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LEGAL
DEPT OF WATER RESOURCES

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. W1-207** STIPULATION OF THE PARTIES TO THE AMENDED AND RESTATED GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT SETTING FORTH THE TERMS OF THE SETTLEMENT

THIS STIPULATION, dated as of May 23, 2006, is entered into among the United States of America; the Gila River Indian Community (hereinafter referred to as the "Community"); the State of Arizona, Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; the Roosevelt Water Conservation District; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and Drainage District; Franklin Irrigation District; Gila Valley Irrigation District; the San Carlos Irrigation and Drainage District; the Hohokam Irrigation and Drainage District; the Buckeye Irrigation Company; the

Buckeye Water Conservation and Drainage District; the Central Arizona Water Conservation District; Phelps Dodge Corporation; the Arizona Game and Fish Commission; the Arizona Water Company; the Arizona Cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale and Tempe; and the Arizona Towns of Florence, Mammoth, Kearny, Duncan and Gilbert.

1.0 RECITALS

1.1 The water rights claims of the Gila River Indian Community ("Community"), Members and Allottees and the United States acting on behalf of the Community, Members and Allottees are to be permanently settled by agreement among the parties to this Stipulation. The terms of the Gila River Indian Community Water Settlement Agreement among the settlement Parties were ratified and approved by Congress in the *Arizona Water Settlements Act*, P.L. 108-451 ("Settlements Act" or "Act"). Pursuant to section 203(a) of the Settlements Act, the Parties amended and restated the settlement agreement to make it consistent with the Settlements Act. This amendment and restatement is hereinafter referred to as the "Settlement Agreement."

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

1.3 The parties to this Stipulation are submitting the Settlement Agreement to this Court for its approval pursuant to Section 207 of the Settlements 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.

1.4 Proceedings to determine the nature and extent of the rights to water of the Gila River Indian Community, Members, Allottees, the United States, and other claimants are pending in the Gila

River Adjudication Proceedings, and enforcement actions regarding the interpretation and enforcement of the Globe Equity Decree are pending before the Globe Equity Enforcement Court.

1.5 Recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the Community, its neighboring non-Indian communities and others have agreed to settle permanently the disputes as provided in Paragraphs 4.0 through 13.0, 16.0, 19.0, 20.0, 22.0, 25.0, 26.0, 28.0 and 30.0 in the Settlement Agreement and to seek funding, in accordance with applicable law, for the implementation of the settlement.

1.6 In keeping with its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

1.7 The complete Settlement Agreement, including all related and incorporated agreements, between the Settlement Parties is attached hereto as Exhibit 1 and by this reference incorporated herein. The complete Settlement Agreement, including all related and incorporated agreements, between the Settlement Parties will be on file in this court, in every Arizona County, and at the Arizona Department of Water Resources ("ADWR") as provided in the Order for Special Proceedings, a copy of which is attached as exhibit B of the Application for an Order for Special Proceedings. The Settlement Agreement is intended to be enforceable among the undersigned parties in pursuing their claims in these proceedings.

NOW, THEREFORE, in consideration of the promises and agreement hereinafter set forth, the parties hereto stipulate as follows:

2.0 DEFINITIONS

Except as provided in the following sentence or where otherwise specifically defined herein, the capitalized terms used in this Stipulation shall be defined as stated in the Settlement Agreement. Exhibits to the Settlement Agreement are referred to as "Exhibit __ to the Settlement Agreement". Exhibits to this Stipulation are referred to as "Exhibit ___".

3.0 STIPULATIONS AND AGREEMENTS

3.1 The Settlement Agreement includes as exhibits additional and subsidiary documents in the forms of contracts, stipulations for settlement of litigation, waivers of claims, maps, terms of legislation, reports and policy statements. Prior to the Enforceability Date, Settlement Parties have agreed not to object or contest the terms and conditions of the Exhibits to the Settlement Agreement in any judicial, administrative or legislative proceedings relating to the approval of the Settlement Agreement; provided, however, that each Exhibit to the Settlement Agreement is binding only on the specific parties to such Exhibit unless expressly provided otherwise in Exhibit 25.18A or Exhibit 25.18B. No Settlement Party has, by reason of the Settlement Agreement, any third-party enforcement or other rights under any Exhibit to the Settlement Agreement to which such a Party is not a party, unless otherwise provided in the Exhibit or in Exhibits 25.18A or 25.18B.

3.2 The description of the terms of the Settlement Agreement set forth in this Stipulation is not intended to supersede the terms of the Settlement Agreement. In the event any aspect of the Stipulation varies from or conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control. No provision or term in this Stipulation shall be construed to alter or amend in any manner any of the terms or provisions of the Settlement Agreement or the Act.

4.0 COMMUNITY'S WATER RIGHTS

4.1 The Community, and the United States on behalf of the Community and Allottees, shall have the following rights to water, which shall be held in trust by the United States on behalf of the Community, and on behalf of the Allottees as described in section 204 of the Act:

SOURCE	AMOUNT
Underground Water	156,700 AFY
Globe Equity Decree Water	125,000 AFY
Haggard Decree Water	5,900 AFY
Community CAP Indian Priority Water	173,100 AFY
RWCD CAP Water	18,600 AFY
RWCD Surface Water	4,500 AFY
HVID CAP Water	18,100 AFY
Asarco CAP Water[1]	17,000 AFY
SRP Stored Water[2]	20,000 AFY
Chandler Contributed Reclaimed Water	4,500 AFY
Mesa Reclaimed Water Exchange Premium	5,870 AFY
Chandler Reclaimed Water Exchange Premium	2,230 AFY
New CAP NIA Priority Water	102,000 AFY
TOTAL	**653,500 AFY**

4.1.1 The Community, and the United States on behalf of the Community, Members and Allottees recognize that, pursuant to 25 U.S.C. §381, allotted lands within the Gila River Indian

[1] Subject to completion of exchange agreement and settlement between the Community and Asarco.

[2] SRP has conditionally agreed to provide an average of five hundred (500) AFY of Blue Ridge Stored Water to the Community pursuant to Subparagraph 12.13 of the Settlement Agreement. In the event the conditions in Subparagraph 12.13.1 of the Settlement Agreement are satisfied, the amount of water listed in subparagraph 4.1 to be provided by SRP shall increase to twenty thousand five hundred (20,500) AFY and the amount of Underground Water listed in subparagraph 4.1 shall be reduced to one hundred fifty-six thousand two hundred (156,200) AFY.

Reservation ("Reservation") have an appurtenant right to an allocation by the Community for irrigation purposes of the water set forth in Subparagraph 4.1 of the Settlement Agreement. As provided in the Settlements Act, the Community shall enact a Water Code, pursuant to which the Community shall regulate, among other things, such allocation by the Community. The Water Code shall provide Allottees a process to enforce this right against the Community. Nothing in this paragraph shall be construed to authorize any action, claim or suit by an Allottee against any person, entity, corporation, or municipal corporation, under Federal, State or other law.

4.1.2 Except as otherwise provided in the Settlement Agreement, the quantities of water associated with the sources described in subparagraph 4.1 shall not be construed to limit or guarantee the quantities of water available from those sources in any Year.

5.0 ACCOUNTING AND LIMITATIONS

5.1 The Community, Members and Allottees, and the United States on behalf of the Community, Members Allottees, collectively, shall not Divert for use on the Reservation more than an average of six hundred fifty-three thousand five hundred (653,500) AFY of water from any combination of sources, calculated as provided in Subparagraph 4.2 and Subparagraphs 4.3, 4.4 and 4.5 of the Settlement Agreement whether or not such sources are listed in Subparagraph 4.1 of the Settlement Agreement.

5.2.1 For purposes of determining compliance with the limitations on total Diversions of Subparagraph 4.2 of the Settlement Agreement, the Community, Members and Allottees and the United States on behalf of the Community, Members and Allottees, collectively, may Divert more than six hundred fifty-three thousand five hundred (653,500) acre-feet of water in any Year or Years, provided that such Diversions, as calculated herein, shall not exceed in the aggregate six million five hundred thirty-five thousand (6,535,000) acre-feet for any period of ten (10) consecutive Years, reckoned in

continuing progressive series, beginning on January 1 of the Year immediately succeeding the Year in which the Enforceability Date occurs. In no Year may the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, Divert an amount of water that would cause the aggregate Diversions for any period of ten (10) consecutive Years to exceed six million five hundred thirty-five thousand (6,535,000) acre-feet.

5.2.2 Subject to the restrictions on Pumping during the Build-Out Period as described in Subparagraph 4.5.2 of the Settlement Agreement, the Settlement Agreement recognizes and confirms the right to Divert Underground Water in amounts greater than one hundred fifty-six thousand (156,700) acre-feet in any Year or Years so long as Diversions from all sources of water do not exceed an average of six hundred fifty-three thousand five hundred (653,500) AFY, calculated as provided in Subparagraph 4.2 of the Settlement Agreement.

5.3 The Community shall install and maintain devices capable of measuring and recording all Diversions of Underground Water by or on behalf of the Community. The Community shall use its best efforts to maintain the accuracy of the measuring and recording devices in accordance with industry standards. The Community shall have no obligation to replace any Diversion measuring devices that meet the accuracy standards of the preceding sentence. The Settlement Agreement includes additional terms that provide the means for calculating and measuring the Amount of Water Diverted for use on the Reservation. (See Subparagraphs 4.3 through 5.1.1 of the Settlement Agreement, inclusive.)

6.0 UNDERGROUND WATER

6.1 The Settlement Agreement provides for the establishment of the Southside Replenishment Program to protect the Reservation from the effects of off-Reservation Pumping. The establishment of the Southside Replenishment Program is a condition for the enforceability of the

Settlement Agreement. Through Chapter 143 of the Forty-seventh Legislature (First Regular Session), the Arizona Legislature enacted legislation intended to make the necessary changes in State law to fulfill this condition for the enforceability of the Settlement Agreement. This Arizona statute is attached hereto as Exhibit 2 and incorporated by this reference.

6.2 The Community and the United States on behalf of the Community, and on behalf of the Allottees as described in section 204 of the Act shall have the right to Divert Underground Water from points located within the Reservation as provided in Paragraph 4.0 of the Settlement Agreement, subject to such further limitations as are set forth in section 204 of the Act and as may be provided by the Water Code.

7.0 GLOBE EQUITY DECREE

7.1 The one hundred twenty-five thousand (125,000) AFY of Globe Equity Decree Water set forth in subparagraph 4.1 neither guarantees, nor does it in any way limit, the decreed amount of water to which the Community, Members and Allottees and the United States on behalf of the Community, Members and Allottees are entitled under articles V and VI of the Globe Equity Decree.

7.2 Under the Settlement Agreement the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, shall not seek to increase the decreed amount of water to which they are entitled under articles V and VI of the Globe Equity Decree; provided, however, that the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees shall be able to seek enforcement of the Globe Equity Decree. The United States shall hold such decreed rights in trust on behalf of the Community, and on behalf of the Allottees as described in section 204 of the Act.

7.3 Subject to Subparagraph 30.22 of the Settlement Agreement, the rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe

Equity Decree) shall be binding upon all parties to the Gila River Adjudication Proceedings, and such rights shall be included in the judgment filed in the Gila River Adjudication Proceedings approving the Settlement Agreement, the form of which is attached as Exhibit 25.18.A to the Settlement Agreement. Enforcement of the rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree) shall be subject to Paragraph 26.0 of the Settlement Agreement. The satisfaction of the requirements described in this subparagraph 7.3 is not intended by the Parties to change the forum for enforcement of the Globe Equity Decree as among the parties to the Globe Equity Decree.

8.0 HAGGARD DECREE/MARICOPA CONTRACT/SACATON CONTRACT

8.1 The rights of the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees as set forth in the Haggard Decree, as modified in the Benson-Allison Decree to 540 miners inches of water from the Salt River, shall be binding upon all parties to the Gila River Adjudication Proceedings, and such rights shall be included in the judgment in the Gila River Adjudication Proceedings approving the Settlement Agreement, the form of which is attached as Exhibit 25.18.A to the Settlement Agreement. Such rights to Haggard Decree Water shall be held in trust by the United States on behalf of the Community and on behalf of the Allottees as described in section 204 of the Act.

8.2 The Parties to the Settlement Agreement ratify, confirm and declare to be valid the Maricopa Contract, which provides that SRP shall make water available for an annual Diversion of five thousand nine hundred (5,900) acre-feet at the location of the SRP delivery point to the Community on the Maricopa Drain. The Community, Members and Allottees and the United States on behalf of the Community, Members and Allottees shall accept delivery of water under the Maricopa Contract in lieu

of water to which they are entitled under the Haggard Decree, as modified in the Benson-Allison Decree, in full satisfaction of such rights.

8.3 The agreement between the United States of America and the Salt River Valley Water Users' Association dated June 3, 1907, as subsequently amended, commonly referred to as the Sacaton Contract, is terminated on the Enforceability Date and shall be of no further force or effect after that date.

9.0 COMMUNITY CAP WATER DELIVERY CONTRACT AND DESIGN AND CONSTRUCTION OF FACILITIES

9.1 The Act and Settlement Agreement require the construction of certain irrigation facilities on the Reservation and that the construction costs allocable to the Community associated with these facilities are non–reimbursable.

9.2 The Community may, with the approval of the Secretary, enter into contracts to lease, options to lease, contracts to exchange or options to exchange Community CAP Water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz or Coconino counties, Arizona, providing for the temporary delivery to others of any portion of the Community's CAP Water. Contracts to lease and options to lease shall be for a term not to exceed one hundred (100) years.

9.3 The Settlement Agreement includes terms and conditions applicable to the lease of Community CAP water to other entities. Any lease of Community CAP Water shall require the payment of all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of leased water by the lessee.

9.4 The Settlement Agreement includes terms and conditions applicable to payment of the CAP Operating Agency of CAP Pumping Energy Charges associated with the delivery of Community CAP Water.

9.5 The Settlement Agreement includes terms and conditions concerning the shortage sharing criteria and distribution of CAP water in time of shortage.

10.0 RWCD AGREEMENT

In addition to the 18,600 AFY of RWCD CAP Water reallocated to the Community described in paragraph 4.1, the Community shall acquire 4,500 AFY of RWCD surface water. Upon the Enforceability Date, the terms of the RWCD-Community Agreement Dated May 10, 1999, Exhibit 9.1 to the Settlement Agreement are amended pursuant to the terms of the Amended and Restated Amendment No.1 thereto, which is also attached to the Settlement Agreement as Exhibit 9.1 to the Settlement Agreement. If the RWCD Agreement is not approved in the Adjudication, all Parties retain any rights they have to object to the RWCD Agreement.

11.0 COMMUNITY/PHELPS DODGE AGREEMENT

11.1 The Settlement Agreement provides that subject to certain conditions, SCIDD, the Community and the United States to the extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIDD and the Miscellaneous Flow Lands agree not object to the validity or characteristics of certain Phelps Dodge's Water Rights claims, but reserving the right to challenge in any future proceedings any applications for change of use, place of use or exchange with respect to specified Water Rights claims. The Settlement Agreement places certain conditions on the Diversion of water by Phelps Dodge.

12.0 ASARCO CAP WATER

12.1 The Community represents that it will continue to meet and engage in good faith negotiations for at least two years in an effort to reach an agreement for Asarco to relinquish Asarco CAP Water in consideration of the Community's waiver of certain rights, claims and objections.

13.0 SRP/COMMUNITY AGREEMENTS

13.1 SRP Stored Water. As a component of the Water Right provided for in paragraph 4.1, hereof, the Community shall be entitled to 20,000 or 20,500 AFY of SRP Stored Water, provided as follows:

13.1.1 Except as provided in Subparagraph 12.2 of the Settlement Agreement,[3] SRP shall credit the Community annually with an entitlement to SRP Stored Water ranging from two thousand (2,000) to thirty-five thousand (35,000) acre-feet when Net SRP Reservoir Storage levels on May 1 of each year exceed one hundred thousand (100,000) acre-feet in accordance with Exhibit 12.1 of the Settlement Agreement. At Net SRP Reservoir Storage levels on May 1 of less than or equal to one hundred thousand (100,000) acre-feet, no SRP Stored Water shall be credited to the Community for that year. A year for purposes of this paragraph shall be from May 1 through the following April 30.

13.1.2 In addition to the SRP Stored Water described in13.1.2, SRP has conditionally agreed to credit the Community an annual entitlement to Blue Ridge Stored Water ranging from zero (0) to eight hundred thirty six (836) acre-feet pursuant to Subparagraph 12.13 of the Settlement Agreement.

[3] Subparagraph 12.2 of the Settlement Agreement provides: "The Community's entitlement to SRP Stored Water under Subparagraph 12.1 shall phase in over five (5) years as provided in this Subparagraph 12.2. The Community shall be entitled to twenty percent (20%) of the SRP Stored Water entitlement under Subparagraph 12.1 in the year in which the Enforceability Date occurs, and the percentage shall increase by twenty percent (20%) each year thereafter over the subsequent four (4) years on a straight-line basis, rising to one hundred percent (100%) of the Community's entitlement under Subparagraph 12.1."

13.2 Community/SRP Water Exchange. The Settlement Agreement provides for the exchange of Community/SRP Exchange Water for SRP water stored in the Salt River Reservoir system.

13.3 SRP-Community Direct Cap Water Delivery. The Settlement Agreement provides that SRP shall accept the delivery of Community CAP Water, which SRP shall deliver to the Community as provided in the Settlement Agreement.

13.4 SRP Drains. The Settlement Agreement provides the terms and conditions for the use, operation and maintenance of the nine (9) Drain Ditches constructed and operated by SRP that are located in whole or in part on the Reservation.

14.0 CAP WATER LEASE AGREEMENTS WITH MUNICIPALITIES

14.1 The Settlement Agreement provides that the Community shall lease and the Cities shall lease from the Community, forty-one thousand (41,000) acre-feet of the CAP Indian Priority Water per year for a term of one hundred (100) years. The Cities shall pay operation, maintenance and replacement charges to the CAP Operating Agency in accordance with the terms of the Lease Agreements, but Lease Agreements shall not obligate either the Cities or the Community to pay CAP capital repayment charges or any other charges, payments or fees, except as specifically provided in the Lease Agreements.

14.2 The Settlement Agreement describes certain conditions for the future lease of Community CAP Water.

15.0 CITIES EXCHANGE OF RECLAIMED WATER

As a component of the Settlement Agreement, the United States, the Community and the cities of Mesa and Chandler have entered into an agreement providing the exchange of Reclaimed Water for Community CAP Exchange Water.

16.0 BUCKEYE IRRIGATION COMPANY

The Articles of Agreement between the United States of America and Buckeye Irrigation Company entered into on May 29, 1947, is made a part of the Settlement Agreement on the Enforceability Date; provided, however, that nothing in such Articles of Agreement shall be construed to limit Pumping of Underground Water on the Reservation when such Pumping is in conformance with the terms and conditions of the Settlement Agreement.

17.0 SCIDD AGREEMENT

17.1 The Settlement Agreement defines Community, Federal, and SCIDD obligations with respect to the rehabilitation, construction, operation and control over the project authorized by the Act of June 7, 1924, 43 Stat. 475, as amended and supplemented, commonly referred to as: the "Project", "SCIP", "SCIIP" or "San Carlos Irrigation Project," including the management of water available to the Project.

17.2 The ability of SCIDD to perform its obligations under the Settlement Agreement is conditioned upon and subject to: (1) the approval of the Settlement Agreement by a majority of SCIDD landowners in an election conducted in accordance with A.R.S. §48-3094; and (2) validation of the election results upon petition by SCIDD to the Pinal County Superior Court in accordance with A.R.S. §48-3094. The former condition is satisfied.

18.0 COMMUNITY WATER CODE

18.1 The Settlements Act and Settlement Agreement provide that the Community shall have the right, subject to applicable Federal law, to allocate Water to all users on the Reservation pursuant to the Water Code, to be enacted by the Community and approved by the Secretary as provided in the Settlements Act, and manage, regulate and control the use on the Reservation and on Off-Reservation Trust Land of: 1) all of the Water Rights granted or confirmed to the Community by the Settlement

Agreement; and the rights to an allocation of water for irrigation purposes recognized by Subparagraph 4.1.1 of the Settlement Agreement for the benefit of allotted lands within the Reservation.

18.2 The Settlements Act and Settlement Agreement provide the means and manner for the consideration and determination by the Community of any request by any water users on the Reservation (including any water users on allotted land), for an allocation of water for irrigation purposes, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions.

19.0 WAIVERS OF CLAIMS AND RESERVATION OF RIGHTS

The Settlement Agreement provides for the waiver of claims and retention of rights in Subparagraphs 25.1 through 25.13, inclusive. The waivers, including retention of Rights, are Exhibits 25.1.1 through 25.11, inclusive, of the Settlement Agreement and are exhibits A.1-11 to the Proposed Final Judgment, which Proposed Final Judgment is Exhibit 3 to this Stipulation.

20.0 UPPER GILA VALLEY

20.1.1 The Community, the San Carlos Irrigation and Drainage District ("SCIDD") and the United States in its capacity as trustee for the Community Members and Allottees have entered into certain agreements with the following Arizona city and towns that Divert water upstream from the Reservation:

20.1.1.1 the City of Safford; and

20.1.1.2 the Towns of Duncan, Kearny and Mammoth.

20.2 In general terms, the agreements referred to in paragraph 20.4.1 establish a "water budget" for the respective city or town. These agreements describe the respective rights of the parties thereto with respect to relevant city or town's compliance with the water budget included in each

agreement, including the rules for accounting, modification and enforcement of the water budget. These agreements also provide for mitigation of any violation of an applicable city or town water budget.

20.3 The Community, SCIDD and the United States in its capacity as defined therein have entered into Exhibit 26.2 to the Settlement Agreement ("UVD Agreement"), which provides for the forbearance of certain claims by the Community, SCIDD and the United States in its capacity as defined therein against certain individuals and entities upstream and to the east of Coolidge Dam other than the San Carlos Apache Tribe (or the United States acting on behalf of or as trustee for the San Carlos Apache Tribe). The beneficiaries of the UVD Agreement include both the signatories thereto and certain individuals Diverting water that act or refrain from acting in the manner specified in the UVD Agreement.

20.4 The Settlement Agreement provides for the establishment of the Upper Gila River Watershed Maintenance Program. The establishment of the Upper Gila River Watershed Maintenance Program is a condition for the enforceability of the Settlement Agreement. Through Chapter 143 of the Forty-seventh Legislature (First Regular Session), the Arizona Legislature enacted legislation intended to make the necessary changes in State law to fulfill this condition for the enforceability of the Settlement Agreement. This Arizona statute is attached hereto as Exhibit 2 and incorporated by this reference.

20.5 The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, agree not to exercise their respective rights under the Globe Equity Decree to challenge, object or call upon certain uses of Water Diverted from within the San Pedro Ag and New Large Industrial Use Impact Zone for

irrigation of Eligible Safe Harbor Acres, if the otherwise eligible Diverter files with the Gila River Adjudication Court, with a copy to the Community, SCIDD and the United States, a description of the Eligible Safe Harbor Acres that such Non-GE 59 Water User owns. Nothing in this paragraph precludes the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, from objecting to a use that exceeds the amount adjudicated in the Gila River Adjudication Proceeding.

20.6 The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, agree not to exercise their respective rights under the Globe Equity Decree to challenge, object or call upon certain uses of Water Diverted from within the San Pedro M&I and Domestic Purposes Impact Zone or the Gila River Impact Zone for M&I Uses, if the otherwise eligible Diverter files with the Gila River Adjudication Court, with a copy to the Community, SCIDD and the United States, an accounting of Water Diverted from within an Impact Zone and used for M&I Uses during the period 1997 through 2001, inclusive. Nothing in this paragraph precludes the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, from objecting to a use that exceeds the amount adjudicated in the Gila River Adjudication Proceeding or challenging the accuracy of the accounting filed.

20.7 The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, agree not to

exercise their respective rights under the Globe Equity Decree to challenge, object or call upon certain uses of Water for Domestic Purposes that exist as of January 31, 2002.

20.8 Within the San Pedro M&I and Domestic Purposes Impact Zone and the Gila River Impact Zone, the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, have agreed not to exercise their respective rights under the Globe Equity Decree to challenge, object or call upon certain uses of Water for New Domestic Uses, subject to the requirements and limits proscribed by Subparagraphs 26.8.2.5.1 and 26.8.2.5.2 of the Settlement Agreement, respectively.

20.9 Within the San Pedro Ag and New Large Industrial Use Impact Zone or the Gila River Impact Zone, the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, have agreed not to exercise their respective rights under the Globe Equity Decree to challenge, object or call upon certain uses of Water with respect to New large Industrial Use. Nothing in this paragraph precludes the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, from objecting to a use that exceeds the amount adjudicated in the Gila River Adjudication Proceeding. To be eligible for the benefits described in this paragraph, a Non-GE 59 Water User must comply with the requirements of 26.8.2.6.1 and 26.8.2.6.2, respectively.

20.10 In replacement of and not in addition to any other safe harbor described in Subparagraph 26.8.2 of the Settlement Agreement, BHP, AWC and the Town of Winkelman shall each

be entitled to the specific safe harbor for Water use subject to the requirements and limits proscribed by Subparagraph 26.8.2.7 of the Settlement Agreement.

20.11 The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to, or call upon any person or entity's use of Water Diverted in Cochise County for M&I Use or Domestic Purposes other than for a New Large Industrial Use.

20.12 ADWR, the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall agree upon a set of aerial photographs, satellite images, or both, that reflect the Eligible Safe Harbor Acres, such images will be archived in digital format, and shall be made a permanent part of the court record in the Gila River Adjudication Proceedings upon the Gila River Adjudication Court's approval of the Agreement, which shall be available for review.

20.13 Beginning on the Enforceability Date, and every five (5) Years thereafter, ADWR shall report to the Gila River Adjudication Court on the status of the use of Water Diverted or Pumped from within the Impact Zones. Such report shall include satellite imagery translated into GIS format for comparison to the map previously prepared and attached to the decree. A copy of such report shall be provided to the Community, SCIDD, and the United States.

20.14 The safe harbor rights described in Subparagraph 26.8.2 of the Settlement Agreement and described in paragraphs 20.8 to 20.16 are subject to the approval by the Gila River Adjudication Court and the signatories to this stipulation explicitly recognize the right of the Community, SCIDD,

and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree to enforce their rights under the Globe Equity Decree in the Gila River Adjudication Court for actions in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2 of the Settlement Agreement, including the provisions of Subparagraph 26.8.10 of the Settlement Agreement.

20.15 The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree agree to not object to the use of Water by a Non-GE 59 Water User as required by public authorities to respond to declared emergencies for the safety and protection of the public.

21.0 CONFIRMATION OF RIGHTS

21.1 Through the Settlement Agreement, the Settlement Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid, and shall not object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of:

21.1.1 the Community, Members, Allottees, and the United States on behalf of the Community, Members, and Allottees to Water or to the use of Water, as described in this Agreement and in the Act;

21.1.2 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 documents referred to in Subparagraph 28.2.1 of the Settlement Agreement;

21.1.3 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 documents, decrees and enactments referred to in Subparagraph 28.3 of the Settlement Agreement;

21.1.4 the City of Phoenix in the waters of the Salt and Verde rivers, which rights are described, stated, confirmed or established in the documents referred to in Subparagraph 28.5 of the Settlement Agreement;

21.1.5 the United States in the waters of the Salt River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. R-2128 issued by the State of Arizona to the U.S. Bureau of Reclamation.

21.1.6 the cities of Phoenix, Scottsdale, Mesa, Chandler, Glendale and Tempe in the waters of the Salt River, which rights are described, stated, confirmed or established in the documents referred to in Subparagraph 28.7 of the Settlement Agreement;

21.1.7 CAWCD in the waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-89719 issued by the State of Arizona to the CAWCD; and

21.1.8 RWCD and its landowners to the waters of the Salt and Verde rivers, which rights are appurtenant to RWCD lands and are described, stated, confirmed or established in the documents referred to in Subparagraph 28.8 of the Settlement Agreement.

21.2 In addition to the recognition of rights described in subparagraphs 21.1 to 21.1.8 of this Stipulation, all of the Settlement Parties, including the United States in all of its capacities except as trustee for other Indian tribes other than the Community, recognize that Water uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from

agricultural uses to M&I Uses. The Settlement Parties including the United States in all of its capacities except as trustee for Indian tribes other than the Community agree that such changes in use are valid, and that Water appurtenant to lands that 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' Assoc., et al.*, Cause No. 32021-C) and the documents referred to therein. No Settlement Party, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Settlement Parties including the United States in all of its capacities except as trustee for Indian tribes other than the Community agree that the historical practices of the cities and towns located within the geographic limits of SRRD 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 as Exhibit 30.8 to the Settlement Agreement.

21.3 Except as provided in Subparagraphs 6.2, 6.3, 25.12, 25.24, 28.1.4 and 30.9 of the Settlement Agreement, and subject to Subparagraph 28.1.3.1 of the Settlement Agreement, the Community and the United States on behalf of the Community, Members and Allottees have agreed to neither challenge nor object to claims for use of Water from the Gila River or its tributaries; provided, however, that the Community and the United States on behalf of the Community, Members and Allottees reserve and retain the right to challenge or object to any claim for use of or call for Water from the Gila River or its tributaries that includes both: (1) a priority date of 1924 or earlier, and (2) a point of Diversion at or downstream from the Diversions into the Gila Bend Canal and the Enterprise Canal.

21.4 Notwithstanding the Community's retention of its right to challenge or object to any claim for use of Water from the Gila River or its tributaries set forth in Subparagraph 28.1.3 of the Settlement Agreement, the Community and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees) shall neither challenge nor object to claims for use of Water from the Gila River or its tributaries by any Gillespie Diverter that executes the Form of Paloma Agreement.

21.5 The Community and the United States on behalf of the Community, Members and Allottees reserve and retain the right to challenge or object to any claim for use of Water by the persons or entities referred to in Subparagraph 28.1.4 of the Settlement Agreement.

21.6 Except as provided in Subparagraph 28.1.4 of the Settlement Agreement, the Community and the United States on behalf of the Community, Members and Allottees shall neither challenge nor object to claims for use of Water from the Salt, Verde, Santa Cruz and Agua Fria rivers, and their tributaries.

22.0 OTHER PROVISIONS

22.1 No modification of the Settlement Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court. Notwithstanding the foregoing, Exhibits to the Settlement Agreement may be amended by the parties to such Exhibits to the Settlement Agreement in accordance with their terms, without court approval, unless such approval is required in the Exhibit to the Settlement Agreement or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Act, or the Settlement Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

22.2 Execution of the Settlement Agreement by the Governor of the State constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 5.3, 8.23, 25.1, 26.8.1,

27.4 and 30.5 of the Settlement Agreement. Except as provided in the preceding sentence, it is not intended that the Settlement Agreement shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory, rule making, or other proceeding or matter. Except as provided in the Settlement Agreement, nothing therein shall be construed as a waiver of any rights that the State has as to its natural resources.

22.3 Any Party shall have the right to petition any court of competent jurisdiction, but not the courts of the Community, for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions, and limitations of the Settlement Agreement and monetary relief as provided for in the Settlement Agreement. Nothing contained in the Settlement Agreement waives the right of the United States, SCIDD, the Community, or the UVD Parties to object to the jurisdiction of the courts of the State to adjudicate any dispute arising under the Settlement Agreement or the Act. Furthermore, nothing in the Settlement Agreement waives the right of any Party to object to the jurisdiction of any Federal Court to adjudicate a dispute arising under the Settlement Agreement or the Act.

22.4 Several of the sources of Water described in Paragraphs 5.0 through 16.0, and 18.0 of the Settlement Agreement are dependent upon the existence of conservation, storage and other facilities, including Water delivery facilities, to deliver such Water to the Community. The destruction of any of these facilities by any cause shall not permanently extinguish the Community's right to receive Water otherwise made available by the affected facility; however, such destruction may relieve the other Parties of the obligation to deliver such Water to the Community until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the principal Parties in interest as provided by the Settlement Agreement. Any Settlement Party responsible for repairing or replacing an affected facility under other contractual arrangements shall have that same obligation under the Settlement Agreement. In the event no Settlement Party has such an 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. The provisions of this paragraph and Subparagraph 30.11 of the Settlement Agreement shall not apply to CAWCD.

22.5 No part of the Settlement Agreement should be construed, in whole or in part, as providing consent by any of the non-Indian Parties to the legislative, executive or judicial jurisdiction or authority of the Community in connection with activities, rights, or duties contemplated by the Settlement Agreement and conducted by any of those Settlement Parties outside the exterior boundaries of the Reservation. The Settlement Agreement should not to be construed as a commercial dealing, contract, lease or other arrangement that creates a consensual relationship between any non-Indian Party and the Community so as to provide a basis for the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to the Settlement Agreement under *Montana v. United States,* 450 U.S. 544 (1981) for activities conducted outside the exterior boundaries of the Reservation. The activities, rights or duties conducted or undertaken by the non-Indian parties pursuant to the Settlement Agreement outside the exterior boundaries of the Reservation shall not be construed as conduct that threatens or affects the political integrity, economic security or health and welfare of the Community so as to provide a basis for the exercise of the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to the Settlement Agreement under *Montana v. United States 450 U.S. 544 (1981).* Benefits and rights accruing to the non-Indian Parties to the Settlement Agreement are provided as consideration for benefits and rights accruing to the Community, and shall not be construed as privileges, benefits, tribal services or other advantages of civilized society provided by the Community that would justify the imposition of the Community's legislative, executive or judicial authority over those Parties in regard to the activities, rights and duties conducted outside the exterior boundaries of the Reservation. The enactment of legislation authorizing or ratifying the Settlement Agreement shall not be construed as a congressional delegation of authority

to the Community of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

22.6 Nothing in the Settlement Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any tribe, band or community other than the Community.

NOW THEREFORE,

The parties to this Stipulation request that, upon this Court's approval of the Stipulation and Settlement Agreement, and upon the date the Secretary of the Interior causes to be published in the Federal Register a statement of findings that the conditions set forth in Section 207 of the Settlements Act have occurred, this Court enter the Judgment and Decree attached as Exhibit 3 hereto fully, finally and permanently adjudicating all water rights claims of the Community, Members and Allottees, and the United States acting on behalf of the Community, Members and Allottees, to the water supplies within this Court's jurisdiction as provided by the terms of the Settlement Agreement.

RESPECTFULLY SUBMITTED this 23 day of May 2006,

THE UNITED STATES OF AMERICA

Patrick Barry
Attorney, Department of Justice
Environment & Natural Resources Division
Indian Resources Section
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Washington, D.C. 20026-4378
(202) 305-0254

By: _____

STATE OF ARIZONA

Janet Napolitano,
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By: _____

GILA RIVER INDIAN COMMUNITY

By: _____

SALT RIVER PROJECT AGRICULTURAL
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By: _____

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SALT RIVER VALLEY WATER
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ROOSEVELT WATER CONSERVATION

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CITY OF CHANDLER

By: _____
City Attorney

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By: Stephen R. Cooper

TOWN OF DUNCAN

By: _____

TOWN OF GILBERT

By: _____

MARICOPA-STANFIELD IRRIGATION

& DRAINAGE DISTRICT

By: _____

CENTRAL ARIZONA IRRIGATION AND

DRAINAGE DISTRICT

By: _____

FRANKLIN IRRIGATION DISTRICT

By: _____ *

L. Anthony Fines
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Attorneys for the Franklin Irrigation District

* Subject to: Amendment No. 1 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement, and the Amended and Restated Forbearance Agreement Among the Gila River Indian Community, the United States of America, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, and Other Parties Located in the Upper Valley of the Gila River.

GILA VALLEY IRRIGATION DISTRICT

By: _____ *

L. Anthony Fines
Law Offices of L. Anthony Fines, P.C.
Attorney For Gila Valley Irrigation District

* Subject to: Amendment No. 1 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement, and the Amended and Restated Forbearance Agreement Among the Gila River Indian Community, the United States of America, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, and Other Parties Located in the Upper Valley of the Gila River.

SAN CARLOS IRRIGATION

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BUCKEYE IRRIGATION COMPANY

By: _____

BUCKEYE WATER CONSERVATION

AND DRAINAGE DISTRICT

By: _____

CENTRAL ARIZONA WATER

CONSERVATION DISTRICT

By: _____

PHELPS DODGE CORPORATION

By: _____

ARIZONA GAME AND FISH

COMMISSION

By: _____