SAN CARLOS APACHE TRIBE
WATER RIGHTS SETTLEMENT AGREEMENT
Dated MARCH 30, 1999

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AGREEMENT

SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

THIS AGREEMENT, dated as of MARCH 30, 1999, is entered into among the United States of America; the State of Arizona; the San Carlos Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe, and the Town of Gilbert, and the Central Arizona Water Conservation District.

1.0 RECITALS

1.1 The representatives of the United States of America, the State of Arizona, the San Carlos Apache Tribe, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe, and the Town of Gilbert, and the Central Arizona Water Conservation District agree that certain water rights of the San Carlos Apache Tribe and its members, be permanently settled and that the terms of that settlement are in accordance with the San Carlos Apache Tribe Water Rights Settlement Act of 1992 as amended, a copy of which Act is attached hereto as Exhibit 1.1 and incorporated herein by this reference (hereinafter referred to as the "Act"), and this Agreement. The Parties have agreed to resolve certain pending litigation concerning the water rights and claims of the San Carlos Apache Tribe and the United States acting on behalf of the San Carlos Apache Tribe.

1.2 The objective of this settlement is to resolve certain outstanding water related litigation and to settle, confirm, and finally adjudicate and decree, once and for always against the Parties to this Agreement and certain other claimants, the water rights of the San Carlos Apache Tribe, its members, and the United States acting on behalf of the San Carlos Apache Tribe, based upon Federal, State and other laws.

1.3 The Congress made the findings set forth in Section 3702(a) of the Act as follows:

(a) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(b) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(c) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(d) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(e) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and

frustrated its effort to reduce its dependence on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(f) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(g) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(h) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into this Agreement to resolve all water rights claims between and among themselves, to quantify the Tribe's entitlement to water, and to provide for the orderly development of the Tribe's lands;

(i) pursuant to this Agreement, the neighboring non-Indian communities will relinquish claims to approximately fifty-eight thousand seven hundred and thirty-five acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out this Agreement's provisions; and

(j) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of this Agreement and contribute funds for the rehabilitation and expansion of existing Reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient Reservation economy.

1.4 The purposes of the Act as stated in Section 3702 (b) are as follows:

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities;

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement; and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and the Act.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the Parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which, when capitalized, shall have the exclusive meanings stated below.

2.1 "Act" shall mean the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Public Law 102-575, as amended.

2.2 "Active Conservation Capacity", except as used in Subparagraph 20.2.2 and Paragraph 21 hereof, shall mean that storage space, exclusive of bank storage, available to store water which can be released through existing Coolidge Dam outlet works.

2.3 "CAP" shall mean the Central Arizona Project, a reclamation project authorized under Title 3 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521, et seq.).

2.4 "CAP Master Repayment Contract" shall mean the contract between the United States and the Central Arizona Water Conservation District for delivery of water and repayment of costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245[1/], Amendment No. 1), and any amendment or revision thereof.

2.5 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the contractor under the CAP Master Repayment Contract.

2.6 "Divert" shall mean to remove, withdraw or develop and produce or capture, Surface Water or Groundwater from its natural course or location by means of a ditch, canal, flume, bypass, pipe line, pit, collection or infiltration gallery, conduit, well, pump or other mechanical device or any other act of man. "Diversion" shall mean the act of diverting.

2.7 "Effluent" shall mean water which, after being diverted as Groundwater or Surface Water, has been used for domestic, municipal, industrial, or mining purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

[1/] Contract number used in the Act is incorrect.

2.8 "Enforceability Date" shall have the meaning ascribed to it in Subparagraph 22.4.1 of this Agreement.

2.9 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as IN RE the General Adjudication of All Rights to Use Water in the Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro).

2.10 "Globe Equity Decree" shall mean that decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity No. 59, in the District Court of the United States in and for the District of Arizona, and all decrees, modifications, amendments, court orders and decisions supplemental thereto.

2.11 "Groundwater" shall mean water which is not defined as Surface Water pursuant to Subparagraph 2.23 or Effluent pursuant to Subparagraph 2.7 hereof.

2.12 "Kent Decree" shall mean that Decree dated March 1, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees, modifications, amendments, court orders and decisions supplemental thereto.

2.13 "Main Stem" shall mean that Surface Water flowing in the Black, Salt, San Pedro and/or Gila Rivers.

2.14 "Parties" means the entities represented by the signatories to this Agreement.

2.15 "Phelps Dodge" shall mean Phelps Dodge Corporation, a New York Corporation, Phelps Dodge Development Corporation, a Delaware Corporation, Phelps Dodge Morenci, Inc., a Delaware Corporation, the Morenci Water and Electric Company, an Arizona Corporation, Pacific Western Land Company, a California Corporation, and their predecessors, affiliates, successors and assigns.

2.16 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

2.17 "Reservation" shall mean the San Carlos Apache Reservation authorized by the Treaty with the Apache Nation dated July 1, 1852, 10 Stat. 979 (1852), established by the Executive Orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive Orders and Acts of Congress, including the Executive Order of August 5, 1873.

2.18 "SCIDD" shall mean the San Carlos Irrigation and Drainage District, an irrigation and drainage district organized under the laws of the State of Arizona.

2.19 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.20 "SRRD" shall mean the Salt River Reservoir District as defined on the Enforceability Date, in Article IV, Section 3 of the Articles of Incorporation of the Salt River Valley Water Users' Association.

2.21 "San Carlos Irrigation Project" shall mean the project authorized pursuant to the Act of June 7, 1924, 43 Stat. 475, expanded pursuant to the Act of March 7, 1928, 45 Stat. 200, 210, and administered by the Bureau of Indian Affairs.

2.22 "Secretary" shall mean the Secretary of the United States Department of the Interior.

2.23 "Surface Water" shall mean all water on or beneath the surface of the earth which is appropriable under applicable law.

2.24 "Tribe" shall mean the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. § 476), and duly recognized by the Secretary.

2.25 "Tributary" or "Tributaries" shall mean that Surface Water in water courses on the Reservation upstream from their confluences with the Main Stem of the Black, Salt, San Pedro and/or Gila Rivers.

3.0 <u>EXHIBITS</u>

This Agreement includes the following exhibits which are attached hereto and incorporated herein:

List of Exhibits

No.	Title	Page
1.1	San Carlos Apache Tribe Water Rights Settlement Act	1
11.1	Tribal CAP Contract Amendment	20
11.3	CAP Leasing Provisions	22
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4.0 WATER RIGHTS; ON-RESERVATION TRIBUTARIES; ON-RESERVATION GROUNDWATER

The rights of the Tribe and the United States acting on behalf of the Tribe to water that are the subject of this Agreement are as stated in this Paragraph 4.0, and in Paragraphs 5.0, 7.0, 8.0, 9.0, 10.0, and 11.0 hereof, and such rights are held by United States in trust for the Tribe.

The terms of this Agreement setting forth the rights of the Tribe and the United States acting on behalf of the Tribe to Surface Water from the San Pedro River and its off-Reservation tributaries as provided in Paragraph 7.0 hereof, from the Black River, and/or from the Salt River below its confluence with the Black River as provided in Subparagraph 5.1 hereof, and from the Tributaries of the San Pedro, Black and Salt Rivers as provided in Subparagraphs 4.2.1 and 4.2.3 hereof, to the storage of Surface Water as provided in Subparagraphs 4.2.1, 4.4, 4.5 and 5.2 hereof, to Groundwater beneath the Reservation as provided in Subparagraph 4.3 hereof, and to Effluent as provided in Subparagraph 4.4 hereof,

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[2/] There are no Exhibits A, B and C to this Agreement.

shall be binding upon all parties to the Gila River Adjudication other than the non-settling entities specifically listed in Subparagraph 18.3(f) hereof, and such rights shall be included in the judgment in the Gila River Adjudication approving this Agreement. The terms of this Agreement setting forth the rights of the Tribe and the United States acting on behalf of the Tribe to Surface Water from the Tributaries of the Gila River as provided in Subparagraph 4.2.2 hereof and its Coolidge Dam storage rights as provided in Paragraph 8.0 hereof shall be binding only on the Parties to this Agreement and shall be included in the judgment in the Gila River Adjudication or other court of competent jurisdiction approving this Agreement.

The terms of this Agreement are not binding upon the non-settling entities specifically listed in Subparagraph 18.3(f) hereof, and the Tribe and the United States on its own behalf and acting on behalf of the Tribe reserve the right to assert claims in the Gila Adjudication or other court of competent jurisdiction against such non-settling entities for the rights of the Tribe and the United States acting on behalf of the Tribe (1) to water as set forth in Paragraphs 4.0 and 5.0 hereof, and to the Gila River and its tributaries upstream of Gila Crossing other than the San Pedro River and its off-Reservation tributaries, (2) to contest all water uses and/or claims for water rights by the non-settling entities, and (3) to contest the application of Arizona law to the Reservation and to the water rights of the Tribe and the United States acting on behalf of the Tribe.

4.1 Except as otherwise provided herein for Groundwater and Tributaries, the rights of the Tribe and the United States acting on behalf of the Tribe to water that are the subject of this Agreement are set forth as follows:

PARAGRAPH REFERENCE	SOURCE	MAXIMUM DIVERSION AMOUNT (AF/YR)
5	Salt/Black River	7,300
11	The Tribe's CAP Contract (original)	12,700
9	Ak-Chin CAP Allocation (referred to in Section 3704(a) and 3704(b) of the Act) in normal years up to	33,300
10	CAP M&I Priority Water Previously Allocated to Phelps Dodge Corporation	14,665[3/]
		67,965

4.2 DIVERSIONS FROM ON-RESERVATION TRIBUTARIES.

4.2.1 The Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the on-Reservation Diversion and use of all the Surface Water in all Tributaries within the Reservation to the Main Stem of the San Pedro River, Black River and the Salt River below its confluence with the Black River, including the right to fully regulate and store such water on the Tributaries; provided, however, that once water from the Tributaries has flowed into the Main Stem of the San Pedro, Salt and/or Black Rivers, such water shall be for the purposes of this Agreement, water from the Main Stem of those rivers, and the rights of the Tribe and the United States acting on behalf of the Tribe to water from the Main Stem of those rivers shall be limited to the amounts set forth in Paragraphs 5.0 and 7.0 hereof.

4.2.2 The Parties, except for the United States acting as trustee for Indian tribes other than the Tribe, agree that the Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the on-Reservation Diversion and use of all the Surface Water in all Tributaries within the Reservation to the Main Stem of the Gila River, including the right to fully regulate and store such water on the Tributaries; provided, however, that once water from the Tributaries has flowed into the Main Stem of the Gila River, such water shall be for the purposes

[3/] Number used in the Act is incorrect.

of this Agreement, water from the Main Stem.

4.2.3 If Executive Orders or Acts of Congress issued or enacted on or after the Enforceability Date add lands to the Reservation, such additional lands may be served by Diversions from Tributaries to the Main Stem of the Black River, Salt River below its confluence with the Black River, Gila River and San Pedro River, to the extent such Tributaries are located within the Reservation on the Enforceability Date. The Tribe and the United States acting on behalf of the Tribe may also Divert Surface Water and Groundwater from within such additions but only to the extent that such Diversions are based on water rights acquired with the additional lands or thereafter in accordance with State law. This provision shall not operate to prevent CAP water exchanges permitted by Subparagraph 12.1 hereof.

4.3 The Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the on-Reservation Diversion, use, and storage of all Groundwater beneath the Reservation, subject to the Groundwater Management Plan referred to in Section 3710(d) of the Act.

4.4 The Tribe and the United States acting on behalf of the Tribe shall have the permanent right to Effluent developed on the Reservation which may be stored and used on the Reservation for such purposes as the Tribe or the United States acting on behalf of the Tribe may determine. Effluent developed on the Reservation shall not be included in the water rights of the Tribe or the United States acting on behalf of the Tribe as set forth in this Agreement. No storage or use of such Effluent by the Tribe or the United States acting on behalf of the Tribe shall diminish the water rights of the Tribe or the United States acting on its behalf, and such Effluent may not be deducted as a set off against the rights described in this Agreement.

4.5 The rights of the Tribe and the United States acting on behalf of the Tribe to store the water that is the subject of this Agreement shall be as stated in Subparagraphs 4.2.1, 4.2.2, 4.3, 4.4, 5.2, and 8.0 hereof. Neither the Tribe nor the United States acting on behalf of the Tribe shall have the right to store water that is the subject of this Agreement other than as stated in Subparagraphs 4.2.1, 4.2.2, 4.3, 4.4, 5.2, and 8.0 hereof.

4.6 The water rights of the Tribe and the United States acting on behalf of the Tribe subject to this Agreement may be used for any beneficial purpose on the Reservation.

5.0 SALT/BLACK RIVER WATER

5.1 The Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the On-Reservation Diversion and use of a total of 7,300 acre-feet of Surface Water annually from the Black River, and/or from the Salt River below its confluence with the Black River. The priority date associated with the right of the Tribe and the United States acting on behalf of the Tribe to the Salt or Black River water shall be November 9, 1871; provided, however, the Tribe and the United States acting on behalf of the Tribe reserve the right to assert in the Gila River Adjudication or other court of competent jurisdiction an earlier priority date against other Indian tribes, the United States acting on behalf of other Indian tribes, and the other non-settling entities listed in Subparagraph 18.3(f).

5.2 The Tribe and the United States acting on behalf of the Tribe have asserted claims in the Gila River Adjudication to water from the Upper Salt River watershed. These claims contemplate construction of reservoirs along the Main Stem of the Upper Salt and Black Rivers. Except for any diversion structures as may be needed to enable the Tribe or the United States acting on behalf of the Tribe to Divert the water described in Subparagraph 5.1 hereof, this

Agreement does not authorize the construction of such reservoirs. Prior to construction of any such Main Stem reservoirs, the Tribe and the Secretary shall execute a separate agreement with SRP regarding operation of any such new reservoirs; provided, however, that the evaporation losses associated with the storage of water by the Tribe or the United States acting on behalf of the Tribe in such reservoirs shall be considered Diversions for purposes of this Agreement and shall be deducted from the annual amount the Tribe or the United States acting on behalf of the Tribe is entitled to Divert from the Salt/Black River under Subparagraph 5.1 hereof.

5.3 The Tribe shall install and maintain devices capable of measuring and recording all Diversions of Surface Water from the Main Stem of the Black and Salt Rivers by or on behalf of the Tribe. The device currently measuring and reporting Diversions of Surface Water from the Main Stem of the Black River by the Tribe or the United States acting on behalf of the Tribe is USGS gauging station #09445000 located on Willow Creek just downstream of the outlet pipeline from the Black River pumping plant which is approximately 3.6 miles northeast of Point of Pines on the Reservation. The Tribe shall use its best efforts to maintain the accuracy of this gauging station, or any other devices capable of measuring and reporting Diversions of Surface Water from the Main Stem of the Black and Salt Rivers by the Tribe or the United States acting on behalf of the Tribe, to as close to zero error as practical, but in no event shall error exceed plus or minus 10% of actual Diversions. The Tribe shall have no obligation to replace any Diversion measuring devices which meet the accuracy standards of the preceding sentence. Substitute or supplemental Diversion measuring and reporting devices or locations may be agreed to by the Tribe, the United States and SRP in writing in order to enhance the accuracy of the Diversion measurements and reporting; provided however, that neither the Tribe, the United States nor SRP shall unreasonably withhold approval of a request by the other to use substitute or supplemental Diversion measuring or reporting devices or locations following an agreement as to who bears the costs of such devices. From time to time as determined by SRP, SRP may request

an access permit ("Permit") from the Tribe for permission to enter on the Reservation to carry out either or both of the following: (a) inspect and verify the accuracy of all such Diversion measuring and recording devices; and (b) inspect and verify the accuracy of the Diversion measurement and accounting procedures used by the Tribe or the United States with respect to Diversions of Surface Water from the Main Stem of the Black and Salt Rivers by the Tribe or the United States acting on behalf of the Tribe. The Tribe shall take action on SRP's request for such Permit to enter on the Reservation within 10 business days of receipt of such request, and such permission shall not be unreasonably withheld by the Tribe.

5.4 No later than March 1 of each year, the Bureau of Indian Affairs, in consultation with the Tribe and SRP, shall prepare an annual accounting based upon data received from the Tribe and other sources of the amounts of Surface Water Diverted by the Tribe or the United States acting on behalf of the Tribe from the Main Stem of the Black and Salt Rivers during the previous calendar year. Such annual accounting shall be provided by the United States to the Parties and shall not be disclosed by the Parties except (1) as otherwise may be ordered in the Gila River Adjudication or other court of competent jurisdiction; (2) as may be agreed to by the Tribe; or (3) as may be necessary to enforce the Diversion limits in Subparagraphs 5.1 and 5.2 hereof. Any dispute among the United States, Tribe and SRP concerning this annual accounting shall be resolved as provided in Subparagraph 5.6 hereof.

5.5 SRP may request a Permit from the Tribe for permission to enter on the Reservation, which permission shall not be unreasonably withheld, to install, repair or maintain, at SRP's expense, data logging devices with the ability to provide real time data transmission for purposes of remotely monitoring Diversions of Surface Water from the Main Stem of the Black and Salt Rivers by the Tribe or the United States acting on behalf of the Tribe. If Surface Water flows are remotely monitored, Surface Water flow data developed from any Surface Water flow

sensing and telementry equipment shall be made simultaneously available to the Tribe, the United States, and SRP, and to no other Party except (1) as otherwise may be ordered in the Gila River Adjudication or other court of competent jurisdiction; (2) as may be agreed to by the Tribe; or (3) as may be necessary to enforce the Diversion limits in Subparagraphs 5.1 and 5.2. hereof.

5.6 If the Tribe, the United States, or SRP disputes the annual accounting, written notice of such dispute shall be given by the disputing Party to the other two Parties within 60 days of the disputing Party's receipt of the annual accounting. In the event such written notice is not given as provided in the preceding sentence the accounting shall be deemed accepted. The Tribe, the United States and SRP shall attempt to work together to resolve any dispute. In the event they are unable to resolve the dispute, the Tribe, the United States or SRP may: (1) seek a judicial resolution of the dispute, or (2) upon mutual agreement of the other two Parties' request the Secretary, in his discretion, to resolve the dispute. The Secretary shall, within 60 days of receipt of a request for a resolution, notify the Tribe, the United States and SRP, whether he intends to resolve the dispute. If the Secretary fails to notify the Tribe, the United States and SRP within the 60-day period, then such failure shall be deemed and treated as a decision not to resolve the dispute. If the Secretary agrees to resolve the dispute, he shall do so within 10 months following the date of his notice to the disputants. Failure to resolve the dispute within such 10-month period shall be deemed and treated as a decision by the Secretary to not resolve the dispute. The Secretary's decision not to resolve the dispute shall not be reviewable; however, the disputing Party may still seek judicial resolution of the dispute. A resolution of the dispute by the Secretary shall constitute final agency action and shall be subject to judicial review pursuant to 5 U.S.C. §702 et seq. of the Administrative Procedure Act ("APA") within 60 days of the date of the decision.

5.7 If the actual Surface Water Diversions of the Tribe or the United States acting on behalf of the Tribe exceed the maximum annual Diversions of Surface Water permitted under Subparagraphs 5.1 and 5.2 hereof, as determined by the annual accounting following any review not subject to further appeal, the Tribe or the United States acting on behalf of the Tribe shall reimburse SRP for any such excess Diversions of Surface Water. Reimbursement for such excess Diversions of Surface Water shall take place within the "Reimbursement Period". The Reimbursement Period shall be for twelve months commencing upon the date of acceptance of the annual accounting by the Tribe, the United States and SRP, or upon the date any review of the annual accounting becomes final and not subject to further appeal. The Tribe shall cause to be delivered as reimbursement to SRP, within the Reimbursement Period, an amount equal to the excess Diversions of Surface Water by, in the sole discretion of the Tribe: (1) arranging for delivery of not more than 730 acre-feet of water available under the Tribal CAP Contract and/or (2) reducing the Diversions of Surface Water by the Tribe or the United States acting on behalf of the Tribe from the Main Stem of the Black or Salt Rivers. In the event that the 730 acre-feet of water available under the Tribal CAP Contract is not sufficient to fully reimburse SRP for any excess Diversions of Surface Water, the remainder of the required reimbursement shall be made by reducing Surface Water Diversions by the Tribe, or the United States acting on behalf of the Tribe, from the Main Stem of the Black or Salt Rivers. All costs associated with such reimbursement shall be borne by the Tribe and reimbursement shall be made at no cost to SRP. Nothing in this Subparagraph 5.7 shall limit or otherwise restrict the Parties' right to enforce the terms of this Agreement by specific performance or otherwise.

5.8 The Arizona Game & Fish Commission (Commission) and SRP ratify and affirm the July 13, 1953 agreement between the Salt River Valley Water Users' Association and the Commission. Notwithstanding the 1953 agreement, if water impounded in either Big Lake or Crescent Lake on the Apache-Sitgreaves National Forest is necessary to contribute to the Tribe's

use right in Subparagraph 5.1, the Tribe may demand release of water from these reservoirs in amounts actually needed but not to exceed a total rate of 15.5 cfs. Release is necessary only if the flow in the Black River at the Point of Pines gauge (#09489500), absent any Diversions, including those authorized by Paragraph 12.0 hereof, from the Black River by the Tribe or the United States acting on behalf of the Tribe, is 10 cfs or less for 20 consecutive days. The Tribe may only demand release during an eight (8) month period beginning on March 1. Releases from Big Lake and Crescent Lake shall terminate when the flow in the Black River increases to 35.5 cfs for 48 hours at the Point of Pines gauge. Under no circumstances is the Commission required to release water stored in Big Lake below elevation 8979.5 feet.

6.0 GLOBE EQUITY DECREE WATER

This Agreement shall not limit, interfere with or affect in any way, any right the United States or the Tribe may have under the Globe Equity Decree.

7.0 CLAIMS AGAINST SAN PEDRO RIVER WATER USERS ADJACENT TO THE RESERVATION

Subject to the disclaimer in Section 3708(e) of the Act and Paragraph 16 of this Agreement, neither the Tribe, nor the United States acting on behalf of the Tribe shall have any right to Divert Surface Water from the Main Stem of the San Pedro River and its off-Reservation tributaries.

8.0 COOLIDGE DAM STORAGE

8.1 The right of the Tribe and the United States acting on behalf of the Tribe to store water behind Coolidge Dam is as provided for in Section 3704(e) of the Act; provided, however,

that this Agreement shall not prohibit the Tribe or the United States acting on behalf of the Tribe from storing additional water behind Coolidge Dam pursuant to an Act of Congress enacted after January 1, 1993, or a consent decree issued by a court after January 1, 1993. Pro rata evaporation and seepage losses shall be deducted daily from the Tribe's stored water as determined by the Secretary or as provided for in Section 3704(e) of the Act or as provided in a subsequent agreement among the Tribe, the United States, and water users in the Upper Gila River watershed above the confluence of the Gila and Salt Rivers.

8.2 As set forth in Section 3704(e) of the Act, in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such Active Conservation Capacity behind Coolidge Dam on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of San Carlos Irrigation Project for irrigation storage.

9.0 REALLOCATION OF EXCESS AK-CHIN CAP WATER

9.1 The Secretary, in accordance with Section 3704(a) of the Act, shall reallocate for the exclusive use of the Tribe, all of the water referred to in Subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin Indian Reservation under that Act.

9.2 The Secretary, in accordance with Section 3704(a) of the Act, shall exclude, for the purposes of determining the allocation and repayment of the costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

10.0 REALLOCATION OF CERTAIN CAP ALLOCATIONS

10.1 The Secretary, in accordance with Section 3704(c) of the Act, shall reallocate to the Tribe an annual right to 14,665 acre-feet of CAP water having a municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated February 10, 1983, 48 Fed. Reg. 12446 et seq. (March 24, 1983).

10.2 With respect to the water referred to in Subparagraph 10.1 hereof, the Secretary, in accordance with Section 3704(c) of the Act, shall exclude, for the purposes of determining the allocation and repayment of the costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

11.0 CAP WATER DELIVERY CONTRACT; AMENDMENTS

11.1 Under the contract dated December 11, 1980 (hereinafter referred to as "the Tribal CAP Delivery Contract"), the Tribe is entitled to 12,700 acre-feet annually of CAP water. The Secretary and the Tribe, in accordance with Section 3706 of the Act, shall amend the Tribal CAP Delivery Contract, and the amended Contract is set forth as Exhibit 11.1 to this Agreement, as follows:

(a) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a) and (c) of Section 3704 of the Act; except that the water reallocated pursuant to such subsections shall retain the priority such water had

prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver CAP water shall not exceed the cost of construction of the delivery and distribution system for the twelve thousand and seven hundred acre-feet of CAP water originally allocated to the Tribe.

(b) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(c) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(d) Except as provided in this Subparagraph 11.2 hereof, the Tribe is obligated to pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with its CAP water as set forth in Sections 6(a) and (b) in the Tribal CAP Delivery Contract, as amended. The Tribe shall not be required to pay the operation, maintenance and replacement charges described and set forth in Section 6(a) and (b) of the Tribal CAP Delivery Contract, as amended, or any other charge, with respect to CAP water delivered or required to be delivered to the lessee or lessees referred to in Subparagraph 11.1(c) hereof.

(e) The Secretary, in accordance with Section 3704(a) and (b) of the Act, shall exclude, for the purposes of determining the allocation and repayment of the costs on the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

11.2 Any lease entered into by the Tribe pursuant to the terms of the Act and this Agreement shall specifically provide that:

(a) The lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD;

(b) Except as provided in Section 3706(e)(3) of the Act, the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs as provided in Subparagraph 11.2(a) hereof and lease payments as set forth in the water lease agreements; and

(c) Pursuant to Section 3706(f) of the Act, the capital costs associated with the delivery of water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases shall be nonreimbursable to the Tribe.

11.3 Any water supplies leased by the Tribe pursuant to this Paragraph 11.0 shall be used as provided in Section 3706(b)(3) of the Act and all such leases shall contain provisions consistent with Exhibit 11.3 attached hereto unless otherwise agreed by the Tribe, CAWCD, the lessee, the United States, and the Parties to this Agreement who are CAP sub-contractors.

12.0 CAP WATER EXCHANGES

12.1 The Tribe may enter into water exchange agreements with other entities as provided in 43 U.S.C. §1524(d) and §3706(g) of the Act. The Secretary shall, in consultation

with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended. Any exchange of the Tribe's CAP water supplies for water supplies in the Salt River basin upstream of modified Roosevelt Dam shall be contingent upon SRP's agreement (which shall not be unreasonably withheld) that such exchange does not adversely affect the water rights of SRP and its shareholders' lands within the SRRD, or SRP's generation of energy.

12.2 To the extent it is subsequently determined that the Secretary is obligated to construct or cause to be constructed such facilities as are necessary to permit the Tribe to exchange all or part of the water available to it under Tribal CAP Delivery Contract, as amended, with the San Carlos Irrigation Project, SCIDD and the Gila River Indian Community, the Secretary shall carry out that obligation.

12.3 Any exchange, pursuant to this Agreement and the Act, of Main Stem Gila River water for CAP water supplies shall not amend, alter, or conflict with the exchanges authorized by Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. §1524(f)).

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15.0 CONSTRUCTION AND REHABILITATION OF FACILITIES; AMENDMENT OF RELATED CONTRACT

15.1 The Secretary, in accordance with Section 3707(a)(1) of the Act, shall design and construct new facilities for the delivery of 12,700 acre-feet of CAP water originally allocated to the Tribe to the tribal reservation lands at a cost which shall not exceed the cost for such design

and construction which would have been incurred by the Secretary in the absence of this Agreement and the Act.

15.2 The Secretary of Commerce shall amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07-0981-09000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of the Act are discharged.

16.0 OFF-RESERVATION ALLOTMENTS

Nothing in this Agreement shall affect the water rights or claims of water rights related to the San Carlos Apache Allotments, referred to in Section 3708(e) of the Act, outside the exterior boundaries of the Reservation.

17.0 APPLICABILITY OF FEDERAL RECLAMATION LAWS AND FULL COST PRICING PROVISIONS

17.1 No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. §390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in this settlement or their execution and performance of this Agreement, or the use, storage or delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under the Act.

17.2 The lands within SRP and RWCD shall be free from the ownership limitations and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

17.3 The lands within the Reservation shall be free from the ownership limitations and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

18.0 WAIVER OF CLAIMS

18.1 The Parties, other than the Tribe, shall execute a waiver and release of any and all past and present claims of injuries to their water rights (including water rights in Groundwater, Surface Water and Effluent), which the Parties may have against the Tribe, its members and the United States on their behalf, under the laws of the United States, the State of Arizona, or otherwise, for Diversions of Surface Water from the Black and Salt Rivers and their Tributaries, Tributaries of the Gila and San Pedro Rivers, Effluent developed on the Reservation, or of Groundwater on the Reservation. The term "Parties" as used in this Subparagraph 18.1 means all Parties except the U.S. Forest Service and the United States acting as trustee for Indian tribes other than the Tribe.

18.2 Except as provided in Subparagraphs 18.3 and 18.4 hereof, the Tribe, on behalf of itself and its members, and the United States, on its own behalf as well as on behalf of the Tribe and its members, shall execute a waiver and release of:

(a) any and all past and present claims of water rights or injuries to water rights (including water rights in Groundwater, Surface Water, and Effluent) for land within the Reservation, from time immemorial to the date of execution of such waiver and release, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United

States, the State of Arizona, or otherwise;

(b) any and all future claims of rights to water (including water rights in Groundwater, Surface Water, and Effluent) for land within the Reservation, from and after the date of execution of such waiver and release, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States, the State of Arizona, or otherwise; and

(c) any and all past, present and future claims of water rights or injuries to water rights (including water rights in Groundwater, Surface Water and Effluent) for lands outside of the Reservation for claims based upon aboriginal occupancy by the Tribe, its members, or their predecessors, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States, the State of Arizona, or otherwise.

The waiver and release described in this Subparagraph 18.2 shall be in the form set forth in Exhibit 18.2 to this Agreement.

18.3 Notwithstanding the execution by the Tribe and the United States of the waiver and release described in Subparagraph 18.2 hereof, the Tribe, its members, and the United States in its own right and on behalf of the Tribe and its members shall reserve the right to assert the following:

(a) claims of damages to water quality of Surface Water or Groundwater on the Reservation arising after the Enforceability Date;

(b) claims arising out of Globe Equity No. 59 to or for enforcement of water rights (including water rights in Groundwater, Surface Water, and Effluent) and claims of injuries to water rights, past, present and future;

(c) claims for enforcement of the Tribe's water rights provided for in this Agreement under the continuing jurisdiction of the court in the Gila River Adjudication or other court of competent jurisdiction;

(d) claims for the breach or enforcement of the terms of this Agreement or rights recognized herein, or in the Act, including claims for future injuries to such rights;

(e) claims which contest Diversions of water on the Reservation by non-parties to this Agreement, for use off-Reservation;

(f) claims in the Gila River Adjudication or other court of competent jurisdiction (1) to water from the Gila River and its tributaries, other than from the San Pedro River and its off-Reservation tributaries, upstream from Gila Crossing against the States of Arizona and New Mexico or any agency or political subdivision thereof, the City of Globe, the City of Safford, SCIDD, the U.S. Forest Service, the Gila River Indian Community, its members and allottees and the United States acting on their behalf and on behalf of the San Carlos Irrigation Project, or any other person, corporation or municipal corporation; (2) to the water supplies specified in Paragraphs 4.0 and 5.0 hereof, against the White Mountain Apache Tribe and its members and the United States acting on their behalf, the U.S. Forest Service, and Phelps

Dodge. All parties referred to in this Subparagraph (f) are herein referred to as "the non-settling entities";

(g) objections in the Gila River Adjudication or other court of competent jurisdiction contesting all water uses and claims for water rights of the non-settling entities;

(h) except as provided in Subparagraph 18.3(i) hereof, objections in the Gila River Adjudication or other court of competent jurisdiction to contest the application of Arizona law to the Reservation and the water right of the Tribe and the United States acting on behalf of the Tribe; and

(i) the right in accordance with State law to Divert Groundwater and to apply for a permit to perfect appropriations of Surface Water for additions to the Reservation under Subparagraph 4.2.3 hereof.

18.4 Nothing in this Paragraph 18.0 shall be construed as a waiver or release of claims to water or injuries to water rights of the Tribe, its members, or the United States in the Gila River Adjudication or other court of competent jurisdiction for existing off-Reservation San Carlos Apache Allotments of land.

18.5 Except as provided in Subparagraphs 18.3 and 18.4 of this Agreement, the United States shall not assert any claim against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona, or otherwise, in its own right or on behalf of the Tribe or its members based upon (1) water rights or injuries to water rights (including water rights in Groundwater, Surface Water or Effluent) of the Tribe or its members; or (2) water rights

or injuries to water rights (including water rights in Groundwater, Surface Water or Effluent) held by the United States on behalf of the Tribe or its members.

18.6 Notwithstanding the foregoing, nothing in this Agreement or the Act shall be deemed to recognize or establish any right of a member of the Tribe to water on the Reservation.

18.7 The Parties shall file a stipulation and form of judgment in the Gila River Adjudication in the form of Exhibit D to this Agreement.

18.8 The Tribe shall dismiss with prejudice the following litigation: San Carlos Apache Tribe of Arizona v. State of Arizona, the State Land Department of the State of Arizona, John M. Little, and the Salt River Valley Water Users' Association, United States District Court, District of Arizona, No. CIV 79-186. The dismissals shall be in the form set out in Exhibit E to this Agreement.

18.9 The United States and the Tribe waive their sovereign immunity from suit as provided in Section 3710(a) of the Act.

19.0 TRIBAL DEVELOPMENT TRUST FUND

19.1 Pursuant to Section 3707(b) of the Act, there has been established in the Treasury of the United States the San Carlos Apache Tribe Development Trust Fund (Fund), into which were deposited:

(a) The funds authorized to be appropriated in Section 3707(c) of the Act; and

(b) The funds provided for in Subparagraph 19.2 hereof.

From and after the Enforceability Date, the Fund, principal and income, may be used by the Tribe in accordance with Sections 3707(d) and 3710(g) of the Act.

19.2 The State of Arizona has provided $3 million for the implementation of this Agreement, which was deposited into the Fund pursuant to Section 3707(b) of the Act.

19.3 The United States shall make no claims for reimbursement of costs arising out of the implementation of this Agreement or the Act against any Indian-owned land within the Reservation, and no assessment shall be made in regard to such costs against such lands.

20.0 CONFIRMATION OF RIGHTS

20.1 Tribe's Rights

The Parties ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights of the Tribe, and the United States acting on behalf of the Tribe, to Divert and use Surface Water on the Reservation from the Black and Salt Rivers and their Tributaries, Tributaries of the Gila and San Pedro Rivers, Effluent developed on the Reservation, and Groundwater beneath the Reservation, as such rights are described in this Agreement and the Act. The term "Parties" as used in this Subparagraph means all Parties except the U.S. Forest Service and the United States acting as trustee for Indian tribes other than the Tribe.

20.2 RWCD Rights

20.2.1 The Parties to this Agreement ratify, confirm and declare to be valid that agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924, and all amendments and modifications thereto. The Parties to this Agreement, except for the United States acting as trustee for Indian tribes other than the Tribe, recognize and confirm the entitlement of RWCD to surface water from the Salt and Verde Rivers and agree not to object to, dispute or challenge, in the Gila River Adjudication, or in any other judicial or administrative proceeding, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and instruments: the agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about September 18, 1940, the judgment dated September 19, 1940, and the order dated September 19, 1940, in W.C. Lehane v. Salt River Valley Water Users' Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

20.2.2 The Parties to this Agreement, except for the United States acting as trustee for Indian tribes other than the Tribe, recognize and confirm that the measure of RWCD's surface water entitlement under the documents and instruments identified in Subparagraph 20.2.1 hereof is five and six-tenths percent (5.6%) of the sum of all surface water, except Spill Water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for use on the lands within the SRRD described in Exhibit 20.2.2 to this Agreement, (b) for distribution by Glendale, Mesa, Phoenix, Tempe and Chandler, or other cities, or towns, or their successors, to the lands within the SRRD listed on Exhibit 20.2.2 to this Agreement, and (c) all surface water delivered to SRP below Granite Reef Dam for use on the lands within the SRRD listed on Exhibit 20.2.2 to this

Agreement in exchange for surface water which otherwise would have been diverted at Granite Reef Dam for delivery to such lands; minus the first 19,427 acre-feet of surface water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Subparagraph 20.2.2, all rights and obligations contained in the documents and instruments referred to in Subparagraph 20.2.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this shall not include any yield from additional active conservation capacity in Roosevelt Reservoir, which is the difference between the reservoir capacity assigned to regulate reservoir outflow for irrigation, power, and municipal and industrial use prior to modifications of Roosevelt Dam, and the reservoir capacity assigned to the same purposes, after modifications of Roosevelt Dam. The term "modifications of Roosevelt Dam" refers to the modifications made as part of Plan 6, which is the regulatory storage division of the CAP, limited to modifications to Roosevelt Dam on the Salt River, as described in the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; the Salt River Project; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated on April 15, 1986, and any amendments or supplements thereto.

20.2.3 The Parties to this Agreement, except for the United States acting as trustee for Indian tribes other than the Tribe, acknowledge that RWCD's water rights as described in the documents and instruments referred to in Subparagraph 20.2.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to RWCD's entitlement, it shall assume RWCD's rights and obligations to the Tribe under this Agreement. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

20.3 SRP Rights. The Parties to this Agreement, except for the United States acting as trustee for Indian tribes other than the Tribe, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights of SRP and its shareholders to the waters of the Salt and Verde Rivers, which rights are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

(a) Notices of Appropriation of Water posted and subsequently recorded by the Hudson Reservoir and Canal Company on April 22, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 1 at Pages 478 to 480; on April 25, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 283-285; on April 29, 1893, with the Yuma County, Arizona, Recorder's Office in Book of Homestead and Pre-emption Claims No. 1 at Pages 76-78; on May 1, 1893, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 8-13; on August 26, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 310-312; on August 26, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records, No. 1 at Pages 534-538; on February 1, 1894, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 53-57; on August 30, 1901, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 2 at Pages 292-293; on August 31, 1901, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at Pages 74-76; on August 31, 1901, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 191-195; on August 31, 1901, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 239-242; on February 26, 1900, in the Office of the Secretary of the Arizona Territory in Book of Filings and Locations No. 2 at Pages 131-133; on March 3, 1900, in the Office of the Secretary of the Arizona Territory in Book of

Water Filings and Locations No. 2 at Pages 154-157.

(b) Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

(c) Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

(d) Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

(e) Decision and Decree, and all Decrees supplemental thereto, entered in Hurley v. Abbott, in the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa, No. 4564, March 1, 1910.

(f) Decision and Decree, and all supplemental Decrees thereto, entered in Benson v. Allison, in the Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast 1/4 of Section 25, Township 1 North, Range 1 East, G&SRB&M.

(g) Salt River Valley Water Users' Association Articles of Incorporation, as amended, in existence on the Enforceability Date.

(h) Water right applications approved and accepted by the authority of the Secretary of Interior for homestead lands under the Reclamation Act and for Lands in Private Ownership and Lands Other than Homesteads under the Reclamation Act between the United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

(i) Agreement between the United States of America and the Salt River Valley Water Users' Association, dated June 25, 1904.

(j) Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.

(k) Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).

(l) Contract between the United States of America and Salt River Valley Water Users' Association, dated November 26, 1935, as amended on October 14, 1936, October 2, 1939, and September 10, 1941 (Construction of Bartlett Dam).

(m) Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

(n) Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam

Construction and Operation).

20.4 Buckeye Rights.

20.4.1 The Parties to this Agreement, except for the United States acting as Trustee for Indian tribes other than the Tribe, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights of the Buckeye Water Conservation & Drainage District, and the Buckeye Irrigation Company and its shareholders, to the waters of the Salt, Verde and Gila Rivers, which rights are appurtenant to lands currently provided with water by the Buckeye Irrigation Company or within Buckeye Water Conservation & Drainage District, and which rights are described, confirmed, or established by virtue of the following documents, decrees and enactments:

(a) Notices of location and appropriation of waters of the Gila River posted March 10, 1877, and recorded March 12, 1877, in Book 1 of Canals, page 22, and posted May 28, 1885, and recorded June 3, 1885, in Book 1 of Canals, Page 80, and posted July 24, 1886, and recorded October 8, 1886, in Book 1 of Canals, page 94, in the records of Maricopa County, Arizona.

(b) The Articles of Incorporation and By-laws of the Buckeye Irrigation Company, as amended and in effect as of the date of the Enforceability Date.

(c) The decree of November 14, 1917, and all amendments and supplements thereto, entered in Benson v. Allison, et al., No. 7589 in the Superior Court of Maricopa County, Arizona, as applicable to all lands described therein and now provided with water diverted from the Gila River at the headgate of the Buckeye Canal in Section 28, Twp. 1 N., R. 1 W.,

G&SRB&M, Maricopa County, Arizona.

(d) The order of the Board of Supervisors of Maricopa County, Arizona, dated November 6, 1922, creating the Buckeye Water Conservation & Drainage District and including specified lands within the boundaries thereof, and the provisions of Chapter 19, title 48, Arizona Revised Statutes, establishing the rights of lands to waters available for distribution within such District as in effect at the time of the Enforceability Date.

(e) The agreements, stipulations, judgments and decrees made and entered in Buckeye Irrigation Company v. Salt River Valley Water Users' Association, et al., No. 30869-B in the Superior Court of Maricopa County, Arizona, including, but not limited to the judgment in favor of Buckeye Irrigation Company and against Salt River Valley Water Users' Association entered September 29, 1944.

20.4.2 Buckeye Waiver. The Buckeye Water Conservation and Drainage District and the Buckeye Irrigation Company, on its own behalf and on behalf of its shareholders, hereby waive any right to object to or contest any claims for rights to use water described in Subparagraph 18.3 of this Agreement which may be asserted by the Tribe, or by the United States on behalf of the Tribe, in the Gila River Adjudication, or other court of competent jurisdiction.

20.5 Arizona Game and Fish Commission Rights

20.5.1 The Tribe confirms that certain State Game and Fish uses of water for wildlife purposes do not adversely affect users on the Reservation and agrees not to dispute in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights and claims to water described in Exhibit 20.5.1 to this Agreement. These uses are not subject to call in the

event the Tribe enforces the earlier priority of its rights.

20.5.2 The Tribe acknowledges that the Arizona Game and Fish Commission has a responsibility to conserve wildlife species and habitat on non-Reservation lands. The Tribe agrees not to object if the Arizona Game and Fish Commission applies for a special use permit from the Apache-Sitgreaves National Forest or a certificate of water rights from the State that shall allow construction of wildlife watering facilities if the water appropriated for each project does not exceed .5 afa, and the use of the water does not cause material harm to the Tribe. Game and Fish shall provide not less than 60 days notice to the Tribe upon application of any special use permit or certificate of water rights described in this Subparagraph 20.5.2.

21.0 SPILL WATER

The Parties to this Agreement recognize that SRP and other water users have asserted appropriative claims to the flood flow waters from the Salt and Verde Rivers in excess of the storage capacities of SRP reservoirs existing as of February 12, 1988 ("Spill Water"). The SRP claims to Spill Water are based upon the alleged actual diversion and beneficial use of this Spill Water through Granite Reef Dam and they extend to the capacity of the SRP water transmission and distribution systems at the time of these diversions. The Tribe has not asserted any claim for and does not have any right to use Spill Water. The United States and the Tribe shall not challenge any claims to Spill Water in the Gila River Adjudication or in any other administrative or other judicial proceeding. All Parties to this Agreement other than the United States and the Tribe reserve the right to assert claims to Spill Water, protest the Spill Water claims of other parties or protest the validity of any appropriation of Spill Water, and/or seek appropriative rights wherein such Spill Water would be stored in additional active conservation capacity in Roosevelt Reservoir, as such capacity is defined in Subparagraph 20.2.2 hereof.

22.0 OTHER PROVISIONS

22.1 Disclaimer. Nothing in this Agreement shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community other than the Tribe.

Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

22.2 Evidentiary Effect of the Negotiations. This Agreement has been arrived at in the process of good faith negotiations, is not evidence pursuant to Rule 408 of the Arizona and Federal Rules of Evidence, and all Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

22.3 Effect of Execution by State of Arizona. Execution of this Agreement by the State of Arizona constitutes the confirmation that it is the policy of the State of Arizona to assist in carrying out the provisions hereof to the extent it may do so in accordance with its responsibility and authority under the law. It is not intended that this Agreement shall be determinative of any decision to be made by any state agency in any adjudicatory or rule making proceeding. Except as provided in this Agreement, nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its land and natural resources.

22.4 Enforceability Date and Related Matters

22.4.1 This Agreement shall be effective and binding when it has been executed by all Parties hereto and when the Parties to this Agreement have executed all exhibits to the Agreement which call for their signatures. Other than to take all steps necessary to cause the events described in this Subparagraph 22.4.1 hereof to occur, no Party to this Agreement shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under the Agreement or under any of the exhibits until such time as the authorizations contained in Section 3708(b) of the Act have become effective, which date is referred to herein as the "Enforceability Date". In the event the authorizations contained in Section 3708(b) of the Act have not become effective by December 31, 1999, this Agreement shall be of no further force or effect.

22.4.2 Any act of Congress which materially amends the Act set forth in Exhibit 1.1 hereto prior to the Enforceability Date without the written consent of the Parties adversely affected by such amendment shall relieve all Parties of their obligations hereunder.

22.5 Uses. All Parties recognize that water uses on urbanized portions of the lands within the SRRD and RWCD have changed and will continue to change from agricultural uses to municipal and industrial (M&I) uses. The Parties agree that such changes in use are valid, and that water appurtenant to lands which are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I uses on such urbanized lands and the water rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of use, these water rights are as described in the Kent Decree, the Lehane Decision (W. C. Lehane v. Salt River Valley Water Users' Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County, Arizona) and Subparagraphs 20.2 and

20.3 hereof and the documents referred to therein. No Party shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any basis in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Parties agree that the historical practices of the Cities and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached hereto as Exhibit 22.5. Nothing in this Subparagraph 22.5 shall be construed as authorizing the delivery of water to any municipality by SRP for M&I uses within the SRRD in the absence of a written delivery agreement between any such municipality and SRP. The term "Party" or "Parties" as used in this Subparagraph 22.5 means all Parties except the United States acting as trustee for Indian tribes other than the Tribe.

22.6 Prohibitions. Except as authorized in Section 3706 of the Act and provided for in Paragraphs 11.0 and 12.0 hereof, none of the water which is the subject of this Agreement, may be sold, leased, transferred or in any way used off the Reservation.

22.7 Other Indian Water Rights Settlements. The Tribe shall support the efforts of other Parties to settle the water rights and damages claims of other Indian tribes to the extent that such settlement would not be inconsistent with the provisions of this Agreement, or the Act, or other water rights or claims to water rights of the Tribe.

22.8 Governing Law. This Agreement shall be construed in accordance with the applicable law of the State of Arizona and applicable Federal law. Nothing contained herein waives the right of the United States or the Tribe to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Agreement.

22.9 Succession. This Agreement shall inure to the benefit of and be binding upon the successors of the Parties hereto.

22.10 Destruction of Facilities. The destruction of any of the facilities provided for in Paragraphs 8.0, 12.0 and 15.0 hereof shall not extinguish the Tribe's right to receive water otherwise made available by the affected facility; however, such destruction may relieve the Parties of the obligation to provide such water to the Tribe until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the principal Parties in interest as hereinafter provided. Any Party responsible for repairing or replacing an affected facility under other contractual arrangements shall have that same obligation under this Agreement. In the event no Party has such obligation, all of the Parties, including the Secretary, shall use all reasonable efforts to provide a permanent equitable substitute source for the affected water supply in a manner consistent with the Parties' respective obligations under this Agreement.

22.11 Participation of CAWCD. The Parties acknowledge that CAWCD's participation in this Agreement is based upon the Statement of Policies and Principles adopted by its Board of Directors on March 3, 1988, a copy of which as attached hereto as Exhibit 22.11.

22.12 Contingent on Appropriation of Funds. The expenditure or advance of any money or the performance of any obligation which requires the expenditure of money by the United States under this Agreement shall be contingent upon appropriation of funds therefor.

22.13 Officials Not to Benefit. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

22.14 Except as otherwise expressly provided herein, nothing in this Agreement, or in the judgment referred to in Paragraphs 4.0 and 18.7, shall be construed to limit or preclude any Party, other than the Tribe and the United States acting on behalf of the Tribe, from asserting any priority date or entitlement to a quantity of water in a claim made by the Party in the Gila River Adjudication, or other court of competent jurisdiction.

22.15 Miscellaneous Provisions

22.15(a) Counterparts. This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

22.15(b) Notices. Any notice to be given hereunder shall have been properly given when received by the Officer or Manager designated herein, or when deposited in the United States mail in an Arizona, or Washington, D. C., post office, certified or registered, postage prepaid, addressed as follows:

As to the United States of America:	Secretary of the Interior Department of the Interior Washington, D.C. 20240
	Area Director Phoenix Area Office Bureau of Indian Affairs P. 0. Box 10 Phoenix, AZ 85001
	Regional Director Bureau of Reclamation Lower Colorado Region P. 0. Box 61470 Boulder City, NV 89006-1470
As to the State of Arizona:	Office of the Governor 1700 West Washington Phoenix, AZ 85007

As to the Tribe:	Office of Tribal Chairman San Carlos Apache Tribe P. O. Box 0 San Carlos, Arizona 85550
As to the CAWCD:	Central Arizona Water Conservation District 23636 North Seventh Street Phoenix, AZ 85024 Attn: General Manager
As to the SRP:	Salt River Project P. 0. Box 52025 Phoenix, AZ 85072-2025 Attn: General Manager
As to the RWCD:	Roosevelt Water Conservation District 15400 South Higley Road Higley, AZ 85236 Attn: General Manager
As to the Buckeye Irrigation Company:	Buckeye Irrigation Company P. O. Box 1726 Buckeye, AZ 85326 Attn: General Manager
As to the Buckeye Water Conservation and Drainage District	Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326 Attn: General Manager
As to the City of Scottsdale:	City of Scottsdale 3939 Civic Center Blvd. Scottsdale, AZ 85251 Attn: City Manager
As to the City of Chandler:	City of Chandler Mailstop 603 P. O. Box 4008 Chandler, AZ 85244-4008 Attn: City Manager
As to the City of Glendale:	City of Glendale 5850 West Glendale Avenue Glendale, AZ 85301 Attn: City Manager

As to the City of Mesa:	City of Mesa P. 0. Box 1466 Mesa, AZ 85211-1466 Attn: City Manager
As to the City of Tempe:	City of Tempe 32 East 5th Street Tempe, AZ 85281 Attn: City Manager
As to the Town of Gilbert:	Town of Gilbert 1025 S. Gilbert Road Gilbert, AZ 85296 Attn: Town Manager

or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Subparagraph 22.15(b).

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Secretary of the Interior

THE STATE OF ARIZONA

By: _____
Governor

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____
General Counsel

SAN CARLOS APACHE TRIBE

Attest: _____ Secretary

By: _____ Chairman

Approved as to Form: _____

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest: _____

Its SECRETARY

By: _____

Its PRESIDENT

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest: _____

Its SECRETARY

By: _____

Its PRESIDENT

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: _____ Secretary

By: _____ President

Approved as to Form: _____

BUCKEYE IRRIGATION COMPANY

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

CITY OF SCOTTSDALE

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF MESA

Attest: _____
Clerk

By: _____
City Manager

Approved as to Form: _____
Deputy City Attorney

CITY OF TEMPE

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

CITY OF CHANDLER

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____

By: _____
Town Manager

Approved as to Form: _____

By: _____
Mayor

CITY OF GLOBE

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

CITY OF SAFFORD

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

EXHIBIT 1.1

SAN CARLOS APACHE TRIBE

WATER RIGHTS SETTLEMENT ACT

(C) THIRD PHASE.—The third phase of the plan, including dredging, transportation, and placement of material, shall be started no later than July 1, 1994.

(D) FOURTH PHASE.—The final phase of the plan shall include monitoring of project success and function and remediation if necessary.

Contracts.

(d) NON-FEDERAL PARTICIPATION.—Any work undertaken pursuant to this title shall be initiated only after non-Federal interests have entered into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. The non-Federal interests shall agree to:

(1) provide 25 percent of the cost associated with the project, including provision of all lands, easements, rights-of-way, and necessary relocations; and

(2) pay 100 percent of the cost of operation, maintenance, replacement, and rehabilitation costs associated with the project.

(e) REPORTS TO CONGRESS.—The Secretary shall report to Congress at the end of each of the time periods referred to in subsection (c)(3) on the progress being made toward development and implementation of the project under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 for carrying out this section for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.

San Carlos Apache Tribe Water Rights Settlement Act of 1992. Contracts. Claims.

TITLE XXXVII—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT, ARIZONA

SEC. 3701. SHORT TITLE.

This title may be cited as the "San Carlos Apache Tribe Water Rights Settlement Act of 1992".

SEC. 3702. CONGRESSIONAL FINDINGS.

(a) SPECIFIC FINDINGS.—The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) qualification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(5) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence

on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(6) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(8) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into an Agreement to resolve all water rights claims between and among themselves, to quantify the Tribe's entitlement to water, and to provide for the orderly development of the Tribe's lands;

(9) pursuant to the Agreement, the neighboring non-Indian communities will relinquish claims to approximately fifty-eight thousand seven hundred and thirty-five acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out the Agreement's provisions; and

(10) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient reservation economy.

(b) PURPOSES OF TITLE.—It is the purpose of this title—

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and this title.

SEC. 3703. DEFINITIONS.

For purposes of this title:

(1) "Active conservation capacity" means that storage space, exclusive of bank storage, available to store water which can be released through existing reservoir outlet works.

(2) "Agreement" means that agreement among the San Carlos Apache Tribe; the United States of America; the State

of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona cities of Chandler, Glendale, Globe, Mesa, Safford, Scottsdale and Tempe, the town of Gilbert; Buckeye Water Conservation and Drainage District, Buckeye Irrigation Company, the Phelps Dodge Corporation and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is executed by the Secretary of the Interior pursuant to sections 3710(c) and 3711(a)(7) of this title.

(3) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(4) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(5) "Globe Equity Decree" means the decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity 59, in the District Court of the United States in and for the District of Arizona, and all decrees and decisions supplemental thereto.

(6) "Reservation" means the reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive orders and Acts of Congress including the Executive order of August 5, 1873.

(7) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(8) "Secretary" means the Secretary of the Interior.

(9) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona Corporation.

(10) "SCIP" means the San Carlos Irrigation Project authorized pursuant to the Act of June 7, 1924 (42 Stat. 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs.

(11) "Tribe" means the San Carlos Apache Tribe, a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

SEC. 3704. WATER.

(a) REALLOCATION OF WATER.—The Secretary shall reallocate, for the exclusive use of the Tribe, all of the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984 (98 Stat. 2698), which is not required for delivery to the Ak-Chin Indian Reservation under that Act. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from

CAWCD's repayment obligation and such costs shall be nonreimbursable.

(b) PARTIAL SATISFACTION OF CLAIMS.—Notwithstanding any other provision of this title, in the event the authorizations contained in section 3708(b) do not become effective, the water referred to in subsection 3704(a) of this title shall constitute partial satisfaction of the Tribe's claims for water in the proceeding entitled "In Re the General Adjudication of All Rights To Use Water in the Gila River System and Source", Maricopa County Superior Court Nos. W-091, W-092, W-093, and W-094 (consolidated), as against the parties identified in section 3703(2) of this title.

(c) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe an annual entitlement to fourteen thousand six hundred and fifty-five acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(d) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe an annual entitlement to three thousand four hundred and eighty acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12466 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be reimbursable.

(e) WATER STORAGE POOL.—Notwithstanding the Act of June 7, 1924 (43 Stat. 475), as amended by the Act of March 7, 1928 (45 Stat. 200, 210), in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam

on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of SCIP for irrigation storage, except that any water stored by the Tribe shall be the first water to spill ("spill water") from Coolidge Dam. The water stored by the Tribe shall be, at the Tribe's designation, the water provided to the Tribe pursuant to subsections (a), (c) and (d) of this section, its entitlement of twelve thousand and seven hundred acre-feet of water under its Tribal CAP Delivery Contract dated December 11, 1981; the water referred to in section 3710(f), or any combination thereof. A pro rata share of evaporation and seepage losses shall be deducted daily from the Tribe's stored water balance as provided in the Agreement. The Tribe shall pay an equitable share of the operation and maintenance costs for the water stored for the benefit of the Tribe, subject to the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C. 386 et seq.). The water stored by the Tribe pursuant to this subsection shall not be subject to apportionments pursuant to Article VIII (2) of the Globe Equity Decree. Not later than January 31 of each year, the Secretary shall notify the United States District Court for the District of Arizona of the Tribe's stored water balance as of January 1 of that year. The Secretary shall notify said Court of the Tribe's stored water balance at least once per calendar month and at such more frequent intervals as conditions, in the Secretary's judgment, may require.

(f) EXECUTION OF AGREEMENT.—The Secretary shall execute the Agreement which establishes, as between and among the parties to Agreement, the Tribe's permanent right, except as provided in paragraphs 13.0, 14.0 and 15.0 of the Agreement, to the on-reservation diversion and use of all ground water beneath the Tribe's Reservation, subject to the management plan referred to in section 3710(d) of this title, and all surface water in all tributaries within the Tribe's Reservation to the mainstreams of: The Black River, the Salt River below its confluence with the Black River, the San Pedro River and the Gila River, including the right, except as provided in paragraphs 14.0 and 15.0 of the Agreement, to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the waiver authorized by subsection 3708(b) of this title, the claims of the Tribe and the United States, as trustee for the Tribe, are preserved.

(g) GILA RIVER EXCHANGES.—Any exchange pursuant to this legislation of Gila River water for water supplied by the CAP shall not amend, alter or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 3705. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) RATIFICATION OF CONTRACT.—Except as provided in section 3710(i), the contract between the SRP and RWCD District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) SUBCONTRACT.—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "A" to the Agreement and to execute the sub-

contract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) RESTRICTIONS.—The lands within RWCD and SRP shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

(d) DISCLAIMER.—No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in the settlement or their execution and performance of the Agreement, or the use, storage or delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under this title.

(e) FULL COST PRICING PROVISIONS.—The lands within the Tribe's Reservation shall be free from all full cost pricing provisions of Federal law.

(f) CERTAIN EXTENSIONS AUTHORIZED.—Notwithstanding any other provision of law or any other provision of this title, the Secretary, subject to tribal approval, is authorized and directed to: extend the term of that right-of-way permit granted to Phelps Dodge Corporation on March 8, 1950, and all amendments thereto, for the construction, operation and maintenance of an electrical transmission line and existing road for access to those facilities over the lands of the Tribe; extend the term of that right-of-way permit numbered 2000089 granted on July 25, 1944, to Phelps Dodge Corporation, and all amendments thereto, for the construction, use, operation and maintenance of a water plant, pipeline, canal, water flowage easement through Willow Creek and existing road for access to those facilities over the lands of the Tribe; and grant a water flowage easement through the portions of Eagle Creek flowing through the Tribe's Reservation. Notwithstanding any other provision of law, each such right-of-way and flowage easement shall be for a term expiring on March 8, 2090, and shall be subject to the right of Phelps Dodge to renew the rights-of-way and flowage easements for an additional term of up to one hundred years, subject to payment of rental at a rate based upon fair market retail value.

SEC. 3706. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE, WATER WITHDRAWAL.

(a) AMENDMENT OF CONTRACT.—The Secretary shall amend the CAP water delivery contract between the United States and the Ak-Chin Indian Community dated December 11, 1980, and the contract between the United States and the Ak-Chin Indian Community dated October 2, 1985, as is necessary to satisfy the requirements of section 3704(a) of this title.

(b) CONTRACT AMENDMENT.—The Secretary shall amend the CAP water delivery contract between the United States and the Tribe dated December 11, 1980 (hereinafter referred to as the "Tribal CAP Delivery Contract"), as follows:

(1) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), (c), and (d)

of section 3704 of this title; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver CAP water shall not exceed the cost of construction of the delivery and distribution system for the twelve thousand and seven hundred acre-feet of CAP water originally allocated to the Tribe.

(2) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(3) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(4) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the city of Scottsdale under the terms and conditions of the Water Lease set forth in Exhibit "B" to the Agreement.

(5) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, including, but not limited to, the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.

(c) APPROVAL OF AMENDMENTS.—Notwithstanding any other provision of law, the amendments to the Tribal CAP Delivery Contract set forth in Exhibit "C" to the Agreement are hereby authorized, approved and confirmed.

(d) CHARGES NOT TO BE IMPOSED.—The United States shall not impose upon the Tribe the operation, maintenance and replacement charges described and set forth in section 6 of the Tribal CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(e) WATER LEASE.—Except as provided in paragraph (3) of this subsection, any Water Lease entered into by the Tribe as authorized by section 3706 shall specifically provide that—

(1) the lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or if directed by the Secretary, to CAWCD;

(2) except as provided in paragraph (3) of this subsection, the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs and lease payments; and

(3) with respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 3704, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this title through September 30, 1995.

(f) ALLOCATION AND REPAYMENT OF COSTS.—For the purpose of determining allocation and repayment of costs of the CAP as

provided in Article 9.3 of Contract Numbered 14-0906-09W-09245, Amendment No. 1, between the United States of America and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water to which the Tribe is entitled under the Tribal Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(g) AGREEMENTS.—The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended.

(h) RATIFICATION.—As among the parties to the Agreement, the right of the city of Globe to withdraw and use water from under the Cutter subarea under the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(i) USE OF WATER.—As among the parties to the Agreement, the right of the city of Safford to withdraw and use water from the Bonita Creek watershed as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(j) WITHDRAWAL AND USE OF WATER.—As between the Tribe and Phelps Dodge, the right of Phelps Dodge to divert, withdraw and use water as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(k) PROHIBITIONS.—Except as authorized by this section, no water made available to the Tribe pursuant to the Agreement, the Globe Equity Decree, or this title may be sold, leased, transferred or in any way used off the Tribe's Reservation.

SEC. 3707. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) DUTIES.—

(1) The Secretary is directed, pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et. seq.), to design and construct new facilities for the delivery of 12,700 acre-feet of CAP water originally allocated to the Tribe to tribal reservation lands at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this title;

(2) The Secretary of Commerce is directed to amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07-0981-09000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this title are discharged.

(b) FUND.—There is established in the Treasury of the United States a fund to be known as the "San Carlos Apache Tribe Development Trust Fund" (hereinafter called the "Fund") for the exclusive use and benefit of the Tribe. The Secretary shall deposit into the Fund the funds authorized to be appropriated in subsection (c) and the $3,000,000 provided by the State of Arizona pursuant to the Agreement. There shall be deposited into the Fund any monies paid to the Tribe or to the Secretary on behalf of the Tribe from leases or options to lease water authorized by section 3706 of this title. Such sums shall be invested in interest-bearing

Securities.

deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162(a)).

(c) AUTHORIZATION.—There are authorized to be appropriated $38,400,000 in fiscal year 1994, together with interest accruing thereon beginning one year from the date of enactment of this title at rates determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to carry out the provisions of subsection (b).

(d) USE OF FUND.—When the authorizations contained in section 3708(b) of this title are effective, the principal of the Fund and any interest or income accruing thereon may be used by the Tribe to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes. The income from the Fund shall be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council. Such income may thereafter be expended only in accordance with such budget. Income not distributed shall be added to principal. The principal from the Fund may be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council and the Secretary. Such principal may thereafter be expended only in accordance with such budget: *Provided, however,* That the principal may only be utilized for long-term economic development projects. In approving a budget for the distribution of income or principal, the Secretary shall, in accordance with regulations promulgated pursuant to subsection (e) of this section, be assured that methods exist and will be employed to ensure that use of the funds shall be in accordance with the approved budget.

(e) REGULATIONS.—The Secretary shall, no later than thirty days after the date the authorizations contained in section 3708(b) are effective, promulgate regulations necessary to carry out the purposes of subsection (d).

(f) DISCLAIMER.—The United States shall not be liable for any claim or cause of action arising from the Tribe's use or expenditure of moneys distributed from the Fund.

SEC. 3708. SATISFACTION OF CLAIMS.

(a) FULL SATISFACTION OF CLAIMS.—Except as provided in subsection (e) of this section, the benefits realized by the Tribe and its members under this title shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal, State, and other laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this title. Notwithstanding the foregoing, nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's Reservation.

(b) RELEASE.—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized, as part of the performance of the obligations under the Agreement,

to execute a waiver and release, except as provided in the Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from time immemorial to the effective date of this title, and any and all future claims of water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise.

(c) ADDITIONAL RELEASES.—Except as provided in the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise in its own right or on behalf of the Tribe based upon—

(1) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) of the Tribe and its members, or

(2) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) held by the United States on behalf of the Tribe and its members.

(d) SAVINGS PROVISION.—In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 3711(a), the Tribe and the United States shall retain the right to assert past and future water rights claims as to all Reservation lands.

(e) DISCLAIMER.—Nothing in this title shall affect the water right or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

(f) CLAIMS.—(1) The United States District Court for the District of Arizona and the United States Claims Court are authorized to hear and decide any claim brought by the Central Arizona Water Conservation District or other contractors of CAP water. Any such claim shall be filed within two years of the date of enactment of this Act, and shall be heard by the court on an expedited basis. If such a claim is filed and the court grants judgment for the plaintiff(s), the court shall award such relief as it deems proper, and shall award costs and attorneys' fees to the plaintiff(s). Any judgment of the court shall be subject to appeal on the same basis that other judgments of that court are subject to review under existing law.

(2) For purposes of this subsection, "claim" means a claim that the reallocation of water to the Tribe pursuant to section 3704(a) of this Act has unlawfully deprived the Central Arizona Water Conservation District or other contractors of CAP water of legal rights to such water.

SEC. 3709. ENVIRONMENTAL COMPLIANCE.

(a) NO MAJOR FEDERAL ACTION.—Execution of the settlement agreement by the Secretary as provided for in section 3710(c) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall carry out all necessary environmental compliance during the implementation phase of this settlement.

(b) AUTHORIZATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with the settlement under this title, including mitigation measures adopted by the Secretary.

(c) LEAD AGENCY.—With respect to such settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable Federal environmental laws.

(d) ENVIRONMENTAL ACTS.—The Secretary shall comply with all aspects of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq.), and other applicable Federal environmental Acts and regulations in proceeding through the implementation phase of such settlement.

SEC. 3710. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—In the event any party to the Agreement files a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Tribe as parties, authorization is hereby granted to joining the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived.

(b) CERTAIN CLAIMS PROHIBITED.—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the San Carlos Apache Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) APPROVAL OF AGREEMENT.—Except to the extent that the Agreement conflicts with the provisions of this title, such Agreement is hereby approved, ratified and confirmed. The Secretary shall execute and perform such Agreement as approved, ratified and confirmed. The Secretary is authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(d) GROUND WATER MANAGEMENT PLAN.—The Secretary shall establish a ground water management plan for the San Carlos Apache Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as a management plan developed under Arizona law.

(e) AMENDMENT TO THE ACT OF APRIL 4, 1938.—The Act of April 4, 1938 (52 Stat. 193; 25 U.S.C. 390), is amended by inserting immediately before the period at the end thereof a colon and the following: "*Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe".

(f) SAN CARLOS RESERVOIR.—There is hereby transferred to the Tribe the Secretary's entitlement of 30,000 acre-feet of water, less any evaporation and seepage losses from the date of acquisition by the Secretary to the date of transfer, which the Secretary may have acquired through substituting CAP water for water to which

the Gila River Indian Community and the San Carlos Irrigation and Drainage District had a right to be released from San Carlos Reservoir and delivered to them in 1990.

(g) LIMITATION.—No part of the Fund established by section 3707(b) of this title, including principal and income, or income from options to lease water or water leases authorized by section 3706, may be used to make per capita payments to members of the Tribe.

(h) DISCLAIMER.—Nothing in this title shall be construed to repeal, modify, amend, change or affect the Secretary's obligations to the Ak-Chin Indian Community pursuant to the Act of October 19, 1984 (98 Stat. 2698).

(i) WATER RIGHTS.—Nothing in this title shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community, other than the San Carlos Apache Tribe.

(j) PLANET RANCH.—The Secretary is authorized and directed to acquire, with the consent of and upon terms mutually acceptable to the city of Scottsdale ("city") and the Secretary, all of the city's right, title and interest in Planet Ranch located on the Bill Williams River in Arizona, including all water rights appurtenant to that property, and the city's January 1988 application filed with the Arizona Department of Water Resources to appropriate water from the Bill Williams River through a land exchange based on fair market value. If an exchange is made with land purchased by the Bureau of Reclamation for the construction and operation of the Central Arizona Project, then, upon commencement of repayment by CAWCD of the reimbursable costs of the Central Arizona Project, the fair market value of those lands so exchanged shall be credited in full against the annual payments due from CAWCD under Article 9.4(a) of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, until exhausted: *Provided, however,* That the authorized appropriation ceiling of the Central Arizona Project shall not be affected in any manner by the provisions of this subsection.

(k) REPEAL.—Section 304(c)(3) of the Colorado River Basin Project Act (43 U.S.C. 1524(c)(3)) is hereby repealed. This subsection does not authorize transportation of water pumped within the exterior boundary of a Federal reclamation project established prior to September 30, 1968, pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), as amended and supplemented, across project boundaries. 43 USC 1524 note.

(l) WATER RIGHTS.—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency other than the Bureau of Indian Affairs on behalf of the San Carlos Apache Tribe, nor shall anything in this title be construed to prohibit the United States from confirming in the Agreement, except on behalf of Indian tribes other than the San Carlos Apache Tribe, the Gila River and Little Colorado River watershed water rights of other parties to the Agreement by making express provisions for the same in the Agreement.

SEC. 3711. EFFECTIVE DATE. 25 USC 390 note.

(a) EFFECTIVE DATE OF AUTHORIZATION.—The authorization contained in section 3708(b) of this title shall become effective Federal Register, publication.

59-194 O—93——7 : QL 3 (Pt. 6)

as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) the Secretary has fulfilled the requirements of sections 3704 and 3706;

(2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 3705(b);

(3) the funds authorized by section 3707(c) have been appropriated and deposited into the Fund;

(4) the contract referred to in section 3707(a)(2) has been amended;

(5) the State of Arizona has appropriated and deposited into the Fund $3,000,000 as required by the Agreement;

(6) the stipulations attached to the Agreement as Exhibits "D" and "E" have been approved; and

(7) the Agreement has been modified, to the extent it is in conflict with this title, and has been executed by the Secretary.

(b) CONDITIONS.—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this section have not occurred by December 31, 1994, subsections (c) and (d) of section 3704, subsections (a) and (b) of section 3705, section 3706, subsections (a)(2), (c), (d), and (f) of section 3707, subsections (b) and (c) of section 3708, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 3710 of this title, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this title, and any funds appropriated pursuant to section 3707(c), and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the State of Arizona.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the provisions of subsections (a) and (b) of section 3705 of this title have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988, the provisions of paragraph (1) of this subsection shall not be construed as affecting such subsections.

~~TITLE XXXVIII—SAN FRANCISCO WATER RECLAMATION~~ AND REUSE DEMONSTRATION PROJECT

The Secretary of the Interior is authorized and directed to undertake a demonstration project in the City and County of San Francisco to examine the feasibility and effectiveness of using advanced ecologically engineered technology for water reclamation and reuse in accordance with the title 22 standards of the California Water Code. "Advanced Ecologically Engineered Technology" refers to a greenhouse-based, ecologically engineered technology which employs highly populated pond and marsh ecosystems to produce water for reclamation and reuse. One-half of the costs associated with implementation of this title shall be borne by the United States as a nonreimbursable cost; the other one-half shall be borne by the State of California and the City and County of San Francisco

Public Law 103-263
103d Congress

An Act

To make certain technical corrections.

May 31, 1994
[S. 1654]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1992.

(a) ENVIRONMENTAL COSTS.—Section 7 of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186 et seq.) is amended by adding the following new subsections (f) and (g) and redesignating the succeeding subsections accordingly:

106 Stat. 1189.

"(f) ENVIRONMENTAL COSTS.—All costs associated with the Tongue River Dam Project for environmental compliance mandated by Federal law and fish and wildlife mitigation measures adopted by the Secretary are the sole responsibility of the United States. Funds for such compliance shall be appropriated pursuant to the authorization in subsection (e), and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act. The Secretary is authorized to expend not to exceed $625,000 of funds appropriated pursuant to subsection (e) for fish and wildlife mitigation costs associated with Tongue River Dam construction authorized by the Act, and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act.

"(g) REIMBURSEMENT TO STATE.—The Secretary shall reimburse Montana for expenditures for environmental compliance activities, conducted on behalf of the United States prior to enactment of this subsection (g), which the Secretary determines to have been properly conducted and necessary for completion of the Tongue River Dam Project. Subsequent to enactment of this subsection (g), the Secretary may not reimburse Montana for any such environmental compliance activities undertaken without the Secretary's prior approval.".

Montana.

(b) AUTHORIZATIONS.—The first sentence of section 4(c) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374; 106 Stat. 1186 et seq.) is amended to read as follows: "Except for authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and the authorization for environmental compliance activities for the Tongue River Dam Project contained in subsection 7(e), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section.".

106 Stat. 1187.

(c) EFFECTIVE DATE.—The amendments made by this section shall be considered to have taken effect on September 30, 1992.

SEC. 2. SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992.

106 Stat. 4743.

(a) AMENDMENT.—Section 3704(d) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (Public Law 102-575) is amended by deleting "reimbursable" and inserting in lieu thereof "nonreimbursable".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be considered to have taken effect on October 30, 1992.

SEC. 3. TRIBALLY CONTROLLED COMMUNITY COLLEGES.

The part of the text contained under the heading "BUREAU OF INDIAN AFFAIRS", and the subheading "OPERATION OF INDIAN PROGRAMS", in title I of the Department of the Interior and Related Agencies Appropriations Act, 1994, which reads "*Provided further*, That any funds provided under this head or previously provided for tribally-controlled community colleges which are distributed prior to September 30, 1994 which have been or are being invested or administered in compliance with section 331 of the Higher Education Act shall be deemed to be in compliance for current and future purposes with title III of the Tribally Controlled Community Colleges Assistance Act." is amended by deleting "section 331 of the Higher Education Act" and inserting in lieu thereof "section 332(c)(2)(A) of the Higher Education Act of 1965".

107 Stat. 1392.

SEC. 4. WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985.

Section 7 of the White Earth Reservation Land Settlement Act of 1985 (25 U.S.C. 331, note) is amended by adding at the end thereof the following:

"(f)(1) The Secretary is authorized to make a one-time deletion from the second list published under subsection (c) or any subsequent list published under subsection (e) of any allotments or interests which the Secretary has determined do not fall within the provisions of subsection (a) or (b) of section 4, or subsection (c) of section 5, or which the Secretary has determined were erroneously included in such list by reason of misdescription or typographical error.

Federal Register, publication

"(2) The Secretary shall publish in the Federal Register notice of deletions made from the second list published under subsection (c) or any subsequent list published under subsection (e).

"(3) The determination made by the Secretary to delete an allotment or interest under paragraph (1) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.".

Courts, Minnesota.

SEC. 5. AMENDMENTS.

(a) Section 1(c) of the Act entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes", approved September 9, 1988 (102 Stat. 1594), is amended as follows:

25 USC 713f note.

Public Law 103-435
103d Congress

An Act

Nov. 2, 1994
[H.R. 4709]

To make certain technical corrections, and for other purposes.

Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASING AUTHORITY OF THE INDIAN PUEBLO FEDERAL DEVELOPMENT CORPORATION.

Notwithstanding the provisions of section 17 of the Act of June 18, 1934 (48 Stat. 988, chapter 576; 25 U.S.C. 477), the Indian Pueblo Federal Development Corporation, whose charter was issued pursuant to such section by the Secretary of the Interior on January 15, 1993, shall have the authority to lease or sublease trust or restricted Indian lands for up to 50 years.

SEC. 2. GRAND RONDE RESERVATION ACT.

25 USC 713f note.

(a) LANDS DESCRIBED.—Section 1 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes", approved September 9, 1988 (102 Stat. 1594), is amended—

(1) in subsection (c)—

(A) by striking "9,879.65" and inserting "10,120.68"; and

(B) by striking all after

"6	8	1	SW¼SW¼,W½SE¼SW¼	83.78"

and inserting the following:

"6	8	1	S½E½SE¼SW¼	10.03
6	7	8	Tax lot 800	5.55
4	7	30	Lots 3, 4, SW¼NE¼, SE¼NW¼,E½SW¼	240
			Total	10,120.68 ";

and

(2) by adding at the end the following new subsection:

"(d) CLAIMS EXTINGUISHED; LIABILITY.—

"(1) CLAIMS EXTINGUISHED.—All claims to lands within the State of Oregon based upon recognized title to the Grand Ronde Indian Reservation established by the Executive order of June 30, 1857, pursuant to treaties with the Kalapuya, Molalla, and other tribes, or any part thereof by the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor in interest, are hereby extinguished, and any trans-

District, and any party who may subsequently acquire any right, title, or interest of any kind whatsoever in or to the Subject Lands by or through the School District, shall be subject to, be bound by, and comply with all terms and conditions set forth in subparagraphs (A) through (D) of subsection (b)(1).

SEC. 12. INDIAN AGRICULTURE AMENDMENT.

(a) LEASING OF INDIAN AGRICULTURAL LANDS.—Section 105 of the American Indian Agriculture Resource Management Act (25 U.S.C. 3715) is amended—

(1) in subsection (b)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) shall approve leases and permits of tribally owned agricultural lands at rates determined by the tribal governing body."; and

(2) in subsection (c), amending paragraph (1) to read as follows:

"(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.".

(b) TRIBAL IMMUNITY.—The American Indian Agriculture Resource Management Act (25 U.S.C. 3701 et seq.) is amended by adding at the end the following new section:

25 USC 3746

"SEC. 308. TRIBAL IMMUNITY.

"Nothing in this Act shall be construed to affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.".

SEC. 13. SAN CARLOS APACHE WATER RIGHTS SETTLEMENT ACT OF 1992.

25 USC 390 note.

Section 3711(b)(1) of title XXXVII of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking "December 31, 1994" and inserting "December 31, 1995".

SEC. 14. RELATIONSHIP BETWEEN BUY INDIAN ACT AND MENTOR-PROTEGE PROGRAM.

Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47; commonly referred to as the "Buy Indian Act"), is amended by adding at the end the following: "Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of this section—

"(1) no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assist-

~~INDIAN HEALTH FACILITIES~~

~~For an additional amount for "Indian Health Facilities" for emergency expenses resulting from flooding and other natural disasters, $2,000,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.~~

GENERAL PROVISIONS, CHAPTER 5

SEC. 5001. Section 101(c) of Public Law 104-134 is amended as follows: Under the heading "Title III—General Provisions" amend sections 315(c)(1)(A) and 315(c)(1)(B) by striking in each of those sections "104%" and inserting in lieu thereof "100%"; by striking in each of those sections "1995" and inserting in lieu thereof "1994"; and by striking in each of those sections "and thereafter annually adjusted upward by 4%,". 16 USC 460l-6a note.

SEC. 5002. Section 101(d) of Public Law 104-208 is amended as follows: Under the heading "Administrative Provisions, Indian Health Service" strike the seventh proviso and insert the following in lieu thereof: ": *Provided further*, That with respect to functions transferred by the Indian Health Service to tribes or tribal organizations, the Indian Health Service is authorized to provide goods and services to those entities, on a reimbursable basis, including payment in advance with subsequent adjustment, and the reimbursements received therefrom, along with the funds received from those entities pursuant to the Indian Self Determination Act, may be credited to the same or subsequent appropriation account which provided the funding, said amounts to remain available until expended". 110 Stat. 3009-213.

SEC. 5003. (a) EXTENSION AND EFFECTIVE DATE.—Section 3711(b)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking "June 30, 1997" and inserting "March 31, 1999". Arizona. 25 USC 390 note.

(b) EXTENSION FOR RIVER SYSTEM GENERAL ADJUDICATION.—Section 3711 of such Act is amended by adding at the end the following new subsection: 25 USC 390 note.

"(c) EXTENSION FOR RIVER SYSTEM GENERAL ADJUDICATION.—If, at any time prior to March 31, 1999, the Secretary notifies the Committee on Indian Affairs of the United States Senate or the Committee on Resources in the United States House of Representatives that the Settlement Agreement, as executed by the Secretary, has been submitted to the Superior Court of the State of Arizona in and for Maricopa County for consideration and approval as part of the General Adjudication of the Gila River System and Source, the March 31, 1999, referred to in subsection (b)(1) shall be deemed to be changed to December 31, 1999.".

(c) COUNTIES.—Section 3706(b)(3) of such Act is amended by inserting "Gila, Graham, Greenlee," after "Maricopa,". 106 Stat. 4745.

(d) PARTIES TO AGREEMENT.—Section 3703(2) of such Act is amended by adding at the end the following new sentence: "The Gila Valley Irrigation District and the Franklin Irrigation District shall be added as parties to the Agreement, but only so long as none of the aforementioned parties objects to adding the Gila Valley Irrigation and/or the Franklin Irrigation District as parties to the Agreement.". 106 Stat. 4741.

(e) DEFINITIONS.—Section 3703 of such Act is amended by adding the following new paragraphs:

"(12) 'Morenci mine complex' means the lands owned or leased by Phelps Dodge Corporation, now or in the future, delineated in a map as 'Phelps Dodge Mining, Mineral Processing, and Auxiliary Facilities Water Use Area', which map is dated March 19, 1996, and is on file with the Secretary of the Interior.

"(13) 'Upper Eagle Creek Wellfield' means that area in Greenlee County which is bounded by the eastern boundary of Graham County on the west, the southern boundary of the Black River watershed on the north, a line running north and south 5 miles east of the eastern boundary of Graham County on the east, and the southern boundary of the natural drainage of Cottonwood Canyon on the south.".

(f) BLACK RIVER FACILITIES.—Section 3711 of such Act, as amended by subsection (b) of this Act, is further amended by adding at the end the following:

"(d) BLACK RIVER FACILITIES.—

"(1) IN GENERAL.—The provisions and agreements set forth or referred to in paragraphs (2), (3), and (4) below shall be enforceable against the United States in United States district court, and the immunity of the United States for such purposes and for no other purpose is hereby waived. The provisions and agreements set forth or referred to in paragraphs (2)(A), (3), and (4) below shall be enforceable against the Tribe in United States district court, and the immunity of the Tribe for such purposes and for no other purpose, is hereby waived. The specific agreements made by the Tribe and set forth in paragraph (5) shall be enforceable against the Tribe in United States district court, and the immunity of the Tribe is hereby waived as to such specific agreements and for no other purpose.

"(2) INTERIM PERIOD.—

"(A) As of July 23, 1997, Phelps Dodge shall vacate the reservation and no longer rely upon permit #2000089, dated July 25, 1944. On such date the United States, through the Bureau of Reclamation, shall enter, operate, and maintain the Black River pump station, outbuildings, the pipeline, related facilities, and certain caretaker quarters (hereinafter referred to collectively as the 'Black River facilities').

"(B) The United States and Phelps Dodge shall enter into a contract for delivery of water pursuant to subparagraph (C), below. Water for delivery to Phelps Dodge from the Black River shall not exceed an annual average of 40 acre feet per day, or 14,000 acre feet per year. All diversions from Black River to Phelps Dodge shall be junior to the diversion and use of up to 7,300 acre feet per year by the San Carlos Apache Tribe, and no such diversion for Phelps Dodge shall cause the flow of Black River to fall below 20 cubic feet per second. The United States shall account for the costs for operating and maintaining the Black River facilities, and Phelps Dodge shall reimburse the United States for such costs. Phelps Dodge shall pay to the United States, for delivery to the Tribe, the sum of $20,000 per month, with an annual CPI adjustment from July 23, 1997, for purposes of compensating the Tribe for United States use and occupancy of the Black

River facilities. Phelps Dodge and the Tribe shall cooperate with the United States in effectuating an orderly transfer of the operations of the Black River facilities from Phelps Dodge to the United States.

"(C) Notwithstanding any other provision of law, the contract referred to in subparagraph (B) between the United States and Phelps Dodge which provides for the diversion of water from the Black River into the Black River facilities, and the delivery of such water to Phelps Dodge at that location where the channel of Eagle Creek last exits the reservation for use in the Morenci mine complex and the towns of Clifton and Morenci and at no other location, is ratified and confirmed.

"(D) The power line right-of-way over the Tribe's Reservation which currently is held by Phelps Dodge shall remain in place. During the interim period, Phelps Dodge shall provide power to the United States for operation of the pump station and related facilities without charge, and Phelps Dodge shall pay a monthly right-of-way fee to the Tribe of $5,000 per month, with an annual CPI adjustment from July 23, 1997.

"(E) Any questions regarding the water claims associated with Phelps Dodge's use of the Upper Eagle Creek Wellfield, its diversions of surface water from Eagle Creek, the San Francisco River, Chase Creek, and/or its use of other water supplies are not addressed in this title. No provision in this subsection shall affect or be construed to affect any claims by the Tribe, the United States, or Phelps Dodge to groundwater or surface water.

"(3) FINAL ARRANGEMENTS AND TERMS.—The interim period described in paragraph (2) shall extend until all conditions set forth in paragraph (3)(B) have been satisfied. At such time, the following final arrangements shall apply, based on the terms set forth below. Such terms shall bind the Tribe, the United States, and Phelps Dodge, and shall be enforceable pursuant to subsection (d)(1) of this Act.

"(A) The United States shall hold the Black River facilities in trust for the Tribe, without cost to the Tribe or the United States.

"(B) Responsibility for operation of the Black River facilities shall be transferred from the United States to the Tribe. The United States shall train Tribal members during the interim period, and the responsibility to operate the Black River facilities shall be transferred upon satisfaction of 2 conditions—

"(i) a finding by the United States that the Tribe has completed necessary training and is qualified to operate the Black River facilities; and

"(ii) execution of the contract described in paragraph (3)(E), which contract shall be executed on or before December 31, 1998. In the event that the contract is not executed by December 31, 1998, the transfer described in this subsection shall occur on December 31, 1998 (so long as condition (i) of this subparagraph has been satisfied), based on application of the contract terms described in paragraph (3)(E), which terms shall be enforceable under this Act. Upon the

approval of the Secretary, the Tribe may contract with third parties to operate the Black River facilities.

"(C) Power lines currently operated by Phelps Dodge on the Tribe's Reservation, and the right-of-way associated with such power lines, shall be surrendered by Phelps Dodge to the Tribe, without cost to the Tribe. Prior to the surrender of the power lines, the Bureau of Reclamation shall arrange for an inspection of the power lines and associated facilities by a qualified third party and shall obtain a certification that such power lines and facilities are of sound design and are in good working order. Phelps Dodge shall pay for the cost of such inspection and certification. Concurrently with the surrender of the power lines and the right-of-way, Phelps Dodge shall construct a switch station at the boundary of the Reservation at which the Tribe may switch power on or off and shall deliver ownership and control of such switch station to the Tribe. Subsequent to the transfer of the power lines and the right-of-way and the delivery of ownership and control of the switch station to the Tribe, Phelps Dodge shall have no further obligation or liability of any nature with respect to the ownership, operation, or maintenance of the power lines, the right-of-way, or the switch station.

"(D) The Tribe and the United States will enter into an exchange agreement with the Salt River Project which will deliver CAP water controlled by the Tribe to the Salt River Project in return for the diversion of water from the Black River into the Black River facilities. The exchange agreement shall be subject to review and approval by Phelps Dodge, which approval shall not be unreasonably withheld. Notwithstanding any other provision of law, the contract referred to in this subparagraph is ratified and confirmed.

"(E) The Tribe, the United States, and Phelps Dodge will execute a contract covering the lease and delivery of CAP water from the Tribe to Phelps Dodge on the following terms:

"(i) The Tribe will lease to Phelps Dodge 14,000 acre feet of CAP water per year as of the date on which the interim period referred to in paragraph (2) expires. The lease shall be subject to the terms and conditions identified in the Tribal CAP Delivery Contract referenced in section 3706(b). The leased CAP water shall be delivered to Phelps Dodge from the Black River pursuant to the exchange referred to in subparagraph (D) above, based on diversions from the Black River that shall not exceed an annual average of 40 acre feet per day and shall not cause the flow of Black River to fall below 20 cubic feet per second. Such CAP water shall be delivered to Phelps Dodge at that location where the channel of Eagle Creek last exits the Reservation, to be utilized in the Morenci mine complex and the towns of Clifton and Morenci, and at no other location.

"(ii) The leased CAP water shall be junior to the diversion and use of up to 7,300 acre feet per year

from the Black and Salt Rivers by the San Carlos Apache Tribe.

"(iii) The lease will be for a term of 50 years or, if earlier, the date upon which mining activities at the Morenci mine complex cease, with a right to renew for an additional 50 years upon a finding by the Secretary that the water is needed for continued mining activities at the Morenci mine complex. The lease shall have the following financial terms:

"(I) The Tribe will lease CAP water at a cost of $1,200 per acre foot. Phelps Dodge shall pay to the United States, on behalf of the Tribe, the sum of $5,000,000 upon the earlier of the execution of the agreement, or upon the expiration of the interim period referred to in paragraph (2) hereof, which amount shall be a prepayment for and applicable to the first 4,166 acre feet of CAP water to be delivered in each year during the term of the lease.

"(II) Phelps Dodge shall pay the United States, on behalf of the Tribe, the sum of $65 per acre foot per year, with an annual CPI adjustment for the remaining 9,834 acre feet of water to be delivered pursuant to the lease each year. Such payments shall be made in advance on January 1 of each year, with a reconciliation made at year-end, if necessary, in the event that less than 14,000 acre feet of CAP water is diverted from the Black River due to shortages in the CAP system or on the Black River.

"(III) Phelps Dodge shall pay in advance each month the Tribe's reasonable costs associated with the Tribe's operation, maintenance, and replacement of the Black River facilities for purposes of delivering water to Phelps Dodge pursuant to the lease, which costs shall be based upon the experience of the Bureau of Reclamation in operating the Black River facilities during the interim period referred to in paragraph (2), subject to an annual CPI adjustment, and providing for a credit for power provided by Phelps Dodge to the Tribe. In addition, Phelps Dodge shall pay a monthly fee of $30,000 to the United States, on behalf of the Tribe, to account for the use of the Tribe's distribution system.

"(IV) Phelps Dodge shall pay the United States operation, maintenance, and replacement charges associated with the leased CAP water and such reasonable interconnection charges as may be imposed by Salt River Project in connection with the exchange referred to in subparagraph (D) above.

"(iv) Notwithstanding the provisions of section 3707(b), any moneys, except Black River facilities OM&R, CAP OM&R and any charges associated with an exchange agreement with Salt River Project, paid to the United States on behalf of the Tribe from the

lease referred to under paragraph (3)(D)(iii) shall be held in trust by the United States for the benefit of the Tribe. There is hereby established in the Treasury of the United States a fund to be known as the 'San Carlos Apache Tribe Lease Fund' for such purpose. Interest accruing to the Fund may be used by the Tribe for economic and community development purposes upon presentation to the Secretary of a certified copy of a duly enacted resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council. Such income may thereafter be expended only in accordance with such budget. Income not distributed shall be added to principal. The United States shall not be liable for any claim or causes of action arising from the Tribe's use or expenditure of moneys distributed from the Fund.

"(v) The lease is not assignable to any third party, except with the consent of the Tribe and Phelps Dodge, and with the approval of the Secretary.

"(vi) Notwithstanding subsection (b) hereof, section 3706 shall be fully effective immediately with respect to the CAP water lease provided for in this subparagraph and the Secretary shall take all actions authorized by section 3706 necessary for purposes of implementing this subparagraph. Notwithstanding any other provision of law, the contract referred to in this subparagraph is ratified and confirmed and shall be enforceable in United States district court. In the event that no lease authorized by this subparagraph is executed, this subparagraph, notwithstanding any other provision of law, shall be enforceable as a lease among the Tribe, the United States, and Phelps Dodge in the United States district court, and the Secretary shall take all action authorized by section 3706 for purposes of implementing this subparagraph in such an event.

"(F) Any questions regarding the water claims associated with Phelps Dodge's use of the Eagle Creek Wellfield, its diversions of surface water from lower Eagle Creek, the San Francisco River, Chase Creek, and/or its use of other water supplies are not addressed by this title. No provision in this subsection shall affect or be construed to affect any claims by the Tribe, the United States, or Phelps Dodge to groundwater or surface water.

"(4) EAGLE CREEK.—From the effective date of this subsection, and during the Interim Period, the Tribe shall not, in any way, impede, restrict, or sue the United States regarding the passage of water from the Black River facilities into those portions of the channels of Willow Creek and Eagle Creek which flow through the Reservation. Phelps Dodge agrees to limit pumping from the Upper Eagle Creek Wellfield so that the combination of water from the Black River facilities and water pumped from the Upper Eagle Creek Wellfield does not exceed 22,000 acre feet per year of delivered water at the Phelps Dodge Lower Eagle Creek Pump Station below the Reservation. In calculating the pumping rates allowed under this subparagraph, transmission losses from Black River

and the Upper Eagle Creek Wellfield shall be estimated, but in no event shall such transmission losses be more than 10 percent of the Black River or Upper Eagle Creek Wellfield water. Based on this agreement, the Tribe shall not, in any way, impede, restrict, or sue Phelps Dodge regarding the passage of water from the Phelps Dodge Upper Eagle Creek Wellfield, except that—

"(A) Phelps Dodge shall pay to the United States, on behalf of the Tribe, $5,000 per month, with an annual CPI adjustment from July 23, 1997, to account for the passage of such flows; and

"(B) the Tribe and the United States reserve the right to challenge Phelps Dodge's claims regarding the pumping of groundwater from the Upper Eagle Creek Wellfield, in accordance with paragraphs (2)(E) and (3)(F) above. In the event that a court determines that Phelps Dodge does not have the right to pump the Upper Eagle Creek Wellfield, the Tribe will no longer be subject to the restriction set forth in this subparagraph regarding the passage of water from the Wellfield through the Reservation. Nothing in this subsection shall affect the rights, if any, that Phelps Dodge might claim regarding the flow of water in the channel of Eagle Creek in the absence of this subsection.

"(5) PAST CLAIMS.—The Act does not address claims relating to Phelps Dodge's prior occupancy and operation of the Black River facilities. The Tribe agrees not to bring any such claims against the United States. The Tribe also agrees that within 30 days after Phelps Dodge has vacated the Reservation, it shall dismiss with prejudice the suit that it has filed in Tribal Court against Phelps Dodge (The San Carlos Apache Tribe v. Phelps Dodge, et al., Case No. C–97–118), which such dismissal shall not be considered a decision on the merits, and any claims that it might assert against Phelps Dodge in connection with Phelps Dodge's prior occupancy and operation of the Black River facilities shall be brought exclusively in the United States district court.

"(6) RELATIONSHIP TO SETTLEMENT.—

"(A) The term 'Agreement', as defined by section 3703(2), shall not include Phelps Dodge.

"(B) Section 3706(j) and section 3705(f) shall be repealed and shall have no effect. 106 Stat. 4745, 4744.

"(7) RATIFICATION OF SETTLEMENT.—The agreement between the San Carlos Apache Tribe, the Phelps Dodge Corporation, and the Secretary of the Interior, as set forth in this subsection, is hereby ratified and approved.".

(g) TECHNICAL AMENDMENT.—Section 3702(a)(3) is amended by striking "qualification" and inserting "quantification". 106 Stat. 4740.

~~SEC. 5004. Paragraph (5) of section 104(c) of the Marine Mammal Protection Act~~ of 1972 (16 U.S.C. 1374(c)(5)) is amended as follows:

(1) In subparagraph ~~(A), by~~ striking ~~", including~~ polar bears taken but not imported ~~prior to the~~ date of enactment of the Marine Mammal ~~Protection~~ Act Amendments of 1994,".

(2) ~~By adding~~ the following new subparagraph at the ~~end thereof~~:

Public Law 104-261
104th Congress

An Act

Oct. 9, 1996
[H.R. 3068]

To accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVOCATION OF CHARTER OF INCORPORATION OF THE PRAIRIE ISLAND INDIAN COMMUNITY UNDER THE INDIAN REORGANIZATION ACT.

(a) ACCEPTANCE OF REQUEST TO REVOKE CHARTER.—The request of the Prairie Island Indian Community to surrender the charter of incorporation issued to that community on July 23, 1937, pursuant to section 17 of the Act of June 18, 1934, commonly known as the "Indian Reorganization Act" (48 Stat. 988, chapter 576; 25 U.S.C. 477) is hereby accepted.

(b) REVOCATION OF CHARTER.—The charter of incorporation referred to in subsection (a) is hereby revoked.

SEC. 2. AMENDMENT TO THE JICARILLA APACHE TRIBE WATER RIGHTS SETTLEMENT ACT.

Section 8(e)(3) of the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2241) is amended by striking "December 31, 1996" and inserting "December 31, 1998".

SEC. 3. AMENDMENT TO THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992.

25 USC 390 note.

Section 3711(b)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking "December 31, 1996" and inserting "June 30, 1997".

Approved October 9, 1996.

LEGISLATIVE HISTORY—H.R. 3068

HOUSE REPORTS: No. 104-584 (Comm. on Resources).
SENATE REPORTS: No. 104-361 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 142 (1996):
May 22, considered and passed House.
Sept. 19, considered and passed Senate, amended.
Sept. 26, House concurred in Senate amendment.

EXHIBIT 11.1

TRIBAL CAP CONTRACT AMENDMENT

Contract No. SANCARLOSAP121180A
Amendment No. 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Contract No. SANCARLOSAP121180A
Amendment No. 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 2, made this 29th day of April 1999, hereinafter called "Amendment No. 2," to Contract No. SANCARLOSAP121180A, as amended, (Tribal CAP Water Delivery Contract) or (Contract), in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto; the Boulder Canyon Project Act dated December 21, 1928 (45 Stat. 1057) 43 USC § 614 et seq.; the Colorado River Basin Project Act dated September 30, 1968, as amended, (82 Stat. 885) 43 USC § 1501 et seq.; the San Carlos Apache Tribe Water Rights Settlement Act of 1992, as amended (San Carlos Settlement Act); and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called "Secretary," in relation to Indians and Indian tribes as contained in Title 25 USC and 43 USC § 1457; between the UNITED STATES OF AMERICA, hereinafter called "United States," and the SAN CARLOS APACHE TRIBE, hereinafter called "Tribe," located on the San Carlos Apache Reservation, Arizona, sometimes collectively called "Parties;"

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Amendment No. 1 to the Contract, executed on January 29, 1999, obligated the Secretary to make available to the Tribe all of the water referred to in subsection (f)(2) of Section 2 of the Ak-Chin Water Settlement Act which is not required for delivery to the Ak-Chin Indian Reservation under that Act, and authorized the Tribe to lease such water

pursuant to terms and conditions set forth in subsection 3711(d) of the San Carlos Settlement Act;

2.2 WHEREAS subsection 3704(c) of the San Carlos Settlement Act provides, among other things, that the Secretary shall reallocate, for the exclusive use of the Tribe, an annual entitlement to fourteen thousand six hundred sixty-five (14,665) acre-feet of M&I Water which the Secretary previously allocated to Phelps Dodge Corporation; and

2.3 WHEREAS subsection 3706(b)(1) of the San Carlos Settlement Act requires, among other things, the Secretary to amend the Tribal CAP Water Delivery Contract to include therein the obligation of the United States to deliver to the Tribe, upon the same terms and conditions set forth in the Tribal CAP Water Delivery Contract, water from the source described in subsection 3704(c) of the San Carlos Settlement Act; *Provided, however*, That pursuant to subsection 3706(b)(1) of the San Carlos Settlement Act, the cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver Water shall not exceed the cost of construction of the delivery and distribution system for twelve thousand seven hundred (12,700) acre-feet of CAP Water originally allocated to the Tribe;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein, it is agreed by the Parties hereto as follows:

3. PURPOSE OF AMENDMENT NO. 2: This Amendment No. 2 modifies the Tribal CAP Water Delivery Contract to incorporate certain provisions required by the San Carlos Settlement Act.

4. AMENDMENT OF CONTRACT:

4.1 Amendment No. 1 to the Contract is hereby rescinded.

4.2 Subarticles 3.23 through 3.25 are hereby added:

3.23 "Excess Ak-Chin Water" shall mean Project Water allocated to the Ak-Chin Indian Community and determined to be available by the Secretary in excess of the quantity required for

delivery to the Ak-Chin Indian Community, in satisfaction of the Secretary's water delivery obligations pursuant to paragraph (f), subsection 2, of Section 2 of the Ak-Chin Indian Community Water Rights Act of October 19, 1984 (98 Stat. 2698).

3.24 "Tribe," or "San Carlos Apache Tribe," shall mean a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

3.25 "CAP Water" as used in this Amendment No. 2 shall mean Project Water as defined in subarticle 3.8 of the Contract.

4.3 In each instance in which the term "Contractor" is used in the Contract, it is hereby replaced by the term "Tribe."

4.4 Subarticle 4.2 of the Contract is hereby deleted and the following substituted in lieu thereof:

4.2 Term of Contract: This Contract shall become effective upon its execution and shall remain in effect through December 31, 2100; *Provided*, That this Contract may be renewed upon written request by the Tribe upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

4.5 Subarticle 4.3(e) of the Contract is hereby deleted and the following substituted in lieu thereof:

(e) The Tribe shall not sell or permit the sale or other disposition of any Project Water for use outside the Tribe's Reservation except:

(1) The Tribe is hereby authorized to enter into Project Water lease agreements or options to lease Project Water to which the Tribe is entitled under this Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal

and Pima Counties, for terms not exceeding one hundred (100) years, and to renew such leases; *Provided*, That all conditions in subsection 3711(b)(1) of the San Carlos Settlement Act have been met; and

(2) The United States shall be a party to all lease agreements, amendments thereto, or options to lease Project Water entered into pursuant to this Contract; and

(3) The United States shall deliver the Tribe's Project Water to the Tribe's lessees as provided in the Project Water lease agreements; *Provided, however*, That the Secretary shall not be obligated to make such deliveries if, in the Secretary's judgment, delivery of water to the lessees or the schedule of deliveries to the lessees would limit deliveries of CAP Water under:

(a) existing CAP Water delivery contracts or subcontracts having terms of at least 50 years;

(b) future CAP Water delivery contracts or subcontracts, having terms of at least 50 years, for the 65,647 acre-feet of M&I Water which was not contracted for by the original allottees under the Secretarial water allocation decision published in the Federal Register on March 24, 1983; and

(c) existing contracts in which CAP Water is mandated to be delivered pursuant to statutory obligations;

to a degree greater than would deliveries to the Tribe; *Provided*, That this subarticle shall not apply to leases which the Tribe may enter into with the Phelps Dodge Corporation, the City of Scottsdale, or the Town of Carefree; and

(4) The Tribe may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary.

4.6 Subarticle 4.5 of the Contract is hereby deleted and the following is substituted in

lieu thereof:

4.5 Delivery Entitlements and Obligations.

(a) The United States or the Operating Agency shall deliver to the Tribe, annually, under this Contract, up to:

(1) 12,700 acre-feet of Project Water allocated to the Tribe in accordance with the Secretarial notice of December 1, 1980, 45 FR 81265;

(2) All of the Excess Ak-Chin Water, which is up to thirty-three thousand and three hundred (33,300) acre-feet in a normal year; and

(3) 14,665 acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.)

(b) The water referred to in this subarticle shall retain the same priority as it had before it was allocated or reallocated to the Tribe under the San Carlos Settlement Act.

4.7 Subarticle 4.11 of the Contract, Exchange Water, is hereby amended by adding the following additional paragraph:

The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange all or part of the water available to it under this Contract.

4.8 The existing text of subarticle 4.9 of the Contract, Priority in Time of Shortages, is hereby designated as subarticle 4.9 (a), and subarticles 4.9 (b) and 4.9 (c) are hereby added:

(b) Excess Ak-Chin Water delivered pursuant to this Contract shall retain the priority such water held prior to being reallocated under the San Carlos Settlement Act; and

(c) Section 2(c) of the Ak-Chin Act defines "time of shortage" of Colorado River water available to the Central Arizona Project. That definition is applicable to determining the "time of shortage" for the Excess Ak-Chin Water available to the Tribe under this Amendment No. 2.

5. PAYMENT OF COSTS:

5.1 Subarticle 6(a) of the Contract is hereby deleted and the following is substituted in lieu thereof:

(a) Except as provided in the San Carlos Settlement Act and this Contract, repayment of construction costs associated with the Tribe's Project Water shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

5.2 Article 6 of the Contract is hereby amended by adding subarticles 6(e), 6(f), and 6(g) after subarticle 6(d):

(e) Water service capital charges, municipal and industrial subcontract charges or any other charges or payments for CAP Water other than OM&R costs shall be nonreimbursable to the extent provided in the San Carlos Settlement Act.

(f) The United States shall not impose upon the Tribe the OM&R charges described and set forth in Article 6 of the Tribal CAP Water Delivery Contract or any other charge with respect to CAP Water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(g) The Tribe shall not be required to pay OM&R costs for CAP Water under this Contract for which the Tribe has no delivery system through which to deliver such water, or for which the Tribe has not placed a delivery order pursuant to subarticle 4.6

of this Contract.

6. NEW FACILITIES: The Secretary shall design and construct new facilities to deliver the water that is subject to this Contract in accordance with the San Carlos Settlement Act.

7. CONTROLLING TERMS AND CONDITIONS:

7.1 Except as expressly provided in this Amendment No. 2, the terms and provisions of the Contract shall remain in full force and effect. In the event any of the terms and conditions of this Amendment No. 2 and the Contract conflict, this Amendment No. 2 shall control.

7.2 This Amendment No. 2 will become effective on the "Enforceability Date" set forth in paragraph 22.4.1 of the San Carlos Apache Tribe Water Rights Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 the day and year above written.

THE UNITED STATES OF AMERICA

By: _____
David J. Hayes
Acting Deputy Secretary
Department of the Interior

LEGAL REVIEW & APPROVAL:

By: _____
Field Solicitor
Phoenix, Arizona

SAN CARLOS APACHE INDIAN TRIBE

By: _____
Chairman

ATTEST:

By: _____
Secretary

EXHIBIT 11.3

CAP LEASING PROVISIONS

Exhibit 11.3
to
The San Carlos Apache Water Rights Settlement Act of 1992 "Settlement Agreement"

This Exhibit was prepared using paragraphs 4.3 through 6.13 of the Subcontract (subcontract) between the City of Scottsdale, as Subcontractor and the Central Arizona Water Conservation District, as Contractor, as an example.

The provisions have been modified from those in the subcontract as necessary to reflect that the requirements of the Tribal Delivery Contract of December 11, 1980, and the fact that these provisions would be included in leases of CAP water by the Tribe subsequent to the Effective Date of the Settlement.

1.0 Conditions Relating to Delivery and Use.

Delivery and use of water under this lease is conditioned on the following, and the Lessee hereby agrees that:

(a) All uses of Project Water and Return Flow shall be consistent with Arizona water law unless such law is contrary to the Federal law applicable to the Central Arizona Project.

(b) The system or systems through which lease water is conveyed after delivery to the Lessee shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses.

(c) The Lessee shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the Lessee's service area, which has been delineated on a map filed and approved by the Secretary, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Secretary and the Lessee shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, that such pumping may be approved by the Secretary in consultation with the Lessor, and approval shall not be unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon submittal by the Lessee of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes as it may be amended from time to time, and will not interfere with the delivery of Project to Lessor, its

Lessees or water rights or supply of the Lessor, or the United States on behalf of Lessor.

(d) The Lessee shall not sell otherwise dispose of or permit the sale or other disposition of any Project Water for use outside of its service area; Provided, however, that this does not prohibit exchanges of Project Water covered by separate agreements with the Lessor.

(e) (i) Project Water scheduled for deliver in any Year under this lease may be used by the Lessee or exchanged by the Lessee pursuant to appropriate agreements approved by the Secretary and the Lessor.

(ii) Project Water scheduled for delivery in any Year under this lease that cannot be used, or exchanged by the Lessee may be made available by the Lessor or the Secretary on behalf of the Lessor to others. If such Project Water is leased to or exchanged with others, the Lessee shall be relieved of its payments hereunder only to the extent of the amount paid to the Lessor by such others, but not to exceed the amount of the Lessee is obligated to pay under this lease for said water.

(iii) In the event the Lessee or the Secretary and the Lessor are unable to lease any portion of the Lessor's Project Water scheduled for delivery and not required by the Lessee, the Lessee shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water to the extent Lessor is relieved of such charges as determined by the Secretary.

2.0 Procedure for Ordering Water.

(a) The Lessee shall, within a reasonable period of time as determined by the Lessor,

but not later than August 1, 1999 submit a written schedule to the Lessor, the Secretary and the Operating Agency showing the quantity of water desired by the Lessee during each month of Year beginning January 1, 2000 and the following Year. The Lessor shall notify the Lessee by written notice of the Lessor's action on the requested schedule promptly upon receipt of confirmation from the Secretary or Operating Agency of the availability of the lease water and delivery schedule.

(b) The amounts, times, and rates of delivery of Project Water to the Lessee during each Year subsequent to the Year beginning January 1, 2000 of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(I) On or before June 1 of each Year beginning with the Year 2000, the Secretary shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Lessor and Lessee. In arriving at this determination, the Secretary, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River and Lessor's allocation of such water over the term of Lessor's contract and any renewal thereof. Within 30 days of receiving said notice, the Lessor shall issue a notice of availability of Project Water to the Lessee.

(ii) On or before August 1 of each Year beginning with the Year 2000, the Lessee shall submit in writing to the Lessor, the Secretary and the Operating Agency a water

delivery schedule indicating the amounts of Project Water desired by the Lessee during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding two years.

(iii) Upon receipt of the schedule, the Lessor and the Secretary shall review it and, after consultation with the Operating Agency and the Lessee, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Lessee are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all water having equal or superior CAP priorities, Provided, that this provision shall not be construed to reduce annual deliveries to the Lessee.

(iv) On or before December 1 of each Year beginning with the Year following said initial Year of water delivery, the Lessor in consultation with the Secretary and the Operating Agency shall determine and furnish to the Lessee the water delivery schedule for the following Year which shall show the amount of water to be delivered to the Lessee during each month of that Year, contingent upon the Lessee remaining eligible to receive water under all terms contained herein.

(c) The monthly water delivery schedules may be amended upon the Lessee's written request to the Lessor. Proposed amendments shall be submitted by the Lessee to the Lessor no later than 45 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. The Lessor shall notify the Lessee and the

Secretary of its action on the Lessee's requested schedule modification within 30 days of the Lessor's receipt of such request.

(d) In no event shall the Secretary or the Lessor be required to deliver to Lessee from the Water Supply System in any one month a total amount of Project Water greater than 11 percent of the Lessee's maximum entitlement; Provided, however, that the Secretary may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to other subcontractors as determined by the Secretary and the Lessor in consultation with Operating Agency and if the Lessee agrees to accept such increased deliveries.

3.0 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) The water to be furnished to the Lessee pursuant to this lease shall be delivered at turnouts to be constructed by the United States at such point(s) on the Water Supply System as may be agreed upon in writing by the Secretary and the Lessor, after consultation with the Operating Agency and Lessee.

(b) Unless the United States and the Lessee agree by contract to the contrary, the Lessee shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Lessee's service area. The Lessee shall furnish, for review by the Operating Agency and approval of the Secretary, drawings showing the construction to be performed by the Lessee within the Water Supply System right-of-way six months before starting said construction. The facilities may be installed, operated, and

maintained on the Water Supply System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Secretary.

(c) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Lessee, Lessor or the Secretary, the accuracy of such measurements shall be investigated by the Secretary, the Operating Agency, Lessor, and Lessee, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, that in the event the parties cannot agree on the required adjustment, the Secretary's determination shall be conclusive.

(d) Neither the United States, the Lessor, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to Subparagraph 4.5(a). The Lessee shall hold the United States, the Lessor, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Lessee's control, carriage, handling use, disposal, or distribution of such water beyond said delivery point(s).

4.0 Temporary Reductions.

In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered, the United

States or the Operating Agency may, after consultation with the Lessor and Lessee, temporarily discontinue or reduce the quantity of water to be furnished to the Lessee as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Lessee, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with Lessor or Lessee, except in case of emergency, in which case no notice need be given. The United States, its officers, agents, and employees, the Lessor, its officers, agents and employees, and the Operating Agency, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction results in deliveries to the Lessee of less water than what has been paid for in advance, the Lessee shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the Lessee's next payment of water service charges or the Lessee may be given credit toward the next payment of water charges if the Lessee should so desire.

5.0 Priority in Case of Shortage. The following methods are set forth to govern priority in case of shortage according to the type or types of CAP subject to this lease:

(a) In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including Contractor) and to non-Indian contractors for municipal and industrial uses according to the following formula:

$IP = I/(I + MI)$ where:

-- IP is the Indian Share of Project Water;

-- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes; provided that, for the purposes of this formula, such ten (10%) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; Provided that, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

-- MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

Subject to the provisions of Section 304(e) of the Basin Project Act, any Project Water furnished to Lessee through Project facilities shall, in the event of shortage thereof, as determined by the Secretary after consultation with the Lessor, be reduced pro rata until exhausted, first for Miscellaneous Water uses and next for Agricultural Water uses before water furnished for non-Indian M&I use is reduced. Thereafter, water for M&I uses shall be reduced pro rata among all M&I users. Pursuant to the authority vested in the Secretary by the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, the Basin Project Act, the Regulations for Implementing the Procedures of the U.S. Department of the Interior (516 DM 5.4), the relative priorities between Indian and non-Indian uses will be determined by the Secretary consistent with the allocations published in the Federal Register on March 24, 1983, and the CAP water delivery contract of Lessor dated December 11, 1980, as amended.

(b) Section 2(c) of the Ak-Chin Indian Water Settlement Act, 98 Stat. at 2699, defines "time of shortage" of Colorado River water available to the Central Arizona Project. The definition is applicable to determining the "time of shortage" for the Excess Ak-Chin water available to the Tribe under this Amendment.

6.0 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Lessee's Service Area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for Project use Return Flow which originates or results from water contracted

for from the Central Arizona Project within the boundaries of the Lessee's Service Area if, in his judgment, such Return Flow is not being put to a beneficial use. The Lessee may recapture and reuse its Return Flow; within its Service Area. If Lessee is unable to use the Return Flow within its Service Area, Lessee shall promptly notify Lessor in writing of the availability of Return Flow. Lessor may use such Return Flow on its Reservation, or may lease such Return Flow within Maricopa, Pinal, Pima, Gila, Graham and Greenlee Counties. The Lessee shall, at least 60 days in advance of any proposed discharge or release of Return Flow, furnish the following information in writing to the Secretary and the Lessor.

(I) The amount of Return Flow available.

(ii) The location and proposed discharge or release of the Return Flow.

(b) Lessor shall use its best efforts to charge a price for the Return Flow to cover the cost incurred by the Lessee for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is in excess of the costs incurred by the Lessee, the excess shall be paid forthwith to the Lessor. Costs required to make Return Flow usable shall not include capital costs but shall include but not be limited to OM&R costs including transportation, treatment, and distribution. The portion of the consideration thereof which may be paid by Lessor to the Lessee shall be subject to the advance approval of the Lessor and the Secretary.

(c) Any Return Flow captured by the United States and determined by the Secretary and the Lessor to be suitable and available for use by the Lessee may be delivered by the United

States or Operating Agency to the Lessee as a part of the water supply for which the Lessee leases hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

(d) All capture, recapture, use, or reuse of Return Flow under this article shall be consistent with Arizona water law unless such law is inconsistent with Federal law applicable to the Central Arizona Project, this lease and the Lessor's contract.

7.0 Water and Air Pollution Control. The Lessee, in carrying out this lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.0 Quality of Water. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Lessor, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The Lessee waives its right to make a claim against the United States, the Operating Agency, the Lessor, or another Lessee because of changes in water quality caused by the commingling of Project Water with other water.

9.0 Loss of Entitlement. The Lessee shall have no right to delivery of water from Project facilities during any period in which the Lessee may be in arrears in the payment of any charges

due the Lessor. Failure to pay any lease payment, OM&R charge or other appropriate charge related to this lease shall constitute a default under this lease. Failure to cure such default with the periods set forth in this lease may constitute a material breach which may subject Lessee to all remedies available to Lessor, including termination of this lease. During any period of default during which deliveries to Lessee have been terminated due to such default, the Lessor may use the water within its Reservation or lease to another entity any water determined to be available under the Lessee's lease for which payment is in arrears. Prior to the time any termination for default is deemed final, the Lessee may regain the right to use any unused or unleased portion of the water determined to be available under the lease upon payment of all delinquent charges plus any difference between the obligation under this lease and the price received in the lease of the water by the Lessor and payment of charges for the current period.

10.0 Refusal to Accept Delivery. In the event the Lessee fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this lease, or in the event the Lessee in any Year fails to submit a schedule for delivery as provided in Paragraph 4.4 hereof, said failure or refusal shall not relieve the Lessee of its obligation to make the payments required in this lease.

11.0 Charge for Later Payments. The Lessee shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, that the late payment charge percentage rate shall not be less than 0.5

percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

12.0 Water Conservation Program.

(a) There is a strong Lessor and Federal interest in developing an effective water conservation program because of this lease. The Lessee shall develop and implement an effective water conservation program for all uses of water which is provided from or conveyed through Federally constructed or Federally financed facilities. The water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(b) A water conservation program, acceptable to the Secretary shall be in existence prior to delivery of water to Lessee under this lease. Following execution of this lease, and at subsequent 5-year intervals, the Lessee shall resubmit the water conservation plan to the Lessor and Secretary for review. After review of the result of the previous 5 years and after consultation with the Lessor, the Lessee, and the Arizona Department of Water Resources or its successor, the Secretary may approve such plan or require modifications in the water conservation program to better achieve program goals.

13.0 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Lessor, the Lessee or the Operating Agency shall be admitted to any share or part of this lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Lessor, the Lessee, the United States or the Operating Agency shall receive any benefit that may arise by reason of this lease other than as a water user within the Project and in the same manner as other water users within the Project.

14.0 Books, Records, and Reports. The Lessee shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary and Lessor may reasonably require. Reports thereon shall be furnished to the Secretary and Lessor in such form and on such date or dates as the Secretary may require. Subject to applicable Tribal and Federal laws and regulations, each party shall have the right during office and upon 10 days written notice to examine and make copies of each other's books and records relating to matters covered by this lease.

15.0 Equal Opportunity. During the performance of this lease, the Lessee agrees as follows:

(a) The Lessee shall not discriminate against any employee or application for employment because of race, color, religion, sex, or national origin. The Lessee shall take

affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited, to the following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising said labor union or workers' representative of the Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Lessee shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Lessee shall furnish all information and reports required by said amended

Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this lease or with any of the such rules, regulations, or orders, this lease may be canceled, terminated, or suspended, in whole or in part, and the Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Lessee shall include the provisions of paragraphs (a) through (g) in every lease or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each lessee or vendor. The Lessee shall take such action with respect to any lease or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Lessee becomes involved in, or is threatened with, litigation with a lessee or vendor as a result of such direction, the Lessee may request the United States to enter into such litigation to protect the interest of the United States.

16.0 Title VI, Civil Rights Act of 1964.

(a) The Lessee agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Lessee receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Lessee by the United States, this assurance obligates the Lessee, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Lessee for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financing assistance extended after the date hereof to the Lessee by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Lessee recognizes and agrees that such Federal financial assistance shall

be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Lessee, its successors, transferees, and assignees.

17.0 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States or the Lessor hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Lessee from any obligation under this lease. No liability shall accrue to the United States or the Lessor in case such funds are not appropriated or allotted.

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EXHIBIT 18.1

WAIVER OF CLAIMS

WAIVER AND RELEASE OF CLAIMS

The Parties to the San Carlos Apache Tribe Water Rights Settlement Agreement dated as of March 30, 1999, (hereinafter referred to as the "Settlement Agreement"), other than the San Carlos Apache Tribe (hereinafter referred to as the "Tribe"), in consideration of the benefits realized under the Settlement Agreement and in accordance with the commitments under Subparagraph 18.1 of the Settlement Agreement, hereby waive and release any and all past and present claims of injuries to their water rights (including water rights in Groundwater, Surface Water and Effluent as these terms are defined in the Settlement Agreement), which the Parties may have against the Tribe, its members and the United States on their behalf, under the laws of the United States, the State of Arizona, or otherwise, for Diversions of Surface Water from the Black and Salt Rivers and their Tributaries, Tributaries of the Gila and San Pedro Rivers, Effluent developed on the San Carlos Apache Reservation, or of Groundwater on the San Carlos Apache Reservation. The term "Parties", when used in this Waiver and Release of Claims, shall mean all parties to the Settlement Agreement except the United States acting on behalf of Indian tribes other than the Tribe and the U.S. Forest Service.

DATED THIS 17th DAY OF December, 1999.

THE STATE OF ARIZONA

By: _____
Governor

THE UNITED STATES OF AMERICA

By: _____
Secretary of Interior

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

Attest: Terrill A. Ronon
Its SECRETARY

By: William P. Schrader
Its PRESIDENT

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

Attest: Terrill A. Ronon
Its SECRETARY

By: William P. Schrader
Its PRESIDENT

ROOSEVELT WATER
CONSERVATION DISTRICT

Attest: Michael [illegible]
Secretary

By: [illegible]
President

Approved as
to Form: [illegible]

BUCKEYE IRRIGATION COMPANY

Attest: [illegible]
Secretary

By: William Hardison
President

Approved as
to Form: _____

BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

CITY OF SCOTTSDALE

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF MESA

Attest: _____
Clerk

By: _____
City Manager

Approved as
to Form: _____
Deputy City Attorney

CITY OF MESA
CORPORATE
SEAL
MARICOPA COUNTY, AZ.

CITY OF TEMPE

Attest: Karen L. Bittingham
Dep. Clerk

By: Neil G. Giuliano
Mayor

Approved as
to Form: C. Brad Wattford
City Attorney

CITY OF CHANDLER

Attest: Carolyn Drinn
Clerk

By: [signature]
Mayor

Approved as
to Form: Dennis M. O'Neill
City Attorney

CITY OF CHANDLER CORPORATE SEAL ARIZONA

TOWN OF GILBERT

Attest: Catherine A. Templer

By: [signature]
Mayor

Approved as
to Form: [signature]

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: [signature]
Secretary

By: [signature]
President

Approved as
to Form: [signature]
General Counsel

CITY OF GLOBE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF SAFFORD

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

EXHIBIT 18.2

WAIVER OF CLAIMS

WAIVER AND RELEASE OF CLAIMS

(a) Except as provided in Subparagraphs (b) and (c) hereof, the San Carlos Apache Tribe (hereinafter referred to as the "Tribe"), on behalf of itself and its members, and the United States, on its own behalf as well as on behalf of the Tribe and its members, in consideration of the benefits realized under the San Carlos Apache Tribe Water Rights Settlement Agreement dated as of March 30, 1999, (hereinafter referred to as the "Settlement Agreement"), and in accordance with the commitments under Subparagraph 18.2 of the Settlement Agreement and pursuant to the authorization granted in Section 3708 of the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Public Law 102-575, as amended (hereinafter referred to as "the Act"), hereby waives and releases:

(1) any and all past and present claims of water rights or injuries to water rights (including water rights in Groundwater, Surface Water, and Effluent, as these terms are defined in the Settlement Agreement) for land within the San Carlos Apache Reservation (hereinafter referred to as the "Reservation"), as that Reservation is defined in the Act, from time immemorial to the date of execution of this Waiver and Release of Claims, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States, the State of Arizona, or otherwise.

(2) any and all future claims of rights to water (including water rights in Groundwater, Surface Water, and Effluent) for land within the Reservation, from and after the date of execution of this Waiver and Release of Claims, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency

or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States, the State of Arizona, or otherwise; and

(3) any and all past, present and future claims of water rights or injuries to water rights (including water rights in Groundwater, Surface Water and Effluent) for lands outside of the Reservation based upon aboriginal occupancy by the Tribe, its members, or their predecessors, which the Tribe or its members may have against the United States, or which the Tribe, its members or the United States may have against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States, the State of Arizona, or otherwise.

(b) Notwithstanding the execution by the Tribe and the United States of this Waiver and Release of Claims, the Tribe, its members, and the United States in its own right and on behalf of the Tribe and its members shall reserve the right to assert the following, as provided in Subparagraph 18.3 of the Settlement Agreement:

(1) claims of damages to water quality of Surface Water or Groundwater on the Reservation arising after the Enforceability Date as defined in the Settlement Agreement;

(2) claims arising out of Globe Equity No. 59 to or for enforcement of water rights (including water rights in Groundwater, Surface Water, and Effluent) and claims of injuries to water rights, past, present and future.

(3) claims for enforcement of the Tribe's water rights provided for in the Settlement Agreement under the continuing jurisdiction of the court in the Gila River Adjudication or other court of competent jurisdiction.

(4) claims for the breach or enforcement of the terms of the Settlement Agreement or rights recognized therein, or in the Act, including claims for future injuries to such rights.

(5) claims which contest Diversions of water on the Reservation by non-parties to the Settlement Agreement, for use off-Reservation.

(6) claims in the Gila River Adjudication or other court of competent jurisdiction (1) to water from the Gila River and its tributaries, other than from the San Pedro River and its off-Reservation tributaries, upstream of Gila Crossing, against the States of Arizona and New Mexico or any agency or political subdivision thereof, the City of Safford, the San Carlos Irrigation and Drainage District, the U.S. Forest Service, the Gila River Indian Community, its members and allottees and the United States acting on their behalf and on behalf of the San Carlos Irrigation Project, or any other person, corporation or municipal corporation; (2) to the water supplies specified in Paragraphs 4.0 and 5.0 of the Settlement Agreement, against the White Mountain Apache Tribe and its members and the United States on their behalf, the U.S. Forest Service, and Phelps Dodge as that entity is defined in the Settlement Agreement. All parties referred to in this Subparagraph 6 and Subparagraph 18.3(f) of the Settlement Agreement are hereby referred to as "the non-settling entities".

(7) objections in the Gila River Adjudication or other court of competent jurisdiction contesting all water uses and claims for water rights of the non-settling entities;

(8) objections in the Gila Adjudication or other court of competent jurisdiction contesting the applicability of Arizona law to the Reservation

and to the water rights of the Tribe and the United States acting on behalf of the Tribe.

(c) Nothing in this Waiver and Release of Claims shall be construed as a waiver or release of claims to water or injuries to water rights of the Tribe, its members, or the United States in the Gila River Adjudication or other court of competent jurisdiction for existing off-Reservation San Carlos Apache Allotments of land.

(d) Except as provided in Subparagraphs (b) and (c) hereof, the United States shall not assert any claim against the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona, or otherwise, in its own right or on behalf of the Tribe or its members based upon (1) water rights or injuries to water rights (including water rights in Groundwater, Surface Water or Effluent) of the Tribe or its members; or (2) water rights or injuries to water rights (including water rights in Groundwater, Surface Water or Effluent) held by the United States on behalf of the Tribe or its members.

DATED THIS 17th DAY OF December, 1999.

THE UNITED STATES OF AMERICA

By: [signature]
Secretary of Interior

SAN CARLOS APACHE TRIBE

Attest: Sandra Kay Kitchegan
Acting Secretary

By: [signature]

Its: Acting Tribal Administrator

EXHIBIT D

STIPULATION AND FORM

OF JUDGMENT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.	**No. W-1 (Salt)** **No. W-2 (Verde)** **No. W-3 (Upper Gila)** **No. W-4 (San Pedro)** **CONTESTED CASE NO.** **STIPULATION AND REQUEST FOR ENTRY OF JUDGMENT AND DECREE**

THIS STIPULATION, dated as of March 30, 1999, is entered into among the United States of America; the State of Arizona; the San Carlos Apache Tribe (hereinafter referred to as the "Tribe"); Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; and the City of Tempe.

WHEREAS,

1. Certain water rights claimed by the Tribe and the United States acting on behalf of the Tribe are to be permanently settled by agreement between the parties to this Stipulation. The terms of the Settlement Agreement between the parties (hereinafter referred to as the "Settlement Agreement") were ratified and approved by Congress in the San Carlos Apache Tribe Water Rights Settlement Act of 1992, P.L. 102-575, as amended (hereinafter referred to as "the Act"). A copy of the Settlement Agreement is attached hereto as Attachment 1 and by this reference incorporated herein.

2. Some of the water supplies that are the subject of the Settlement Agreement between the parties are subject to the jurisdiction of this Court.

3. The parties to this Stipulation have submitted the Settlement Agreement to this court for its approval pursuant to Section 3711 of the Act and the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, Dated May 16, 1991.

NOW THEREFORE,

4. The parties to this Stipulation request that upon this court's approval of the Stipulation and Settlement Agreement, and that, after completion of the conditions set forth in Sections 3711(a), (b) and (c) of the Act, this court enter the attached Judgment and Decree of the Tribe and of the United States acting on behalf of the Tribe decreeing the rights to the water supplies within its jurisdiction as provided by the terms of the Settlement Agreement.

RESPECTFULLY SUBMITTED this 30th day of March, 1999.

THE UNITED STATES OF AMERICA

By: Patrick Barry by [illegible]

THE ARIZONA GAME AND FISH COMMISSION
THE ARIZONA STATE LAND DEPARTMENT
(State of Arizona Claimants)

By: [illegible]

SAN CARLOS APACHE TRIBE

By: [illegible]

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By: _____

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

By: _____

BUCKEYE IRRIGATION COMPANY

By: _____

BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT

By: _____

CITY OF TEMPE

By: _____

ROOSEVELT WATER
CONSERVATION DISTRICT

By: Richard L. Morrison

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.	**No. W-1 (Salt)** **No. W-2 (Verde)** **No. W-3 (Upper Gila)** **No. W-4 (San Pedro)** **CONTESTED CASE NO.** **JUDGMENT AND DECREE**

1. The Court has approved the Settlement Agreement dated March 30, 1999, permanently resolving certain water rights claims of the San Carlos Apache Tribe (hereinafter referred to as the "Tribe") and of the United States acting on behalf of the Tribe that are subject to the Court's jurisdiction in this case, a copy of which Settlement Agreement is attached as Attachment 1 to the Stipulation and Request for Entry of Judgment and Decree.

2. The conditions to the enforceability of the Settlement Agreement, set forth in Paragraph 22.4 of the Settlement Agreement, have been satisfied.

3. The United States Secretary of the Interior has published in the Federal Register a notice of completion of all actions necessary to make the settlement effective, as required by Section 3711(a) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Public Law 102-575, as amended.

NOW THEREFORE, it is hereby adjudged and decreed as follows:

4. The capitalized terms used in this Judgment and Decree shall be defined as stated in the Settlement Agreement.

5. Pursuant to the terms of Subparagraph 5.1 of the Settlement Agreement and subject to the qualifications set forth in Paragraph 17 hereof, the Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the on-Reservation diversion and use of a total of 7,300 acre-feet of Surface Water annually from the Black River, and/or from the Salt River below its

confluence with the Black River. The priority date associated with the right of the Tribe and the United States acting on behalf of the Tribe to Salt or Black River water shall be November 9, 1871; provided, however, that the Tribe or the United States acting on behalf of the Tribe reserves the right to assert in the Gila River Adjudication or other court of competent jurisdiction an earlier priority date against the non-settling entities listed in Subparagraph 18.3(f) of the Settlement Agreement.

6. The Tribe, and the United States acting on behalf of the Tribe, have asserted claims in the Gila River Adjudication to water from the Upper Salt River watershed. These claims contemplate construction of reservoirs along the Main Stem of the Upper Salt and Black Rivers. Except for any diversion structures as may be needed to enable the Tribe or the United States acting on behalf of the Tribe to Divert the water described in Paragraph 5 hereof, the Settlement Agreement does not authorize the construction of such reservoirs. Prior to construction of any such Main Stem reservoirs, the Tribe and the Secretary shall execute a separate agreement with the Salt River Valley Water Users' Association and/or the Salt River Project Agricultural Improvement and Power District regarding the operation of any such new reservoirs; provided, however, that the evaporation losses associated with the storage of water by the Tribe or the United States acting on behalf of the Tribe in such reservoirs shall be considered Diversions for purposes of the Settlement Agreement, and such losses shall be deducted from the amount that the Tribe and the United States acting on its behalf are entitled to Divert from the Salt and Black Rivers under Paragraph 5 hereof.

7. Pursuant to the terms of Paragraph 4.2.1 of the Settlement Agreement and subject to the qualifications set forth in Paragraph 17 hereof, the Tribe and the United States acting on behalf of the Tribe, shall have the permanent right to the on-Reservation Diversion and use of all the Surface Water in all Tributaries within the Reservation to the Main Stem of the San Pedro River, the Black River and the Salt River below its confluence with the Black River, including the right to fully regulate and store such water on the Tributaries; provided, however, that once water from the Tributaries has flowed into the Main Stem of the San Pedro, Salt and/or Black Rivers, such water shall be, for the purposes of the Settlement Agreement, water from the Main Stem of those rivers, and the right of the Tribe and the United States acting on behalf of the Tribe to water from the Main Stem

of those rivers shall be limited to the amounts set forth in Subparagraphs 5.1 and 7.0 of the Settlement Agreement.

8. Pursuant to the terms of Subparagraph 4.2.2 of the Settlement Agreement and subject to the qualifications set forth in Paragraph 17 hereof, the Parties to the Settlement Agreement agree that the Tribe and the United States acting on behalf of the Tribe shall have the permanent right to the on-Reservation Diversion and use of all the Surface Water in all Tributaries within the Reservation to the Main Stem of the Gila River, including the right to fully regulate and store such water on the Tributaries; provided, however, that once water from the Tributaries has flowed into the Main Stem of the Gila River, such water shall be, for the purposes of the Settlement Agreement, water from the Main Stem.

9. Nothing in Paragraphs 6, 7 and 8 hereof shall be construed as permitting the Tribe or the United States acting on behalf of the Tribe to store water from tributaries to the Gila, Salt, Black and San Pedro Rivers in reservoirs located on the Main Stem of those rivers.

10. Subject to the terms of Paragraph 4.3 of the Settlement Agreement, the Groundwater Management Plan referred to in Section 3710(d) of the San Carlos Apache Tribe Water Rights Settlement Act and Paragraph 17 hereof, the Tribe shall have the permanent right to the on-Reservation Diversion and use of all Groundwater beneath the Reservation.

11. Pursuant to Subparagraph 4.4 of the Settlement Agreement and subject to the qualifications set forth in Paragraph 17 hereof, the Tribe and the United States acting on behalf of the Tribe shall have the permanent right to Effluent developed on the Reservation, which may be stored and used on the Reservation for such purposes as the Tribe or the United States acting on behalf of the Tribe may determine. Effluent developed on the Reservation shall not be included in the water rights of the Tribe or the United States acting on behalf of the Tribe set forth in Paragraph 4.0 of the Settlement Agreement. No storage or use of such Effluent by the Tribe or the United States acting on behalf of the Tribe shall diminish the water rights of the Tribe or the United States acting on behalf of the Tribe, and such Effluent may not be deducted as a set off against the rights described in the Settlement Agreement.

12. Subject to the qualifications set forth in Paragraphs 13 and 17 hereof, neither the Tribe nor the United States acting on behalf of the Tribe shall have any right to Divert Surface Water from the Main Stem of the San Pedro River or its off-Reservation Tributaries.

13. Nothing in the Settlement Agreement shall affect the water rights or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

14. The water rights of the Tribe and the United States acting on behalf of the Tribe that are the subject of the Settlement Agreement may be used for any beneficial purpose on the Reservation.

15. Except as authorized by Paragraphs 11.0 and 12.0 of the Settlement Agreement, none of the water that is the subject of the Settlement Agreement may be sold, leased, transferred or in any way used off the Reservation.

16. Except as specifically provided in this Judgment and Decree and in Subparagraphs 4.2.1, 4.2.2, 4.3, 4.4, 4.5, 5.2, and 8.0 of the Settlement Agreement, neither the Tribe nor the United States acting on behalf of the Tribe shall have any right to store the water that is the subject of the Settlement Agreement.

17. Subparagraphs 4.2.1, 4.2.3, 4.3, 4.4, 4.5, 5.1, 5.2 and 7.0 of the Settlement Agreement, which define the rights of the Tribe and the United States on behalf of the Tribe to Surface Water from the San Pedro River, the Black River, the Salt River below its confluence with the Black River and Tributaries to these rivers, to Groundwater beneath the Reservation, and to Effluent shall be binding on all parties to the Gila River Adjudication other than the non-settling entities specifically excepted by Subparagraph 18.3(f) of the Settlement Agreement. Subparagraph 4.2.2 of the Settlement Agreement, which defines the rights of the Tribe and the United States on behalf of the Tribe to Surface Water from Tributaries to the Gila River, shall be binding on all Parties to the Settlement Agreement, but shall not be binding on any other parties to the Gila River Adjudication.

18. Neither this Judgment and Decree nor the Settlement Agreement shall limit, interfere with or affect in any way, any right the United States or the Tribe may have under the Globe Equity Decree.

19. The Tribe, and the United States acting on its behalf, reserve the right to assert, as specified in Subparagraphs 18.3(f), (g) and (h) of the Settlement Agreement, in the Gila River Adjudication or other court of competent jurisdiction: (1) claims against certain non-settling entities for the water supplies described in Paragraphs 4.0 and 5.0 of the Settlement Agreement, and to the Gila River and its tributaries, other than the San Pedro River and its off-Reservation tributaries, upstream of Gila Crossing; (2) objections contesting all water uses and/or claims for water rights by the non-settling entities; and (3) objections contesting the applicability of Arizona law to the Reservation and to the water rights of the Tribe and the United States acting on behalf of the Tribe.

20. In exchange for the benefits realized under the Settlement Agreement and as authorized by the Act, the Parties have executed Waivers and Releases of Claims for water rights and injuries to water rights, which are attached as Exhibits 1 and 2 hereto which are by this reference incorporated herein.

21. Nothing in the Settlement Agreement, the Act or this Judgment and Decree shall be deemed to recognize or establish any right of a member of the Tribe to water on the Reservation.

22. Nothing in this Judgment and Decree or the Settlement Agreement shall be construed to quantify or otherwise affect the water rights or entitlements to water of any Arizona Indian tribe, band or community, or the United States on their behalf, other than the San Carlos Apache Tribe and the United States acting on its behalf.

23. Nothing in this Judgment and Decree or the Settlement Agreement shall affect the right of any Party, other than the Tribe and the United States acting on behalf of the Tribe, to assert any priority date or quantity of water for water rights claimed by such party in the Gila River Adjudication or other court of competent jurisdiction.

24. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree and the Settlement Agreement, including the entry of injunctions, restraining orders or other remedies under law or equity; provided, however, nothing in this Judgment and Decree or the Settlement Agreement shall waive the right of the United States, the Tribe or the United States acting on behalf of the Tribe to object to the jurisdiction of the courts of the State of Arizona to adjudicate

any disputes arising under this Agreement.

DATED this ___ day of _____, 1999.

_____
Judge of the Superior Court

EXHIBIT E

DISMISSALS

SPARKS, TEHAN & RYLEY, P.C.
7503 First Street
Scottsdale, Arizona 85251-4573
(602) 949-1339
(602) 949-7587 FAX

Joe P. Sparks, State Bar I.D. No. 002383
Kevin T. Tehan, State Bar I.D. No.005175
John H. Ryley, State Bar I.D. No. 002095

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA, Plaintiff, vs. STATE OF ARIZONA, et al., Defendants.	Cause No. CIV 79-186 PHX-PGR **NOTICE OF DISMISSAL OF CERTAIN CLAIMS TO WATER**

The San Carlos Apache Tribe (herein "the Apache Tribe"), Plaintiff, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, gives Notice of Dismissal with prejudice of all claims against THE STATE OF ARIZONA, THE STATE LAND DEPARTMENT OF THE STATE OF ARIZONA; and JOHN M. LITTLE and SALT RIVER VALLEY WATER USERS' ASSOCIATION, Defendants in this action, as to surface water to the Black River and the Salt River below its confluence with the Black River, as specified in that Settlement Agreement dated March 30, 1999, between and among the Tribe, the United States, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and other parties pursuant to the San Carlos Apache Tribe Water Rights Settlement Act of 1992 PL-102-575, as

amended, hereafter referred to as the "Settlement Agreement," which is attached and made a part of this Notice.

RESPECTFULLY SUBMITTED this ___ day of December, 1999.

SPARKS, TEHAN & RYLEY, P.C.

By _____
Joe P. Sparks
Kevin T. Tehan
7503 First Street
Scottsdale, AZ 85251-4573
Attorneys for San Carlos Apache Tribe

COPIES of the foregoing delivered by fax and mail this ___ day of December, 1999, to:

Mary Mangotich Grier
Steve Were
Assistant Attorneys General
Natural Resources Section
Office of the Attorney General (Arizona)
1275 W. Washington Street
Phoenix, AZ 85007-2997

John B. Weldon, Jr.
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Michael Pearce
Arizona Dept. of Water Resources
Litigation Support Section
Adjudications Division
500 N. Third Street
Phoenix, AZ 85004

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DISTRICT OF ARIZONA
BY _____ Z DEPUTY

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Joe P. Sparks, State Bar I.D. No. 002383
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John H. Ryley, State Bar I.D. No. 002095

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA, Plaintiff, vs. STATE OF ARIZONA, et al., Defendants.	Cause No. CIV 79-186 PHX-PGR **MOTION TO LIFT STAY TO FILE NOTICE OF DISMISSAL OF CERTAIN CLAIMS TO WATER**

The San Carlos Apache Tribe (herein "the Apache Tribe"), Plaintiff, moves for an order lifting the stay in these proceedings entered by order of the Ninth Circuit Court of Appeals on December 9, 1983 on the grounds that Plaintiff has partially settled its claims and wishes to dismiss that portion of the complaint comprising those claims as well as claims for declaratory and/or injunctive relief premised upon those claims. A copy of the proposed Notice of Dismissal as to Certain Claims pursuant to Rule 41(a) of the Federal Rules of Civil Procedure is attached.

RESPECTFULLY SUBMITTED this 22nd day of November, 1999.

SPARKS, TEHAN & RYLEY, P.C.

By _____
Joe P. Sparks
Kevin T. Tehan

MEMORANDUM OF POINTS AND AUTHORITIES

The San Carlos Apache Tribe's Claims in this case have been pending in Federal Court since 1979. Pursuant to the Order of the United States Court of Appeals for the Ninth Circuit dated December 9, 1983, this Court has stayed this proceeding, except for the filing of the next status report. See Minute Order dated February 8, 1999.

This Motion is filed to lift the stay to allow the San Carlos Apache Tribe to file a Notice of Dismissal of Certain Water Claims.

Congress enacted the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Public Law 102-575, 106 Stat.4740, as amended, on October 30, 1992. ("Act").

The Act authorizes the settlement of certain claims to water by the San Carlos Apache Tribe, and the United States acting on behalf of the Tribe, pursuant to an Agreement which may be entered into by certain entities.

On March 30, 1999, that Agreement, together with a Stipulation and proposed form of Judgment, was filed with the Superior Court for the State of Arizona ("Superior Court") in the General Stream Adjudication Of All Rights To Use Water In The Gila River System And Source, W-1 (Salt) W-2 (Verde) W-3 (Upper Gila) W-4 (San Pedro), Consolidated, on March 30, 1999, pursuant to the Special Procedural Order Providing for the Approval of Federal Water Rights Settlement, Including Those of Indian Tribes entered by the Supreme Court of the State of Arizona on May 16, 1991. (Contested Case No. W1-204).

Upon approval by the Superior Court, of the Agreement and Stipulation by the entry of the Judgment attached to the Agreement, the Notice of Dismissal (Exhibit "E") will be filed with this Court dismissing certain claims against certain Defendants before this Court. The hearing on any objection to the Final Report on the Settlement by the Special Master will be held at 9:30 A.M. MST, Wednesday, December 8, 1999. The Superior Court is expected to rule shortly thereafter.

The statutory deadline is December 31,1999 to complete the requirements under the Act set forth in Section 3711 of the Act.

The Secretary of Interior must publish a statement of findings in the Federal register that the requirements of §3711 have been met by December 31, 1999. December 31, 1999 is a federal holiday, therefore the statement in the Federal Register must be published "prior" to December 31, 1999. Section 3711(a)(6) of the Act, includes this Court's approval of Exhibit "E" of the Agreement. (106 Stat. 4751, 4752).

The parties to the case before this Court have stipulated in State Contested Case No. W1-204 that Exhibit "E" can be filed with this Court. Exhibit "E" attached consists of two (2) documents:

1. This Motion to Lift Stay to File Notice of Dismissal of Certain Claims to Water. ("Motion to Lift Stay") which will be labeled as Exhibit E-1 to the Agreement.

2. Notice of Dismissal of Certain Claims to Water ("Notice of Dismissal") which will be labeled E-2 to the Agreement.

The Motion to Lift Stay in this case (Cause No. CIV 79-186 PHX-PGR) is necessary to permit the San Carlos Apache Tribe to file the Notice of Dismissal.

The San Carlos Apache Tribe therefore respectfully requests this Court to grant the Motion to Lift Stay for the limited purpose of filing the Notice of Dismissal.

RESPECTFULLY SUBMITTED this 22nd day of November, 1999.

SPARKS, TEHAN & RYLEY, P.C.

By _____
Joe P. Sparks
Kevin T. Tehan
John H. Ryley
7503 First Street
Scottsdale, Arizona 85251
Attorneys for the Plaintiff,
San Carlos Apache Tribe

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DISTRICT OF ARIZONA
BY D DEPUTY

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Kevin T. Tehan, State Bar I.D. No.005175
John H. Ryley, State Bar I.D. No. 002095

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA, Plaintiff, vs. STATE OF ARIZONA, et al., Defendants.	Cause No. CIV 79-186 PHX-PGR **NOTICE OF ERRATA RE: MOTION TO LIFT STAY TO FILE NOTICE OF DISMISSAL OF CERTAIN CLAIMS TO WATER**

The San Carlos Apache Tribe of Arizona, Plaintiff, filed their Motion to Lift Stay to File Notice of Dismissal of Certain Claims to Water ("Motion to Lift Stay") on November 22, 1999. A Draft Notice of Dismissal of Certain Claims to Water is attached as Exhibit "E" to the Motion to Lift Stay. The following language was inadvertently omitted from the Draft Notice of Dismissal of Certain Claims to Water:

> "...and the Salt River below its confluence with the Black River..."

The corrected Draft Notice of Dismissal of Certain Claims to Water is attached as Exhibit "E" and the language has been added to page 1, lines 22 and 23.

RESPECTFULLY SUBMITTED this 23rd day of November, 1999.

SPARKS, TEHAN & RYLEY, P.C.

By _____
Joe P. Sparks
Kevin T. Tehan
John H. Ryley
7503 First Street
Scottsdale, Arizona 85251
Attorneys for the Plaintiff,
San Carlos Apache Tribe

COPIES of the foregoing delivered by fax and mail this 23rd day of November, 1999, to:

Mary Mangotich Grier
Steve Were
Assistant Attorneys General
Natural Resources Section
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1275 W. Washington Street
Phoenix, AZ 85007-2997

John B. Weldon, Jr.
M. Byron Lewis
Salmon, Lewis & Weldon, P.L.C.
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Phoenix, AZ 85018

Michael Pearce
Arizona Dept. of Water Resources
Litigation Support Section
Adjudications Division
500 N. Third Street
Phoenix, AZ 85004

_____

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA, Plaintiff, vs. STATE OF ARIZONA, et al., Defendants.	Cause No. CIV 79-186 PHX-PGR **ORDER GRANTING MOTION TO LIFT STAY TO FILE NOTICE OF DISMISSAL OF CERTAIN CLAIMS TO WATER**

The San Carlos Apache Tribe (herein "the Apache Tribe"), Plaintiff, having moved to lift the stay in these proceedings for the limited purpose of filing a Notice of Dismissal of Certain Claims To Water in order to effectuate a portion of the San Carlos Apache Water Rights Settlement Act of 1992, Public Law 102-575, (106 Stat. 4740), as amended, including §3711(a)(6), and good cause appearing for such motion, IT IS ORDERED THAT:

The stay in these proceedings is lifted for the limited purpose of permitting the San Carlos Apache Tribe to file a Notice of Dismissal of Certain Water Claims.

Signed this 9th day of ~~November~~ December 1999.

United States District Court Judge

I hereby attest and certify on 12/14/99 that the foregoing document is a full, true and correct copy of the original on file in my office and in my custody.
CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
By ___ Deputy

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EXHIBIT 20.2.2

SRRD LANDS

Land Classifications Subject to RWCD Credit of 5.6% of Water Diverted at Granite Reef Dam

CLASSIFICATION	ACRES
Association Regular Member Land	200,074.50
Special District Land - Tempe	22,494.65
Special District Land - Mormon Flat	9,707.30
Special District Land - Utah	2,091.65
New State Irrigation and Drainage District	2,327.70
Maricopa Garden Farms	1,258.10
Pump Contract Land (surface water only)	215.10
SUBTOTAL ASSOCIATIONS LANDS	238,170.00
Townsite Lands	9,615.30
Tempe Non-Member	458.35
Normal Flow Only Land Within SRRD	79.10
State of Arizona Tree Rows	35.50
SRPMIC Land in Sections 34, 35, & 36 T2N R5E	1,125.00
TOTAL	249,483.25

EXHIBIT 20.5.1

ARIZONA GAME AND FISH

COMMISSION RIGHTS

Drainage	SubArea	Name	LAND_STATU	SOC #	Type	Basis	ADWR_No	PRIORITY_D	Section	Township	Range	County	PT DIVERSI
Salt	Bear Creek	Bear Creek	No Agreement	39-04885	Instream	36REG	36-71990	12/26/78	SE35	04N	28E	Greenlee	SE35 04N 28E
Salt	Bear Wallow Creek	Bear Wallow Creek	No Agreement	39-04886	Instream	36REG	36-71994	12/26/78	2426	03N	28E	Greenlee	2426 03N 28E
Salt	Black River	Black River	No Agreement	39-04882	Instream	36REG	36-72001	12/26/78	SE11	04N	28E	Greenlee	SE11 04N 28E
Salt	Black River E. Fork	Black River	No Agreement	39-04883	Instream	36REG	36-71989	12/26/78	1425	06N	29E	Apache	1425 06N 29E
Salt	Black River W. Fork	Black River	No Agreement	39-04881	Instream	36REG	36-71988	12/26/78	1112	06N	27E	Apache	1112 06N 27E
Salt	Boggy Creek	Boggy Creek	No Agreement	39-04890	Instream	36REG	36-71998	12/26/78	SW27	05N	27E	Apache	SW27 05N 27E
Salt	Canyon Creek (O.W. Spring	Canyon Creek Hatchery	USFS-SUP	NONE	Spring	33APP	33-96144	12/8/91	SE35	11N	14E	Gila	SE35 11N 14E
Salt	Canyon Creek (O.W. Spring	Canyon Creek Hatchery	USFS-SUP	39-04891	Spring	33CER	3672	7/10/65	SE35	11N	14E	Gila	SE35 11N 14E
Salt	Centerfire Creek	Apache Trout Habitat	No Agreement	39-04884	Instream	36REG	36-71999	12/26/78	3536	05N	27E	Apache	3536 05N 27E
Salt	Conklin Creek	Conklin Creek	No Agreement	39-04893	Instream	36REG	36-71992	12/26/78	3536	03.5N	28E	Apache	3536 03.5N 28E
Salt	Corduroy Creek	Apache Trout Habitat	No Agreement	39-04888	Instream	36REG	36-71991	12/26/78	NW16	03N	29E	Greenlee	NW16 03N 29E
Salt	Cunningham Tracts (Carroll	Cunningham Tracts	Deeded	NOT FILED	Spring	33PER	A-2275	11/3/52	SW08	09N	15E	Gila	SW08 09N 15E
Salt	Cunningham Tracts (Carroll	Cunningham Tracts	Deeded	39-04879	Spring	33CER	33-37002	4/8/76	SW08	09N	15E	Gila	SW08 09N 15E
Salt	Cunningham Tracts (Carroll	Cunningham Tracts	Deeded	NOT FILED	Spring	33PER	A-2276	11/3/52	SE18	09N	15E	Gila	SE18 09N 15E
Salt	Double Cienega Creek	Double Cienega Creek	No Agreement	39-04889	Instream	36REG	36-71996	12/26/78	7&8	03N	29E	Greenlee	7&8 03N 29E
Salt	Fish Creek	Fish Creek	No Agreement	39-04887	Instream	36REG	36-71997	12/26/78	SE 9	03N	29E	Greenlee	SE 9 03N 29E
Salt	Reservation Creek	Apache Trout Habitat	No Agreement	39-04892	Instream	36REG	36-71995	12/26/78	2227	04N	28E	Apache	2227 04N 28E
Salt	Rock Creek Well	Rock Spring	USFS-SUP	39-04880	Well	55WEL	55-628239	3/31/53	SW 5	04N	11E	Gila	SW 5 04N 11E
Salt	Sierra Blanca L	Sierra Blanca Lake	USFS-SUP	NOT FILED	Lake	33APP	33-23551		NE34	06N	29E	Apache	NE34 06N 29E
Salt	Snake Creek	Snake Creek	No Agreement	39-04894	Instream	36REG	36-71993	12/26/78	SW19	03.5N	28E	Greenlee	SW19 03.5N 28E
Salt	Three Bar Well	Three Bar Wildlife Area	FS-COOP	39-11549	Well	55WEL	55-628239	3/31/53	NE 5	04N	11E	Gila	NE 5 04N 11E
Salt	Tonto Creek	Tonto Hatchery	No Agreement	39-04895	Instream	PND33	File-33	6/26/80	SW33	12N	12E	Gila	SW33 12N 12E
Salt	Tonto Spring	Tonto Hatchery	USFS-SUP	39-04878	Hatchery	33CER	33-90519	4/16/86	NW33	12N	12E	Gila	NW33 12N 12E
Salt	Wildcat Creek	Wildcat Creek	No Agreement	39-04877	Instream	36REG	36-72000	12/26/78	SW27	05N	27E	Apache	SW27 05N 27E

EXHIBIT 22.5

WATER COMMISSIONER'S REPORT

OF JUNE 3, 1977

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PATRICK T. HURLEY, Plaintiff,	)	NO. C-4564
UNITED STATES OF AMERICA, Intervenor,	)	WATER COMMISSIONER'S REPORT
vs.	)	
CHARLES F. ABBOTT: et al., Defendants.	)	

The undersigned, A. L. Monette, heretofore having been selected and designated as the Water Commissioner to execute and carry out the provisions of the Decree herein and report to the Court with reference thereto, respectfully submits the following Report for the Court's information:

I

The Salt River Valley Water Users' Association (hereinafter referred to as the "Association"), by contracts with the United States Government of June 25, 1904, and September 6, 1917, operates the Salt River Federal Reclamation Project (hereinafter referred to as the "Salt River Project"), and delivers water pursuant to and in accordance with the Decree of the Court heretofore entered herein and commonly referred to as the "Kent Decree". The Association has, as provided for in such decree, reported to, or made its records available to, the Water Commissioner as to the operation and maintenance of the Salt River Project and the distribution of water administered by the Association under the authority of the Water Commissioner and the Kent Decree.

II

The Association has heretofore reported to the Water Commissioner that it has entered into contracts with the City of Phoenix, the City of Mesa, the City of Scottsdale, the City of Tempe, the City of Glendale, the City of Peoria, the City of Chandler and the Town of Gilbert, all of which are municipalities lying within the Salt River Reservoir District, the service area of the Association; in view of the expanded urban development within the Reservoir District of the Salt River Project land area, the Salt River Project now provides a major portion of the total domestic, commercial and industrial water supply needed by the municipal population of the above Cities; this water supply and delivery is made possible by virtue of contracts between the Cities and the Association, each of which has been approved by the Secretary of the Interior of the United States, whereby the Cities pay the Association the annual assessment owed by each landowner on lands that have become urbanized and are no longer utilized for agricultural purposes; the water to which these lands are entitled, including normal flow, stored and developed, surface and underground water is delivered by the Association to the Cities' water filtration plants for use on regular member and townsite lands within the Reservoir District, primarily for municipal and industrial purposes; the Cities are contracting parties with the Association (or propose to become contracting parties with the Association) in order that each municipality contracting with the Association may make available to the owners or occupants of Association-member lands water available for beneficial use in connection with such lands, all as will be further described herein.

III

The use of water by members of the Association in connection with their respective parcels of regular member

lands and townsite lands has changed as valley lands have been urbanized, as the population of the area has increased and as municipal water sources have changed; as agricultural uses of member lands have changed to uses for residential, commercial, industrial and municipal uses, in like manner the water uses appurtenant to such lands have accordingly changed; the water distribution facilities of the Association were originally developed for the purpose of delivering irrigation water to the high point of each quarter section; without filtration and further treatment, the water delivered by the Association is not adaptable for urban and municipal uses other than urban and municipal irrigation uses; at the same time, the owners and occupants of these member lands require a water supply for the beneficial uses for which the lands have been and are now being adapted and used.

IV

The regular member lands lying within the Reservoir District are becoming urbanized and reliable forecasts indicate that this urbanization will continue; the water which has been made subject to the water delivery contracts between the Association and the Cities, and which will, in the future, progressively be delivered by the Cities for domestic, commercial and industrial uses, has been and will continue to be put to beneficial use; the uses now being made and which will be made of the water in the future will not lawfully interfere with any other existing water rights; the Water Commissioner hereby reports the changes in use of water from agricultural to municipal and industrial, and the city domestic uses for certain lands within the confines of the Salt River Reservoir District, as shown on the attached Exhibit "A".

V

In the decree entered herein it is provided that the Water Commissioner shall supervise the proper * * * distribution of the water to be diverted by the canals under the said decree * * * in accordance with the rights of the persons entitled thereto as found by the decision and decree herein.

In the decree it is further provided in part as follows:

> "Commissioner shall * * * apply to the judge of the court for such further or specific directions as to his powers and duties whenever such directions shall be necessary or proper for the effective carrying out of the provisions of the decree herein."

Your Commissioner respectfully requests that the court give specific directions as to his duties in respect to the proper distribution of water to the lands affected by the aforesaid contracts and specifically described in the tables attached hereto, in view of the changes in delivery and use under said contracts.

VI

The Water Commissioner respectfully requests the court to give notice of the filing of this report to representatives of all interested parties, viz, City of Phoenix, City of Mesa, City of Scottsdale, City of Tempe, City of Glendale, City of Peoria, City of Chandler, Town of Gilbert, the United States and the Salt River Valley Water Users' Association. The Water Commissioner respectfully requests that the court fix a time within which the interested parties may file objections or other response to the report and that a time and place be fixed by the court for considering the report and all objections or other responses thereto and that appropriate notice be ordered to all interested parties of the time within which responses may be filed to this report and of the time and place fixed by the court for considering the report and any objections and responses thereto.

Respectfully submitted this 3rd day of June, 1977.

A. L. Monette

A. L. Monette
Water Commissioner

EXHIBIT 22.11

STATEMENT OF POLICIES AND PRINCIPLES

REGARDING THE USE OF CAP FACILITIES

TO FACILITATE INDIAN WATER RIGHTS

SETTLEMENTS

ADOPTED BY THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS - March 3, 1988

STATEMENT OF POLICIES AND PRINCIPLES REGARDING THE USE OF CAP FACILITIES TO FACILITATE INDIAN WATER RIGHTS SETTLEMENTS

Policy

The Board of Directors of the Central Arizona Water Conservation District recognizes that unresolved Indian water rights claims are a constraint on orderly and efficient water management. The Board recognizes that a broad public benefit is a potential result of resolution of these claims, and wishes to lend the resources of the District to efforts to realize those benefits while protecting the ability of the CAP to accomplish its primary purpose of delivering CAP water to CAP customers. Accordingly, we support and direct the use of CAP facilities to facilitate Indian water rights settlements which we find to be consistent with our basic responsibilities. As a general condition, we find that such settlements should be implemented and given priority over non-Project uses of CAP facilities, subject to the following principles:

Principles:

1. Water Supply

   a) There should be no adverse impact on water supplies otherwise available for CAP.

   b) There should be no adverse impact on CAP users that are not parties to the settlement.

   c) Supplemental water supplies delivered through CAP facilities should share losses pro rata with all other water supplies delivered through such facilities.

2. System Capacity

There should be no reduction in the delivery capacity otherwise available to existing CAP subcontractors (i.e., there should be no change required in the anticipated water delivery schedules of those that are not parties to the settlement).

3. Navajo Power

a) There must be no reduction in Navajo Surplus available for long term marketing under the Navajo Marketing Plan.

b) The settlement should not interfere with the District's receiving optimum value from the sale of short term Navajo Surplus.

c) At no time may the power costs to settlement participants be less than those paid by CAP water users generally.

4. O&M Costs

The settlement should provide for the recovery of an appropriate charge to offset fixed O&M costs associated with the delivery of settlement water supplies.

5. Repayment

Water delivered through Project facilities to facilitate Indian settlements (such as replacement water and water leased by Indians to non-Indians) should be treated as if it were Project water

delivered to Indian entities for purposes of determining CAWCD's repayment obligation.

Subject to the foregoing principles, each proposed settlement should be considered on its own merits. The Board's approval of any particular settlement shall not be regarded as establishing any precedent for any other settlement.

Amendment No. 1

to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

AMENDMENT NO. 1 TO

SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT AGREEMENT DATED MARCH 30, 1999

DATED DECEMBER 16, 1999

This Amendment, Number One to the San Carlos Apache Tribe Water Rights Settlement Agreement dated March 30, 1999 is entered into among the United States of America; the State of Arizona; the San Carlos Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe, and the Town of Gilbert, and the Central Arizona Water Conservation District.

1.0 Paragraph 3.0 of the San Carlos Apache Tribe Water Rights Settlement Agreement is amended by adding the following:

"B Central Arizona Project Water Lease (Scottsdale) ___"

2.0 Exhibits 11.1 and 11.3 to the San Carlos Apache Tribe Water Rights Settlement Agreement are deleted and are superseded by and replaced with Exhibits 11.1 and 11.3 to this Amendment No. 1, which are attached hereto and incorporated herein by this reference.

3.0 Subparagraph 11.3 of the San Carlos Apache Tribe Water Rights Settlement Agreement is amended as follows:

> 11.3 Except for the water supplies leased to Phelps Dodge Corporation, the City of Scottsdale and the Town of Carefree, any water supplies leased by the Tribe pursuant to this Paragraph 11.0 shall be used as provided in Section 3706(b)(3) of the Act and all

such leases shall contain provisions consistent with Exhibit 11.3 attached hereto unless otherwise agreed by the Tribe, CAWCD, the lessee, the United States, and the Parties to this Agreement who are CAP subcontractors.

4.0 The San Carlos Apache Tribe Water Rights Settlement Agreement is amended to add Subparagraph 11.4, which provides as follows:

11.4 The Central Arizona Project Water Lease (Scottsdale) between the United States, the Tribe and the City of Scottsdale is attached hereto as Exhibit B and incorporated herein by this reference.

5.0 Footnote 2, to Paragraph 3 of the San Carlos Apache Tribe Water Rights Settlement Agreement is amended as follows:

"There are no Exhibits A and C to this Agreement."

IN WITNESS WHEREOF, the parties have executed this Agreement as shown below.

THE UNITED STATES OF AMERICA

By: David J. Hayes
Deputy Secretary of Interior

THE STATE OF ARIZONA

By: Jane Hull
Governor

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____
General Counsel

SAN CARLOS APACHE TRIBE

Attest: Catherine L. McComb
Witness

By: _____
Vice- Chairman

OFFICIAL SEAL
CATHERINE L. McCOMB
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 6, 2002

Approved as
to Form: _____

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

Attest: Terrill A. Lonon
Its SECRETARY

By: William P. Schneider
Its PRESIDENT

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

Attest: Terrie A. Ronon

Its SECRETARY

By: William P. Schrader

Its PRESIDENT

ROOSEVELT WATER
CONSERVATION DISTRICT

Attest: Michael O'Leonard
Secretary

By: Mark W. Dohn
President

Approved as
to Form: Richard A. Morrison

BUCKEYE IRRIGATION COMPANY

Attest: _____
Secretary

By: William Hardin
President

Approved as
to Form: _____

BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

CITY OF SCOTTSDALE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF MESA
CORPORATE SEAL
MARICOPA COUNTY, AZ.

CITY OF MESA

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
Deputy City Attorney

CITY OF TEMPE

Attest: _____
City Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF CHANDLER

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLOBE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF SAFFORD

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

EXHIBIT 11.1

to Amendment No. 1 to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

Contract No. SANCARLOSAP121180A
Amendment No. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

Contract No. SANCARLOSAP121180A
Amendment No. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Contract No. SANCARLOSAP121180A
Amendment No. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 3, made this _____ day of _____, 1999, hereinafter called "Amendment No. 3," to Contract No. SANCARLOSAP121180A, as amended, (Tribal CAP Water Delivery Contract) or (Contract), in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto; the Boulder Canyon Project Act dated December 21, 1928 (45 Stat. 1057) 43 U.S.C. § 614 et seq.; the Colorado River Basin Project Act dated September 30, 1968, as amended, (82 Stat. 885) 43 U.S.C. § 1501 et seq.; the San Carlos Apache Tribe Water Rights Settlement Act of 1992, as amended (San Carlos Settlement Act); and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called "Secretary," in relation to Indians and Indian tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457; between the UNITED STATES OF AMERICA, hereinafter called "United States," and the SAN CARLOS APACHE TRIBE, hereinafter called "Tribe," located on the San Carlos Apache Reservation, Arizona, both sometimes collectively called "Parties;"

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Amendment No. 1 to the Contract, executed on January 29, 1999, obligated the Secretary to make available to the Tribe all of the water referred to in subsection (f)(2) of Section 2 of the Ak-Chin Indian Community Water Rights Settlement Act of October 19, 1984, which is not required for delivery to the Ak-Chin Indian Reservation under that act, and authorized the Tribe to lease such water pursuant to terms and conditions set forth in subsection 3711(d) of the

San Carlos Settlement Act;

2.2 WHEREAS subsections 3704(a), (c) and (d) of the San Carlos Settlement Act provide, among other things, that the Secretary shall reallocate, for the exclusive use of the Tribe, all of the Excess Ak-Chin Water and annual entitlements to fourteen thousand six hundred sixty-five (14,665) acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation, and to three thousand four hundred and eighty (3,480) acre-feet of M&I Water which the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 FR 12466 et seq.) ;

2.3 WHEREAS subsection 3706(b)(1) of the San Carlos Settlement Act requires, among other things, the Secretary to amend the Tribal CAP Water Delivery Contract to include therein the obligation of the United States to deliver to the Tribe, upon the same terms and conditions set forth in the Tribal CAP Water Delivery Contract, water from the source described in subsections 3704 (a), (c) and (d) of the San Carlos Settlement Act; *Provided, however,* That pursuant to subsection 3706(b)(1) of the San Carlos Settlement Act, the cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver water shall not exceed the cost of construction of the delivery and distribution system for twelve thousand seven hundred (12,700) acre-feet of CAP Water originally allocated to the Tribe;

2.4 WHEREAS, Amendment No. 2 was executed by the Parties on April 29, 1999, to provide for the obligation of the United States to deliver to the Tribe water from the source described in subsection 3704(c) of the San Carlos Settlement Act; and

2.5 WHEREAS, after execution of Amendment No. 2, the Parties determined that certain technical corrections and modifications were required in the Amendment, and that it was desirable to further amend the Tribal CAP Water Delivery Contract to provide for such corrections and modifications;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein, it is

agreed by the Parties hereto as follows:

3. PURPOSE OF AMENDMENT NO. 3: This Amendment No. 3 modifies the Tribal CAP Water Delivery Contract to incorporate certain provisions required by the San Carlos Settlement Act and to make certain technical corrections and modifications to Amendment No. 2.

4. REALLOCATION OF CAP WATER: The following CAP water allocations are hereby reallocated to the Tribe:

(a) All of the water referred to in subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin Indian Reservation under that Act (Ak-Chin Water) as provided in Section 3704(a) of the San Carlos Settlement Act;

(b) All of the water referred to in subsection 3704(c) of the San Carlos Settlement Act, which is 14,665 acre-feet of water per year from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Users and Related Decisions, dated March 24, 1983 (48 FR 12466 et seq.); and

(c) Three thousand four hundred and eighty (3,480) acre-feet of water from the Central Arizona Project having a CAP M&I priority, which the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 FR 12466 et seq.).

5. AMENDMENT OF CONTRACT:

5.1 Amendments No. 1 and 2 to the Contract are hereby rescinded.

5.2 The following definitions are hereby added to the Contract as Subarticles 3.23 and 3.24:

> 3.23 "Tribe," or "San Carlos Apache Tribe," shall mean a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476),

and duly recognized by the Secretary.

3.24 "CAP Water" as used in this Amendment No. 3 shall mean Project Water as defined in subarticle 3.8 of the Contract.

5.3 In each instance where the term "Contractor" is used in the Contract, it is hereby replaced by the term "Tribe."

5.4 Subarticle 4.2 of the Contract is hereby deleted and the following substituted in lieu thereof:

4.2 Term of Contract: This Contract shall become effective upon its execution and shall remain in effect through December 31, 2100; *Provided*, That this Contract may be renewed upon written request by the Tribe upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

5.5 Subarticle 4.3(e) of the Contract is hereby deleted and the following substituted in lieu thereof:

(e) The Tribe shall not sell or permit the sale or other disposition of any Project Water for use outside the Tribe's Reservation except:

(1) The Tribe is hereby authorized to enter into Project Water lease agreements or options to lease Project Water to which the Tribe is entitled under this Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal, and Pima Counties, for terms not exceeding one hundred (100) years, and to renew such leases; *Provided*, That all conditions in subsection 3711(b)(1) of the San Carlos Settlement Act have been met;

(2) The United States shall be a party to all lease agreements, amendments thereto, or options to lease Project Water entered into pursuant to this Contract;

(3) The United States shall deliver the Tribe's Project Water to the

Tribe's lessees as provided in the Project Water lease agreements; *Provided, however*, That the Secretary shall not be obligated to make such deliveries if, in the Secretary's judgment, delivery of water to the lessees or the schedule of deliveries to the lessees would limit to a degree greater than would deliveries to the Tribe, deliveries of CAP Water under:

(a) existing CAP Water delivery contracts or subcontracts having terms of at least 50 years;

(b) future CAP Water delivery contracts or subcontracts, having terms of at least 50 years, for the 65,647 acre-feet of M&I Water which was not contracted for by the original allottees under the Secretarial water allocation decision published in the Federal Register on March 24, 1983; and

(c) existing contracts in which CAP Water is mandated to be delivered pursuant to statutory obligations.

(4) Except for leases which the Tribe may enter into with Scottsdale, Carefree, or the Phelps Dodge Corporation, the terms and conditions of Exhibit 11.3 to the San Carlos Apache Tribe Water Rights Settlement Agreement shall be included in all water leases; and

(5) The Tribe may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary.

5.6 Subarticle 4.5 of the Contract is hereby deleted and the following is substituted in lieu thereof:

4.5 <u>Delivery Entitlements and Obligations</u>. Subject to the provisions of this Contract, the United States or the Operating Agency shall deliver to the Tribe, annually, under this Contract, and the Tribe shall be entitled to the annual delivery of, the following quantities of Project Water:

(a) 12,700 acre-feet of Project Water allocated to the Tribe in accordance

with the Secretarial notice of December 1, 1980, 45 FR 81265;

(b) All of the water referred to in subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin Indian Reservation under that Act;

(c) 14,665 acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 FR 12446 et seq.); and

(d) 3,480 acre-feet of M&I Water which the Secretary previously allocated to the city of Globe, Arizona in the Notice of Final Water Allocations to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 FR 12446 et seq.).

5.7 Subarticle 4.9 of the Contract, Priority in Time of Shortages, is hereby deleted and the following is substituted in lieu thereof:

4.9 Priority in Time of Shortage.

(a) The priority of the water referred to in subarticle 4.5(a) of this Contract shall be determined as follows. In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including the Tribe) and to non-Indian contractors for municipal and industrial uses according to the following formula:

IP = I/(I + MI) where:

- IP is the Indian Share of Project Water;
- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to

Indian Contractors for agricultural purposes; *Provided*, that for the purposes of this formula, such ten (10%) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; *Provided*, that where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

– MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

(b) For purposes of delivery in times of shortage, Ak-Chin Water delivered pursuant to this Contract shall retain the priority such water held prior to being reallocated to the Tribe. Section 2(c) of the Ak-Chin Indian Community Water Rights Settlement Act of October 19, 1984, defines "time of shortage" of Colorado River water available to the Central Arizona Project. That definition is applicable to determining the "Time of Shortage" for the Ak-Chin Water available to the Tribe under this Amendment No. 3.

(c) For purposes of delivery in times of shortage, the water referred to in subarticles 4.5(c) and (d) of this Contract shall retain the same priority as it had before it was reallocated to the Tribe.

5.8 Subarticle 4.11 of the Contract, Exchange Water, is hereby amended by adding the

following additional paragraph:

The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange all or part of the water available to it under this Contract.

5.9 Subarticle 6(a) of the Contract is hereby deleted and the following is substituted in lieu thereof:

(a) Except as provided in the San Carlos Settlement Act and this Contract, repayment of construction costs associated with the Tribe's Project Water shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

5.10 Article 6 of the Contract is hereby amended by adding subarticles 6(e), 6(f), and 6(g) after subarticle 6(d):

(e) Water service capital charges, municipal and industrial subcontract charges, or any other charges or payments for CAP Water other than OM&R costs shall be non-reimbursable to the extent provided in the San Carlos Settlement Act.

(f) The United States shall not impose upon the Tribe the OM&R charges described and set forth in Article 6 of the Tribal CAP Water Delivery Contract or any other charge with respect to CAP Water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(g) The Tribe shall not be required to pay OM&R costs for CAP Water under this Contract for which the Tribe has no delivery system through which to deliver such water, or for which the Tribe has not placed a delivery order pursuant to subarticle 4.6 of the Contract.

6. NEW FACILITIES: The Secretary shall design and construct new facilities to deliver the water that is subject to this Contract in accordance with the San Carlos Settlement Act.

7. CONTROLLING TERMS AND CONDITIONS:

7.1 Except as expressly provided in this Amendment No. 3, the terms and provisions of

the Contract shall remain in full force and effect. In the event any of the terms and conditions of this Amendment No. 3 and the Contract conflict, this Amendment No. 3 shall control.

7.2 This Amendment No. 3 will become effective on the "Enforceability Date" set forth in paragraph 22.4.1 of the San Carlos Apache Tribe Water Rights Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 the day and year above written.

LEGAL REVIEW AND APPROVAL:

By: _____
Field Solicitor

THE UNITED STATES OF AMERICA

By: _____
Robert W. Johnson,
Regional Director
Lower Colorado Region
Bureau of Reclamation

ATTEST:

By: _____
Secretary

SAN CARLOS APACHE INDIAN TRIBE

By: _____
Tribal Administrator

EXHIBIT 11.3

to Amendment No. 1 to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

1.0 Conditions Relating to Delivery and Use

Delivery and use of water under this lease is conditioned on the following, and the Lessee hereby agrees that:

(a) All uses of Project Water and Return Flow shall be consistent with Arizona water law unless such law is contrary to the Federal law applicable to the Central Arizona Project.

(b) The system or systems through which lease water is conveyed after delivery to the Lessees shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses.

(c) The Lessee shall not sell or otherwise dispose of or permit the sale or other disposition of any Project Water for use outside of its service area; Provided, however, that this does not prohibit exchange of Project Water covered by separate agreements approved by the Lessor, which approval shall not be unreasonably withheld.

(d) Project Water scheduled for delivery in any Year under this lease may be used by the Lessee or exchanged by the Lessee pursuant to appropriate agreements approved by the Secretary and the Lessor, which approval shall not be unreasonably withheld.

2.0 Procedure for Ordering Water.

(a) On or before the date of execution of this lease, or as soon thereafter as is practicable, Lessor will notify Lessee of the amount of Project Water available for delivery in the first Year under this lease (the initial Year of water delivery). The Lessee shall, within a reasonable period of time as determined by the Lessor, submit a written schedule to the Lessor, the Secretary and the Operating Agency showing the quantity of water desired by the Lessee during each month of the initial Year. The Secretary or, if such authority has been delegated to

the Operating Agency, the Operating Agency shall notify the Lessor and Lessee by written notice of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's action on the requested schedule as soon as practicable following receipt of the Lessee's request.

(b) The amounts, times, and rates of delivery of Project Water to the Lessee during each Year subsequent to the initial Year of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(I) On or before June 1 of each Year beginning with the Year following the initial Year of water delivery under this lease, the Secretary shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Lessor and Lessee. In arriving at this determination, the Secretary, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River over the term of Lessor's contract and any renewal thereof. Within 30 days of receiving said notice, the Lessor shall issue a notice of availability of Project Water to the Lessee.

(ii) On or before August 1 of each Year beginning with the Year following the initial Year of water delivery, the Lessee shall submit in writing to the Lessor, the Secretary and the Operating Agency a water delivery schedule indicating the amounts of Project Water desired by the Lessee during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding two years.

(iii) Upon receipt of the schedule, the Lessor and the Secretary shall review it and, after consultation with the Operating Agency and the Lessee, shall make only such

modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Lessee are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all CAP contractors and subcontractors, Provided, that this provision shall not be construed to reduce annual deliveries to the Lessee.

(iv) On or before December 1 of each Year beginning with the Year following said initial Year of water delivery, the Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency shall determine and furnish to the Lessor and Lessee the water delivery schedule for the following Year which shall show the amount of water to be delivered to the Lessee during each month of that Year, contingent upon the Lessee remaining eligible to receive water under all terms contained herein.

(c) The monthly water delivery schedules may be amended upon the Lessee's written request to the Lessor, Secretary and Operating Agency. Proposed amendments shall be submitted by the Lessee to the Lessor, Secretary and Operating Agency promptly upon the Lessee's determination that an amendment is needed but no later than 15 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. The Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency shall notify the Lessee and the Lessor of the action on the Lessee's requested schedule modification within 10 days of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's receipt of such request.

(d) In no event shall the Secretary, the Operating Agency or the Lessor be required to deliver to Lessee from the Water Supply System in any one month a total amount of Project

Water greater than 11 percent of the Lessee's maximum annual entitlement; Provided, however, that the Secretary may deliver a greater percentage in any month only if such increased delivery will not interfere with Lessor's ability to receive the amount of Project Water scheduled for delivery by Lessor under its CAP contract and is compatible with the overall delivery of Project Water to other CAP contractors and subcontractors as determined by the Secretary and the Operating Agency and if the Lessee agrees to accept such increased deliveries.

3.0 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) Unless the United States and the Lessee agreed by contract to the contrary, the Lessee shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Lessee's service area. The Lessee shall furnish, for review by the Operating Agency and approval of the Secretary, drawings showing the construction to be performed by the Lessee within the Water Supply System right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the Water Supply System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Secretary.

(b) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the operating Agency. Upon the request of the Lessee, Lessor or the Operating Agency, the accuracy of such measurements shall be investigated by the Secretary, the Operating Agency, Lessor, and Lessee, and any error which may be mutually determined to have occurred

therein shall be adjusted; Provided, that in the event the parties cannot agree on the required adjustment, the Secretary's determination shall be conclusive.

(c) Neither the United States, the Lessor, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to paragraph 3.0. The Lessee shall hold the United States, the Lessor, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Lessee's control, carriage, handling use, disposal, or distribution of such water beyond said delivery point(s).

4.0 Temporary Reductions.

In addition to the right of the United States under Subarticle 4.3(a)(4) of the Lessor's CAP Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may temporarily discontinue or reduce the quantity of water to be furnished to the Lessee as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Lessee, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with Lessor or Lessee, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, and employees, nor the Lessor, its officers, agents and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Lessee of less water

than what has been paid for in advance, the Lessee shall be entitled to be reimbursed for the appropriate proportion of such advance OM&R payments prior to the date of the Lessee's next payment of water service charges or the Lessee may be given credit toward the next payment of water charges if the Lessee should so desire.

5.0 Priority in Case of Shortage. In the event of a shortage of Project Water, the water provided to Lessee under this lease will have the same priority as that water had when it was allocated or reallocated to the Lessor.

6.0 Water and Air Pollution Control. The Lessee, in carrying out this lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

7.0 Quality of Water. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality or water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Lessor, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The Lessee waives its right to make a claim against the United States, the Operating Agency, the Lessor, any CAP contractor or subcontractor, or another Lessee because of changes in water quality caused by the commingling of Project Water with other water.

8.0 Loss of Entitlement. The Lessee shall have no right to delivery of water from Project facilities during any period in which the Lessee may be in arrears in the payment of any charges due the Lessor. Failure to pay any lease payment, OM&R charge or other appropriate charge

related to this lease shall constitute a default under this lease. Failure to cure such default within the periods set forth in this lease may constitute a material breach which may subject Lessee to all remedies available to Lessor, including termination of this lease. During any period of default during which deliveries to Lessee have been terminated due to such default, the Lessor may use the water within its Reservation or lease to another entity any water determined to be available under the Lessee's lease for which payment is in arrears. Prior to the time any termination for default is deemed final, the Lessee may regain the right to use any unused or unleased portion of the water determined to be available under the lease upon payment of all delinquent charges plus any difference between the obligation under the lease and the price received in the lease of the water by the Lessor and payment of charges for the current period.

9.0 Refusal to Accept Delivery. In the event the Lessee fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this lease, or in the event the Lessee in any Year fails to submit a schedule for delivery as provided in Paragraph 2.0 hereof, said failure or refusal shall not relieve the Lessee of its obligation to make the payments required in this lease.

10.0 Charge for Late Payments. The Lessee shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue

payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

11.0 Water Conservation Program. There is a strong Lessor and Federal interest in developing an effective water conservation program because of this lease.

(a) If Lessee has a subcontract with the United States and CAWCD for municipal and industrial ("M&I") CAP water, use of water received under this lease shall be consistent with Article 6.4 of Lessee's CAP M&I subcontract.

(b) If Lessee does not have a CAP M&I subcontract, the Lessee shall develop and implement an effective water conservation program for all uses of water which is provided from or conveyed through Federally constructed or Federally financed facilities. The water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives. A water conservation program, acceptable to the Secretary, shall be in existence prior to delivery of water to Lessee under this lease. Following execution of this lease, and at subsequent 5-year intervals, the Lessee shall resubmit the water conservation plan to the Secretary for review. After review of the result of the previous 5 years and after consultation with the Lessee, and the Arizona Department of Water Resources or its successor, the Secretary may approve such plan or require modifications in the water conservation program to better achieve program goals.

12.0 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Lessor, the Lessee or the Operating Agency shall be admitted

to any share or part of this lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Lessor, the Lessee, the United States or the Operating Agency shall receive any benefit that may arise by reason of this lease other than as a water user within the Project and in the same manner as other water users within the Project.

13.0 Books, Records, and Reports. The Lessee shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary and Lessor may reasonably require. Reports thereon shall be furnished to the Secretary and Lessor in such form and on such date or dates as the Secretary may require. Subject to applicable Tribal and Federal laws and regulations, each party shall have the right during office and upon 10 days written notice to examine and make copies of each other's books and records relating to matters covered by this lease.

14.0 Equal Opportunity. During the performance of this lease, the Lessee agrees as follows:

(a) The Lessee shall not discriminate against any employee or application for employment because of race, color, religion, sex, or national origin. The Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited, to the following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising said labor union or workers' representative of the Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Lessee shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Lessee shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this lease or with any of the such rules, regulations, or orders, this lease may be canceled, terminated, or suspended, in whole or in part, and the Lessee may be declared ineligible for

further Government contracts in accordance with procedures authorized in said amended Executive Order an such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Lessee shall include the provisions of paragraphs (a) through (g) in every lease or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each lessee or vendor. The Lessee shall take such action with respect to any lease or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Lessee becomes involved in, or is threatened with, litigation with a lessee or vendor as a result of such direction, the Lessee may request the United States to enter into such litigation to protect the interest of the United States.

15.0 Title VI, Civil Rights Act of 1964.

(a) The Lessee agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Lessee receives financial assistance form the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Lessee by the United States, this assurance obligates the Lessee, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Lessee for the period during which the Federal financial assistance is extended to it by the Untied States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contacts, property, discounts, or other Federal financing assistance extended after the date hereof to the Lessee by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Lessee recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Lessee, its successors, transferees, and assignees.

16.0 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States or the Lessor under this lease which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Lessee from any obligation under this lease. No liability shall accrue to the United States or the Lessor in case such funds are not appropriated or allotted.

17.0 Definitions. Definitions included in the Lessor's CAP water delivery contract are applicable to this lease. In addition, when used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms:

(a) "Water Supply System" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

18.0 The Lessor's Covenants. The Lessor agrees:

(a) To observe and perform all obligations imposed on the Lessor under the Lessor's CAP water delivery contract which are not assumed by Lessee so that Lessee's rights are not in any way impaired.

(b) Not to execute any other lease or obligate by contract any of the Lessor's right to the delivery of Project Water under the Lessor's CAP water delivery contract in a manner that would impair Lessee's rights under this lease.

(c) Not to alter or modify the terms of the Lessor's CAP water delivery contract, except as provided herein, in such a way as to impair Lessee's rights to receive delivery of Project Water under this lease, or to exercise any option required or permitted by the Lessor's CAP water delivery contract so as to interfere with or change Lessee's rights to receive delivery of Project Water under this lease.

EXHIBIT B

to Amendment No. 1 to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

CENTRAL ARIZONA PROJECT WATER LEASE

AMONG

THE UNITED STATES OF AMERICA

THE SAN CARLOS APACHE TRIBE

AND

THE CITY OF SCOTTSDALE, ARIZONA

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CENTRAL ARIZONA PROJECT WATER LEASE

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CENTRAL ARIZONA PROJECT WATER LEASE

1. PREAMBLE

This Central Arizona Project Water Lease is entered into between the United States of America, the San Carlos Apache Tribe, and the City of Scottsdale, Arizona, sometimes collectively referred to as the "Parties."

2. RECITALS

2.1 The Parties to this Lease are also parties to the San Carlos Apache Agreement.

2.2 Pursuant to Section 3710(c) of the Act, the United States confirmed the San Carlos Apache Agreement.

2.3 Pursuant to Section 3706(b) of the Act, the Secretary has been directed to amend the Tribe's CAP Delivery Contract to authorize the Tribe to lease water to which the Tribe is entitled under the Tribe's CAP Delivery Contract, and to authorize the lease of a portion of such water to Scottsdale.

2.4 Pursuant to Section 3706(b) of the Act, and the San Carlos Apache Agreement, the United States and the Tribe have executed Amendment No. 3 to the Tribe's CAP Delivery Contract, which authorizes the Tribe to make this Lease.

2.5 Pursuant to Paragraph 11.4 of the San Carlos Apache Agreement, this Lease is attached thereto as Exhibit B and incorporated therein by reference.

2.6 The Parties acknowledge that the covenants and benefits under this Lease represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

NOW, THEREFORE, the Parties agree as follows:

3. DEFINITIONS

3.1 Any capitalized terms which are not defined in this Section 3 or elsewhere in this Lease shall have the meanings ascribed to them in the Tribe's CAP Delivery Contract and/or the CAP Master Repayment Contract.

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3.2 "Act" shall mean the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Public Law 102-575, as amended.

3.3 "CAP" shall mean the Central Arizona Project, a reclamation project authorized under Title 3 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521 *et seq.*).

3.4 "CAP Master Repayment Contract" shall mean the contract between the United States and the Central Arizona Water Conservation District for delivery of water and repayment of costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

3.5 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the contractor under the CAP Master Repayment Contract.

3.6 "CAWCD Service Area" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties that may hereafter become part of the District.

3.7 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona, in and for the County of Maricopa, styled as *In Re The General Adjudication of All Rights to Use Waters in the Gila River System and Source*, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro).

3.8 "Lease" shall mean this Central Arizona Project Water Lease.

3.9 "Lease Water" under this Lease shall mean 12,500 acre-feet of the 14,665 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 *et seq.*), which is reallocated to the Tribe under the Tribe's CAP Delivery Contract pursuant to Section 3704(c) of the Act, and which is leased by Scottsdale pursuant to this Lease.

3.10 "OM&R" shall mean the care, operation, maintenance and replacement of the Main System, or any part thereof.

3.11 "Reservation" shall mean the San Carlos Apache Reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive Orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive Orders and Acts of Congress, including the Executive Order of August 5, 1873.

3.12 "San Carlos Apache Agreement" shall mean the San Carlos Apache Tribe Water Rights Settlement Agreement, dated as of March 30, 1999, as amended, entered into among and between Scottsdale, the Tribe and the United States, and other signatories to that Agreement settling specified water rights claims raised in the Gila River Adjudication. This Lease constitutes Exhibit B to the San Carlos Apache Agreement.

3.13 "Scottsdale" shall mean the City of Scottsdale, an Arizona municipal corporation, its predecessors, successors and assigns.

3.14 "Secretary" shall mean the Secretary of the Interior or the Secretary's lawful designee.

3.15 "Tribe" shall mean the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476), and duly recognized by the Secretary.

3.16 The "Tribe's CAP Delivery Contract" shall mean that certain Central Arizona Project Indian Delivery Contract between the Tribe and the United States dated December 11, 1980, as amended by the fully executed Amendment No. 3 to that contract and attached as Exhibit A to this Lease, as the same may be amended from time to time.

3.17 "United States" shall mean the United States of America in its capacity as trustee for the Tribe and of the Reservation and in all other capacities necessary to effectuate the terms of this Lease.

4. LEASE OF CENTRAL ARIZONA PROJECT WATER

4.1 Tribe's CAP Delivery Contract. This Lease is subject to the provisions of the Tribe's CAP Delivery Contract (as defined in Subsection 3.16 of this Lease and attached hereto as Exhibit A), which is incorporated into and made a part of this Lease. In the event the Tribe's CAP Delivery Contract and this

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Lease are construed to be inconsistent, the terms of the Tribe's CAP Delivery Contract shall govern unless the Parties otherwise agree in writing at such time.

4.2 Subject of Lease. The Tribe leases to Scottsdale the right to the delivery of 12,500 acre-feet per year of municipal and industrial ("M&I") priority Lease Water under the Tribe's CAP Delivery Contract, subject to the terms and conditions of the Tribe's CAP Delivery Contract and this Lease.

4.3 Term of Lease. The term of this Lease ("Lease Term") shall commence on January 1, 2000, or the Date of Initial Payment under Subsection 4.10(b) of this Lease, whichever is later ("Commencement Date"), and shall end 100 years later.

4.4 Amendment of Tribe's CAP Delivery Contract. In the event the Commencement Date of this Lease is after January 1, 2001, owing to events described in Subsection 4.10(b) of this Lease, the Tribe and the United States shall amend, as soon as reasonably possible, Subsection 4.2 of the Tribe's CAP Delivery Contract to provide for a Lease Term of not less than 100 years from the Commencement Date.

4.5 Lease of Water Only. This Lease shall never be construed to be a sale or assignment of the Tribe's right or interest in the Lease Water. The allocation of the Lease Water to the Tribe shall always be deemed to be the property of the Tribe, to which Scottsdale has acquired only a leasehold interest for the Lease Term and any renewal of this Lease, but not thereafter. Scottsdale shall never assert the permanent or perpetual right to the Lease Water, whether during the Lease Term or thereafter. The Tribe reserves to itself all rights to use the Lease Water in its total discretion upon expiration or termination of this Lease.

4.6 Joint Prosecution. If, at any time during the ten (10) year period commencing with the Enforceability Date of this Lease, the Arizona Department of Water Resources ("DWR") or a successor agency refuses or otherwise fails, for purposes of Scottsdale's designation of Assured Water Supply, to determine that this Lease -- by its terms and without necessity of demonstrating a backup supply of water -- satisfies the requirements of the Assured Water Supply law as it existed on the Effective Date of this Lease, as a physically, continuously and legally available supply of surface water for 100 years, then Scottsdale and the Tribe agree to jointly prosecute Scottsdale's claims against DWR or any successor

agency concerning DWR's interpretation, application and/or enforcement of the Assured Water Supply law, including reasonable joinder in actions filed by Scottsdale against DWR or any successor agency.

4.7 Right of First Refusal During Lease Term. Except for any potential leases or other transfers of its CAP water supplies not subject to this Lease to Phelps Dodge Corporation, the Cities of Globe and Tempe, and the Town of Carefree, prior to offering, or accepting an offer, during a twenty (20) year period beginning with the Effective Date of this Lease, to lease or otherwise transfer to a municipality all or part of its CAP water supplies not subject to this Lease for use in Maricopa, Pinal or Pima Counties, the Tribe shall first offer said CAP water to Scottsdale in writing on the same terms and conditions as offered to or by the municipality. Scottsdale shall have ninety (90) days from receipt in which to accept any such offer, or such additional time as the Parties may agree to in writing.

4.8 Right of First Refusal Following Lease Term. Prior to leasing or otherwise transferring to a third party all or part of the Lease Water within fifteen (15) years following the expiration of this Lease for use in Maricopa, Pinal or Pima Counties, the Tribe shall first offer such water to Scottsdale in writing on the same terms and conditions as offered to or by the third party. Scottsdale shall have one hundred twenty (120) days from receipt in which to accept any such offer, or such additional time as the Parties may agree to in writing.

4.9 Consideration for Lease. In consideration for the Lease Water which is the subject of this Lease, Scottsdale shall pay to the Tribe a one-time water lease charge ("Water Lease Charge") applicable to the Lease Term which is equal to the result obtained by multiplying: (a) 12,500 acre-feet, by (b) a base payment of One Thousand Two Hundred Three Dollars ($1203) adjusted in direct proportion to the percentage change in the All Items Consumer Price Index for All Urban Consumers, U.S. City Average (1982-84 = 100) ("CPI-U") published by the U.S. Department of Labor, Bureau of Labor Statistics, which occurs between the index published for the month of December, 1991, and the index published for the month in which the Date of Initial Payment under this Lease occurs. An example showing the manner in which the adjustment required by this Subsection 4.9 shall be made, and the manner in which the total consideration shall be calculated, is as follows:

Assuming, solely for purposes of this example, that the CPI-U index published for the month of December, 1991, is 137.9 ("previous period"), and that the CPI-U index published for the month in which the Date of Initial Payment of this Lease occurs is 167 ("current period").

Calculation (all numbers rounded to the nearest hundredth):

CPI-U for current period	167.0
Divided by CPI-U for previous period	137.9
Equals	1.21
Result multiplied by base payment	1.21 x $1,203
Equals	= $1,455.63
$1,455.63 x 12,500 AF	= $18,195,375
Total Consideration	= $18,195,375

In the event the CPI-U index is discontinued or not otherwise available as of the Date of Initial Payment, the Parties shall select a comparable index.

4.10 Payment of Water Lease Charge.

(a) Method of Payment. Scottsdale shall, at its election, pay the Water Lease Charge either by (i) payment of the Water Lease Charge in full (without interest) on the Date of Initial Payment (as hereinafter defined); or (ii) payment of one-half of the Water Lease Charge on the Date of Initial Payment and the balance in seven (7) equal annual installments, payable without notice on the next seven (7) anniversary dates of the Date of Initial Payment, together with interest on the unpaid balance at the rate of eight percent (8%) per annum. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

Scottsdale may at any time, without any prepayment penalty, elect to pay the balance in full together with interest on the unpaid balance to the date of such payment, and such a payment shall satisfy the Water Lease Charge in full.

In no event shall Scottsdale have a right under this Lease to the delivery of water in advance of the Date of Initial Payment.

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(b) Date of Initial Payment. The "Date of Initial Payment" shall be the later of: (i) the thirtieth day after the time expires under the Arizona Supreme Court's Special Procedural Order Providing for Interlocutory Appeals dated May 16, 1991, to file an interlocutory appeal from the judgment of the Superior Court of Arizona in and for Maricopa County approving the San Carlos Apache Agreement, provided, that no such interlocutory appeal is filed; (ii) if one or more interlocutory appeals is filed from the judgment approving the San Carlos Apache Agreement, then the Date of Initial Payment shall be thirty days after a decision has been rendered from which no further appeal(s) may be taken, which fully disposes of any and all such interlocutory appeals; provided, however, that this Lease continues to be enforceable in light of the decision(s); or (iii) the thirtieth day after the later of the effective date or the date of execution of the amendment referred to in Subsection 4.4 of this Lease, if any.

4.11 Operation, Maintenance and Replacement Costs.

(a) Scottsdale. Scottsdale shall pay to the United States or, if directed by the Secretary, to CAWCD, for any Lease Water Scottsdale schedules for delivery pursuant to Subsection 4.15 of this Lease, all OM&R costs of such water that would be charged to the Tribe for non-Indian use off the Reservation. Scottsdale's obligation to pay OM&R costs shall not begin earlier than the date that Scottsdale is entitled to receive water under this Lease. Scottsdale shall not be obligated to schedule any amount of Lease Water for delivery in any year and Scottsdale shall not be responsible for any OM&R costs for Lease Water not scheduled for delivery.

(b) The Tribe. The Tribe shall pay, or cause to be paid, OM&R costs to the United States or, if directed by the Secretary, to CAWCD, for any Lease Water scheduled for delivery to other than Scottsdale.

4.12 Other Charges or Payments. Neither the Tribe nor Scottsdale shall be obligated to pay OM&R costs, water service capital charges, M&I subcontract charges or any other costs, charges or payments for the Lease Water other than as provided in Subsections 4.9, 4.10, and 4.11 of this Lease.

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4.13. Permissible Uses of Lease Water. Scottsdale shall have the right to use the Lease Water for any purpose in conformance with Federal law applicable to the CAP, and consistent with Arizona law. Permissible uses include, but are not limited to, groundwater recharge as that term is defined in the CAP Master Repayment Contract, underground storage and recovery projects, as that term is defined in Arizona Revised Statutes § 45-802.01, and groundwater savings facilities, as that term is defined in Arizona Revised Statutes § 45-802.01, as these sections may be amended from time to time.

4.14 Conditions Relating to Delivery and Use. Delivery and use of Lease Water are conditioned on the following:

(a) All uses of Lease Water and Return Flow of Lease Water shall be consistent with Arizona water law unless such law violates the Federal law applicable to the CAP.

(b) The system or systems through which Lease Water is conveyed after delivery to Scottsdale shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses.

(c) Scottsdale shall not sell, sublease, transfer or otherwise dispose of or permit the sale, sublease, transfer or other disposition of any Lease Water for use outside of its service area without prior written approval of the Tribe and the Secretary, which approvals shall not be unreasonably withheld; provided, however, that this does not prohibit exchange of Lease Water covered by separate agreements which have been approved in writing by the Tribe and the Secretary, which approvals shall not be unreasonably withheld.

(d)(i) Lease Water scheduled for delivery in any Year under this Lease may be used by Scottsdale or exchanged by Scottsdale pursuant to appropriate agreements approved by the Tribe and the Secretary, which approvals shall not be unreasonably withheld.

(ii) In the event Scottsdale, the Tribe, or the Secretary on behalf of the Tribe, do not use, lease, sublease, exchange, transfer or otherwise dispose of a portion of Scottsdale's Lease Water scheduled for delivery in any Year and not required by Scottsdale, Scottsdale shall be relieved of the

///

pumping energy portion of the OM&R costs associated with the undelivered water to the extent the Tribe is relieved of such charges as determined by the Secretary.

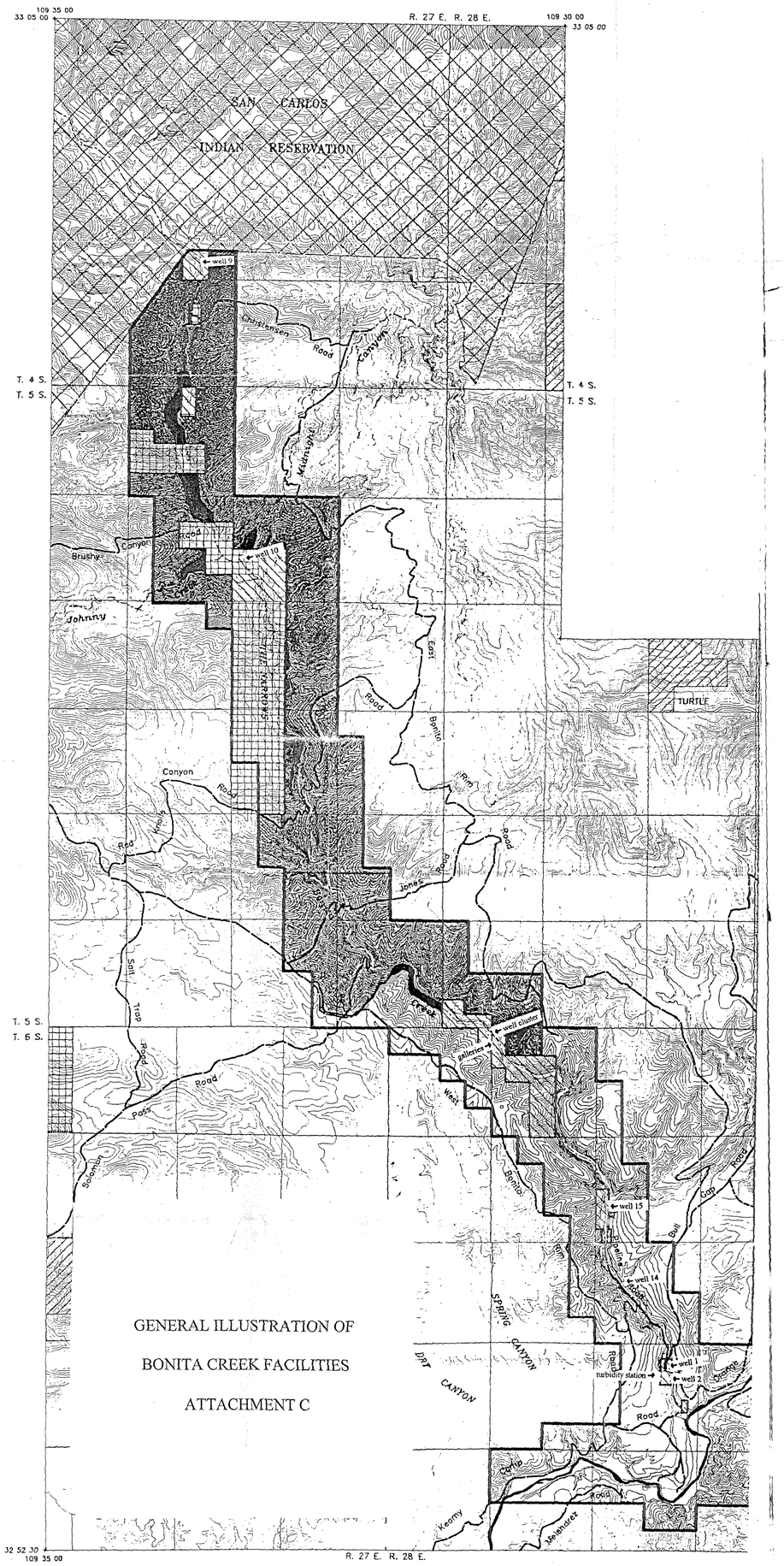
4.15 Procedure for Ordering Water.

(a) On or before the date of execution of this Lease, or as soon thereafter as is practicable, the Tribe will notify Scottsdale of the amount of Project Water available for delivery in the first Year under this Lease (the initial Year of water delivery). Scottsdale shall, within a reasonable period of time as determined by the Tribe, submit a written schedule to the Tribe, the Secretary and the Operating Agency showing the quantity of water desired by Scottsdale during each month of the initial Year. The Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency, shall notify the Tribe and Scottsdale by written notice of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's, action on the requested schedule as soon as practicable following receipt of Scottsdale's request.

(b) The amounts, times, and rates of delivery of Lease Water to Scottsdale during each Year subsequent to the initial Year of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(i) On or before June 1 of each Year beginning with the Year following the initial Year of water delivery under this Lease, the Secretary shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Tribe and Scottsdale. In arriving at this determination, the Secretary, subject to the provisions of the CAP Master Repayment Contract, shall use the Secretary's best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River water over the term of the Tribe's CAP Delivery Contract and any renewal thereof. Within 30 days of receiving said notice, the Tribe shall issue a notice of availability of Lease Water to Scottsdale.

(ii) On or before August 1 of each Year beginning with the Year following the initial Year of water delivery under this Lease, Scottsdale shall submit in writing to the Tribe, the Secretary and the Operating Agency a water delivery schedule indicating the amounts of Lease Water desired by

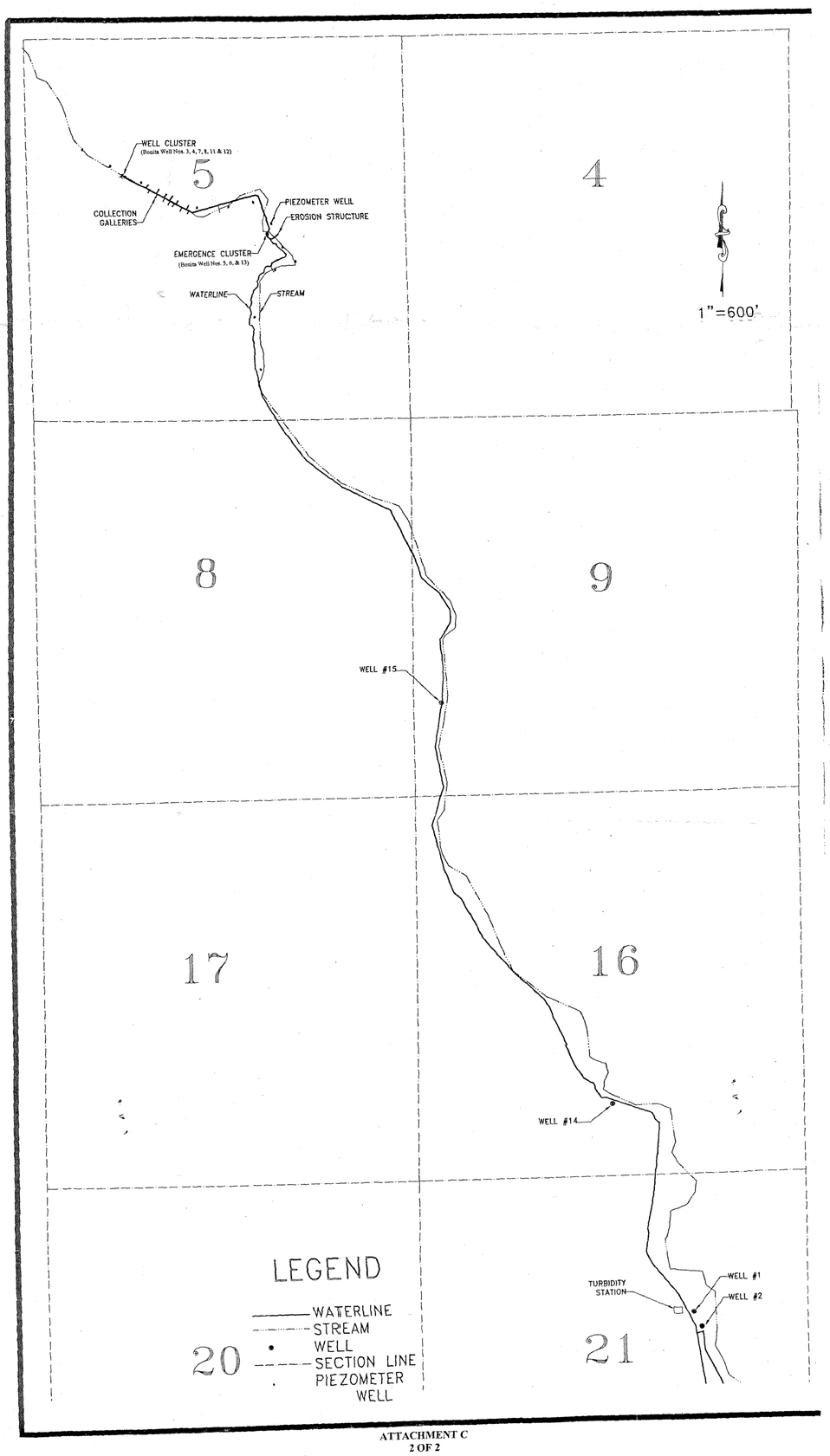


GENERAL ILLUSTRATION OF

BONITA CREEK FACILITIES

ATTACHMENT C

ATTACHMENT C
1 OF 2



ATTACHMENT C
2 OF 2

Amendment No. 2

to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

AMENDMENT No. 2

TO THE SAN CARLOS APACHE TRIBE
WATER RIGHTS SETTLEMENT AGREEMENT

This Agreement is entered into this 16 day of December 1999, by and among the United States of America on behalf of the Tribe and in no other capacity; the State of Arizona; the San Carlos Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Users' Association; the Roosevelt Water Conservation District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; the Cities of Chandler, Glendale, Mesa, Scottsdale, Safford, Tempe and Globe; the Town of Gilbert; and the Central Arizona Water Conservation District. In order to include Safford as a Party to the Agreement, the Agreement is amended as follows:

1.0 Page 1, at lines 9 and 18 of the Agreement is amended to expressly include Safford as a Party to the Agreement.

2.0 Paragraph 3.0 at page 9 of the Agreement is amended to include Exhibit 14.1, Safford ("Supplemental Agreement"), as an Exhibit.

3.0 Paragraph 14 at page 23, line 20, is amended to read as follows (new language is italicized):

14.0 ~~THIS PARAGRAPH INTENTIONALLY LEFT BLANK~~ THE CITY OF SAFFORD.

As among the parties to the Agreement, the right of the City of Safford to withdraw and use water from Bonita Creek Watershed as provided in the Agreement, as limited and conditioned thereunder and in Exhibit 14.1 to the Agreement.

4.0 Subparagraph 22.15 (b) at page 45, beginning at line 9, is amended to add Safford as a Party to be noticed under this Agreement:

As to the City of Safford:

City of Safford
P.O. Box 272
Safford, Arizona 85548-0272
Attn: City Manager

This amendment is entered into on the date and year first set forth above.

THE UNITED STATES OF AMERICA

By: David J. Hay
Acting Deputy Secretary of Interior

THE STATE OF ARIZONA

By: _____
Governor

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as to Form: _____

SAN CARLOS APACHE TRIBE

Attest: _____
Secretary

By: _____
Vice-Chairman

Approved as to Form: _____
Special Counsel

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest: _____
SECRETARY
Its: _____

By: _____
Its: PRESIDENT

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest: Terrill A. Lonon
Its: SECRETARY

By: William P. Schrader
Its: PRESIDENT

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: Michael Dennis
Secretary

By: Mark W. Dohn
President

Approved as to Form: Richard M Morris

BUCKEYE IRRIGATION COMPANY

Attest: [signature]
Secretary

By: William Hardin
President

Approved as to Form: _____

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

Attest: [signature]
Secretary

By: R M Narramore
President

Approved as

CITY OF SCOTTSDALE

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
City Attorney

CITY OF MESA

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
Deputy City Attorney

CITY OF CHANDLER

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLOBE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF SAFFORD

Attest: Sharon French
Clerk

By: Van Talley
Mayor

Approved as
to Form: Neil Elliott
City Attorney

CITY OF TEMPE

Attest: Karen L. Buddington
Dep. Clerk

By: Neil Giuliano
Mayor

Approved as
to Form: C. Brad Wofford
City Attorney

I:\Clients\Indian\SCAT\W1\W1-204\Amendmen.2

EXHIBIT 14.1

SUPPLEMENTAL AGREEMENT BETWEEN

SAN CARLOS APACHE TRIBE

AND

CITY OF SAFFORD

SUPPLEMENTAL AGREEMENT BETWEEN
SAN CARLOS APACHE TRIBE AND
CITY OF SAFFORD

This Supplemental Agreement ("Supplemental Agreement") is entered into as of the last date executed below, by and between the San Carlos Apache Tribe, a federally recognized Indian Tribe organized pursuant to section 16 of the Indian Reorganization Act of 1934, (the "Tribe") the City of Safford, Arizona, a municipal corporation, (the "City") and the United States of America, (collectively, the "Parties") to supplement the Agreement (the "Settlement Agreement"), dated March 30, 1999, between the United States of America, the State of Arizona, the Tribe and others, including the City.

RECITALS

A. The City Diverts water from Bonita Creek to provide a portion of its municipal water supply from a system of infiltration galleries, pumps and pipelines (the "Bonita Creek Facilities") in the watershed of Bonita Creek ("Bonita Creek Watershed"), a tributary of the Gila River more specifically described in Attachment A to this Supplemental Agreement, and illustrated on the map at Attachment C.

B. The Tribe believes that the water Diverted by the City through the Bonita Creek Facilities includes water to which the Tribe has prior and superior rights.

C. The City believes that its use of water Diverted by the City through the Bonita Creek Facilities does not infringe upon the Tribe's water rights.

D. The Tribe claims that the external boundaries of its Reservation includes land upon which certain Bonita Creek Facilities are located. The City does not agree with the Tribe's boundary claim.

E. The San Carlos Apache Water Rights Settlement Act of 1992, P.L. 102-575, 106 Stat. 4740, et. seq., (the "Act") provides for the settlement of certain Surface Water and Groundwater rights claims of the Tribe, and for a Supplemental Agreement between the City and Tribe.

F. The Tribe and the City are entering into this Supplemental Agreement to resolve their differences and avoid disputes over the use of water on the Reservation and the Bonita Creek Watershed, and the use of the Bonita Creek Facilities.

G. The City claims 5310.14 acre feet per annum ("AFA") of water in State Certificated Water Rights in Bonita Creek, more fully described in Attachment D to this Supplemental Agreement.

H. This Supplemental Agreement will employ abbreviated terms which will have the meanings stated herein and in Section 2 of the Settlement Agreement.

WHEREFORE, in consideration for the mutual promises contained in this Supplemental Agreement and other valuable considerations, the Parties agree as follows:

1. **City Diversions from Bonita Creek Watershed.**

a. The Tribe, and the United States acting on behalf of the Tribe, agree that the City shall be entitled to Divert up to 3876.8 AFA of water from the Bonita Creek Watershed through its Bonita Creek Facilities. The City agrees not to expand the capacity of its Bonita Creek Facilities beyond 3876.8 AFA, except as may be provided under 1(b).

b. The City shall not Divert or develop the water of the Bonita Creek Watershed through its Bonita Creek Facilities beyond 3876.8 AFA except upon (1) mutual written consent of the City, the Tribe and the Secretary of the Interior, (2) separate agreement with the City, Tribe and the Secretary as part of an Upper Gila River settlement other than Bonita Creek, or (3) confirmation of the City's rights identified in Attachment D by the superior court presiding over the Gila River General Stream Adjudication or other court of competent jurisdiction. Nothing in this Supplemental Agreement shall be deemed to be an admission against interest by the City or operate as a relinquishment, abandonment, or forfeiture of the City's right to claim the use of water rights in Bonita Creek in excess of 3876.8 AFA.

c. The Tribe, and the United States acting on behalf of the Tribe, will not develop the Surface Water or Groundwater of the Bonita Creek Watershed in such a way as to unreasonably interfere with the ability of the City's Bonita Creek Facilities to produce 3876.8 AFA of water; provided, however, that the Tribe, or the United States acting on behalf of the Tribe, shall not be responsible for any impacts on the production ability of the Bonita Creek Facilities which result from the development, Diversion, pumping or withdrawal of Surface Water or Groundwater off the Reservation by any other person, claimant, irrigation district, corporation, municipality, tribe or entity, except the Tribe and the United States acting on behalf of the Tribe.

d. If the City's Bonita Creek Facilities are located within the exterior boundary of the Reservation, the title to which the Tribe does not waive, the Tribe, and the United States acting on behalf of the Tribe, agree that the City shall have the permanent right of ingress and egress to the City's Bonita Creek Facilities for the purpose of inspection, maintenance, repair or replacement of the City's Bonita Creek Facilities, and irrespective of a final resolution of the Tribe's boundary claim, the Tribe and the United States acting on behalf of the Tribe, hereby agree to the City's permanent right to access and use the lands more fully described in Attachment B for the purposes set forth in this Paragraph.

2. **Recognition and Confirmation of the Rights of the Tribe and City.**

a. The City hereby ratifies, confirms, declares to be valid, and agrees not to object to, dispute, or challenge in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights of the Tribe, and the United States acting on behalf of the Tribe,

to Divert and use Surface Water on the Reservation from the Black and Salt Rivers and their Tributaries, the Bonita Creek as a Tributary of the Gila River, the San Pedro River, Effluent developed on the Reservation, and Groundwater beneath the Reservation in the Black and Salt Rivers, the San Pedro River, and the Bonita Creek Watershed, including the right to fully regulate and store such Surface Water, Groundwater and Effluent as set forth in the Settlement Agreement, except as provided in Paragraphs1(c) and 1(d) herein.

b. The Tribe and the United States hereby ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or in any other judicial or administrative proceeding, the rights of the City to Divert and use water from the Bonita Creek Watershed through the City's Bonita Creek Facilities at the capacity of 3876.8 AFA. The City and Tribe agree that the Diversion may be subject to call by the Tribe as against all then-existing priorities under the Globe Equity Decree, if applicable, or under the Gila River Adjudication.

3. <u>Payment of Claims and Other Consideration</u>.

a. The City shall pay one hundred thousand dollars ($100,000) to the Tribe, payable within ten (10) business days following the Enforceability Date of this Supplemental Agreement under the Act.

b. This payment shall be adjusted for CPI from October 30, 1992 until paid.

4. <u>Release of Claims and Covenant Not to Sue</u>.

a. The Tribe and the United States acting on behalf of the Tribe hereby release the City from any and all past or present claims for injuries to their water rights that the Tribe and the United States may have against the City related to:

(1) the City's Diversion and use of water from the Bonita Creek Facilities;

(2) the City's construction, operation and maintenance of the Bonita Creek Facilities and related pipeline and ditches; and

(3) the City's use of the land described in Attachment B, and reasonably necessary for location of and ingress and egress to the Bonita Creek Facilities.

b. The Tribe and the United States shall not sue the City for any claims for injuries to their water rights related to the withdrawal or use of up to 3876.8 AFA of water from the Bonita Creek Facilities, except to the extent that such claims arise from a breach of this Supplemental Agreement.

c. The City hereby releases the Tribe, and the United States acting on behalf of the Tribe, for any and all past or present claims for injuries to their water rights in the Bonita Creek Watershed that the City may have against the Tribe or the United States acting on behalf of the Tribe.

d. The release and covenant described in Paragraph 4 of this Supplemental Agreement shall be in addition to all waivers, releases and covenants of the Tribe and the United States in the Settlement Agreement.

5. **Compliance and Reporting.**

The City shall install, operate and maintain accurate metering devices on all pumps and other Diversion facilities owned or operated by or for the City in the Bonita Creek Watershed. The City shall keep records of all pumping from all wells and other Diversions from the Bonita Creek Watershed and shall deliver to the Tribe and the Secretary, a copy of such records together with a summary of the total Diversions within thirty (30) days of the end of each quarter for the preceding quarter, showing all Diversions for the previous quarter, and the total Diversions for the calendar year through the proceeding quarter, verified and certified as to accuracy.

6. **Default.**

In the event that any party fails to fulfill its non-monetary obligations under this Supplemental Agreement, such party shall have ten (10) days, after receiving written notice of such failure from the other party, to cure any such non-monetary default before such failure shall be deemed to constitute an event of default.

7. **Injunctive Relief.**

The Parties agree that monetary damages shall be deemed inadequate for non-monetary breaches under this Lease, and that Injunctive relief shall be available for the enforcement of the non-monetary terms of this Lease..

8. **Condition to Enforceability of Supplemental Agreement.**

The rights and obligations of the Parties under this Supplemental Agreement shall become enforceable upon the Enforceability Date under the Act. In the event that such Enforceability Date does not occur by December 31, 1999 as provided in Act or any amendment or extension of the Act, this Supplemental Agreement shall be void and shall have no further force and effect.

9. **Incorporation and Ratification of Supplemental Agreement.**

The Parties shall cause the terms of this Supplemental Agreement to be incorporated into the Settlement Agreement for ratification by all parties to the Settlement Agreement.

10. **Applicability.**

a. This Supplemental Agreement shall apply to the water rights and claims of the City Diverted through the Bonita Creek Facilities in the Bonita Creek Watershed. For purposes of this Supplemental Agreement, the Bonita Creek Watershed shall mean the drainage of Bonita Creek to its confluence with the Gila River.

b. Nothing in this Supplemental Agreement shall be construed so as to limit the Parties from entering additional written agreements for the use of water in excess of 3876.8 AFA from the Bonita Creek Watershed through the Bonita Creek Facilities upon mutual consent of the City, the Tribe and the Secretary.

c. This supplemental Agreement shall not limit, interfere with or affect in any way, any right the United States, the Tribe, or the City may have under the Globe Equity Decree.

11. **Enforcement.**

The rights and obligations under this Supplemental Agreement may be enforced in the federal district courts of the United States pursuant to the Act, and the Tribe and the United States on behalf of the Tribe hereby waive their sovereign immunity from suit as provided in Section 3710(a) of the Act, and the City consents to jurisdiction in federal district court in regard to any claim which relates to the interpretation or enforcement of this Supplemental Agreement.

12. **Governing Law.**

This Supplemental Agreement shall be construed in accordance with the applicable law of the State of Arizona and applicable Federal law. Nothing contained herein waives the right of the United States or the Tribe to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Supplemental Agreement.

13. **Successors and Assigns.**

This Supplemental Agreement shall inure to the benefit of and be binding upon the Parties to this Supplemental Agreement, and their successors and assigns.

14. **Disclaimers.**

a. Nothing in this Supplemental Agreement shall be construed in any way to quantify or otherwise affect the water rights, claims, or entitlement to water of any Arizona tribe, band or community other than the Tribe.

b. Nothing in this Supplemental Agreement shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

15. **Evidentiary Effect of Negotiations.**

This Supplemental Agreement is subject to Rule 408 of the Arizona Rules of Evidence and the Federal Rules of Evidence and has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes including pending litigation, and all Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Supplemental Agreement.

16. **Officials Not to Benefit.**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Supplemental Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Supplemental Agreement if made with a corporation or company for its general benefit.

17. **Counterparts.**

This Supplemental Agreement may be executed in duplicate originals, each of which shall constitute an original Supplemental Agreement.

18. **Notices.**

Any notice to be given hereunder shall have been properly given when received by the Officer or Manager designated herein or when deposited in the United States mail in an Arizona or Washington D.C. post office, certified or registered, postage prepaid, addressed as follows:

As to the United States of America:

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

Area Director
Phoenix Area Office
Bureau of Indian Affairs
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, NV 89005

Bureau of Indian Affairs
San Carlos Agency
P. O. Box 209
San Carlos, Arizona 85550
Attn: Superintendent

As to the Tribe:

San Carlos Apache Tribe
P.O. Box "0"
San Carlos, Arizona 85550
Attn: Tribal Chairman

San Carlos Apache Tribe
P.O. Box "0"
San Carlos, Arizona 85550
Attn: Tribal Vice-Chairman

San Carlos Apache Tribe
c/o Joe Sparks, Attorney
Sparks, Tehan & Ryley, P.C.
7503 First Street
Scottsdale, Arizona 85251

As to the City:

City of Safford
P.O. Box 272
Safford, Arizona 85548-0272
Attn: City Manager

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this Paragraph.

IN WITNESS WHEREOF, the Parties have executed this Supplemental Agreement dated as of the day and year signed below.

SAN CARLOS APACHE TRIBE

By: _____
SAN CARLOS APACHE TRIBAL COUNCIL
Its: Assistant Administrator

Dated: June 29, 1999

Attest: _____
Secretary

Approved as to Form: _____
Its: Special Counsel

State of Arizona)
) ss
County of Maricopa)

Subscribed and sworn to before me this 29th day of June, 1999 by Rupert Alden.

_____
Notary Public

My commission expires:

My Commission Expires Aug. 25, 1999

CITY OF SAFFORD

By: Van Talley
Mayor

Dated: June 30, 1999

Attest: Sharon French
Clerk

Approved as
to Form: [signature]
City Attorney

State of Arizona)
) ss
County of Graham

Subscribed and sworn to before me this 30th day of June 1999 by
Van Talley.

Janet S. Angle
Notary Public

My commission expires:

OFFICIAL SEAL
JANET S. ANGLE
Notary Public - State of Arizona
GRAHAM COUNTY
My Comm. Expires Oct. 23, 2002

This Agreement is approved pursuant to the San Carlos Apache Water Rights Settlement Act of 1992, as amended, 106 Stat. 4740, et. seq., and 25 U.S.C. §81.

THE UNITED STATES OF AMERICA

By: _____
Acting Deputy Secretary of the Interior

Dated: NOV - 3 1999

LAS
12/15/99

ATTACHMENT A
TO
SUPPLEMENTAL
AGREEMENT BETWEEN
SAN CARLOS APACHE TRIBE AND
CITY OF SAFFORD

Description of the City's Bonita Creek Facilities:[1]

A. Infiltration Galleries and Associated Diversion Facilities:[2] Galleries (Bonita Wells Nos. 3, 4, 7, 8, 11 & 12 located in Galleries), Bonita Wells Nos. 5, 6 & 13[3]

B. Northern Wells: Bonita Wells Nos. 9[4] & 10[5]

C. Southern Pipeline Wells: Bonita Wells Nos. 1, 2, 14 & 15[6]

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[1]The approximate locations of all Bonita Creek Facilities, including the Aqueduct Pipeline from the Galleries through Bonita Creek, are shown on Attachment C.

[2]The word "well" includes all well features such as casings, standpipes, meters, valves, pipes and similar equipment.

[3]Including Registration Nos. 55-607087, 55-607090, 55-607092, 55-607093, 55-607094, 55-607097, 55-607098, 55-607108 & 55-607109.

[4]Registration No. 55-607095.

[5]Registration No. 55-607096.

[6]Including Registration Nos. 55-607089, 55-607099 & 55-607110.

CAS 12/15/99

ATTACHMENT B
TO
SUPPLEMENTAL
AGREEMENT BETWEEN
SAN CARLOS APACHE TRIBE AND
CITY OF SAFFORD

Land Upon Which the City's Bonita Creek Facilities Are Located:[1]

A) Infiltration Galleries and Associated Diversion Facilities: located in Sections 5 & 6, Township 6 South, Range 28 East, Gila and Salt River Meridian ("G&SRM") and Section 31, Township 5 South, Range 28 East, G&SRM (legal description of patented land contained in United States Patents Nos. 1130309 & 02-64-0034).

B) Northern Wells: located in Section 27, Township 4 South, Range 27 East, G&SRM (Bonita Well No. 9) and Section 11, Township 5 South, Range 27 East, G&SRM (Bonita Well No. 10) (legal description of patented land contained in United States Patent No. 1182747 and Arizona Patents Nos. 5349 & 6799).

C) Southern Pipeline Wells: located in Sections 9 (Bonita Well No. 15), 16 (Bonita Well No. 14) & 21 (Bonita Well Nos. 1 & 2), Township 6 South, Range 28 East, G&SRM) (legal description of patented land contained in United States Patent No. 02-71-0036).

D) Northern Pipeline/Aqueduct: the Northern Pipeline/Aqueduct begins at the Infiltration Galleries (described above) and runs through Sections 5, 8, 9, 16, 21, Township 6 South, Range 28 East, G&SRM.

[1]Approximate locations of all land upon which the City's Bonita Creek Facilities are located and shown on Attachment C.

LAS 12/15/99

ATTACHMENT D
TO
SUPPLEMENTAL
AGREEMENT BETWEEN
SAN CARLOS APACHE TRIBE AND
CITY OF SAFFORD

City of Safford's Bonita Creek Water Rights

1. CWR 1950
   Amount: 3629.3 AFY
   Priority: October 18, 1950

2. CWR 1746
   Amount; 1447.84 AFY
   Priority: December 20, 1933

3. Statement of Claimant No. 36-80661
   Amount: 233 AFY
   Priority: January 1, 1959

CAS
12/15/99

Certificate Record No. 1950 Page No. 1950

STATE OF ARIZONA

Water District No. County of Graham

Certificate of Water Right

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* TOWN OF SAFFORD,

of Safford, *State of* Arizona, *has made proof to the satisfaction of the STATE LAND COMMISSIONER of Arizona of a right to the use of the waters of*

Bonita Creek, Tributary of Gila River,

for Municipal Purposes, *under Application No.* A-3089, *Permit No.* A-2114, *of the State* Land *Commissioner, and that said right to the use of said waters has been perfected in accordance with the laws of Arizona, and made and entered of record in the Records of the State Land Commissioner at Phoenix, Arizona, in Volume* 5, *at page* 1950 *on the* 3rd *day of* December, 1953 *; that the priority of the right hereby confirmed dates from* October 18, 1950 *; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* Three Million Two Hundred Forty Thousand (3,240,000) gallons per day.

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or if for other purposes, the place where such water is put to beneficial use, is as follows:

The place where such water is put to beneficial use and right to the use of the water is within the Town of Safford and vicinity, the works being designated as the Safford Municipal Water Supply System of Graham County, Arizona; the point of diversion being N. 09°-02' W., 2,988.7 feet from the South one-quarter corner of Section Five (5), Township Six (6) South, Range Twenty-eight (28) East, being within the Southeast Quarter of the Northwest Quarter (SE¼NW¼) of said Section Five (5).

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, and subject to all prior existing rights.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE LAND COMMISSIONER affixed this* 3rd day of December, 1953.

S E A L

ROGER ERNST
State Land Commissioner.

Attest: Kay Hammond
Secretary.

Certificate Record No. 1746 Page No. 1746

LAS 12/15/99

STATE OF ARIZONA

WATER DISTRICT No. COUNTY OF GRAHAM

Certificate of Water Right

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* TOWN OF SAFFORD

of Safford *State of* Arizona *has made proof to the satisfaction of the STATE LAND COMMISSIONER of Arizona of a right to the use of the waters of*

Bonita Canyon Creek, Tributary of Gila River,

for Municipal and Domestic purposes *under*

Application No. A-1477 *Permit No.* A-974 *of the State Land Commissioner, and that said right to the use of said waters has been perfected in accordance with the laws of Arizona, and made and entered of record in the Records of the State Land Commissioner at Phoenix, Arizona, in Volume* 5 *at page* 1746 *on the* 19th *day of* February, 1951 *; that the priority of the right hereby confirmed dates from* December 20, 1933 *; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* Two (2) cubic feet per second

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or if for other purposes, the place where such water is put to beneficial use, is as follows:

Town of Safford in Sections 7, 8, 17 and 18,
Township Seven (7) South, Range Twenty-six
(26) East.

Diversion Pt. in Unsurveyed
Sec. 5 - T6S - R28E

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, and subject to all prior existing rights.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE LAND COMMISSIONER affixed*
this 19th day of February, 1951

S E A L

JAMES R. BURGER
Deputy *State Land Commissioner.*

Attest: KAY HAMMOND
Acting *Secretary.*

LAS 12/15/99

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIM OF RIGHT TO USE PUBLIC WATERS OF THE STATE

Filing Fee $5.00

[LEAVE BLANK]
Registry No. 36-80661
Filed 6-25-79 at 8:06 A.M.
(DATE) (TIME)

INSTRUCTIONS:

1. Submit Statement of Claim in duplicate.
2. Answer all questions fully.
3. File separate claim for each claimed right to appropriate and for each source of water.

1. Name of Claimant City of Safford (Safford Municipal Utilities)
(Print Last Name or Name of Co.) (First Name) (Middle Initial)

P.O. Box 551 Safford, Arizona 85546 428-2762
(Address, City, State, Zip) (Phone No.)

2. The purpose(s) and extent of use(s) Domestic
(Examples: Irrigation, Stockwater, Domestic)

3. The quantities of water used annually 233 ac.ft. from 1 1
(Gallons or Acre feet) (Day) (Month)

to 31 12 each year
(Day) (Month)

4. The date(s) the water was first used beneficially Jan 1 1959
(Month) (Day) (Year)

5. The Name(s) of the water course(s) or Water Source(s) being claimed Bonita Creek
(Source Name)

Tributary to Gila River on the Upper Gila River Watershed
(Leave Blank)

6. The point of diversion is within the SW ¼, SE ¼, Section 27,

of Township 5S (N/S), Range 27E (E/W), G&SRB&M, in the County of Graham.

7. The Place(s) of use is in the ***SEE ATTACHED SHEET*** ¼, ¼, Section _____, of

Township _____ (N/S), Range _____ (E/W), G&SRB&M, in the County of _____.

8. The legal basis for the claim Lease from State #C-422

(Attach copies of any documents being filed in support of Claim)

STATE OF ARIZONA)
) ss
County of Graham)

Wilford R. Richardson being first duly sworn on oath, deposes and states that the foregoing Statement of Claim is true and correct of his own knowledge except as to any matters stated therein to be on information and belief and as to all such matters so stated he believes the same to be true and correct.

CITY OF SAFFORD
By Wilford R. Richardson
City Attorney
(CLAIMANT(S))

REFILED 6-5-80 AT 11:00 A.M.
DIRECTOR, WATER RIGHTS DIVISION

Subscribed and sworn to before me this 21st day of June 1979.

My Commission Expires:
10/23 1982
(SEAL)

(NOTARY PUBLIC)

Filed in Water Rights Claim Registry No. 36-80661 of the State Land Department of

June 25, 1979 at 8:06 A.M.

ARS 45-154 FILING OF CLAIM WITH THE DEPARTMENT NOT DEEMED ADJUDICATION OF RIGHT"
28-76

Brian Kirby
Adjudicary Section

16

LTS 12/15/99

7. The Place(s) of use is in:

Township 7South; Range 27 East;
Township 7South, Range 26 East;
The East ½ of Township 7South; Range 25 East;
Sec. 4, Township 7 South, Range 25 East;
Secs. 28, 33, 34, 35 of Township 6 South, Range 25 East.

All in the Gila and Salt River Base and Meridian, in the County of Graham, State of Arizona.

Amendment No. 3

to San Carlos Apache Tribe Water Rights Settlement Agreement Dated March 30, 1999

AMENDMENT No. 3

TO THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT AGREEMENT

This Amendment is entered into this 16 day of December, 1999, by and among the United States of America on behalf of the Tribe and in no other capacity; the State of Arizona; the San Carlos Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale, Safford, Tempe and Globe; the Town of Gilbert; and the Central Arizona Water Conservation District. In order to include Globe as a Party to the Agreement, the Agreement is amended as follows:

1.0 Page 1, at lines 9 and 18 of the Agreement is amended to expressly include Globe as a Party to the Agreement.

2.0 Paragraph 3.0 at page 9 of the Agreement is amended to include Exhibit 13.1, Map of the Cutter subarea, as an Exhibit.

3.0 Subparagraph 4.1 at page 11, lines 1 through 6 is amended as follows (new language is italicized):

PARAGRAPH REFERENCE	SOURCE	MAXIMUM DIVERSION AMOUNT (AF/YR)
5	Salt/Black River	7,300
11	The Tribe's CAP Contract (original)	12,700
9	Ak-Chin CAP Allocation (referred to in Sections 3704(a) and 3704(b) of the Act) in normal years up to	33,300
10	CAP M&I Priority Water Previously Allocated to Phelps Dodge Corporation	14,665[3]
13	*CAP M&I Priority Water Previously Allocated to City of Globe*	*3,480*
		71,445

4.0 Subparagraph 10.1 at page 20, lines 3 through 7, is amended to read as follows (new language is italicized):

[3] Number used in the Act is incorrect.

10.1 The Secretary, in accordance with Section 3704(c) of the Act, shall reallocate to the Tribe an annual right to 14,665 acre-feet of CAP water having a municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated February 10, 1983, 48 Fed. Reg. 12446, et seq. (March 24, 1983); *and in accordance with Section 3704(d) of the Act, the Secretary shall reallocate to the Tribe an annual right to 3,480 acre-feet of CAP water having a municipal and industrial priority, which the Secretary previously allocated to Globe in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated February 10, 1983, 48 Fed. Reg. 12446, et seq. (March 24, 1983).*

5.0 Subparagraph 10.2 at page 20, beginning at line 9, is amended to read as follows (new language is italicized):

10.2 With respect to the water referred to in Subparagraph 10.1 hereof, the Secretary, in accordance with Sections 3704(c) *and (d)* of the Act, shall exclude, for purposes of determining the allocation and repayment of the costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

6.0 Subparagraph 11.1(a) at page 20, beginning at line 23, is amended to read as follows (new language is italicized):

(a) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), ~~and~~ (c), *and (d)* of Section 3704 of the Act; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver CAP water shall not exceed the cost of construction of the delivery and distribution system for the twelve thousand and seven hundred acre-feet of CAP water originally allocated to the Tribe.

7.0 Paragraph 13 at page 23, line 18, is amended to read as follows (new language is italicized):

13.0 ~~THIS PARAGRAPH INTENTIONALLY LEFT BLANK~~ *THE CITY OF GLOBE.*

(a) Definitions. The Cutter Aquifer underlies the Cutter Subarea which straddles a portion of the westerly boundary of the San Carlos Apache Indian

Reservation (the "Reservation"). For purposes of this Agreement, the Cutter Subarea is defined as the area described on ***Exhibit "13.1"*** *to this Agreement; and the Cutter Aquifer is defined as the geologic water-bearing formation underlying the Cutter Subarea. The right of Globe to Divert and use water from the Cutter Aquifer as defined, described, limited and conditioned hereunder, is hereby ratified and confirmed by the Parties to the Agreement.*

(b) Cutter Basin Withdrawals. Subject to the provisions set forth herein, Globe agrees that it will not Divert from the Cutter Aquifer and use more than two thousand five hundred (2,500) acre-feet per year; Globe further agrees that on a year-by-year basis, Globe's Diversion and use from the Cutter Aquifer shall not exceed the following:

Year	*Not to Exceed*
2000	*1750* ***acre-feet per year***
2001	*1855* ***acre-feet per year***
2002	*1966* ***acre-feet per year***
2003	*2084* ***acre-feet per year***
2004	*2209* ***acre-feet per year***
2005	*2342* ***acre-feet per year***
2006	*2482* ***acre-feet per year***
2007	*2500* ***acre-feet per year***
2008 and thereafter	*2500* ***acre-feet per year***

Globe agrees not to provide any potable water for mining purposes or agricultural use, provided that Globe shall be entitled to provide water to a mining company for potable use only. Globe agrees that any water provided to mining companies for potable use or to neighboring communities shall fall within the limits set forth in this paragraph. Any amounts provided by Globe to the Tribe or Tribal members for use on the Reservation shall not count against the limits set forth above, provided that any such provision of water to the Tribe or Tribal members shall be metered separately.

Neither the Tribe nor the United States guarantee the availability of any amount of water to Globe under this Agreement.

(c) Compliance and Reporting. Globe shall install, operate and maintain, at its own expense, accurate metering devices on all pumps and other Diversion facilities owned or operated by or for Globe on wells within the Cutter

subarea. Globe shall keep permanent records of all pumping from all wells and other Diversions from its wells within the Cutter Subarea and shall deliver to the Tribe and the Area Director of the Bureau of Indian Affairs, a copy of such records together with a summary of the total Diversions within thirty (30) days of the end of each quarter for the preceding quarter, showing all Diversions for the previous quarter, and the total Diversions for the calendar year through the preceding quarter, verified and certified as to accuracy. Upon reasonable notice to Globe, the Tribe, or the United States acting on behalf of the Tribe, may inspect the Diversion wells or facilities of Globe located in the Cutter Subarea to measure water levels and determine the accuracy of the metering devices. The cost of any such inspection or determination shall be borne by the Tribe or by the United States on behalf of the Tribe.

(d) Well Spacing. Any production well drilled by either the Tribe or Globe shall not be closer to the boundary of the Tribe's Reservation than the closest of Globe's existing wells. Globe will provide to the Tribe and the United States a survey depicting the legal description for each of its wells prior to December 31, 1999. Notwithstanding the foregoing, subject to the appropriate consents and permits from all applicable agencies, any Party to this Amendment shall be entitled to drill an observation well or wells for monitoring purposes closer to the Reservation boundary.

(e). Forest Service Special Use Permits. Provided that Globe is in compliance with the terms and conditions of this Paragraph, the Tribe and the United States on behalf of the Tribe and in no other capacity, will not object to the next renewal, or any subsequent renewal thereof, of the special use permit dated 6/26/96, expiration date 12/31/04, or the special use permit dated 1/24/94, expiration dated 12/31/04, issued by the United States Forest Service to Globe for its Cutter Subarea well field and water mains therefrom, provided that if Globe attempts to acquire title to the land described in the special use permits, the Tribe or the United States shall be free to object to any such acquisition. The terms and conditions of this Amendment shall be referenced as an attachment and as a limitation to the special use permits. Approval of this Agreement by the United States shall not be construed as consent to the renewal of the special use permits. If it is determined that any or all of Globe's wells or any portion of its water mains or related facilities are located within the exterior boundary of the Reservation, the title to which the Tribe does not waive, the Tribe, and the United States acting on behalf of the Tribe, agree that Globe shall have the permanent right of ingress and egress to Globe's wells and facilities for the purpose of Diversion of water, use, inspection, maintenance, repair or replacement, irrespective of a final resolution of the Tribe's boundary claim.

Neither the Tribe nor the United States convey or grant any interest in property to Globe under this Agreement.

(f) Right of Refusal. Except for any potential leases or other transfers of its CAP water supplies to Phelps Dodge Corporation, the Cities of Scottsdale, Tempe and the Town of Carefree pursuant to the Agreement, prior to offering, or accepting an offer, during a twenty (20) year period beginning with the Effective Date of the Agreement, to lease or otherwise transfer to a municipality all or part of its CAP water supplies not subject to such potential leases or other transfer, the Tribe shall first offer nine hundred eighty (980) acre-feet per annum of said CAP water to Globe in writing on the same terms and conditions as offered to or by the municipality. Globe shall have ninety (90) days from receipt in which to accept any such offer, or such additional time as Globe and the Tribe may agree to in writing.

(g) Default. In the event that either Globe or the Tribe fails to fulfill its non-monetary obligations under this Paragraph, such Party shall have ten (10) days, after receiving written notice of such failure from the other Party, to cure any such non-monetary default before such failure shall be deemed to constitute an event of default.

(h) Injunctive Relief. Globe, the Tribe and the United States agree that monetary damages shall be deemed inadequate for non-monetary breaches under this Paragraph, and that injunctive relief shall be available for the enforcement of the non-monetary terms of this Paragraph. Any such claim for injunctive relief shall be brought in Federal District Court pursuant to Section 3710(a) of the Act.

(i) Covenant Not to Sue. Neither the Tribe nor the United States acting on behalf of the Tribe shall (1) sue Globe for any claims (other than for enforcement of the Agreement) related to Globe's Diversion or use of water from the Cutter Aquifer, or related to the transportation of such water across basin or sub-basin boundaries, or (2) interfere with Globe's access to, maintenance, repair or replacement of Globe's wells or water mains.

8.0 Subparagraph 18.3(f) at page 27, beginning at line 18, is amended to read as follows (deleted language is illustrated by strike-out):

(f) claims in the Gila River Adjudication or other court of competent jurisdiction (1) to water from the Gila River and its tributaries, other than from the San Pedro River and its off-Reservation tributaries, upstream from Gila Crossing against the States of Arizona and New Mexico or any agency or political subdivision thereof, ~~the City of Globe,~~ the City of Safford, SCIDD, the U.S. Forest Service, the Gila River Indian Community, its members and allottees and the United States acting on their behalf and on behalf of the San Carlos Irrigation Project, or any other person, corporation or municipal corporation; (2) to the water supplies specified in

Paragraphs 4.0 and 5.0 hereof, against the White Mountain Apache Tribe and its members and the United States acting on their behalf, the U.S. Forest Service, and Phelps Dodge. All parties referred to in this Subparagraph (f) are herein referred to as "the non-settling entities";

9.0 Subparagraph 22.15(b) at page 45, beginning at line 9, is amended to add Globe as a Party to be noticed under this Agreement:

As to the City of Globe:

City of Globe
150 North Pine Street
Globe, AZ 85501
Attn: City Manager

This amendment is entered into on the date and year first set forth above.

THE UNITED STATES OF AMERICA

By: _____
Acting Deputy Secretary of Interior

THE STATE OF ARIZONA

By: _____
Governor

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
President

Attest: _____
Secretary

Approved as to Form: _____

SAN CARLOS APACHE TRIBE

Attest: _____ By: _____

Approved as to Form: _____

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest: _____ By: _____

Its: SECRETARY Its: PRESIDENT

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest: _____ By: _____

Its: SECRETARY Its: PRESIDENT

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: _____ By: _____

Secretary President

Approved as to Form: _____

BUCKEYE IRRIGATION COMPANY

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as
to Form: _____

CITY OF SCOTTSDALE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF MESA

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
Deputy City Attorney

CITY OF TEMPE

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
City Attorney

CITY OF CHANDLER

Attest: _____ By: _____
Mayor

Approved as
to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____ By: _____
Clerk Mayor

Approved as
to Form: _____
City Attorney

CITY OF GLOBE

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

CITY OF SAFFORD

Attest: _____
Clerk

By: _____
Mayor

Approved as
to Form: _____
City Attorney

Scottsdale during each month of the following Year along with a preliminary estimate of Lease Water desired for the succeeding two years.

(iii) Upon receipt of the schedule, the Secretary shall review it and, after consultation with the Tribe, the Operating Agency and Scottsdale, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to Scottsdale are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all CAP contractors and subcontractors; provided, that this provision shall not be construed to reduce annual deliveries to Scottsdale.

(iv) On or before December 1st of each Year beginning with the Year following the initial Year of water delivery under this Lease, the Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency, shall determine and furnish to Scottsdale and the Tribe the water delivery schedule for the following Year, which shall show the amount of water to be delivered to Scottsdale during each month of that Year, contingent upon Scottsdale remaining eligible to receive water under all terms contained herein.

(c) The monthly water delivery schedules may be amended upon Scottsdale's written request to the Secretary, the Tribe and the Operating Agency. Proposed amendments shall be submitted by Scottsdale as soon as Scottsdale determines it requires such amendments, but no later than 15 days before the desired change is to become effective, and such requests shall be subject to review and modification by the Secretary in like manner as the schedule. The Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency, shall notify Scottsdale and the Tribe of the its action on Scottsdale's requested schedule modification within 10 days of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's, receipt of such request. No modification shall prevent the delivery of Project Water to the Tribe and its lessees in accordance with their previously scheduled CAP water supplies.

(d) In no event shall the Secretary, the Operating Agency or the Tribe be required to deliver to Scottsdale from the Water Supply System in any one month a total amount of Lease Water greater

than 11 percent of Scottsdale's maximum entitlement under this Lease; provided, however, that the Secretary may, upon the request of Scottsdale, deliver a greater percentage in any month: (i) if such increased delivery is compatible with the overall delivery of Project Water to other contractors and subcontractors as determined by the Secretary and the Operating Agency; and (ii) with the consent of the Tribe. Such consent may only be withheld where Scottsdale's request will prevent the delivery of Project Water to the Tribe in accordance with its schedule requests.

4.16 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) The water to be furnished to Scottsdale pursuant to this Lease shall be delivered at Scottsdale's CAP turnout.

(b) All water delivered from the CAP shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of Scottsdale, the Tribe, or the Secretary on behalf of the Tribe, the accuracy of such measurements shall be investigated by the Secretary or the Operating Agency, the Tribe, and Scottsdale, and any errors which may be mutually determined to have occurred therein shall be adjusted; provided, that in the event the parties cannot agree on the required adjustment, the Secretary's determination shall be conclusive.

(c) Neither the United States, the Tribe, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Lease Water beyond the delivery point(s) agreed to pursuant to Subsection 4.16(a) of this Lease. Scottsdale shall hold the United States, the Tribe, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with Scottsdale's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

4.17 Temporary Discontinuance or Reduction. In addition to the right of the United States under Subparagraph 8.3(a)(iv) of the CAP Master Repayment Contract to temporarily discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may, after

consultation with the Tribe and Scottsdale, temporarily discontinue or reduce the quantity of water to be furnished to Scottsdale as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to Scottsdale. So far as feasible, the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Tribe and Scottsdale, except in case of emergency, in which case no notice need be given. The United States, its officers, agents, and employees, the Tribe, its officers, agents and employees, and the Operating Agency, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any such discontinuance or reduction in delivery of water occurs. If any such discontinuance or reduction results in deliveries to Scottsdale of less water than what has been paid for in advance pursuant to Subsection 4.11(a) of this Lease, Scottsdale shall be entitled to reimbursement from the United States, or CAWCD if Scottsdale paid CAWCD pursuant to Subsection 4.11(a), for the proportionate amount of such advance OM&R payments prior to the date of Scottsdale's next payment of OM&R costs, or Scottsdale may be given credit toward the next payment of water charges if Scottsdale should so desire.

4.18 Priority in Case of Shortage. Lease Water shall have the priority provided in Section 3706(b)(1) of the Act.

4.19 Water and Air Pollution Control. Scottsdale, in carrying out this Lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

4.20 Quality of Water. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Tribe, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Scottsdale waives its right to make a claim against the United States, the Operating Agency, the Tribe,

or another lessee or CAWCD subcontractor because of changes in water quality caused by the commingling of Lease Water with other water.

4.21 Water Conservation Program. There is a strong Tribal and Federal interest in developing an effective water conservation program because of this Lease. Therefore, use of the Lease Water shall be consistent with Article 6.4 of Scottsdale's CAP M&I subcontract, a copy of which Article is attached hereto as Exhibit B and incorporated into and made a part of this Lease.

4.22 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Tribe, Scottsdale or the Operating Agency shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Tribe, Scottsdale, the United States or the Operating Agency shall receive any benefit that may arise by reason of this Lease other than as a water user within the CAP and in the same manner as other water users within the CAP.

4.23 Books, Records, and Reports. Scottsdale shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary may reasonably require. Reports thereon shall be furnished to the Secretary in such form and on such date or dates as the Secretary may require. Subject to applicable Federal laws and regulations, each Party shall have the right during office hours and upon 10 days written notice to examine and make copies of the others' books and records relating to matters covered by this Lease.

4.24 Equal Opportunity. During the performance of this Lease, Scottsdale agrees as follows:

(a) Scottsdale shall not discriminate against any employee or application for employment because of race, color, religion, sex, or national origin. Scottsdale shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited, to the

following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Scottsdale agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Scottsdale shall, in all solicitations or advertisements for employees placed by or on behalf of Scottsdale, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) Scottsdale shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising said labor union or workers' representative of Scottsdale's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Scottsdale shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) Scottsdale shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) If Scottsdale, in exercising its rights or discharging its duties under this Lease, fails to comply with the nondiscrimination clauses of this Lease or with any such rules, regulations, or orders, this Lease may be canceled, terminated, or suspended, in whole or in part, by the United States, and Scottsdale may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

///

(g) Scottsdale shall include the provisions of Subsections 4.24(a) through (f) in every sublease unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each sublessee. Scottsdale shall take such action with respect to any sublease under this Lease as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Scottsdale becomes involved in, or is threatened with, litigation with a sublessee as a result of such direction, Scottsdale may request the United States to enter into such litigation to protect the interest of the United States.

4.25 Title VI, Civil Rights Act of 1964.

(a) Scottsdale agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 C.F.R. § 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Scottsdale receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to Scottsdale by the United States, this assurance obligates Scottsdale, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates Scottsdale for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financing assistance extended after the date hereof to Scottsdale by the United States, including installment payments after such date

on account of arrangements for Federal financial assistance which were approved before such date. Scottsdale recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on Scottsdale, its successors, transferees, and assignees.

4.26 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States or the Tribe under this Lease which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve Scottsdale from any obligation under this Lease, except where such failure constitutes a material breach of this Lease. No liability shall accrue to the United States or the Tribe in favor of Scottsdale in case such funds are not appropriated or allotted.

4.27 The Tribe's Covenants. The Tribe agrees:

(a) To observe and perform all obligations imposed on the Tribe under the Tribe's CAP Delivery Contract which are not assumed by Scottsdale so that Scottsdale's rights are not in any way impaired;

(b) Not to execute any other lease or obligate by contract any of the Tribe's right to the delivery of Project Water under the Tribe's CAP Delivery Contract in a manner which would impair Scottsdale's rights hereunder;

(c) Not to alter or modify the terms of the Tribe's CAP Delivery Contract in such a way as to impair Scottsdale's rights to receive delivery of the Lease Water under the terms of this Lease, or to exercise any option required or permitted by the Tribe's CAP Delivery Contract so as to interfere with or change Scottsdale's rights to receive delivery of the Lease Water under the terms of this Lease; and

(d) Not to terminate or cancel the Tribe's CAP Delivery Contract, or transfer, convey or permit a transfer or conveyance of said Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the Tribe's CAP Delivery Contract.

(e) The Tribe shall deliver to Scottsdale a copy of any amendment to the Tribe's CAP Delivery Contract within thirty (30) days of the execution of the amendment.

4.28 Scottsdale's Covenants. Scottsdale agrees not to sublease, exchange, transfer or otherwise dispose of any of Scottsdale's right to the delivery of Lease Water under this Lease in a manner which would impair the Tribe's rights hereunder.

4.29 CAWCD Repayment. Pursuant to Section 3706(f) of the Act, for the purpose of determining allocation and repayment of costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of water pursuant to this Lease shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4.30 Taxation. The water subject to this Lease is allocated to the Tribe in partial satisfaction of the Federal reserved water rights of the Tribe. The water is a trust asset held in trust by the United States for the Tribe. In entering into this Lease, the Tribe and Scottsdale have assumed and relied upon the fact that the water to which the Tribe is entitled under the Tribe's CAP Delivery Contract is a Federal trust resource which would not be subject to taxation. Although it is the understanding and intent of the Tribe and Scottsdale that such water is not subject to taxation in the first instance, to the extent that any such taxation right or power may exist, the Tribe and Scottsdale, on a government to government basis, each agree to refrain from imposing any tax on this Lease or the Lease Water, or any tax measured by the value of such water to be delivered under this Lease or the transportation of Lease Water under this Lease.

5. WAIVER OF SOVEREIGN IMMUNITY

The United States and the Tribe waive their sovereign immunity from suit as provided in Section 3710(a) of the Act, and Scottsdale waives any right it may have to claim that it may not be sued under the Eleventh Amendment of the United States Constitution, in the United States District Court for the District of Arizona on any claim or claims which they may have as against each other, or which Scottsdale may have against either or both of them, which relate to the interpretation or enforcement of this Lease, and any such claim or claims shall be brought exclusively in such District Court to the extent the Court otherwise has jurisdiction.

6. DEFAULT AND REMEDIES

6.1 Loss of Entitlement. Scottsdale shall have no right to delivery of water from Project facilities during any period in which Scottsdale may be in arrears in the payment of any charges due the Tribe. Failure to pay any lease payment, OM&R cost or other charge due under this Lease shall constitute a default under this Lease. Failure to cure such default within the periods set forth in Section 6 of this Lease may constitute a material breach which may subject Scottsdale to all remedies available to the Tribe, including termination of this Lease. During any period of default during which deliveries to Scottsdale have been suspended due to such default, the Tribe may, subject to Scottsdale's right to cure, use the water within its Reservation or on land leased by the Tribe, or lease, exchange, transfer or otherwise dispose of to another entity any water determined to be available under this Lease for which payment is in arrears. Prior to the time any termination for default is deemed final pursuant to this Section 6, Scottsdale shall have the right to cure and thereby regain the right to use any unused portion of the water determined to be available under this Lease upon payment of all delinquent charges plus any difference between the obligation under this Lease and the price received from the lease of the water by the Tribe, or the United States on behalf of the Tribe, and payment of charges.

6.2 Curing for Scottsdale's Nonpayment. If the initial payment of the Water Lease Charge is not made on or before the date such payment is due, or if any successive payment is not made on the date such payment is due, Scottsdale shall be in default and the Tribe, or the Secretary on behalf of the Tribe, shall give written notice of default to Scottsdale. The notice of default shall specifically describe the default and state the amount due by Scottsdale ("Default Amount"). After notice of default, the rights of Scottsdale and the Tribe shall be as follows:

(a) For sixty (60) days following the notice of default, Scottsdale shall have the right to cure any such default by tendering the Default Amount to the Tribe together with interest on the Default Amount accrued at the annual rate of one percent (1%) over the Prime Rate in effect on the due date, but in no event less than nine percent (9%) per annum. A cure effected pursuant to this Subsection 6.2(a) shall constitute full performance of such payment obligation. For purposes of this Lease, the term "Prime

Rate" shall mean the per annum interest rate designated by Bank One Arizona as its "prime rate," "base rate," or "reference rate" for commercial loans as publicly announced from time to time.

(b) A failure by Scottsdale to cure as provided for in Subsection 6.2(a) hereof, after notice of default, shall constitute a material breach under this Lease and shall constitute grounds for termination of this Lease. The Tribe shall give Scottsdale at least ten (10) days written notice prior to termination of this Lease for material breach. Upon the effective termination of this Lease by the Tribe pursuant to this Section 6, Scottsdale shall be indebted to the Tribe in the amount of Fifteen Million Thirty Seven Thousand Five Hundred Dollars ($15,037,500), adjusted in accordance with Subsection 4.9 hereof, less principal payments made before the default, together with interest, costs and reasonable attorneys' fees as provided by law, and the Tribe shall be entitled to judgment for such an amount. Payment of the amount provided in this Subsection 6.2(b) prior to the effective termination of this Lease by the Tribe pursuant to this Section 6 shall constitute full performance of Scottsdale's obligations under Subsections 4.9 and 4.10 of this Lease.

(c) Notwithstanding the foregoing provisions of this Section 6, upon effective termination of this Lease by the Tribe for any reason, the Tribe shall have the affirmative obligation to use its best efforts to contract with a third party or parties for a lease or leases, transfer or transfers, or other disposition of the Lease Water which is the subject of this Lease for a valuable consideration. All consideration received from said lease(s) or transfer(s) shall first be applied to the costs and attorneys fees, if any, incurred by the Tribe in reducing its claim against Scottsdale to judgment; then to reduce the accrued interest and principal owed by Scottsdale under this Lease. The Tribe shall be entitled to any excess proceeds, as well as to all rights to the delivery of the Lease Water which is the subject of this Lease.

6.3 Termination. In addition to any other remedy provided herein, or otherwise provided at law or in equity, either Scottsdale or the Tribe may terminate this Lease for material breach upon written notice of default of a material provision and failure to cure the default within the periods provided herein; provided, however, if no period is specified, the time for curing such default shall be as soon as reasonably possible, but not longer than thirty (30) days.

7. GENERAL PROVISIONS

7.1 Effective Date and Enforceability Date. This Lease shall be effective and binding when it has been executed by all Parties hereto ("Effective Date"). However, no Party shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under this Lease until the Enforceability Date of the San Carlos Apache Agreement as set forth in Subparagraph 22.4.1 thereof (which date shall also constitute the "Enforceability Date" of this Lease).

7.2 Effect of San Carlos Apache Agreement. On the Enforceability Date of the San Carlos Apache Agreement, this Lease shall be enforceable between the Parties notwithstanding the performance or non-performance of other provisions of the San Carlos Apache Agreement not related to this Lease. The provisions of the San Carlos Apache Agreement that are related to this Lease are set forth in Subparagraphs 11.1 (c), (d), 11.2, and 11.4 of the San Carlos Apache Agreement.

7.3 Invalidity of Agreement. If Scottsdale's right to the delivery and use of the Lease Water under this Lease is determined to be invalid by a final judgment of a Federal court entered over the objection of Scottsdale, then the Tribe shall refund to Scottsdale within ten (10) days of said determination that portion of the Water Lease Charge that the number of years remaining in the Lease Term at the time of such determination bears to the total Lease Term, together with interest thereon at the rate of eight percent (8%) per annum from the date of each payment by Scottsdale to the date of reimbursement of each sum by the Tribe.

7.4 Attorneys' Fees. The prevailing party in any lawsuit, appeal or other proceeding brought to enforce or to otherwise implement the terms and conditions of this Lease shall be entitled to an award of reasonable attorneys' fees and costs; provided, however, this provision shall not apply to the United States.

7.5 Delegation of Responsibility. The Tribe agrees that the Secretary may delegate operational responsibilities to the Operating Agency. The Tribe does not consent to the delegation to the Operating Agency of any Trust responsibility of the United States to the Tribe.

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7.6 Approval, Consent and Ratification. The Tribe, Scottsdale and the Secretary, by execution of this Lease, approve, endorse, consent to and ratify this Lease.

7.7 Counterparts. This Lease may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

7.8 Notice. Any notice to be given or payment to be made under this Lease shall be properly given or made when received by the individual(s) designated below, or five (5) days following deposit in the United States mail in an Arizona or Washington, D.C., post office, certified or registered, postage prepaid, addressed as follows:

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Area Director
Phoenix Area Office
Bureau of Indian Affairs
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89006-1470

Superintendent
San Carlos Apache Tribe
1 San Carlos Ave.
San Carlos, Arizona 85550

(b) As to the Tribe:
Office of Tribal Chairman
San Carlos Apache Tribe
P.O. Box 0
San Carlos, Arizona 85550

(c) As to Scottsdale:
City Manager
City of Scottsdale
3939 Civic Center Blvd.
Scottsdale, Arizona 85251

City Attorney
City of Scottsdale
3939 Civic Center Blvd.
Scottsdale, Arizona 85251

or addressed to such other address as the party to receive such notice or payment shall have designated by written notice given as required by this Subsection 7.8.

7.9 Governing Law. This Lease shall be governed in accordance with Federal law applicable to contracts and leases with Indian Tribes and the Act. To the extent that Federal law provides no controlling precedent, the Court shall apply Arizona law as its choice of law.

7.10 Waiver. No waiver of any breach of any of the terms or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease.

7.11 Severability. If any term or provision of this Lease is held to be unenforceable or invalid by a court of competent jurisdiction, that term or provision shall be severable from the remainder of this Lease and shall not affect or render invalid any other term or provision of this Lease.

7.12 Construction and Effect. This Lease and each of its provisions are to be construed fairly and reasonably and not strictly for or against any party hereto. The Section titles used in this Lease are for convenience only and shall not to be considered in the construction of this Lease.

7.13 Successors and Assigns. Each of the terms and conditions of this Lease shall be binding on and inure to the benefit of the Parties and their successors and assigns.

7.14 Third Party Beneficiaries. There shall be no third party beneficiaries of this Lease.

7.15 Good Faith Negotiations. This Lease has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease may be

used as either evidence or argument by any party to this Lease in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease.

7.16 Further Instruments and Acts. Each Party will, whenever and as often as it shall be requested so to do by either or both of the others, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates shown below.

THE UNITED STATES OF AMERICA

By: Barry W. Welch
Bureau of Indian Affairs

Date: 12/17/99

By: Robert W. Johnson
Bureau of Reclamation

Date: 12/17/99

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SAN CARLOS APACHE TRIBE

By: _____

Its: Vice Chairman

Date: 5/13/99

ATTEST:

_____
Secretary

APPROVED AS TO FORM:

_____
~~Joseph~~ P. Sparks, Esq.
Joe

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Sam Kathryn Campana, Mayor

Date: 05-11-99

ATTEST:

_____
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

_____
Fredda J. Bisman
City Attorney

EXHIBIT A

TRIBE'S CAP DELIVERY CONTRACT,

AS AMENDED BY AMENDMENT NO. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE:

THIS CONTRACT, made this 11 day of DECEMBER 1980, in pursuance generally of the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto, the Boulder Canyon Project Act, 45 Stat. 1057, 43 USC s614 et seq (1928), the Colorado River Basin Project Act, 82 Stat. 885, 43 USC s1501 et seq. (1968), and the various authorities and responsibilities of the Secretary of the Interior (hereinafter "Secretary") in relation to Indians and Indian Tribes as contained in Title 25 USC and 43 USC s1457; and is between the United States of America (hereinafter "United States") and the San Carlos Apache Tribe (hereinafter "Contractor") located on the San Carlos Apache Reservation, Arizona.

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the Colorado River Basin Project Act provides, among other things, that the Secretary of the Interior shall construct, operate and maintain the Central Arizona Project for the purpose of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico and for other purposes; and

Exhibit "A"

WHEREAS, Contractor is in need of Central Arizona Project water to sustain its agricultural base and for other tribal homeland purposes; and

WHEREAS, upon completion of the Central Arizona Project, water will be available for delivery to Contractor for such purposes in accordance with the Secretarial notice of December 1, 1980, 45 FR 81265;

NOW, THEREFORE, in consideration of the mutual and dependent convenants herein contained, it is agreed as follows:

3. DEFINITIONS:

When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms:

3.1 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968.

3.2 "Secretary" shall mean the Secretary of the Interior of the United States.

3.3 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

3.4 "Central Arizona Project" or "Project" shall mean the dams, reservoirs, aqueducts, canals, distribution and drainage works and appurtenant works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

3.5 "Main System" shall mean those principle works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tucson Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and rights-of-way for such works and appurtenances.

3.6 "OM&R" shall mean the care, operation, maintenance, and replacement of the Main System, or any part thereof.

3.7 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of all or any part of the Main System and approved for that purpose by the Contracting Officer.

3.8 "Project Water" shall mean (a) Colorado River mainstream water, (b) all other water contracted and developed by Central Arizona Project dams and reservoirs and available for delivery by the United States, and (c) Return Flow captured by the Secretary for Project use.

3.9 "Notice of Availability of Project Water" shall mean the notice or notices which the Contracting Officer issues to Contractor to announce the availability of water for delivery to Contractor.

3.10 "Agricultural Water" or "Irrigation Water" shall mean Project Water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto.

3.11 "Miscellaneous Water" shall mean water delivered from the Project for recreational and fish and wildlife purposes at other than Project facilities.

3.12 "Municipal and Industrial Water" hereinafter referred to as "M&I Water" shall mean water other than Agricultural Water or Miscellaneous Water delivered by means of the Main System.

3.13 "Return Flow" shall mean waste water, seepage, and drainage water which originates or results from Agricultural Water, M&I Water, and Miscellaneous Water contracted for from the Central Arizona Project.

3.14 "Contractor's Reservation" shall mean the lands within the legal boundaries of Contractor's reservation(s).

3.15 "Distribution Works" shall mean those facilities constructed or financed by the United States for the primary purpose of distributing Project Water to the Delivery Point(s) within the Contractor's Reservation after said Project Water has been transported or delivered through the Main System.

3.16 "Water Right(s)" shall mean all those water rights which Contractor or the United States own or hold for the benefit of the lands of the Contractor's Reservation(s) and the people thereon.

3.17 "Nonproject Water shall mean water acquired by Contractor's other than from the Central Arizona Project.

3.18 "Year" shall mean the twelve month period between January 1 through the next succeeding December 31.

3.19 "Delivery Point(s)" is defined as the point(s) on Contractor's Reservation that are reasonably required, by agreement by the Contracting Officer and the Contractor, or selected by the Secretary to permit the Contractor to put the Project Water to its intended use.

3.20 "Substantial Completion" shall mean that degree of completion which, in the determination of the Contracting Officer, will enable the transportation of Project Water to Contractor's Delivery Points.

3.21 "Time of Shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Basin Project Act, such that there is not sufficient Project Water in that year to supply up to a limit of 309,828 acre feet of water for Indian uses, and up to a limit of 510,000 acre feet of water for non-Indian municipal and industrial uses.

3.22 "Exchange Water" shall mean water to be delivered to Contractor hereunder from a local source pursuant to an exchange as provided in section 304(d) of the Basin Project Act.

4. DELIVERY OF WATER:

4.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this contract during such periods as it operates and maintains the Project, the United States will deliver Project Water to the Contractor. The United States will use reasonable diligence to make available to the Contractor the quantities of water specified in the schedule submitted by Contractor and shall make deliveries of Project Water to Contractor to meet Contractor's water requirements within the constraints of and in accordance with Section 4.6. After transfer of OM&R to Operating Agency the United States will make deliveries of Project Water to the Operating Agency for subsequent delivery to Contractor as provided herein; the Secretary shall require a Subcontractor or other Indian Contractor to accept Project Water in exchange for or in replacement of existing supplies other than the mainstream of the Colorado River so that Contractor may receive the water to be delivered to it pursuant to this contract from a local source, all pursuant to Sec. 304(d) of the Basin Project Act (43 USCA 1524(d)).

4.2 Term of Contract. This Contract shall become effective upon its execution and shall remain in effect for a period of 50 years beginning with the year following Substantial Completion of the Project; Provided, that this Contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

4.3 Conditions Relating to Delivery. Contractor hereby agrees that:

(a) The obligation of the United States to deliver water under this contract is subject to:

(1) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now issued or hereafter modified.

(2) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty.

(3) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be

subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(4) The right of the United States temporarily to discontinue to reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized for, in the opinion of the Secretary, necessary for delivery of water hereunder, its being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) There be in effect measures, adequate in the judgment of the Secretary, to provide for the internally integrated management and control of surface and groundwaters within Contractor's Reservation to the end that groundwater withdrawals are managed on a responsible basis.

(c) The canals and Distribution Works through which Project Water is conveyed after its delivery to the Contractor shall be maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses: Provided, the Contractor shall be relieved from this obligation if the United States does not make funds for this purpose available to Contractor following a timely request for such funds.

(d) The Contractor shall not pump nor permit others to pump groundwater from within the exterior boundaries of Contractor's Reservation for use outside said Reservation unless the Secretary and the Contractor agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is required; Provided however, that where such pumping is presently permitted pursuant to contract, said pumping may continue throughout the life of said contract; Provided further, that such pumping may be permitted in other and additional cases subject to the approval of the Secretary.

(e) The Contractor shall not sell or permit the sale or other disposition of any Project Water for use outside the Contractor's Reservation except:

(1) The Contractor may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary; and

(2) The Contractor may dispose of Project Water credited against finally determined Water Rights to the same extent that said Water Rights may then be subject to dispositon by Contractor.

4.4 Delivery of Project Water Prior to Completion of Project

Prior to completion of the Project works, water may be temporarily available for delivery to Contractor. When such water is available, the Contractor Officer will so notify Contractor and the water will be delivered on a "when available" basis at such terms as agreed upon between the Contractor and the Contracting Officer.

4.5 Delivery Entitlements and Obligations. The United States or the Operating Agency will not be required to deliver to the Contractor under this contract in excess of 12,700 acre-feet of Project Water yearly during the life of the Project.

4.6 Procedure for Ordering Water.

Following notice of Substantial Completion of the Project, Contracting Officer will issue a Notice of Availability of Project Water to Contractor. The Contractor will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery. If the Notice of Availability of Project Water is given by Contractor prior to July 1 of any year, the first schedule for the balance of the current year shall be submitted to the Contracting Officer within 30 days. If said Notice is given after July 1 of any year, the first schedule shall cover the balance of the then current year and the next succeeding full year. Thereafter, the amounts, times, and rates of delivery of Project water to the Contractor during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before October 1 of each year, the Contractor shall submit in writing to the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Contractor during each month of the following year along with a preliminary schedule of water desired for the succeeding two years.

(b) Upon receipt of a schedule the Contracting Officer shall review it and, after consultation with the Operating Agency and the Contractor, shall make only such modifications in it as are necessary to insure that the amounts, times, and rates of delivery to the Contractor will be consistent with the provisions of section 4.3(a). On or before December 1 of each year, the Contracting Officer shall determine and furnish to the Contractor the water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the Contractor during each month of that year.

(c) A water delivery schedule may be amended by the Contracting Officer upon the Contractor's written request. Proposed amendments shall be submitted by the Contractor within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

4.7 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) The Exchange Water to be furnished to the Contractor pursuant to this Contract will be delivered at the point(s) to be agreed upon in writing by the Contracting Officer and the Contractor, or in the event they are unable to agree, to be selected by the Secretary.

(b) All water delivered to the Contractor shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon request of the Contractor, the accuracy of such measurements will be investigated by the Contracting Officer or the Operating Agency and Contractor, and any errors appearing therein adjusted.

(c) Neither the United States nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the turnout point(s) from the Main System to the Distribution Works serving the Contractor, and the Contractor shall hold the United States and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or death arising out of or connected with the Contractor's control, carriage, handling, used, disposal, or distribution of such water beyond said turnout point(s).

4.8 Water Acquired by Contractor Other than from the United States. The provisions of the Contract shall not be applicable to or affect Non-project Water or water rights now owned or hereafter acquired by the Contractor.

4.9 Priority in Time of Shortages.

In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including Contractor) and to non-Indian contractors for municipal and industrial uses according to the following formula:

IP = I/(I + MI) where:

-- IP is the Indian Share of Project Water;

-- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes;

provided that, for the purposes of this formula, such ten (10%) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; Provided that, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

-- MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

4.10 Secretarial Control of Return Flow. The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor's Reservation as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. Contractor may recapture and reuse or sell Return Flow within the exterior boundaries of Contractor's reservation Provided however, that such Return Flow may not be sold for use outside the Contractor's Reservation unless the Secretary has given prior written approval.

4.11 Exchange Water. Where the Secretary determines that Contractor is physically able to receive Project water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from

the confluence of the Salt and Verde Rivers and Buttes Dam site, if such dam is then existent, the Secretary may require and Contractor agrees to accept said Project water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

5. OTHER WATER:

Nothing in this contract shall prevent Contractor from agreeing with a water user to receive water from an off-reservation source where the water user does not condition delivery upon substitution for Project Water.

6. Payment of Costs:

(a) Repayment of construction costs associated with Contractor's of Project Water shall be subject to the provisions of 43 U.S.C 1542 and 25 U.S.C. 386a.

(b) The Secretary shall fix OM&R charges payable by Contractor pursuant to 25 U.S.C. s385 and regulations promulgated pursuant thereto (25 C.F.R. Part 191). Project Water will not be delivered to Contractor unless the annual OM&R assessment is paid in advance, except where such payment is deferred, adjusted, or cancelled pursuant to 25 CFR 191.17.

(c) In the event the Contractor fails or refuses to accept delivery at the Deliveries Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Contract, or in the event the Contractor in any year fails to submit a schedule for delivery as provided in Section 4.6 hereof, said failure or refusal shall not relieve the Contractor of its obligation to make the payments required in this Section. Contractor agrees to make payment therefor in the same

manner as if said water had been delivered to an account by it in accordance with this Contract; Provided however, if Contractor fails or refuses to accept delivery of Project Water, Operating Agency is then able to sell that portion of Contractor's allotment of Project waters to another contractor that would not have otherwise received the additional increment of Project Water, then the Contractor's financial responsibility will be decreased by a like amount. The Secretary shall require Operating Agency to use due diligence to secure a reasonable price for said water. Provided further that Contractor shall be relieved from the obligation to pay for refusal to accept delivery if the United States does not make funds available to Contractor to construct Distribution Works and said Distribution Works are not in place to accept delivery.

(d) It is anticipated by both parties that a separate agreement will be entered into concerning the operation, maintenance, and replacement of the Distribution Works, the appointment of a Distribution Works Operating Agent and the setting and collection of appropriate charges for the care operation, maintenance and replacement of the Distribution Works.

7. DISTRIBUTION SYSTEM - ENVIRONMENTAL REVIEW: Notwithstanding any other provision of this contract, the United States will not deliver Project Water through Distribution Works to the Contractor's Reservation until additional environmental analyses as necessary, relating to the Distribution Works have been completed by the United States in accordance with the National Environmental Policy Act, and the design of Distribution Works suitable for delivery of Project Water to the Contractor pursuant to the terms of this contract is thereafter approved by the Secretary, it being the intent of the parties hereto that such approval is to be based on environmental considerations related only to the Distribution Works.

B. GENERAL PROVISIONS:

B.1 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and shall obtain all required permits or licenses from the appropriate Federal authorities.

B.2 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

B.3 Rules, Regulations, and Determinations.

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract and the laws of the United States and to add to or to modify such rules and regulations as he may deem proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations.

(b) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or

unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor.

8.4 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters the Contracting Officer may reasonably require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

8.5 Notices. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor when mailed, postage prepaid, or delivered to the appropriate agent of the United States, or when mailed, postage prepaid, or delivered to the [Tribe and address]. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

8.6 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate

funds or the absence of any allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

8.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

8.8 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. This restriction shall not be construed to extend to this contract if made with a corporate or company for its general benefit.

(b) No official of the Contractor shall receive any benefit that may arise by reason of this contract other than as a landowner within the project and in the same manner as other landowners within the project.

8.9 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisments for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or a understanding, a notice to be provided by the Agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8.10 Title VI, Civil Rights Act of 1964.

(a) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the grounds of race, color, religion, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

9. CREDIT AGAINST WATER RIGHTS:

At such time as Contractor's Water Rights, are finally determined, the Project Water delivered to the Contractor under this contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and Contractor at that time. Thereafter Contractor may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this contract. Until such time as Contractor's Water Rights are finally determined the Project Water delivered to Contractor is supplemental water and is not credited against, or in any way related to, Contractor's Water Rights.

10. ALLOCATION NOT TO RELEASE RIGHTS

Neither the allocation of Project Water to the Contractor or otherwise, nor the execution of this contract shall constitute a taking, either directly or by implication of any water rights of the tribes, nor shall it be construed to alter or release the right of any person or entity, including the Contractor, to assert rights to water all without limitation as to whether the water is surface or groundwater, nor will it constitute the Department's opinion as to the legal rights of the tribe.

11. EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of Subarticles 7.1, 7.9, nd 7.10 apply except where they conflict with Sections 701(b)(1) and 703)i) of Title VII of the Civil Rights Act of 1964, 73 Stat. 253-257, 42 U.S.C. s200e, which pertains to Indian Tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year above written.

THE UNITED STATES OF AMERICA

BY _____
Office of the Secretary

San Carlos Apache Tribe

ATTEST:

BY _____

Tribal Chairman

_____

ATTEST:

BY _____

_____

SECRETARIAL ORDER NO.

Delegation of authority: Central Arizona Project

1. Purpose. The purpose of this Order is to delegate authority to execute water delivery contracts with the 12 Indian Tribes and Communities allocated Central Arizona Project water on December 1, 1980. (45 Fed. Reg. 81265, December 10, 1980)

2. Authority. 43 U.S.C. §§ 614 et seq. (1928); 43 U.S.C. §§ 1501 et seq. (1968); 43 U.S. § 1457; Title 25, U.S. Code, 5 U.S.C. § 301.

3. Delegation. There is hereby delegated to Daniel P. Beard, Deputy Assistant Secretary, Land and Water Resources, the authority to execute contracts with the 12 Indian Tribes and Communities named in 45 Fed. Reg. 81265, December 10, 1980, for delivery of the Central Arizona Project water allocated to them on December 1, 1980.

4. Effective date. This Order is effective immediately, to remain in effect until February 1, 1981, unless first rescinded or modified.

Cecil D. Andrus
Secretary of the Interior

12-11-80
Date

Contract No. SANCARLOSAP121180A
Amendment No. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Contract No. SANCARLOSAP121180A
Amendment No. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 3, made this _____ day of _____1999, hereinafter called "Amendment No. 3," to Contract No. SANCARLOSAP121180A, as amended, (Tribal CAP Water Delivery Contract) or (Contract), in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto; the Boulder Canyon Project Act dated December 21, 1928 (45 Stat. 1057) 43 USC § 614 et seq.; the Colorado River Basin Project Act dated September 30, 1968, as amended, (82 Stat. 885) 43 USC § 1501 et seq.; the San Carlos Apache Tribe Water Rights Settlement Act of 1992, as amended (San Carlos Settlement Act); and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called "Secretary," in relation to Indians and Indian tribes as contained in Title 25 USC and 43 USC § 1457; between the UNITED STATES OF AMERICA, hereinafter called "United States," and the SAN CARLOS APACHE TRIBE, hereinafter called "Tribe," located on the San Carlos Apache Reservation, Arizona, both sometimes collectively called "Parties;"

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Amendment No. 1 to the Contract, executed on January 29, 1999, obligated the Secretary to make available to the Tribe all of the water referred to in subsection (f)(2) of Section 2 of the Ak-Chin Indian Community Water Rights Settlement Act of October

19, 1984, which is not required for delivery to the Ak-Chin Indian Reservation under that Act, and authorized the Tribe to lease such water pursuant to terms and conditions set forth in subsection 3711(d) of the San Carlos Settlement Act;

2.2 WHEREAS subsection 3704(c) of the San Carlos Settlement Act provides, among other things, that the Secretary shall reallocate, for the exclusive use of the Tribe, an annual entitlement to fourteen thousand six hundred sixty-five (14,665) acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation; and

2.3 WHEREAS subsection 3706(b)(1) of the San Carlos Settlement Act requires, among other things, the Secretary to amend the Tribal CAP Water Delivery Contract to include therein the obligation of the United States to deliver to the Tribe, upon the same terms and conditions set forth in the Tribal CAP Water Delivery Contract, water from the source described in subsection 3704(c) of the San Carlos Settlement Act; *Provided, however*, That pursuant to subsection 3706(b)(1) of the San Carlos Settlement Act, the cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver Water shall not exceed the cost of construction of the delivery and distribution system for twelve thousand seven hundred (12,700) acre-feet of CAP Water originally allocated to the Tribe;

2.4 WHEREAS, Amendment No. 2 was executed by the Parties on April 29, 1999, to provide for the obligation of the United States to deliver to the Tribe water from the source described in subsection 3704(c) of the San Carlos Settlement Act; and

2.5 WHEREAS, after execution of Amendment No. 2, the Parties determined that certain technical corrections and modifications were required in the Amendment, and that it was desirable to further amend the Tribal CAP Water Delivery Contract to provide for such corrections and modifications;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein, it is agreed by the Parties hereto as follows:

3. PURPOSE OF AMENDMENT NO. 3: This Amendment No. 3 modifies the Tribal CAP Water Delivery Contract to incorporate certain provisions required by the San Carlos Settlement Act and to make certain technical corrections and modifications to Amendment No. 2.

4. REALLOCATION OF CAP WATER: The following CAP water allocations are hereby reallocated to the Tribe:

(a) All of the water referred to in subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 Stat. 2698) which is not required for delivery to the Ak-Chin Indian Reservation under that Act (Ak-Chin Water) as provided in Section 3704(a) of the San Carlos Settlement Act.

(b) All of the water referred to in subsection 3704(c) of the San Carlos Settlement Act, which is 14,665 acre-feet of water per year from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Users and Related Decisions, dated March 24, 1983 (48 FR 12466 et seq.).

5. AMENDMENT OF CONTRACT:

5.1 Amendments No. 1 and 2 to the Contract are hereby rescinded.

5.2 The following definitions are hereby added to the Contract as Subarticles 3.23 and 3.24:

3.23 "Tribe," or "San Carlos Apache Tribe," shall mean a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

3.24 "CAP Water" as used in this Amendment No. 3 shall mean Project Water as defined in subarticle 3.8 of the Contract.

5.3 In each instance where the term "Contractor" is used in the Contract, it is hereby replaced by the term "Tribe."

5.4 Subarticle 4.2 of the Contract is hereby deleted and the following substituted in lieu thereof:

4.2 Term of Contract: This Contract shall become effective upon its execution and shall remain in effect through December 31, 2100; *Provided*, That this Contract may be renewed upon written request by the Tribe upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

5.5 Subarticle 4.3(e) of the Contract is hereby deleted and the following substituted in lieu thereof:

(e) The Tribe shall not sell or permit the sale or other disposition of any Project Water for use outside the Tribe's Reservation except:

(1) The Tribe is hereby authorized to enter into Project Water lease agreements or options to lease Project Water to which the Tribe is entitled under this Contract, as amended, within Maricopa, Gila, Graham, Greenlee, Pinal, and Pima Counties, for terms not exceeding one hundred (100) years, and to renew such leases; *Provided*, That all conditions in subsection 3711(b)(1) of the San Carlos Settlement Act have been met;

(2) The United States shall be a party to all lease agreements, amendments thereto, or options to lease Project Water entered into pursuant to this Contract;

(3) The United States shall deliver the Tribe's Project Water to the Tribe's lessees as provided in the Project Water lease agreements; *Provided, however*, That the Secretary shall not be obligated to make such deliveries if, in the Secretary's judgment, delivery of water to the lessees or the schedule of deliveries to the lessees would limit to a degree greater than would deliveries to the Tribe, deliveries of CAP Water under:

(a) existing CAP Water delivery contracts or subcontracts having terms of at least 50 years;

(b) future CAP Water delivery contracts or subcontracts, having terms of at least 50 years, for the 65,647 acre-feet of M&I Water which was not contracted for by the original allottees under the Secretarial water allocation decision published in the Federal Register on March 24, 1983; and

(c) existing contracts in which CAP Water is mandated to be delivered pursuant to statutory obligations;

(4) Except for leases which the Tribe may enter into with Scottsdale, Carefree, or the Phelps Dodge Corporation, the terms and conditions of Exhibit 11.3 to the San Carlos Apache Tribe Water Rights Settlement Agreement shall be included in all water leases; and

(5) The Tribe may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary.

5.6 Subarticle 4.5 of the Contract is hereby deleted and the following is substituted in lieu thereof:

4.5 <u>Delivery Entitlements and Obligations</u>

Subject to the provisions of this Contract, the United States or the Operating Agency shall deliver to the Tribe, annually, under this Contract, and the Tribe shall be entitled to the annual delivery of the following quantities of Project Water:

(a) 12,700 acre-feet of Project Water allocated to the Tribe in accordance with the Secretarial notice of December 1, 1980 (45 FR 81265);

(b) All of the water referred to in subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 stat 2698) which is not required for delivery to the Ak-Chin Indian Reservation under that Act; and

(c) 14,665 acre-feet of M&I Water which the Secretary previously allocated to the Phelps Dodge Corporation in the Notice of Final Water Allocations to Indians and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 FR 12446 et seq.).

5.7 Subarticle 4.9 of the Contract, Priority in Time of Shortages, is hereby deleted and the following is substituted in lieu thereof:

4.9 Priority in Time of Shortage

(a) The priority of the water referred to in subarticle 4.5(a) of this Contract shall be determined as follows. In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including the Tribe) and to non-Indian contractors for municipal and industrial uses according to the following formula:

IP = I/(I + MI) where:

- IP is the Indian Share of Project Water;
- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes; provided that,

for the purposes of this formula, such ten (10%) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; Provided that, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

- MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

(b) For purposes of delivery in times of shortage, Ak-Chin Water delivered pursuant to this Contract shall retain the priority such water held prior to being reallocated to the Tribe. Section 2(c) of the Ak-Chin Indian Community Water Rights Settlement Act of October 19, 1984, defines "time

of shortage" of Colorado River water available to the Central Arizona Project. That definition is applicable to determining the "time of shortage" for the Ak-Chin Water available to the Tribe under this Amendment No. 3.

(c) For purposes of delivery in times of shortage, the water referred to in subarticle 4.5(c) of this Contract shall retain the same priority as it had before it was reallocated to the Tribe.

5.8 Subarticle 4.11 of the Contract, Exchange Water, is hereby amended by adding the following additional paragraph:

The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange all or part of the water available to it under this Contract.

5.9 Subarticle 6(a) of the Contract is hereby deleted and the following is substituted in lieu thereof:

(a) Except as provided in the San Carlos Settlement Act and this Contract, repayment of construction costs associated with the Tribe's Project Water shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

5.10 Article 6 of the Contract is hereby amended by adding subarticles 6(e), 6(f), and 6(g) after subarticle 6(d):

(e) Water service capital charges, municipal and industrial subcontract charges, or any other charges or payments for CAP Water other than OM&R costs shall be non-reimbursable to the extent provided in the San Carlos Settlement Act.

(f) The United States shall not impose upon the Tribe the OM&R charges described and set forth in Article 6 of the Tribal CAP Water Delivery Contract or any other charge with respect to CAP Water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(g) The Tribe shall not be required to pay OM&R costs for CAP Water under this Contract for which the Tribe has no delivery system through which to deliver such water, or for which the Tribe has not placed a delivery order pursuant to subarticle 4.6 of the Contract.

6. NEW FACILITIES: The Secretary shall design and construct new facilities to deliver the water that is subject to this Contract in accordance with the San Carlos Settlement Act.

7. CONTROLLING TERMS AND CONDITIONS:

7.1 Except as expressly provided in this Amendment No. 3, the terms and provisions of the Contract shall remain in full force and effect. In the event any of the terms and conditions of this Amendment No. 3 and the Contract conflict, this Amendment No. 3 shall control.

7.2 This Amendment No. 3 will become effective on the "Enforceability Date" set forth in paragraph 22.4.1 of the San Carlos Apache Tribe Water Rights Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 the day and year above written.

THE UNITED STATES OF AMERICA

By: _____
Robert W. Johnson
Regional Director
Lower Colorado Region
Bureau of Reclamation

LEGAL REVIEW AND APPROVAL:

By: _____
Field Solicitor
Phoenix, Arizona

SAN CARLOS APACHE INDIAN TRIBE

By: _____
Chairman

ATTEST:

By: _____
Secretary

EXHIBIT B

ARTICLE 6.4 TO SCOTTSDALE'S

CAP SUBCONTRACT

~~Contractor and the Contracting Officer.~~

~~6.3 Notices. Any notice, demand, or request~~ authorized or required by this subcontract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P. O. Box 427, Boulder City, Nevada 89005, on behalf of the Contractor or Subcontractor; to the Central Arizona Water Conservation District, 23636 North 7th Street, Phoenix, Arizona 85024, on behalf of the United States or Subcontractor; and to the City of Scottsdale, 3939 Civic Center Plaza Scottsdale, AZ 85251 on behalf of the United States or Contractor. The designation of the addressee or the address may be changed by notice given in the same manner as ~~provided in this Article for other notices.~~

6.4 Water Conservation Program.

(a) While the contents and standards of a given water conservation program are primarily matters of State and local determination, there is a strong Federal interest in developing an effective water conservation program because of this subcontract. The Subcontractor shall develop and implement an effective water conservation program for all uses of water which is provided from or conveyed through Federally constructed or Federally financed facilities. That water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(b) A water conservation program, acceptable to the Contractor and the Contracting Officer, shall be in existence prior to one or all of the following: (1) service of Federally stored/conveyed water; (2) transfer of operation and maintenance of the Project facilities to the Contractor or Operating Agency; or (3) transfer of the Project to an operation and maintenance status. The distribution and use of Federally stored/conveyed water and/or the operation of Project facilities transferred to the Contractor shall be consistent with the adopted water conservation program. Following execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor shall resubmit the water conservation plan to the Contractor and the Contracting Officer for review and approval. After review of the

results of the previous 5 years and after consultation with the Contractor, the Subcontractor, and the Arizona Department of Water Resources or its successor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.

~~6.5 Rules, Regulations, and Determinations.~~

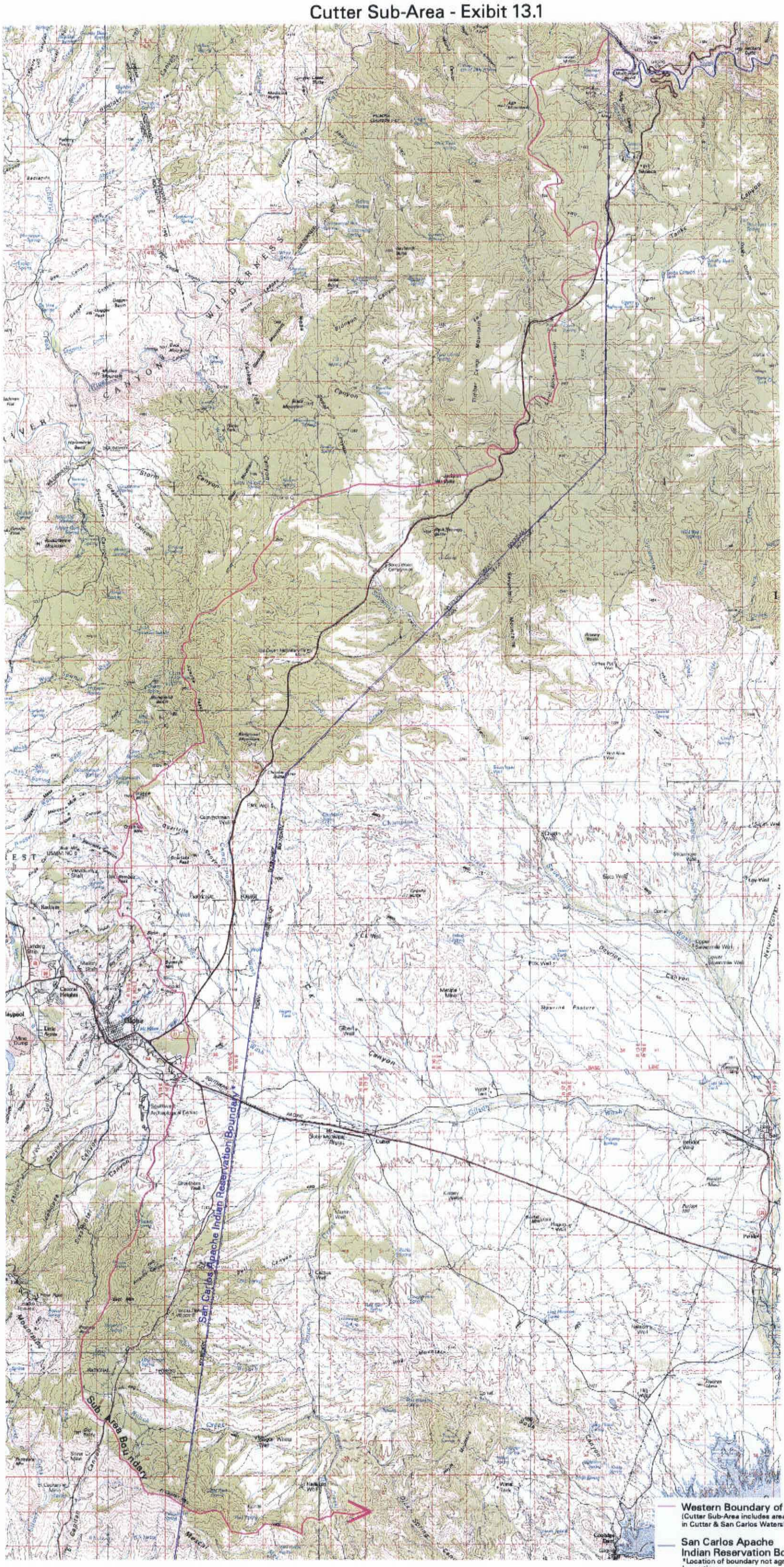
~~(a) The Contracting Officer shall have the right~~ to make, after an opportunity has been offered to the Contractor and Subcontractor for consultation, rules and regulations consistent with the provisions of this subcontract, the laws of the United States and the State of Arizona, to add to or to modify them as may be deemed proper and necessary to carry out this subcontract, and to supply necessary details of its administration which are not covered by express provisions of this subcontract. The Contractor and Subcontractor shall observe such rules and regulations.

(b) Where the terms of this subcontract provide for action to be based upon the opinion or determination of any party to this subcontract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor or Subcontractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor or Subcontractor and shall be conclusive upon the parties.

6.6 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this subcontract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this subcontract if made with a corporation or company for its general benefit.

(b) No official of the Subcontractor shall receive any benefit that may arise by reason of this subcontract other than as a water user within the Project and in the same manner as other water users within the Project.

6.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this subcontract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this subcontract or any part or interest therein shall be valid until approved by the Contracting Officer.

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