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Tohono O'odham Settlement

Tohono O'odham Nation et al

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Tohono O'odham Settlement (Apr. 30, 2003)

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TOHONO
O'ODHAM
SETTLEMENT
AGREEMENT

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AGREEMENT

THIS AGREEMENT, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478, is executed by each party on the date shown next to the party's signature, among the United States of America, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two Allottee Classes in the Consolidated Litigation.

1. RECITALS

1.1. Proceedings to determine the nature and extent of the rights to water of the Nation, allottees, the United States in all its capacities, and other claimants are pending in the Gila River Adjudication Proceedings.

1.2. 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 Tohono O'odham Nation, its neighboring non-Indian communities and others have agreed to settle permanently the disputes as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this settlement.

1.3. 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.

1.4. A chronology of events leading up to this Agreement can be found in Exhibit 1.4.

NOW, THEREFORE, the Parties agree as follows:

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1. "Acre-foot" means the quantity of water necessary to cover one acre of land to a depth of one foot.

2.2. "Act" means the Arizona Water Settlements Act of 2004.

2.3. "After-Acquired Trust Land" means land that is located within the State, but outside the exterior boundaries of the Nation's Reservation, and is taken into trust by the United States for the benefit of the Nation after the Enforceability Date.

2.4. "Agreement" or "Tohono O'odham Settlement Agreement" means the Agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478 (including all the exhibits of and attachments to the Agreement).

2.5. "Agreement of December 11, 1980" means the contract entered into by the United States and the Nation on December 11, 1980.

2.6. "Agreement of October 11, 1983" means the contract entered into by the United States and the Nation on October 11, 1983.

2.7. "Allottee" means a person that holds a beneficial real property interest in an Indian allotment that is located within the San Xavier Reservation and is held in trust by the United States.

2.8. "Allottee Class" means an applicable plaintiff class certified by the court of jurisdiction in the Alvarez Case or the Tucson Case.

2.9. "Alvarez Case" means the first through third causes of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (defined as Civ. No. 93-09039 in Public Law 108-451, 118 Stat. 3478)(D. Ariz., filed April 21, 1993)).

2.10. "*Alvarez v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Alvarez Case.

2.11. "*Alvarez v. Tucson* Plaintiff Class" means a class of plaintiff Allottees certified for the first through third causes of action in the Alvarez Case.

2.12. "Applicable Law" means any applicable federal, State, tribal, or local law.

2.13. "Arizona Department of Water Resources" or "ADWR" means the entity established pursuant to Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.14. "Arizona Water Banking Authority" means the entity established pursuant to Chapter 14 of Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.15. "Asarco" means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

2.16. "Asarco Agreement" means the agreement by that name attached to this Agreement as Exhibit 13.1.

2.17. "Available CAP Supply" means for any given Year any Fourth Priority Water available for delivery through the CAP System, water available from CAP dams

and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

2.18. "CAP" or "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

2.19. "CAP Contract" means a long term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.20. "CAP Contractor" means any person or entity that has entered into a long-term contract (as that term is used in the CAP Repayment Stipulation) with the United States for delivery of water through the CAP system.

2.21. "CAP Indian Irrigation Water" means water allocated as Indian irrigation water pursuant to the Secretarial Record of Decision of March 24, 1983 published in the Federal Register at volume 48, number 58, pages 12446 through 12452.

2.22. "CAP Indian Priority Water" means that water having an Indian delivery priority.

2.23. "CAP Link Pipeline" or "Central Arizona Project Link Pipeline" means the pipeline extending from the Tucson Aqueduct of the CAP to Station 293+36.

2.24. "CAP M&I Priority Water" or "M&I Priority Water" means CAP water that has municipal and industrial priority.

2.25. "CAP NIA Priority Water" or "NIA Priority Water" means CAP water that has non-Indian agricultural priority.

2.26. "CAP Operating Agency" means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the date of this Agreement, CAWCD is the CAP Operating Agency.

2.27. "CAP Repayment Contract" means the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1 (defined as Contract No. 14-0906-09W-09245, Amendment No. 1 in Public Law 108-451, 118 Stat. 3478) between the United States and the CAWCD for the delivery of water and the repayment of costs of the CAP. The term includes all amendments to and revisions of that contract.

2.28. "CAP Repayment Stipulation" means the "Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions," filed with the United States District Court for the District of Arizona on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX (EHC) (Consolidated Action) (defined as No. CIV 95-09625-09TUC-09WDB(EHC), No. CIV 95-091720-09PHX-09EHC (Consolidated Action) in Public Law 108-451, 118 Stat. 3478), including all amendments to and revisions of that Stipulation.

2.29. "CAP Service Area" or "Central Arizona Project Service Area" means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the CAWCD delivers CAP water; and any expansion of that area under Applicable Law.

2.30. "CAP Subcontract" means a long term subcontract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.31. "CAP Subcontractor" means a person or entity that has entered into a long-term subcontract (as that term is used in the CAP Repayment Stipulation) with the United States and the CAWCD for the delivery of water through the CAP System.

2.32. "CAP System" means the Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants, and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described herein and any extensions of, additions to, or replacements for the features described herein.

2.33. "CAWCD" or the "Central Arizona Water Conservation District" means the political subdivision of the State that is the contractor under the CAP repayment contract.

2.34. "Community" means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.35. "Consolidated Litigation" means the consolidated Tucson Case and Alvarez Case.

2.36. "Cooperative Farm" means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c) of the SAWRSA Amendments.

2.37. "Cooperative Fund" means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the SAWRSA Amendments.

2.38. "Deferred Pumping Storage Credit" means a pumping credit recoverable as authorized by section 308(f)(1)(B) of the SAWRSA Amendments and accounted for under paragraph 8.6.2 of this Agreement.

2.39. "Deficiency Year" means a Year in which the Secretary is unable to fulfill the obligations of the Secretary under sections 304(a) and 306(a) of the SAWRSA Amendments.

2.40. "Delivery And Distribution System" means the CAP aqueduct, the CAP Link Pipeline and the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the CAP. The term includes pumping facilities, power plants, and electric power transmission facilities, external to the boundaries of any farm to which the water is distributed.

2.41. "Direct Storage and Recovery Project" means a facility that uses CAP water or effluent for underground storage or that recovers stored water.

2.42. "eastern Schuk Toak District" means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson Management Area.

2.43. "eastern Schuk Toak District Maximum Demand" means the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use (other than direct groundwater recharge) and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.44. "Enforceability Date" means the date on which Title III of the Act (defined herein as the SAWRSA Amendments) takes effect as defined in section 302(b) of the SAWRSA Amendments.

2.45. "Exempt Well" means a water well, the maximum pumping capacity of which is not more than 35 gallons per minute and the water from which is used for the supply, service, or activities of households or private residences; landscaping; livestock watering; or the irrigation of not more than two acres of land for the production of one or more agricultural or other commodities for sale; human consumption; or use as feed for livestock or poultry.

2.46. "Fee Owner of Allotted Land" means a person that holds fee simple title in real property on the San Xavier Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

2.47. "Fourth Priority Water" means Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water for the Central Arizona Project, including use of Colorado River water on Indian lands.

2.48. "Gila River Adjudication Court" means the Superior Court of the State of Arizona in and for the county of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

2.49. "Gila River Adjudication Proceedings" means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *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) (Consolidated).

2.50. "Indian Tribe" means that term as used in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

2.51. "Injury To Water Quality" means any contamination, diminution, or deprivation of water quality under Applicable Law.

2.52. "Injury To Water Rights" means an interference with, diminution of, or deprivation of water rights under Applicable Law. The term includes a change in the underground water table and any effect of such a change. The term does not include Subsidence Damage or Injury to Water Quality.

2.53. "Interim Allottee Water Rights Code" means the code described in section 308(b) of the SAWRSA Amendments.

2.54. "Irrigation System" means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm. The term, with respect to the Cooperative Farm, includes activities, procedures, works, and devices for rehabilitation of fields; remediation of sinkholes, sinks, depressions, and fissures; and stabilization of the banks of the Santa Cruz River.

2.55. "Lower Colorado River Basin Development Fund" means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

2.56. "Marketable Credit" means a storage credit that can be transferred for use outside the Nation's Reservation if the transfer is authorized by State law.

2.57. "Nation" means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.58. "Nation's Reservation" means all land within the exterior boundaries of (A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (B) the San Xavier Reservation established by the Executive order of July 1, 1874; (C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by Executive order of June 17, 1909; (D) the Florence Village established by Public Law 95-361 (92 Stat. 595); (E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798) if title to the land is held in trust by the Secretary for the benefit of the Nation; and all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable federal law before the Enforceability Date.

2.59. "Net Irrigable Acres" means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

2.60. "Non-Exempt Well" means any well that is not an Exempt Well.

2.61. "Party" means any signatory to this Agreement; the State's participation as a Party shall be as described in paragraph 18.4.

2.62. "Qualified Entity" means any CAP Contractor or CAP Subcontractor within the Tucson Management Area, any municipal provider that has a member service area in the Central Arizona Groundwater Replenishment District within the Tucson Management Area, or any other entity that agrees to use the leased water within the Tucson Management Area and demonstrates the financial and physical ability to utilize that water.

2.63. "San Xavier Allottees Association" means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of Allottees .

2.64. "San Xavier Cooperative Association" means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the Cooperative Farm.

2.65. "San Xavier District" means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

2.66. "San Xavier District Council" means the governing body of the San Xavier District, as established under the constitution of the Nation.

2.67. "San Xavier District Maximum Demand" means the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use (other than direct groundwater recharge or use by Asarco), and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.68. "San Xavier Reservation" or "Reservation" means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

2.69. "SAWRSA Amendments" means the Southern Arizona Water Rights Settlement Amendments Act of 2004, Title III of the Act.

2.70. "Schuk Toak Farm" means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4) of the SAWRSA Amendments.

2.71. "Secretary" means the Secretary of the Interior.

2.72. "State" means the State of Arizona.

2.73. "Subjugate" means to prepare land for agricultural use through irrigation.

2.74. "Subsidence Damage" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

2.75. "Surface Water" means all water that is appropriable under State law.

2.76. "Transaction Date" means the date designated by the Nation on which the Nation intends to enter into an assignment, exchange, lease, option to lease or temporary disposal of water pursuant to section 309(c) of the SAWRSA Amendments.

2.77. "Tucson Case" means *United States et al. v. City of Tucson, et al.* (Civ. No. 75-39 TUC consol. with Civ. No. 75-51 TUC FRZ (defined as Civ. No. 75-0939 TUC consol. With Civ. No. 75-0951 TUC-FRZ in Public Law 108-451, 118 Stat. 3478) (D. Ariz., filed February 20, 1975)).

2.78. "Tucson Interim Water Lease" means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the City of Tucson, Arizona, and the Nation, dated October 24, 1992.

2.79. "Tucson Management Area" means the area in the State comprised of (A)(i) the area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and (A)(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and (B) the portion of the Upper Santa Cruz Basin that is not located within the area described in (A)(i) above.

2.80. "Turnout" means a point of water delivery on the CAP aqueduct.

2.81. "Underground Storage" means storage of water accomplished under a project authorized under section 308(e) of the SAWRSA Amendments.

2.82. "United States" or "United States of America" in any given reference herein means the United States acting in the capacity as set forth in said reference. When the term "United States" or "United States of America" is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

2.83. "*United States v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Tucson Case.

2.84. "*United States v. Tucson* Plaintiff Class" means a class of plaintiff Allottees certified in the Tucson Case.

2.85. "Value" means the value attributed to water based on the greater of (A) the anticipated or actual use of the water; or (B) the fair market value of the water.

2.86. "Water Code" means the comprehensive water code described in section 308(b) of the SAWRSA Amendments.

2.87. "Water Right" means any right in or to groundwater, Surface Water, or effluent under Applicable Law.

2.88. "Year" means a calendar year; when not capitalized, the term "year" shall have the meaning set forth in the paragraph in which the term is used.

2.89. "1982 Act" means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the Enforceability Date.

3. EXHIBITS

3.1. The following is a list of Exhibits attached to this Agreement and incorporated herein by this reference:

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	1.4	A Chronology of Events Leading up to the Tohono O'odham Settlement Agreement
	5.2	The Tohono O'odham Nation's CAP Contract, as amended under this Agreement
	5.3.4.1	Secretary's Shortage Sharing Approach Under the 1980 Contract
	8.6	Storage Account Form
	8.7	Examples of Calculations for Additional Groundwater Pumping
	8.8	Concept for Groundwater Protection Program
	11.3	Standard Form of CAP Subcontract for CAP M&I Use
	12.1	Tucson Agreement
	13.1	Asarco Agreement
	14.1	FICO Agreement

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	16.2	Stipulation and Form of Conditional Order of Dismissal with Prejudice
	17.1	Stipulation and Form of Judgment by Gila River Adjudication Court

4. NATION'S WATER RIGHTS

4.1. The Nation shall have the following rights to water in the Tucson Management Area, which shall be held in trust by the United States on behalf of the Nation and the Allottees :

<u>SOURCE</u>	<u>AMOUNT</u>	<u>REFERENCE</u>
<u>Underground water</u>	<u>13,200 Acre-feet/yr*</u>	
San Xavier Reservation	10,000 Acre-feet/yr*	Paragraph 8.1.1
eastern Schuk Toak District	3,200 Acre-feet/yr*	Paragraph 8.1.2
<u>Total CAP Indian Priority Water</u>		
<u>Currently Under Contract</u>	<u>37,800 Acre-feet/yr</u>	
San Xavier Reservation	27,000 Acre-feet/yr	Paragraph 5.1.1.1
eastern Schuk Toak District	10,800 Acre-feet/yr	Paragraph 5.1.1.2
<u>Total New CAP NIA Priority Water</u>	<u>28,200 Acre-feet/yr</u>	
San Xavier Reservation	23,000 Acre-feet/yr	Paragraph 5.1.2.1
eastern Schuk Toak District	5,200 Acre-feet/yr	Paragraph 5.1.2.2
TOTAL	79,200 Acre-feet/yr*	

*The availability of groundwater is subject to the provisions of paragraph 8.6.

4.2. The Nation may use water listed in paragraph 4.1 for any use.

4.3. Except as provided in Section 309(b)(1)(C) of the SAWRSA Amendments, the Nation may use water listed in paragraph 4.1 at any location within the Nation's Reservation.

4.4. The Nation may use water listed in paragraph 4.1 outside the Nation's Reservation and within the State as follows:

4.4.1. Groundwater supplies may be used pursuant to the Asarco Agreement;

4.4.2. CAP water may be used within the CAP service area; and

4.4.3. Water derived from Marketable Credits may be used only in accordance with State law.

4.5. No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State.

5. WATER DELIVERY

5.1. The Secretary's Obligation to Acquire and Deliver Water.

5.1.1. Pursuant to section 304(a) of the SAWRSA Amendments and the Agreement of December 11, 1980, as amended, and this Agreement, the Secretary shall deliver 37,800 Acre-feet per Year of CAP water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to any other point of delivery agreed to by the Secretary and the Nation, of which:

5.1.1.1. 27,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.1.2. 10,800 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.2. Pursuant to section 306(a) of the SAWRSA Amendments, the Secretary shall deliver 28,200 Acre-feet per Year of CAP NIA Priority Water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to

any other point of delivery agreed to by the Secretary, CAWCD and the Nation, of which:

5.1.2.1. 23,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.2.2. 5,200 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.3. Pursuant to section 305 of the SAWRSA Amendments, the Secretary shall deliver the 66,000 Acre-feet per Year of CAP water described above, or an equivalent quantity of water from a source identified in section 305(b)(1) of the SAWRSA Amendments, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence described in section 305(a)(2)(B) of the SAWRSA Amendments.

5.1.4. In accordance with the provisions of section 305(d) of the SAWRSA Amendments, the Secretary shall provide compensation if the Secretary is unable to acquire and deliver sufficient quantities of water under sections 304(a) and 306(a) of the SAWRSA Amendments.

5.2. CAP Contract Amendments. The Nation's CAP Contract shall be amended to conform to the provisions of section 309(g) of the SAWRSA Amendments. The form of the Nation's CAP contract as amended is set forth in Exhibit 5.2.

5.3. Shortage Sharing Criteria

5.3.1. On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

5.3.1.1. Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in paragraphs 5.3.1.1.1 through 5.3.1.1.3 below:

5.3.1.1.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.1.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water; and

5.3.1.1.3. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.1.2. On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in paragraphs 5.3.1.2.1 through 5.3.1.2.4 below:

5.3.1.2.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.2.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water;

5.3.1.2.3. Up to forty-seven thousand three hundred three (47,303) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and

5.3.1.2.4. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.2. Initial Distribution of Water in Time of Shortage.

5.3.2.1. If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

5.3.2.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{ [32,770 \div (E - 853,079)] \times W \} + (343,079 - \{ [32,770 \div (E - 853,079)] \times E \})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraphs 5.3.1.1 or 5.3.1.2, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.1 were nine

hundred eighty-one thousand nine hundred two (981,902) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) Acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.2 were one million twenty-nine thousand three hundred twenty-three (1,029,323) Acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) Acre-feet plus 18.59354% of the Available CAP Supply.

5.3.3. Redistribution of Unscheduled Water in Time of Shortage.

In time of shortage unscheduled CAP Water shall be distributed as follows:

5.3.3.1. Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

5.3.3.2. CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

5.3.3.3. Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

5.3.3.4. Nothing in this paragraph 5.3 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

5.3.4. Distribution of CAP Indian Priority Water among CAP Indian Priority Water Users.

5.3.4.1. In consideration of the agreement by the Community to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit 5.3.4.1, the Secretary shall first make available to the Community any water made available for delivery as CAP Indian Priority Water under paragraph 5.3.3.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community. After the additional shortages borne by the Community have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in proportion to their contractual entitlements to CAP Indian Priority Water.

5.3.4.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet but less than the sum of the entitlements described in paragraphs 5.3.2.1 or 5.3.2.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with paragraph 5.3.3.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit 5.3.4.1.

5.3.4.3. If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, up to fifty-one thousand five hundred five (51,505) Acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community, the Nation and the San Carlos Apache Tribe. During a time of shortage described in this paragraph 5.3.4.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit 5.3.4.1, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

5.3.4.4. If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet, then the CAP Indian Priority Water determined to be available pursuant to paragraph 5.3.2.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at the time of the shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only

fifteen thousand (15,000) Acre-feet of its entitlement because the Nation's CAP distribution system was only partially completed and would permit the delivery of only fifteen thousand (15,000) Acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) Acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) Acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

5.3.4.5. If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or exchange of CAP water, then the Secretary shall require such Indian tribe to include in such new contract or amendment, a provision to share, on a proportional basis¹ with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to paragraphs 5.3.4.2 and 5.3.4.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation and the Secretary shall modify the Nation's CAP Contract to reflect such sharing of shortages by the other Indian tribes. This subparagraph 5.3.4.5 shall not apply to the renewal of any contract existing on December 10, 2004 with an Indian Tribe that the

1. The proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian Irrigation Water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian Irrigation Water.

Secretary entered into pursuant to an Indian water settlement approved by an Act of Congress.

5.3.4.6. The shortage sharing criteria in subparagraph 5.3.4 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community water Rights Settlement Act, Pub. L. 98-530, or water acquired from the Welton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Pub. L. 100-512, both of which have a higher priority than Fourth Priority Water.

5.4. Distribution of CAP NIA Priority Water. If the available CAP Supply is insufficient to meet the fixed quantity water service contracts or subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority water to the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA priority water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA priority water. However, if during the last such Year the Nation had not completed construction of the distribution system necessary to take and use its entire entitlement to CAP NIA Priority Water, the Secretary shall impute in the calculation the quantity of CAP NIA Priority Water that the Nation would have been expected to take had the distribution system, as it exists in the then current Year, been in place during the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water.

5.5. The Secretary and the CAP Operating Agency shall not unreasonably withhold permission or authorization to construct Turnouts on the CAP System to deliver

the Nation's CAP water that are necessary for the Nation either to use its water on or off the Nation's Reservation or to implement leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.6. Pursuant to section 314(a) of the SAWRSA Amendments, for purposes of determining the allocation and repayment of costs of any stages of the CAP, the costs associated with the delivery of the Nation's CAP water, whether such water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease, exchanges or options to exchange the Nation's CAP water entered into by the Nation shall be nonreimbursable, and such costs shall not be included in the CAWCD's repayment obligation.

5.7. Pursuant to section 314(b) of the SAWRSA Amendments, the costs associated with the construction of the CAP shall be nonreimbursable by the Nation and no CAP water service capital charges shall be due or payable for the Nation's CAP water, whether such water is delivered for use by the Nation or is delivered pursuant to any leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.8. The Nation shall be entitled to enter into contracts for excess CAP water as provided in the CAP Repayment Stipulation.

5.9. Nothing in this Agreement shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

5.10. Firming.

5.10.1. The Secretary shall firm 28,200 Acre-feet per Year of CAP NIA Priority Water for the benefit of the Nation, to the equivalent of CAP M&I Priority Water

for a period of 100 Years after the Enforceability Date, as provided in section 105 of the Act.

5.10.2. The State shall assist the Secretary in firming the 28,200 Acre-feet as provided in section 306(b) of the SAWRSA Amendments.

6. DESIGN AND CONSTRUCTION OF FACILITIES

6.1. The Secretary shall (without cost to the Nation, any Allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the CAP, design and construct the Delivery and Distribution System necessary to deliver the water described in paragraph 5.1.

6.2. Pursuant to sections 304(b) and (c) of the SAWRSA Amendments, the Secretary shall complete:

6.2.1. Not later than eight years after the Enforceability Date, the improvements to the irrigation systems that serve the Cooperative Farm and the extension to the Cooperative Farm. On completion of the extension, the extended Cooperative Farm irrigation system shall serve 2,300 Net Irrigable Acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree to fewer Net Irrigable Acres.

6.2.2. Not later than one year after the Enforceability Date, the design and construction of an irrigation system and Delivery and Distribution System to serve the farm in the eastern Schuk Toak District.

6.3. Pursuant to the provisions of section 304(d) of the SAWRSA Amendments, the Secretary may extend a deadline referred to in paragraphs 6.2.1 and

6.2.2. If the Secretary extends a deadline, the Secretary shall comply with the notice provision of section 304(d)(2) of the SAWRSA Amendments.

7. NEW FARM PROVISIONS

7.1. In accordance with section 304(c)(3) of the SAWRSA Amendments, and in accordance with paragraph 7.2, the Secretary shall either:

7.1.1. Pay to the San Xavier District \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) in lieu of designing and constructing the canals, laterals, farm ditches and irrigation works for a new farm within the San Xavier Reservation; or

7.1.2. Design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet of water that is not required for the irrigation systems that serve the Cooperative Farm and the extension to the Cooperative Farm.

7.2. The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under paragraphs 7.1.1 or 7.1.2 by notifying the Secretary after the Enforceability Date, but not later than 180 days thereafter or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council. If the Secretary does not receive such a resolution by the deadline specified herein, the Secretary shall pay the \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) to the San Xavier District in lieu of constructing the new farm.

7.2.1. Payment of the \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) shall be made by the Secretary from the Lower Colorado River Basin Development Fund:

7.2.1.1. Not later than 60 days after the election described in paragraph 7.2, but in no event earlier than the enforceability date or January 1, 2010, whichever is later, or

7.2.1.2. If no timely election is made, then not later than 240 days after the Enforceability Date or January 1, 2010, whichever is later.

7.2.2. Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches and irrigation works as described in section 304(c)(3)(A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if the election is to receive the benefits under paragraph 7.1.2.

7.3. Pursuant to section 304(f) of the SAWRSA Amendments, the San Xavier District Council shall hold the funds in trust in interest bearing deposits and securities and may expend the principal and interest in accordance with a budget authorized by the San Xavier District Council and approved by the Nation's Legislative Council and for the purposes specified in section 304(f)(1)(C) of the SAWRSA Amendments.

8. USE OF PUMPED WATER

8.1. Right to Pump Groundwater. The Nation agrees, except as provided in sections 308(e), 308(f), 308(g) and 308(h) of the SAWRSA Amendments:

8.1.1. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the San Xavier Reservation to not more than 10,000 Acre-feet per Year; and

8.1.2. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the eastern Schuk Toak District to not more than 3,200 Acre-feet per Year.

8.2. Storage and Recovery Projects. Pursuant to section 308(e) of the SAWRSA Amendments, the Nation may establish and maintain one or more Direct Storage and Recovery Projects within the San Xavier Reservation or the eastern Schuk Toak District.

8.3. [Intentionally omitted.]

8.4. Allocation and Transfer of Storage Credits.

8.4.1. The Nation shall allocate as a first right of beneficial use by Allottees, the San Xavier District, and other persons within the San Xavier Reservation, the storage credits resulting from a project authorized in section 308(e) of the SAWRSA Amendments that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.4.2. The Nation has the exclusive right, subject to section 308 of the SAWRSA Amendments, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.5. Deferred Pumping.

8.5.1. Pursuant to section 308(f)(1)(B) of the SAWRSA Amendments, within the San Xavier Reservation:

8.5.1.1. All or any portion of the 10,000 Acre-feet of water not pumped under paragraph 8.1.1 in any Year—

8.5.1.1.1. may be withdrawn in any subsequent Year;
and

8.5.1.1.2. shall be accounted for in accordance with
paragraph 8.6.

8.5.1.2. The quantity of water authorized to be recovered as
Deferred Pumping Storage Credits under this section shall not exceed--

8.5.1.2.1. 50,000 Acre-feet for any ten-Year period; or

8.5.1.2.2. 10,000 Acre-feet in any year.

8.5.2. Pursuant to section 308(f)(2)(B) of the SAWRSA Amendments,
within the eastern Schuk Toak District:

8.5.2.1. All or any portion of the 3,200 Acre-feet of water not
pumped under paragraph 8.1.2 in any Year—

8.5.2.1.1. may be withdrawn in any subsequent Year;
and

8.5.2.1.2. shall be accounted for in accordance with
paragraph 8.6.

8.5.2.2. The quantity of water authorized to be recovered as
Deferred Pumping Storage Credits under this section shall not exceed--

8.5.2.2.1. 16,000 Acre-feet for any ten-Year period; or

8.5.2.2.2. 3,200 Acre-feet in any Year.

8.6. Accounting. Attached as Exhibit 8.6 is a form to maintain the Storage
Accounts.

8.6.1. Direct Storage Accounts.

8.6.1.1. For each Direct Storage and Recovery Project an account shall be maintained to credit the quantities of water stored underground and to debit the water recovered.

8.6.1.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.1.2.1. Credit the quantity of water stored underground within the San Xavier Reservation and within the eastern Schuk Toak District during the Year; and

8.6.1.3. Debit the quantity of water recovered from direct storage or transferred as Marketable Credits during the Year.

8.6.2. Deferred Pumping Storage Accounts. Deferred pumping storage accounts shall be established to credit the quantities of water stored underground in lieu of pumping and to debit the water recovered. Such accounts shall be maintained as follows:

8.6.2.1. Within the San Xavier Reservation:

8.6.2.1.1. To initiate the account, the Nation shall credit 50,000 Acre-feet;

8.6.2.1.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.1.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 10,000 Acre-feet, credit to the account the difference between 10,000 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.1.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 10,000 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 10,000 Acre-feet.

8.6.2.2. Within the eastern Schuk Toak District:

8.6.2.2.1. To initiate the account, the Nation shall credit 16,000 Acre-feet;

8.6.2.2.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.2.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 3,200 Acre-feet, credit to the account the difference between 3,200 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.2.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 3,200 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 3,200 Acre-feet.

8.7. Additional groundwater pumping. Pursuant to section 308(h) of the SAWRSA Amendments and subject to the conditions of this paragraph, in any Deficiency Year, the Nation may, for then existing beneficial uses on the San Xavier Reservation and within the eastern Schuk Toak District, respectively, pump an additional amount of groundwater. Examples of the calculations for additional groundwater pumping pursuant to this paragraph are provided in Exhibit 8.7.

8.7.1. With respect to the San Xavier Reservation, the additional amount may be equal to the San Xavier District Maximum Demand; less:

8.7.1.1. The quantity of water delivered by the Secretary to the Reservation during the Deficiency Year; and

8.7.1.2. 10,000 Acre-feet (the groundwater referred to in section 307(a)(1)(A) of the SAWRSA Amendments); and

8.7.1.3. All storage credits, except for Marketable Credits; and

8.7.1.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.2. With respect to the eastern Schuk Toak District, the additional amount may be equal to the eastern Schuk Toak District Maximum Demand; less:

8.7.2.1. The quantity of water delivered to the eastern Schuk Toak District during the Deficiency Year; and

8.7.2.2. 3,200 Acre-feet (the groundwater referred to in section 307(a)(1)(B) of the SAWRSA Amendments); and

8.7.2.3. All storage credits, except for Marketable Credits; and

8.7.2.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.3. The operation of this paragraph 8.7 shall be subject to the following conditions:

8.7.3.1. As to the San Xavier Reservation:

8.7.3.1.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the

quantity of groundwater that may be pumped pursuant to paragraph 8.7.1 only to the extent that the total of such credits subtracted for any Year does not exceed 20% of the San Xavier District Maximum Demand; and

8.7.3.1.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.1 shall be debited to the San Xavier Reservation account on a one-for-one basis without discount.

8.7.3.2. As to the eastern Schuk Toak District:

8.7.3.2.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the quantity of groundwater that may be pumped pursuant to paragraph 8.7.2 only to the extent that the total of such credits subtracted for any Year does not exceed 20% of the eastern Schuk Toak District Maximum Demand; and

8.7.3.2.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.2 shall be debited to the eastern Schuk Toak account on a one-for-one basis without discount.

8.8. Groundwater Protection Program. The Parties agree to support the enactment of legislation by the State that would implement the groundwater protection program for the San Xavier Reservation as described in Exhibit 8.8.

8.9. Consistent with section 308(f)(3)(B) of the SAWRSA Amendments, the Nation and the United States on behalf of the Nation agree not to assert a reserved right claim for groundwater for the San Xavier District or the eastern Schuk Toak District portion of the Schuk Toak District.

8.10. Exempt Wells may be drilled on the San Xavier Reservation and the eastern Schuk Toak District and their use shall be exempt from pumping limitations in the SAWRSA Amendments and this Agreement.

9. WATER MANAGEMENT PLANS

9.1. Pursuant to section 308(d) of the SAWRSA Amendments, the Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans under contracts executed under section 311 of the SAWRSA Amendments between the Secretary and the San Xavier District for the San Xavier Reservation for a sum not to exceed \$891,200, and between the Secretary and the Nation for the eastern Schuk Toak District for a sum not to exceed \$237,200.

10. WATER RIGHTS ALLOCATION; WATER CODE; INTERIM ALLOTTEE
WATER RIGHTS CODE

10.1. The Nation agrees to comply with section 307(a)(1) of the SAWRSA Amendments.

10.2. The Nation shall enact and maintain an interim Allottee water rights code and a comprehensive water code in accordance with section 308(b) of the SAWRSA Amendments.

11. LEASING; ASSIGNMENT OF CREDITS

11.1. With respect to uses outside of the Nation's Reservation, the Nation may, for a term not to exceed 100 years, assign, exchange, lease, provide an option to lease or otherwise temporarily dispose of CAP water and direct storage credits in accordance with section 309(c) of the SAWRSA Amendments.

11.2. Assignment of Credits. Pursuant to section 309(b)(2)(C) of the SAWRSA Amendments, the Nation may assign Marketable Credits only in accordance with State law.

11.3. Leasing of CAP Water.

11.3.1. A lease of CAP water shall be in accordance with the requirements of section 309(c)(4) and section 309(j) of the SAWRSA Amendments.

11.3.2. The Secretary shall deliver leased CAP water to the lessee as further provided herein. The Secretary shall not be obligated to make deliveries to such lessee if, in the judgment of the Secretary, such deliveries would limit deliveries of water to other CAP Contractors or CAP Subcontractors to a degree greater than would deliveries of such CAP water to the Nation's Reservation.

11.3.3. Subject to the provisions of the lease, the Secretary shall deliver CAP water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in article 4.4 of the standard form of CAP Subcontract for CAP M&I Use that is attached as Exhibit 11.3.

11.3.4. The CAP water to be delivered to the lessee pursuant to the lease shall be delivered at such Turnouts as are agreed by the Secretary, the CAP Operating Agency and the lessee.

11.3.5. The lessee may not transfer assign or sublease its leased CAP water.

11.3.6. The lease shall impose upon the lessee terms and conditions equivalent to those contained in subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and

4.5(d), and articles 4.6, 4.10, and 6.9 of the standard form of CAP Subcontract that is attached as Exhibit 11.3. Although Exhibit 11.3 is the standard form of CAP Subcontract for CAP M&I use, nothing in this Agreement is intended to preclude leases of CAP water for irrigation use.

11.3.7. The Nation may enter into leases of CAP water for terms in excess of 25 years subject to the following terms and conditions:

11.3.7.1. The Nation shall initially make an offer for a lease term in excess of 25 years to users within the Tucson Management Area. The offer shall include the substantive terms of the lease.

11.3.7.2. In the event that the Nation receives no proposal for the use of the water within the Tucson Management Area, the Nation's offer may be extended for use of the water outside the Tucson Management Area, subject to the following provisions:

11.3.7.2.1. On or before the 180th day prior to the Transaction Date on which the Nation desires to enter into a transaction under section 309(c)(4) of the SAWRSA Amendments with an entity intending to use the water acquired pursuant to section 304(a) and section 306(a) of the SAWRSA Amendments outside of the Nation's Reservation and the Tucson Management Area, the Nation shall submit to the Secretary, the proposed transaction and all related exhibits and agreements.

11.3.7.2.2. On or before the 150th day prior to the Transaction Date, the Nation, shall provide notice of the proposed transaction by mail to all Qualified Entities and by publication in a newspaper of general circulation in the City of Tucson, Arizona, once a week for two consecutive weeks. The notice shall contain

any changes from the substantive terms of the offer provided in paragraph 11.3.7.1 of this Tohono O'odham Settlement Agreement.

11.3.7.2.3. On or before the 90th day prior to the Transaction Date, any Qualified Entity may submit a counteroffer to the Nation. If the Nation does not receive any counteroffers from a Qualified Entity, it may submit the proposed transaction for approval under section 309(c)(4)(C) of the SAWRSA Amendments.

11.3.7.2.4. If the Nation has received one or more counteroffers from Qualified Entities, the Nation may either select one or more of such counteroffers that match or are superior to the proposed transaction or reject the proposed transaction and all counteroffers. A counteroffer matches or is superior to the proposed transaction if it matches the price and other substantive terms of the proposed transaction.

11.3.7.2.5. If no counteroffer from a Qualified Entity matches or is superior to the proposed transaction, the Nation may either select or reject the proposed transaction.

11.3.7.2.6. The Nation shall notify all parties who submitted a proposed transaction or counteroffer of its selection and shall submit the proposed transaction or counteroffer for approval under section 309(c)(4) of the SAWRSA Amendments.

12. TUCSON AGREEMENT

12.1. The City of Tucson, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the Tucson Agreement, an executed copy of which is attached as Exhibit 12.1.

13. ASARCO AGREEMENT

13.1. Asarco, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the Asarco Agreement, an executed copy of which is attached as Exhibit 13.1.

14. FICO AGREEMENT

14.1. FICO, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the FICO Agreement, an executed copy of which is attached as Exhibit 14.1.

15. WAIVERS OF CLAIMS.

15.1. Waiver of claims by the Nation.

15.1.1. Except as provided in paragraph 15.4, the Nation hereby waives and releases:

15.1.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity;

15.1.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, and claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the Enforceability Date, against the United

States, in any capacity, (including any agency, officer, and employee of the United States);

15.1.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.1.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement, or the negotiation or enactment of the SAWRSA Amendments against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity.

15.1.2. The waiver and release of claims described in paragraph 15.1 shall become effective upon the Enforceability Date.

15.2. Waiver of Claims by the Allottee Classes.

15.2.1. Each Allottee Class hereby waives and releases:

15.2.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights from time immemorial through the Enforceability Date, and claims for future Injury to Water Rights for land within the San Xavier Reservation, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity (other than the Nation);

15.2.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation from time immemorial through the Enforceability Date, against the United States, in any capacity, (including any agency, officer, and employee of the United States);

15.2.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.2.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement or the negotiation or enactment of the SAWRSA Amendments, against the United States, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity; and

15.2.1.5. Any and all past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, against the Nation (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall retain rights to share in the water resources granted or confirmed under the SAWRSA

Amendments and this Agreement with respect to uses within the San Xavier Reservation).

15.2.2. The waiver and release of claims described in paragraph 15.2 shall become effective upon the Enforceability Date.

15.3. Waiver of Claims by the United States on behalf of the Nation and the Allottees.

15.3.1. Except as provided in paragraph 15.4, the United States, on behalf of the Nation and the Allottees, hereby waives and releases:

15.3.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.2. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.3. On and after the Enforceability Date, any and all claims on behalf of the Allottees for Injury to Water Rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA

Amendments, the Allottees shall retain rights to share in the water resources granted or confirmed under the SAWRSA Amendments and this Agreement with respect to uses within the San Xavier Reservation); and

15.3.1.4. Contingent on the effectiveness of a waiver of such claims as are provided for in the Asarco Agreement, claims against Asarco on behalf of a plaintiff class comprised of plaintiff allottees in the fourth cause of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (D. Ariz., filed April 21, 1993)).

15.4. Claims Related to Groundwater Protection Program -- The Nation and the United States, on behalf of the Nation, shall:

15.4.1. Have the right to assert any claims provided for in the State legislation implementing the groundwater protection program described in paragraph 8.8 of this Agreement; and

15.4.2. If after the Enforceability Date the State legislation implementing the groundwater protection program described in Exhibit 8.8 is changed so as to have a material adverse effect upon the Nation, assert a claim in the Gila River Adjudication Court against an owner of any non-exempt well drilled after such change becomes effective if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation for the incremental effect of such pumping that exceeds that which would have been allowable had the State legislation not changed. It is agreed that the remedy upon proof of such a claim would be damages or any other remedy then permitted under State law for a similar claim.

16. PROCEDURES FOR DISMISSAL OF TUCSON CASE AND ALVAREZ CASE

16.1. After the deadline for opting out of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Classes has passed, the Parties, including the United States in all its capacities except as trustee for Indian tribes other than the Nation, agree to seek approval of this Agreement by the Court in the Tucson Case and the Alvarez Case.

16.2. After the Court has approved this Agreement, the Parties, including the United States in all its capacities except as trustee for Indian tribes other than the Nation, the *United States v. Tucson* Named Plaintiff Allottees as representatives of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Named Plaintiff Allottees as representatives of the *Alvarez v. Tucson* Plaintiff Class agree to join in a stipulation for dismissal of the Tucson Case and the Alvarez Case conditioned solely on the Secretary publishing findings under section 302 of the SAWRSA Amendments. A copy of the stipulation and form of judgment are attached as Exhibit 16.2

17. APPROVAL OF THE SETTLEMENT AGREEMENT BY THE GILA RIVER
ADJUDICATION COURT

17.1. All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Nation, agree to seek approval of this Agreement by the Gila River Adjudication Court. The Parties shall file a stipulation and form of judgment and decree in the Gila River Adjudication Proceedings in the form of Exhibit 17.1.

17.2. The Parties, other than the United States in any capacity, agree to support the enactment of legislation by the State to confirm the jurisdiction of the Gila River

Adjudication Court to carry out the provisions of sections 312(d) and 312(h) of the SAWRSA Amendments.

18. OTHER PROVISIONS

18.1. 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.

18.2. This Agreement constitutes the entire understanding among the Parties and supercedes the Agreement of October 11, 1983. Evidence of conduct or statements made in the course of negotiating this Agreement, including but not limited to previous drafts of this Agreement is inadmissible in any legal proceedings other than for approval or confirmation of this Agreement.

18.3. Each Party to this Agreement shall have the obligation to work in good faith as provided in paragraphs 8.8, 16.1, 17, and 18.4 in order to satisfy the conditions set forth in Section 302 of the SAWRSA Amendments. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

18.4. No modification of this 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 this Agreement may be amended by the Parties to such Exhibits in accordance with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the SAWRSA Amendments or this

Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

18.5. Execution of this Agreement by the Governor of the State constitutes a commitment to use good faith efforts to work with the State legislature to enact legislation necessary to carry out the provisions of paragraphs 5.10.2, 8.8 and 17.2 of this Agreement. These provisions will not be binding upon the State until the State legislation is enacted and the SAWRSA Amendments are effective as provided in the SAWRSA Amendments. It is not intended that this 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 this Agreement, nothing herein shall be construed as a waiver of any rights that the State has to its natural resources.

18.6. By signing this Agreement each person represents that he or she has the authority to execute it.

18.7. This Agreement shall be construed in accordance with applicable State and Federal law.

18.8. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

18.9. The expenditure or advance of any money or the performance of any obligation by the United States in any of its capacities, under this Agreement shall be contingent upon the authorization of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not authorized.

18.10. This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

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

the exterior boundaries of the Nation's Reservation. The enactment of legislation authorizing or ratifying this Agreement shall not be construed as a congressional delegation of authority to the Nation of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

18.12. Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to water of the Nation outside the Tucson Management Area.

18.13. Nothing in this 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 Nation.

18.14. Nothing in this Agreement shall affect the rights of the Parties under the Well Site Lease or the New Well Site Lease, as defined in the Asarco Agreement.

18.15. In the event that differences between the language of the SAWRSA Amendments and this Agreement result in ambiguity or confusion or the provisions are inconsistent, the language of the SAWRSA Amendments shall govern.

18.16. The Parties are aware of canons of interpretation whereby ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties who have worked together in preparing the final version of this Agreement.

18.17. Any party shall have the right to petition the Gila River Adjudication Court or a court of the United States having jurisdiction, for such declaratory and

injunctive relief as may be necessary to enforce the terms, conditions and limitations of this Agreement and monetary relief as provided in this Agreement and as limited by section 312(h) of the SAWRSA Amendments. Nothing contained herein shall grant or give the right to any Party to petition any court of the Nation or any state court other than the Gila River Adjudication Court for monetary relief or for any declaratory or injunctive relief to enforce the terms, conditions and limitations provided in this Agreement, except as provided in section 312(i) of the SAWRSA Amendments.

18.18. All notices required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing.

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

The State of Arizona:

Office of the Governor
1700 W. Washington Street
Phoenix, Arizona 85007

With a copy to:

Director
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004

The Tohono O'odham Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, Arizona 85634

Chairperson San Xavier District
San Xavier District
2018 W. San Xavier Road
Tucson, Arizona 85746

Louis W. Barassi
Barassi & Curl PLC
485 South Main Avenue
Tucson, Arizona 85701

Chairperson Schuk Toak District
Schuk Toak District
P.O. Box 368
Sells, Arizona 85634

The City of Tucson:

City Manager
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210

With copies to:

Director
Tucson Water
P.O. Box 27210
Tucson, Arizona 85726-7210

City Attorney
P.O. Box 27210
Tucson, Arizona 85726-7210

Asarco Incorporated:

General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

Farmers Investment Co.:

Richard S. Walden, President
Farmers Investment Co.
1525 Helmet Peak Road
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87102

or addressed to such other address as the Party to receive such notice shall have designated by written notice as required by this paragraph 18.18.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year below.

THE UNITED STATES OF AMERICA

By: Gale A. Norton
Secretary of the Interior

Date: March 28, 2006

THE STATE OF ARIZONA

By: Janet Napolitano
Governor

Date: 5-5-06

THE TOHONO O'ODHAM NATION

By: Vincent Saunders Date: 5/5/06
Chairperson

Approved as to Form: Dal Frank Date: 5/5/06
Attorney General

CITY OF TUCSON

By: [Signature] Date: 5-5-06
Mayor

Attest: Kathleen S. Hestrich Date: 6-12-06
City Clerk

Approved as to Form: Cliff Anglin Date: 6/12/06
City Attorney

ASARCO INCORPORATED

By: D. E. MacCister Date: 6/12/06
President
The 1st
VP Gen. Atty.

FARMERS INVESTMENT CO.

By: Richard Walker Date: 6/12/2006
President

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: [Signature] Date: 5/5/06

By: Joanna Gyle Date: 5/5/06

By: Julian Ramon-Person Date: 5/5/06

By: Carmita Mott Date: 5/5/06

By: N 2 Reddy Date: 5/5/06

By: Michael B. Grier Date: 5/5/06

By: Walt Sager Date: 5/5/06

Its Class Representatives

Approved as to Form: Thomas E. Fuller Date: 5/5/06
Attorney for Certified Class

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: AAV Date: 5/5/06

By: Kasandra Carls Date: 5/5/06

By: Julian Ramon-Person Date: 5/5/06

By: Carmita Mott Date: 5/5/06

By: N 2 Reddy Date: 5/5/06

Its Class Representatives

Approved as to Form: Thomas E. Fuller Date: 5/5/06
Attorney for Certified Class

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: <u>Lucinda Muñoz</u>	Date: <u>5/5/06</u>
By: <u>Gerardo Escobar</u>	Date: <u>5/5/06</u>
By: <u>Patricia Aguirre</u>	Date: <u>5-5-06</u>
By: <u>Yolanda E. Thiguel</u>	Date: <u>5-5-06</u>
By: <u>Celestine Pablo</u>	Date: <u>5/5/06</u>
By: <u>Carlyle Day</u>	Date: <u>5-5-06</u>
By: <u>Jocella Ines Benell</u>	Date: <u>5-5-06</u>
By: <u>Felicia Muñoz</u>	Date: <u>5-5-06</u>
By: <u>Rugga Cruz</u>	Date: <u>5/5/06</u>
By: <u>Jeff Cruz</u>	Date: <u>5/5/06</u>
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____
By: _____	Date: _____

Its Class Representatives

EXHIBIT 1.4

CHRONOLOGY OF SOUTHERN ARIZONA

WATER RIGHTS LITIGATION AND SETTLEMENT EVENTS

CHRONOLOGY OF SOUTHERN ARIZONA
WATER RIGHTS LITIGATION AND SETTLEMENT EVENTS

A. On February 20, 1975, in its own right and on behalf of the Nation and individual Indian allottees of land on the San Xavier Indian Reservation of the Nation, the United States filed suit in the Federal District Court for the District of Arizona, under Case No. CV 75-39 TUC FRZ ("*United States v. Tucson*"). This action sought a declaration of the rights of the United States, the Nation and Indian allottees in and to the use of surface and groundwater of the Upper Santa Cruz River Basin, damages resulting from defendants' use of surface and groundwater from within the Basin in derogation of the rights of the plaintiffs, and injunctive relief to prohibit withdrawal of surface and groundwater by defendants in derogation of the rights of the plaintiffs.

B. On March 6, 1975, a second action was filed in Federal District Court for the District of Arizona by the Nation and John Lewis and Rosanna Carlyle, individually and on behalf of all other Indian allottees similarly situated, seeking the same relief as the first action, Case No. CV 75-51 TUC FRZ.

C. On October 16, 1975, the Court ordered the plaintiff in *United States v. Tucson* to amend its complaint to make all users of the surface and groundwater of the Upper Santa Cruz River Basin defendants.

D. The two actions were consolidated on December 11, 1975 (the "Tucson Case"). The plaintiffs in the consolidated action filed a first amended complaint on August 14, 1980 naming as defendants approximately 1300 individuals and entities who allegedly were surface and groundwater users in the Upper Santa Cruz River Basin. In the first amended complaint, the United States sued in its own right and on behalf of the

Nation and individual Indian allottees of land within the San Xavier Indian Reservation, the Nation sued in its own right and on behalf of its member allottees, and John Lewis and Rosanna Carlyle sued as Indian allottees on the San Xavier Indian Reservation. The first amended complaint omitted the class allegations that had been alleged in the second action.

E. Between 1975 and 1982, the principal parties to the Tucson Case engaged in negotiations to devise a federal legislative settlement of the case. The resulting legislation, the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) was approved on October 12, 1982, Public Law 97-293, 96 Stat. 1274, *et seq.*

F. Several of the provisions of SAWRSA did not become effective unless certain actions were taken within a one-year period. These requirements, specified in Section 307(a)(1) of SAWRSA, were timely met within one year of the date of SAWRSA's enactment as follows:

1. The City entered into an agreement with the United States dated October 11, 1983, to make available 28,200 acre feet of reclaimed water to the Secretary of the Interior to be disposed of as the Secretary saw fit and including a provision that permitted the Secretary to provide terms and conditions under which the Secretary would relinquish to the City such quantities of water as were not needed to satisfy the Secretary's obligations under SAWRSA;

2. The City, Asarco, FICO, the State of Arizona and others entered into an agreement with the United States dated October 11, 1983 to fund the Cooperative Fund; contributions that were required to be made to the Cooperative Fund pursuant to Section 313 of SAWRSA were subsequently made; and

3. The Nation entered into an agreement with the United States dated October 11, 1983 in which (a) the Nation agreed to file a stipulation for dismissal with prejudice of the Tucson Case, in compliance with Section 307(a)(1)(C) of SAWRSA, and (b) the Nation executed a waiver and release as required by Section 307(a)(1)(D) of SAWRSA.

G. In accordance with its October 11, 1983 agreement with the United States, on December 2, 1988, the Nation filed a motion to dismiss with prejudice the Tucson Case. On December 21, 1988, the City joined in the motion of the Nation with the objective that the claims of all plaintiffs against the defendants could be dismissed with prejudice. The Nation's motion was granted on February 3, 1989 and amended on July 6, 1989. The Court granted the Nation's motion to vacate its dismissal and restored the Nation as a party on September 17, 1992.

H. The United States filed a separate motion to dismiss on December 14, 1989. On March 19, 1990, allottees John Lewis and Rosanna Carlyle opposed dismissal of the Tucson Case, and filed a motion to certify a class of allottees and to add the remaining *United States v. Tucson* Named Plaintiff Allottees as class representatives. The remaining *United States v. Tucson* Named Plaintiff Allottees were added "as additional plaintiffs and class representatives" by Court Order dated June 7, 1990.

I. The *United States v. Tucson* Named Plaintiff Allottees filed a motion for leave to file a separate amended complaint on November 13, 1991, as later revised on June 8, and a second motion to file a further revised amended complaint on October 9, 1992. On December 7, 1992, the Court denied the October 9, 1992 motion and granted in part and denied in part the November 13, 1991 motion. The Court permitted the *United*

States v. Tucson Named Plaintiff Allottees to amend the pleadings to reassert class allegations and to assert separate *Winters'* reserved water rights.

J. The *United States v. Tucson* Named Plaintiff Allottees objected to dismissal with prejudice of the Tucson Case. Among other objections, the *United States v. Tucson* Named Plaintiff Allottees disagreed with the division of benefits between the Allottees and the Nation under SAWRSA.

K. SAWRSA was amended by the Southern Arizona Water Rights Technical Amendments Act of 1992, Public Law 102-497, 106 Stat. 3255 *et seq.* (October 24, 1992).

L. On January 22, 1993, Felicia Alvarez and additional Allottees (collectively, the *Alvarez v. Tucson* Named Plaintiff Allottees) filed an action in Federal District Court for the District of Arizona, Case No. CV 93-0039 TUC FRZ ("*Alvarez v. Tucson*"), against the City, Asarco and FICO each on his or her own behalf and on behalf of a putative class of Allottee plaintiffs. The *Alvarez v. Tucson* Named Plaintiff Allottees alleged: First Cause of Action - federal common law trespass by the defendants to Indian possessory rights based on (a) pumping activities by all defendants, resulting in (i) depletion of the surface flows of the Santa Cruz River, declining water tables and diminished water availability for irrigation, and (ii) land subsidence; and (b) groundwater contamination, erosion and sedimentation by defendant Asarco; Second Cause of Action - federal common law equitable restitution and accounting from the defendants; Third Cause of Action - federal statutory §1983 violation by defendant City of Tucson under color of Arizona State law by depriving the Allottees of federally-protected rights, privileges and immunities. The Allottee plaintiffs alleged a Fourth Cause of Action -

diversity nuisance violation by defendant Asarco by causing groundwater contamination, erosion and sedimentation of Allottees' lands. This Settlement Agreement includes the First through Third causes of action (the "Alvarez Case") which are consolidated with the Tucson case and the Fourth Cause of Action. Additionally, the Allottee plaintiffs alleged a Fifth Cause of Action for breaches by defendant Asarco of its mining and business site leases of allotted land. The Fifth Cause of Action is not involved in this settlement.

M. On April 20, 1993, Gerald D. Adams and a number of other allottees (the *Adams v. United States* Plaintiff Allottees) filed a lawsuit in Federal District Court for the District of Arizona, Case No. CIV 93-240-TUC (the "Adams Case") against the United States. The *Adams v. United States* Plaintiff Allottees claimed that: (1) the United States had (a) breached its trust responsibilities to the allottees and (b) violated the Administrative Procedures Act; (2) the *Adams v. U.S.* Plaintiff Allottees were entitled to a special adjudication and administration or statutory right to a just and equal distribution of the San Xavier Indian Reservation water resources; and (3) the United States had violated its statutory duty to protect the riparian allottees from wrongful appropriations or grants of appropriative water rights by other landowners.

N. On December 21, 1998, the parties filed a Joint Motion to Consolidate the Adams Case and Counts one through three of the Alvarez Case with the Tucson Case for administrative purposes. The Court granted the motion on September 30, 1999. The consolidated litigation of the Tucson Case, the Alvarez Case and the Adams Case is referred to herein as the "Consolidated Litigation."

O. On December 21, 1998, the parties filed a Joint Stipulation to Certification of the *United States v. Tucson* Plaintiff Class as a Rule 23(b)(3) Class and filed a Joint

Motion to Certify the *Alvarez v. Tucson* Plaintiff Class as a Rule 23(b)(3) Class. Putative members of the "Plaintiff Class" consist of (a) Allottees and (b) Fee Owners of Allotted Lands. Putative class members who do not opt out will constitute the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Class. The Court granted the motions on January 18, 2000.

P. On July 6, 2004, the attorney for the United States and the attorney for the Adams plaintiffs stipulated to the dismissal of the Adams case. The Adams Case was dismissed without prejudice on July 9, 2004.

Q. During the past decade, the parties have made a number of efforts to settle this matter through amendments to SAWRSA. The Tohono O'odham Settlement Agreement reflects a settlement that relies on both legislative and contractual components to resolve the disputes among the parties, including dismissal with prejudice of the Consolidated Litigation.

EXHIBIT 5.2

THE TOHONO O'ODHAM NATION'S CAP CONTRACT, AS AMENDED

Contract No. PAPAGO121180A
Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDMENT TO CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

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Contract No. PAPAGO121180A
Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDED CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

1 PREAMBLE: This AMENDED CONTRACT TO CONTRACT NO. PAPAGO121180A ("Amended Contract") is made and entered into this ____ day of _____, 2005, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat 1057), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. § 1501), as amended, the Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293, 96 Stat. 1274), as amended, the Arizona Water Settlements Act enacted December 10, 2004 ("Settlements Act") and the various authorities and responsibilities of the Secretary of the Interior ("Secretary") in relation to Indians and Indian Tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, and the Tohono O'odham Settlement Agreement, between the UNITED STATES OF AMERICA ("United States"), acting through the Bureau of Reclamation, for and on behalf of the Secretary, and the TOHONO O'ODHAM NATION ("Nation"), formerly known as the "Papago Tribe" organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476). In this Amended Contract, the United States

and the Nation are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties".

WITNESSETH THAT:

2 EXPLANATORY RECITALS:

2.1 WHEREAS, on December 11, 1980, the Nation and the United States entered into Contract No. PAPAGO121180A, hereinafter referred to as the "1980 Contract" for the delivery of Central Arizona Project water to sustain the Nation's agricultural base and for other tribal homeland purposes; and

2.2 WHEREAS, the United States, the State of Arizona, the Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Company, and the San Xavier allottees entered into the Tohono O'odham Settlement Agreement to settle the disputes concerning the nature and extent of the rights to water of the Nation; and

2.3 WHEREAS, on December 10, 2004, Congress enacted the Arizona Water Settlements Act, hereinafter referred to as the "Settlements Act;" and

2.4 WHEREAS, the Settlements Act was created to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes; and

2.5 WHEREAS, Title III of the Settlements Act is the Southern Arizona Water Rights Settlement Amendments Act of 2004, which requires the Secretary, pursuant to section 309(g), to amend the 1980 Contract; and

2.6 WHEREAS, the Nation and the Secretary desire to amend the 1980 Contract to conform with the Settlements Act and the Tohono O'odham Settlement Agreement; and

2.7 WHEREAS, this Amended Contract will supersede and replace the 1980 Contract, in its

entirety;

NOW THEREFORE, the Parties agree as follows:

3 AMENDED CONTRACT PURPOSE: The purpose of this Amended Contract is to conform the 1980 Contract with the terms and conditions of the Settlements Act and the Tohono O'odham Settlement Agreement and to supersede and replace the 1980 Contract.

4 STATUS OF THE 1980 CONTRACT: The 1980 Contract is superseded and replaced by this Amended Contract when it becomes effective on the Enforceability Date, as defined in subsection 5.26 herein, and as set forth in section 302 of the Settlements Act.

5 DEFINITIONS: The first letters of defined terms are capitalized in this Amended Contract. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the following defined terms shall apply:

5.1 Available CAP Supply means for any given Year all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and Return Flows captured by the Secretary for CAP use.

5.2 Basin Project Act means the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended.

5.3 CAP means the Central Arizona Project, the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

5.4 CAP Contract means a long-term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for the delivery of water through the CAP System.

5.5 CAP Contractor means any person or entity having a CAP Contract.

5.6 CAP Fixed OM&R Charge means Fixed OM&R Charge as that term is defined in the

CAP Repayment Stipulation.

5.7 CAP Indian Priority Water means water having an Indian delivery priority as described in subsection 6.8 herein.

5.8 CAP Master Repayment Contract means 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.

5.9 CAP M&I Priority Water means water having a municipal and industrial delivery priority as described in subsection 6.8 herein.

5.10 CAP NIA Priority Water means water having a non-Indian agricultural delivery priority as described in subsection 6.8 herein.

5.11 CAP Operating Agency means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of September 13, 2004, CAWCD is the CAP Operating Agency.

5.12 CAP Pumping Energy Charge means the Pumping Energy Charge as that term is defined in the CAP Repayment Stipulation.

5.13 CAP Repayment Stipulation means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgement Upon the Satisfaction of Conditions, entered in Central Arizona Water Conservation District v. United States, et al., No. CIV 95-625-TUC-WDB EHC, No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the order dated April 29, 2003, entered therein and any amendment or revision thereof.

5.14 CAP Service Area means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central

Arizona Project water and any expansion of that area under applicable law.

5.15 CAP Subcontract means a long-term subcontract, as that term is used in the CAP Repayment Stipulation, among any person or entity, the United States, and CAWCD for the delivery of water through the CAP System.

5.16 CAP Subcontractor or Subcontractor means the person, agency or entity holding a subcontract between such party and CAWCD providing for the delivery of Project Water.

5.17 CAP System means the Mark Wilmer Pumping Plant, the Hayden Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants and appurtenant works of the Central Arizona Project aqueduct system and any extensions, addition thereto, or replacement features thereof.

5.18 CAWCD means the Central Arizona Water Conservation District.

5.19 Central Arizona Project or Project or CAP means that reclamation project authorized and constructed by the United States pursuant to Title III of the Colorado River Basin Project Act of September 30, 1968 (43 U.S.C. §§ 1501 et seq.), 82 Stat. 885, as amended.

5.20 Community means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

5.21 Contracting Officer means the Secretary or his or her authorized designee acting on his or her behalf.

5.22 Cooperative Fund means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the Settlements Act.

5.23 Delivery Point(s) means the point(s) on the Nation's Reservation that are reasonably required, by agreement of the Contracting Officer and the Nation, or selected by the Secretary, to permit the Nation to put the Project Water to its intended use.

5.24 Distribution Works 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 Nation's Reservation after said Project Water has been transported or delivered through the Main System.

5.25 Eastern Schuk Toak District means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area as defined in section 303(48) of the Settlements Act.

5.26 Enforceability Date means the date on which Title III of the Settlements Act entitled "Southern Arizona Water Rights Settlement Amendments Act of 2004" takes effect.

5.27 Excess CAP Water means Excess Water as that term is defined in the CAP Repayment Stipulation.

5.28 Excess CAP Water Contract means a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

5.29 Excess CAP Water Contractor or Excess CAP Water Contractors means one or more persons or entities having an Excess CAP Water Contract.

5.30 Exhibit A is the Secretary's Shortage Sharing Approach Under 1980 Contract as referred to in subsection 6.8 herein.

5.31 Fourth Priority Water means Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water to the Central Arizona Project, including use of Colorado River water on Indian lands.

5.32 Hohokam Agreement means the Agreement Among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona Cities of Chandler, Mesa, Phoenix and Scottsdale, dated December 21, 1993.

5.33 Lower Colorado River Basin Fund means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

5.34 Main System means those principal works of the Project listed as follows: Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, Buttes Dam, and the Navajo Power Project, together with all appurtenances thereto and all lands, interests in lands, and rights-of-way for such works and appurtenances.

5.35 Nation's Reservation means all land within the exterior boundaries of (a) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (b) the San Xavier Reservation established by the Executive order of July 1, 1874; (c) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909; (d) the Florence Village established by Public Law 95-361 (92 Stat. 595); (e) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and (f) all other land to which the United States holds title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the Enforceability Date.

5.36 Non-Project Water means water acquired by the Nation other than from the Central Arizona Project.

5.37 OM&R means the care, operation, maintenance, and replacement of the Main System, or any part thereof.

5.38 Project Water means (i) Colorado River mainstream water, (ii) all other water conserved

and developed by Central Arizona Project dams and reservoirs and available for delivery by the United States, and (iii) Return Flow captured by the Secretary for Project use.

5.39 Return Flow means waste water, seepage, and ground water which originates or results from water contracted for from the CAP pursuant to this Amended Contract.

5.40 San Xavier Reservation means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

5.41 Secretary means the Secretary of the United States Department of the Interior or his or her duly authorized representative.

5.42 Settlements Act means the Arizona Water Settlements Act enacted on December 10, 2004.

5.43 Time of Shortage is described in subsection 6.8 herein entitled, "Priority" which conforms to subsection 5.3 of the Tohono O'odham Settlement Agreement.

5.44 Tohono O'odham Settlement Agreement means means the Agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478 (including all the exhibits of and attachments to the Agreement) among the United States of America, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two Allottee Classes in the Consolidated Litigation.

5.45 Water Right means any right in or to groundwater, surface water, or effluent under applicable law, as defined in section 303(53) of the Settlements Act.

5.46 Year means the twelve-month period between January 1 through the next succeeding December 31.

6 DELIVERY OF WATER:

6.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this Amended Contract, during such periods as it operates and maintains the Project, the

United States will deliver Project Water to the Nation. The United States will use reasonable diligence to make available to the Nation the quantities of water specified in the schedule submitted by the Nation and shall make deliveries of Project Water to the Nation to meet the Nation's water requirements within the constraints of and in accordance with subsection 6.6 herein. After transfer of OM&R to the CAP Operating Agency the United States will make deliveries of Project Water to the CAP Operating Agency for subsequent delivery to the Nation, as provided herein.

6.2 Term of Amended Contract. This Amended Contract is for permanent service, as that term is used in section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. 617d, is without limit as to term, and shall otherwise conform to the provisions of section 104(d) of the Settlements Act.

6.3 Conditions Relating to Delivery. The Nation hereby agrees that the obligation of the United States to deliver water under this Amended Contract is subject to:

6.3.1 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.

6.3.2 The United States obligation under the Mexican Water Treaty, 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 Mexican Water Treaty;

and obligations associated with Minutes of the International Boundary and Water Commission adopted pursuant to the Mexican Water Treaty.

6.3.3 The express understanding and agreement by the Nation that this Amended 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 Amended 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 Nation 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 the Nation hereunder.

6.3.4 The right of the United States or the CAP Operating Agency temporarily to discontinue or 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 or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the CAP Operating Agency will give thirty (30) days notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, employees, successors, or assigns, nor the CAP Operating Agency, its officers, agents, employees, successors, or assigns shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs.

6.3.5 Measures shall be in effect, adequate in the judgement of the Secretary, to provide for the internally integrated management and control of surface and ground water within the Nation's Reservation to the end that ground water withdrawals are managed on a responsible basis.

6.3.6 The canals and Distribution Works through which Project Water is conveyed after its delivery to the Nation shall be maintained with linings adequate in the Secretary's judgement to prevent excessive conveyance losses; provided, however, that the Nation shall be relieved from this obligation if the United States does not make funds for this purpose available to the Nation following a timely request for such funds.

6.3.7 The Nation shall not pump nor permit others to pump groundwater from within the exterior boundaries of the Nation's Reservation for use outside said Reservation unless the Secretary and the Nation 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 a contract, said pumping may continue through-out 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.

6.4 Exchanges, Leases, and Other Agreements. The Nation may, with the approval of the Secretary assign, exchange, or otherwise temporarily dispose of CAP water to which the Nation is entitled under this Amended Contract. With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may, with the approval of the Secretary, lease and enter into options to lease its CAP water.

6.4.1 The Nation may, with the approval of the Secretary renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years.

6.4.2 Subject to the provisions of sections 309 and 310 of the Settlements Act, the Nation shall be entitled to all moneys or other consideration due to the Nation under any leases and

any options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

6.4.3 The United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange.

6.4.4 No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State of Arizona.

6.4.5 CAP water scheduled for delivery in any Year under this Amended Contract that the Nation does not use may be made available by the Contracting Officer to other users, or the Contracting Officer may request that the CAP Operating Agency make such water available to other users; provided, however, that the Nation shall first have an opportunity to enter into contracts to lease, options to lease, contracts to exchange or options to exchange or resell such water as provided in this Amended Contract.

6.4.6 None of the Nation's CAP water may be permanently alienated.

6.4.7 The provisions of this Amended Contract shall not be applicable to or affect Non-Project Water or Water Rights now owned or hereafter acquired by the Nation.

6.4.8 The Nation may exchange CAP water and may change times and places of delivery of CAP water, subject to the approval of the Secretary.

6.4.9 The Nation shall be entitled to enter into contracts for Excess CAP Water, as provided in the CAP Repayment Stipulation.

6.4.10 Nothing in this Contract shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

6.4.11 All of the Nation's CAP water shall be delivered through the CAP System;

provided, however, that in the event the delivery capacity of the CAP System is significantly reduced or is anticipated to be significantly reduced for an extended period of time or the CAP System is destroyed, the Nation shall have the same CAP delivery rights as other CAP Contractors and CAP Subcontractors, if the CAP Contractors or CAP Subcontractors are allowed to take delivery of water other than through the CAP System.

6.4.12 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District which is allocated solely for agricultural use within the Sif Oidak District, the Nation may use the Nation's CAP water on or off the Nation's Reservation for any purpose of the Nation consistent with the Settlements Act. Such purposes include any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use, whether the Nation's water supplies were delivered by the Secretary or pumped by the Nation.

6.4.13 The Secretary or the CAP Operating Agency shall deliver the Nation's CAP water in accordance with water delivery schedules provided by the Nation to the Secretary and the CAP Operating Agency pursuant to subsection 6.6 herein, or pursuant to lease or exchange agreements approved by the Secretary.

6.4.14 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District, if the Nation's CAP water is to be delivered for use off the Nation's Reservation, neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or of the Secretary, the delivery schedule for such off-Reservation use would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would delivery of the Nation's CAP water to the Nation's Reservation; provided, however, that Excess CAP Water Contracts first entered into after the off-Reservation delivery of the Nation's CAP water has been established shall not limit such

delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

6.4.15 The Nation shall schedule delivery of the Nation's CAP water in accordance with this Amended Contract. If the combined delivery requests for all CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Nation's delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Nation requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Nation's requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Nation or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor shall be considered "similarly located" for purposes of this section if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor will affect the quantity of the Nation's CAP water available for delivery to the Nation.

6.4.16 With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may use the CAP water supplies provided under this Amended Contract within the CAP Service Area, in accordance with the Settlements Act.

6.4.17 Any CAP water received by the Nation in exchange for effluent shall not be deducted from the Nation's contractual entitlement under this Amended Contract.

6.5 Delivery Entitlements and Obligations.

6.5.1 The Secretary shall deliver annually from the CAP System, a total of 37,800 acre-feet of water suitable for agricultural use, of which:

6.5.1.1 27,000 acre-feet shall be deliverable for use to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.1.2 10,800 acre-feet shall be deliverable for use to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2 In addition to the delivery of water described in 6.5.1 herein, the Secretary shall deliver annually from the CAP System, a total of 28,200 acre-feet of NIA Priority Water suitable for agricultural use, of which:

6.5.2.1 23,000 acre-feet shall be delivered to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2.2 5,200 acre-feet shall be delivered to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act.

6.5.3 The Secretary shall deliver the 66,000 acre-feet per year of CAP water described in 6.5.1 and 6.5.2 herein, or an equivalent quantity of water from any appropriate source if the Secretary is unable during any Year to deliver annually from the main project works of the CAP any portion of the 66,000 acre-feet, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence affecting water delivery caused by an act or omission

of the Secretary, the United States or any officer, employee, contractor, or agent of the Secretary or United States; provided, however, that the Secretary shall not acquire any water that would cause depletion of groundwater supplies or aquifers in the San Xavier Reservation or the Eastern Schuk Toak District. In accordance with the provisions of the section 305(d) of the Settlements Act, the Secretary shall provide compensation if the Secretary is unable to acquire and deliver sufficient quantities of water under subsections 6.5.1 and 6.5.2 herein.

6.5.4 In addition to the delivery of water described in subsections 6.5.1 and 6.5.2 herein, the Secretary shall deliver 8,000 acre-feet annually to the Sif Oidak District; provided, however, that certain terms and conditions of this Amended Contract do not apply or apply differently to this CAP water, as set forth in subsections 6.4, 6.4.12, 6.4.14, 6.4.16, 9.6, and section 13, herein.

6.6 Procedure For Ordering Water.

6.6.1 The Nation will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery.

6.6.1.1 On or before October 1 of each Year, the Nation shall submit in writing to the Contracting Officer a water delivery schedule indicating the amount of CAP water desired by the Nation during each month of the following Year along with a preliminary schedule of water desired for the succeeding two (2) Years.

6.6.1.2 Upon receipt of the schedule, the Contracting Officer shall review it and, after consultation with the CAP Operating Agency and the Nation, shall make only such modifications in it as are necessary to ensure that the amounts, times and rates of delivery to the Nation will be consistent with the provisions of section 6.3 herein. On or before December 1 of each Year, the Contracting Officer shall determine and furnish to the Nation the water delivery schedule for the next succeeding Year which shall show the amounts of water to be delivered to the Nation during each month of that Year.

6.6.2 A water delivery schedule may be amended by the Contracting Officer upon the Nation's written request. Proposed amendments shall be submitted by the Nation to the Contracting Officer 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.

6.6.3 The Nation shall hold the United States, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature arising out of or connected with the actions of the United States regarding water delivery schedules furnished to the Nation.

6.6.4 In lieu of the Nation submitting water delivery schedules to the Contracting Officer for approval, the Contracting Officer reserves the right to direct the Nation to submit such schedules to the CAP Operating Agency under such criteria as the Contracting Officer determines to be appropriate, after consultation with the Nation and the CAP Operating Agency and so long as the Nation's rights to require the delivery of CAP water are not thereby adversely impacted or diminished.

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

6.7.1 The Nation's CAP water to be furnished to the Nation pursuant to this Amended Contract will be delivered (i) at the turnout(s) from the CAP System to the Distribution Works as agreed upon in writing by the Contracting Officer and the Nation or, in the event they are unable to agree, as selected by the Secretary and (ii) at such other points as may otherwise be agreed upon or approved by the Secretary.

6.7.2 All water delivered to the Nation shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the CAP Operating Agency. Upon request of the Nation, the accuracy of such measurements will be investigated by the Contracting Officer or the CAP Operating Agency and the Nation, and any errors appearing therein adjusted; provided, however, that in the event the Parties cannot agree on the

required adjustment, the Contracting Officer's determination shall be conclusive.

6.7.3 Neither the United States nor the CAP Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the delivery point(s) as specified in section 305(a)(1) of the Settlements Act. The Nation shall hold the United States and the CAP 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 Nation's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

6.8 Priority.

6.8.1 In time of shortage the Available CAP Supply shall be distributed as described in this section 6.8.

6.8.2 For purposes of administering this Amended Contract, a time of shortage shall be a Year when:

6.8.2.1 On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

6.8.2.2 Prior to January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and (iii) up to one-hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.2.3 On or after January 1, 2044, any Year in which the Available CAP

Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; (iii) up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and (iv) up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.3 In time of shortage the initial distribution of water shall be determined in the following manner:

6.8.3.1 If the available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

6.8.3.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsections 6.8.2.2 and 6.8.2.3, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.2 were nine hundred eighty-one thousand nine hundred two (981,902) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.3 were one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

6.8.4 In time of shortage unscheduled CAP water shall be redistributed in the following manner:

6.8.4.1 Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

6.8.4.2 CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

6.8.4.3 Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

6.8.4.4 Nothing in this subsection 6.8 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

6.8.5 The distribution of CAP Indian Priority Water among CAP Indian Priority Water users shall be accomplished as follows:

6.8.5.1 In consideration of the agreement by the Community and the Nation to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit A attached hereto, the Secretary shall first make available to the Community and the Nation any water made available for delivery as CAP Indian Priority Water under subsection 6.8.4.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community and the Nation. After the additional shortages borne by the Community and the Nation have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in including the Community and the Nation, in proportion to their contractual entitlements to CAP Indian Priority Water.

6.8.5.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in subsections 6.8.3.1 or 6.8.3.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with subsection 6.8.4.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit A attached hereto.

6.8.5.3 If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima Maricopa Indian Community, the Nation, and the San Carlos

Apache Tribe. During a Time of Shortage described in this subsection 6.8.5.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit A, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

6.8.5.4 If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to subsection 6.8.3.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at the Time of Shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only fifteen thousand (15,000) acre-feet of its entitlement because the Nation's CAP distribution system was only partially complete and would permit the delivery of only fifteen thousand (15,000) acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

6.8.5.5 If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or

exchange of CAP water, then the Secretary shall require such Indian Tribe to include in such new contract or amendment, a provision to share, on a proportional basis (the proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian irrigation water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian irrigation water) with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to subsections 6.8.5.2 and 6.8.5.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation and the Secretary shall modify this Amended Contract to reflect such sharing of shortages by the other Indian tribes.

6.8.5.6 Subsection 6.8.5.5 shall not apply to the renewal of any contract existing on December 31, 2002, with an Indian tribe or nation that the Secretary entered into pursuant to an Indian water settlement approved by act of Congress.

6.8.5.7 The shortage sharing criteria in subsection 6.8 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530, or water acquired from the Wellton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Public Law 100-512, both of which have a higher priority than Fourth Priority Water.

6.9 Secretarial Control of Return Flow. The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Nation's Reservation as a source of supply and for distribution to and use of the CAP to the fullest extent practicable. The Nation may recapture and reuse or sell Return Flow within the Nation's Reservation; provided, however, that such Return Flow captured within the Nation's Reservation may not be sold for use outside the Nation's Reservation unless the Secretary has given prior written approval.

6.10 Exchange Water. Where the Secretary determines that the Nation is 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 the Nation 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.

7 UNDERGROUND STORAGE AND RECOVERY PROJECTS: The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham Settlement Agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

8 OTHER WATER: Nothing in this Amended Contract shall prevent the Nation 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.

9 PAYMENTS:

9.1 Pursuant to section 309(g)(7) of the Settlements Act, the costs associated with the construction of the delivery and distribution system allocable to the Nation:

9.1.1 shall be nonreimbursable; and

9.1.2 shall be excluded from any repayment obligation of the Nation.

9.2 Pursuant to section 309(g)(8) of the Settlements Act, no CAP water service capital charges shall be due or payable for the Nation's CAP water, regardless of whether the CAP water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

9.3 Pursuant to section 310(b)(1) and (2) of the Settlements Act and subject to the exceptions herein and in subsection 9.5, the Secretary shall be responsible for the payment of the

CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.3.1 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charge associated with the delivery of the Nation's CAP water as follows:

9.3.1.1 from the Lower Colorado River Basin Development Fund, established by section 403 of the Basin Project Act, as authorized by subparagraph (A) of section 403(f)(2) of that Act and to the extent that funds are available in the Fund.

9.3.1.2 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act and to the extent that funds are not available from the Lower Colorado River Basin Development Fund, from the Cooperative Fund; or

9.3.1.3 in the event that there are no monies available from the Lower Colorado River Basin Development Fund or from the Cooperative Fund, then from the Nation.

9.3.2 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water as follows:

9.3.2.1 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act, from the Cooperative Fund; or

9.3.2.2 in the event that there are no monies available from the Cooperative Fund the from the Nation.

9.4 In those instances in which the monies are not available to the Secretary from the Lower Colorado River Basin Development Fund as set forth in subsection 9.3.1, or the Cooperative Fund as

set forth in subsection 9.3.1 and 9.3.2, and the Nation is responsible for making payments as provided herein, the following shall apply:

9.4.1 The Nation's CAP water shall not be delivered to the Nation unless the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of such water are paid in advance.

9.4.2 The annual CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water shall be paid in twelve (12) equal monthly installments and shall be paid on or before the first day of each month in order for the Nation to receive water deliveries in the succeeding month.

9.4.3 The Contracting Officer may direct that payments be received in other than the equal monthly installments described in subsection 9.4.2.

9.4.4 Unless otherwise agreed, differences between estimated and actual CAP Fixed OM&R Charge and the estimated and actual CAP Pumping Energy Charge shall be determined by the Contracting Officer and shall be adjusted in the next succeeding annual CAP Fixed OM&R Charge; provided, however, that if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be insufficient to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge during the Year, the Contracting Officer may increase the annual estimate of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation CAP water by written notice thereof to the Nation, and the Nation shall forthwith increase its remaining monthly payments in such Year by the amount necessary to cover the insufficiency; provided, further, that unless otherwise agreed, if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be greater than what is required to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water during the Year, the Contracting Officer shall reduce the

remaining monthly payments on a pro rata basis to adjust the total payment for the Year to the revised estimate. The Nation agrees to make all advances or payments required under this section.

9.4.5 Pursuant to 25 U.S.C. 385 and regulations promulgated pursuant thereto (25 CFR Part 171), the Secretary may adjust the amount of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge for which the Nation is responsible.

9.4.6 In the event the Nation fails or refuses to accept delivery at the Delivery Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Amended Contract, or in the event the Nation fails in any Year to submit a schedule for delivery as provided in subsection 6.6, said failure or refusal shall not relieve the Nation of its obligation to make the payment required in this subsection 9.3.5. The Nation agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this Amended Contract except as provided in subsection 6.4.5; provided, however, that the Nation shall be relieved from such obligation to pay if Distribution Works are not in place to receive water because the United States has not made funds available to the Nation to construct Distribution Works or the United States has not constructed Distribution Works for the Nation.

9.4.7 If the Nation's CAP water is made available to others by the Contracting Officer or the CAP Operating Agency, the Nation shall be relieved of its payments hereunder and only to the extent of the amount paid to the Contracting Officer or the CAP Operating Agency by such other users, but not to exceed the amount the Nation is obligated to pay under this Amended Contract for said water.

9.4.8 In the event the Nation or the Contracting Officer and the CAP Operating Agency are unable to sell any portion of the Nation CAP water scheduled for delivery and not required by the Nation, the Nation shall be relieved of the CAP Pumping Energy Charges associated with the undelivered water.

9.4.9 In the event that a discontinuance or temporary reduction in deliveries of CAP water results in the delivery to the Nation of an amount less than what has been paid for in advance by the Nation, the Nation shall be given credit toward the next payment of the CAP Fixed OM&R Charge.

9.4.10 The Nation shall have no right to delivery of water from Project facilities during any period in which the Nation may be in arrears in the payment of any charges due to the Contracting Officer or the CAP Operating Agency. The Contracting Officer may sell to another entity any water determined to be available under the Nation's entitlement for which payment is in arrears or the Contracting Officer may request that the CAP Operating Agency sell such water; provided, however, that the Nation may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of water by the Contracting Officer or the CAP Operating Agency and payment of charges for the current period.

9.4.11 The Nation shall be subject to interest, administrative, and penalty charges on delinquent CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.12 When a payment is not received by the due date, the Nation shall pay an interest charge for each day the payment is delinquent beyond the due date. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

9.4.13 When a payment becomes 60 days delinquent, the Nation shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment.

9.4.14 When a payment is delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6 percent per Year for each day the payment is delinquent beyond the due date.

9.4.15 The Nation shall pay any fees incurred for debt collection services associated with a delinquent payment.

9.4.16 When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.17 The obligation of the Nation to pay the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water to the Contracting Officer, or the CAP Operating Agency as provided in this Amended Contract, is a general obligation of the Nation notwithstanding the manner in which the obligation may be distributed among the Nation's water users and notwithstanding the default of individual water users in their obligations to the Nation.

9.5 The Nation shall require its contractors to pay the CAP Operating Agency the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge in any contracts, leases, options to lease or other agreements providing for the temporary delivery to, or use by, such contractors of any portion of the Nation's CAP water.

9.6 Payment Provisions for Sif Oidak District Water (Chuichu).

9.6.1 Subsection 9.4 of this Amended Contract shall apply to the 8,000 acre feet per Year of the Nation's CAP water for the Sif Oidak District.

9.6.1.1 The Nation is obligated for the repayment of total reimbursable costs of construction of the CAP System allocated to delivery of irrigation water in accordance with section 402 of the Basin Project Act. Pursuant to section 402 of the Basin Project Act, (1) repayment of the

construction costs allocated to the delivery of irrigation water to lands of the Nation's Reservation and within the repayment capacity of such lands shall be deferred until such time as the lands are converted to non-Indian ownership, and (2) repayment of the construction costs allocated to delivery of irrigation water to the lands of the Nation's Reservation and beyond the repayment capability of such lands shall be nonreimbursable.

9.6.1.2 The Nation shall be responsible for payment to the United States or the CAP Operating Agency of CAP water service capital charges associated with the delivery of the 8,000 acre-feet per Year of CAP water for the Sif Oidak District in the event that (1) any of the Sif Oidak District lands are converted to non-Indian ownership, and (2) this water is converted to municipal and industrial (M&I) use.

9.6.1.3 The Nation shall be responsible for payment to the United States or the CAP Operating Agency for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the 8,000 acre-feet per Year of CAP water that is not covered by the Lower Colorado River Basin Development Fund.

9.6.1.4 Repayment will be made in accordance with applicable Federal Reclamation law. The Nation agrees to make all required payments associated with the delivery of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District on such terms and conditions as may be agreed to by the Contracting Officer and the Nation.

10 ENVIRONMENTAL COMPLIANCE: Notwithstanding any other provision of this Amended Contract, the United States will not deliver Project Water through Distribution Works to the Nation'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 Nation pursuant to the terms of this Amended 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.

11 GENERAL PROVISIONS:

11.1 Water and Air Pollution Control. The Nation, in carrying out this Amended Contract, shall comply with all applicable water and air pollution laws and regulations of the Nation and the United States, and shall obtain all required permits or licenses from the appropriate authorities of the Nation and the United States.

11.2 Quality of Water. The OM&R of the CAP System 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. Neither the United States nor the CAP 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.

11.3 Compliance With Federal Reclamation Laws. The delivery of water or the use of Federal facilities pursuant to this Amended Contract is subject to applicable Federal Reclamation laws.

11.4 Books, Records, and Reports. The Nation shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Amended Contract as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Amended Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Amended Contract.

11.5 Notices. Any notice, demand, or request authorized or required by this

Amended Contract shall be deemed to have been given, on behalf of the Nation, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Tohono O'odham Nation, P.O. Box 837, Sells, Arizona 85634-0837, with a copy mailed to P.O. Box 830, Sells, Arizona 85634. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

11.6 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Amended Contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allocated.

11.7 Assignment Limited – Successors and Assigns Obligated. The provisions of this Amended Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Amended Contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

11.8 Officials Not to Benefit. No member of or delegate to Congress or official of the Nation shall benefit from this Amended Contract other than as a water user or landowner in the same manner as other water users or landowners.

11.9 Equal Opportunity.

11.9.1 In accordance with the provisions of Title 42 U.S.C. 2000e-2(i), the Nation shall give preference in employment to Indians living on or near the Nation's Reservation.

11.9.2 Except as provided above, during the performance of this Amended Contract, the Nation agrees as follows:

11.9.2.1 The Nation will not discriminate against any employee or applicant

for employment because of race, color, religion, sex, or national origin. The Nation 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 Nation 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.

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

11.9.2.3 The Nation will 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 Contracting Officer, advising said labor union or workers' representative of the Nation'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.

11.9.2.4 The Nation will 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.

11.9.2.5 The Nation will 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 will permit access to its books, records, and accounts by

the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

11.9.2.6 In the event of the Nation's noncompliance with the nondiscrimination clauses of this Amended Contract or with any such rules, regulations, or orders, this Amended Contract may be canceled, terminated, or suspended, in whole or in part, and the Nation 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 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.9.2.7 The Nation will include the provisions of subsections 11.9.2.1 through 11.9.2.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Nation will take such action with respect to any subcontract 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 the Nation becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interests of the United States.

11.10 Compliance with Civil Rights Laws and Regulations.

11.10.1 The Nation shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines

imposed by the Department of the Interior and/or Bureau of Reclamation.

11.10.2 These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Amended Contract, the Nation agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

11.10.3 The Nation makes this agreement 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 Nation by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Nation recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this section, and that the United States reserves the right to seek judicial enforcement thereof.

11.10.4 Rules, Regulations, and Determinations.

11.10.4.1 The Contracting Officer shall have the right to make, after an opportunity has been offered to the Nation for consultation, rules and regulations consistent with the provisions of the Amended Contract and the laws of the United States and to add to or to modify such rules and regulations as the Contracting Officer may deem proper and necessary to carry out this Amended Contract, and to supply necessary details of its administration which are not covered by express provisions of this Amended Contract. The Nation shall observe such rules and regulations.

11.10.4.2 Where the terms of this Amended Contract provide action to be based upon the opinion or determination of either party to this Amended 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 Nation 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 Nation.

12 EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of subsections 11.9 and 11.10 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), which pertain 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.

13 CREDIT AGAINST WATER RIGHTS: At such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation under this Amended Contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and the Nation at that time. Thereafter, the Nation may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this Amended Contract. Until such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation is supplemental water and is not credited against, or in any way related to the Nation's Water Rights.

14 AMENDED CONTRACT AND SETTLEMENTS ACT: In the event that differences between the language of this Amended Contract and the Settlements Act result in ambiguity or confusion or

the provisions are inconsistent, the language of the Settlements Act shall govern.

15 EXHIBIT MADE PART OF CONTRACT: Exhibit A is attached hereto and made part of this Amended Contract, and shall be in full force and effect in accordance with its respective provisions until superseded by a subsequent exhibit or exhibits executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended Contract the day and year first written above.

THE UNITED STATES OF AMERICA

Legal Review and Approval:

By: _____
Field Solicitor
Phoenix, Arizona

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

ATTEST:

TOHONO O'ODHAM NATION

By: _____

By: _____
Chairperson

Exhibit A
Contract No. PAPAGO121180A
Amendment No. 1
Tohono O'odham Nation

**SECRETARY'S APPROACH FOR DETERMINING THE AMOUNT OF WATER
AVAILABLE TO THE NATION DURING A TIME OF SHORTAGE
UNDER 1980 CONTRACT**

1. This Exhibit A, made this _____ day of _____, 2005, to be effective under and as a part of Contract No. PAPAGO121180A, as amended, hereinafter called "Amended Contract," shall become effective on the date of the Amended Contract's execution and shall remain in effect until superseded by another Exhibit A; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Amended Contract.
2. The following is the Secretary's approach for determining the amount of water available to the Nation during a time of shortage under the 1980 Contract, that is referred to in subarticle 6.8 entitled "Priority".

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.
5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.

EXHIBIT 5.3.4.1

SECRETARY'S SHORTAGE SHARING APPROACH

UNDER THE 1980 CONTRACT

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.

5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.

EXHIBIT 8.6

STORAGE ACCOUNT FORM

TOHONO O'ODHAM NATION

UNDERGROUND WATER STORAGE ACCOUNT SUMMARY

Long Term Storage Account Holder:	Tobacco Ordinance Nations
Long Term Storage Account Number:	
Balance as of (Date):	

[illegible][illegible]

EXHIBIT 8.7

EXAMPLES OF CALCULATIONS

FOR ADDITIONAL GROUNDWATER PUMPING

EXHIBIT 8.7

Examples of Calculations for Additional Groundwater Pumping

The following examples illustrate calculations to determine additional groundwater pumping allowances for the San Xavier District and the eastern Schuk Toak District as provided in paragraph 8.7 of the Tohono O'odham Settlement Agreement.

I. SAN XAVIER RESERVATION:

Example A:

1. Determination of San Xavier District Maximum Demand (SXDM):

("San Xavier District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use [other than direct groundwater recharge or use by Asarco], and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].) The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example A calculation:

Year 1 water use	13,000 af
Year 2 water use	16,000 af
Year 3 water use	17,000 af
Year 4 water use	20,000 af
Year 5 water use	19,000 af

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDM (highest year's water use is year 4)	20,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDM	4,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*

**Bracketed items are not summed.*

Minus non-marketable storage credits up to 20% of SXDMD	<u>-4,000 af</u>
TOTAL	-1,000 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	0 af

Example B:

1. Determination of San Xavier District Maximum Demand (SXDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	19,000 af
Year 2 water use	20,000 af
Year 3 water use	25,000 af
Year 4 water use	21,000 af
Year 5 water use	23,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDMD (highest year's water use is year 3)	25,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDMD	5,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*
Minus non-marketable storage credits up to 20% of SXDMD	<u>-5,000 af</u>
TOTAL	3,000 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	3,000 af

**Bracketed items are not summed.*

II. EASTERN SCHUK TOAK DISTRICT

Example A:

1. **Determination of eastern Schuk Toak District Maximum Demand (ESTDMD):**

("eastern Schuk Toak District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use [other than direct groundwater recharge], and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].) The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of the Example A calculation:

Year 1 water use	9,000 af
Year 2 water use	7,000 af
Year 3 water use	10,000 af
Year 4 water use	8,000 af
Year 5 water use	9,000 af

2. **Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:**

ESTDMD (highest year's water use is year 3)	10,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
[20% of ESTDMD	2,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	4,000 af]*
[Deferred Pumping Storage Credits in account	16,000 af]*
Minus non-marketable storage credits up to 20% of ESTDMD	<u>-2,000 af</u>
TOTAL	-2,200 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	0 af

**Bracketed items are not summed.*

Example B:

1. Determination of eastern Schuk Toak Maximum Demand (ESTDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	14,000 af
Year 2 water use	13,000 af
Year 3 water use	14,000 af
Year 4 water use	15,000 af
Year 5 water use	16,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

ESTDMD (highest year's water use is year 5)	16,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-3,000 af
Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
[20% of ESTDMD	3,200 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	4,000 af]*
[Deferred Pumping Storage Credits in account	16,000 af]*
Minus non-marketable storage credits up to 20% of ESTDMD	<u>-3,200 af</u>
TOTAL	-6,600 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	6,600 af

**Bracketed items are not summed.*

EXHIBIT 8.8

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

The terms used herein shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the term "Non-exempt Well" means a well that is not an "Exempt Well" and the term "Replacement Well" means a well no further than 660 feet from an existing well being replaced that will not annually withdraw in excess of the historical withdrawals from the original well or as that term is defined in future ADWR well-spacing regulations if the distance of the replacement well from the original well is less than 660 feet.

The basic elements of the Groundwater Protection Program ("Program") referenced in paragraph 8.8 of the Tohono O'odham Settlement Agreement are as follows:

1. Written consent of the Nation shall be required for the permitting of any new Non-exempt Well, for which the projected 10-feet-within-5-year drawdown contour (as determined by a well-spacing analysis done under state regulations by ADWR) intercepts the border of the San Xavier Reservation.

- 2.a. In addition to the requirements of paragraph 1, an applicant for a permit to drill a proposed well of over 500 gpm capacity, or for a group of wells of over 500 gpm total capacity, to be located within two miles of the exterior boundaries of the San Xavier Reservation shall submit to ADWR one of the following:

- i. Evidence showing that the water levels at the proposed well site(s) are declining at less than an average rate of 2 feet per year (based on annual water level data collected during the five years prior to the permit application date); or

ii. Evidence showing that a projected 5-feet-within-5-year drawdown contour does not intercept the border of the San Xavier Reservation; or

iii. The Nation's written consent.

2.b. In determining the average annual water level change at a proposed well site and the projected drawdown effect of the proposed well(s) for purposes of obtaining a permit under this paragraph, the following shall be excluded:

i. the water-level effect of the pumping within the San Xavier Reservation; and

ii. the water-level effects of underground storage facilities within the 2 mile limit and permitted recovery wells within that limit except the water-level effects at the site of the proposed well of storage at said underground storage facilities by or on behalf of the applicant within the 2 mile limit.

2.c. For purposes of this paragraph, if the same applicant submits an application for a permit to drill a well within eighteen months of a previous application, the applications shall be aggregated in terms of capacity and considered as an application for a group of wells.

3. Upon receiving an application for a permit to drill any Non-exempt Well located within two miles of the San Xavier Reservation, the ADWR shall mail to the Nation written notice of the application along with a copy of thereof. The Nation shall have 60 days after mailing of the written notice to file an objection to the application. The grounds for an objection are that the application fails to meet the standards required herein or that the granting of the permit will violate these standards. If objection is made, a hearing shall be held on the application within 60 days of receipt of the objection. The

Nation shall be a party in such hearing. A recommendation based on the hearing shall be made by the hearing officer within 30 days after the close of the hearing. Within 30 days of the recommendation, the Director of ADWR ("Director") shall render his decision on the application. Any decision of the Director granting or denying a permit after objection by the Nation shall be subject to review by the Gila River Adjudication Court by an aggrieved party filing an application for review with the court within 30 days of mailing of the written notice of the decision of the Director on the application.

4. An applicant for a "Replacement Well" within two miles of the San Xavier Reservation shall be exempt from the requirements set forth in paragraphs 1 and 2 except that ADWR shall give notice thereof and provide the opportunity to object to the application and obtain review of the Director's decision thereon as provided in paragraph 3.

5. An applicant for a permit to drill an Exempt Well shall be exempt from the requirements set forth in paragraphs 1 and 2.

6. An applicant for a permit to drill a recovery well within two miles of the exterior boundaries of the San Xavier Reservation and within one mile of an underground storage facility shall be exempt from the requirements set forth in paragraphs 1 and 2 so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

7. This Program need not be described in detail in the SAWRSA Amendments, but the enactment of state legislation implementing the Program and authorizing ADWR's role in the Program will be a condition precedent to the Enforceability Date.

8. The judgment approving the Tohono O'odham Settlement Agreement should incorporate the salient provisions of this Program and the settlement will be made contingent on the passage of state legislation implementing the Program and authorizing the Director to enforce the Program as part of an approved Indian water rights settlement. Review of decisions of the Director will be part of the continuing jurisdiction of the Gila River Adjudication Court.

EXHIBIT 11.3

STANDARD FORM OF CAP SUBCONTRACT FOR CAP M&I USE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE _____
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 200____, in
pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as the "Federal
Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as
the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA
WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water
conservation district organized under the laws of Arizona, with its principal place of business
in Phoenix, Arizona, and the _____, hereinafter referred to as the
"Subcontractor," with its principal place of business in _____, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary of the Interior shall construct, operate, and maintain the Central Arizona Project; and

WHEREAS, pursuant to the provisions of Arizona Revised Statutes §§ 48-3701, et seq., the Contractor has been organized with the power to enter into a contract or contracts with the Secretary of the Interior to accomplish the purposes of Arizona Revised Statutes, §§ 48-3701, et seq.; and

WHEREAS, pursuant to Section 304(b)(1) of the Colorado River Basin Project Act, the Secretary of the Interior has determined that it is necessary to effect repayment of the cost of constructing the Central Arizona Project pursuant to a master contract and that the United States, together with the Contractor, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and the Contractor entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby the Contractor agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to the Contractor; and

WHEREAS, the Subcontractor is in need of a water supply and desires to subcontract with the United States and the Contractor for water service from water supplies available under the Central Arizona Project; and

WHEREAS, upon completion of the Central Arizona Project, water shall be available for delivery to the Subcontractor;

1 NOW THEREFORE, in consideration of the mutual and dependent
2 covenants herein contained, it is agreed as follows:

3 3. DEFINITIONS:

4 Definitions included in the Repayment Contract are applicable to this
5 subcontract; Provided, however, That the terms "Agricultural Water" or "Irrigation Water"
6 shall mean water used for the purposes defined in the Repayment Contract on tracts of
7 land operated in units of more than 5 acres. The first letters of terms so defined are
8 capitalized herein. As heretofore indicated, a copy of the Repayment Contract is attached
9 as Exhibit "A."

10 4. DELIVERY OF WATER:

11 4.1 Obligations of the United States. Subject to the terms, conditions,
12 and provisions set forth herein and in the Repayment Contract, during such periods as it
13 operates and maintains the Project Works, the United States shall deliver Project Water
14 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to
15 make available to the Subcontractor the quantity of Project Water specified in the schedule
16 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
17 the Operating Agency, the United States shall make deliveries of Project Water to the
18 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
19 herein.

20 4.2 Term of Subcontract.

21 This subcontract shall become effective upon its confirmation as provided
22 for in Article 6.12 and shall remain in effect for a period of 50 years beginning with the
23 January 1 of the Year following that in which the Secretary issues the Notice of Completion
24 of the Water Supply System; Provided, That this subcontract may be renewed upon written
25 request by the Subcontractor upon terms and conditions of renewal to be agreed upon not
26 later than 1 year prior to the expiration of this subcontract; and Provided, further, That such
terms and conditions shall be consistent with Article 9.9 of the Repayment Contract.

4.3 Conditions Relating to Delivery and Use.

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

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

(b) The system or systems through which water for Agricultural, M&I, and Miscellaneous (including ground water recharge) purposes is conveyed after delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(c) The Subcontractor shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the Subcontractor's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, 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 Contracting Officer, the Contractor, and the Subcontractor 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 Contracting Officer and the Contractor, and approval shall not be unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon submittal by the Subcontractor 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.

(d) The Subcontractor shall not sell or otherwise dispose of or permit the sale or other disposition of any Project Water for use outside of Maricopa, Pinal,

and Pima Counties; Provided, however, That this does not prohibit exchanges of Project Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2.

(e) (i) Project Water scheduled for delivery in any Year under this subcontract may be used by the Subcontractor or resold, or exchanged by the Subcontractor pursuant to appropriate agreements approved by the Contracting Officer and the Contractor. If said water is resold or exchanged by the Subcontractor for an amount in excess of that which the Subcontractor is obligated to pay under this subcontract, the excess amount shall be paid forthwith by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States; Provided, however, That the Subcontractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs.

(ii) Project Water scheduled for delivery in any Year under this subcontract that cannot be used, resold, or exchanged by the Subcontractor may be made available by the Contracting Officer and Contractor to other users. If such Project Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its payments hereunder only to the extent of the amount paid to the Contractor by such other users, but not to exceed the amount the Subcontractor is obligated to pay under this subcontract for said water.

(iii) In the event the Subcontractor or the Contracting Officer and the Contractor are unable to sell any portion of the Subcontractor's Project Water scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contractor.

(f) Notwithstanding any other provision of this subcontract, Project Water shall not be delivered to the Subcontractor unless and until the Subcontractor has obtained final environmental clearance from the United States for the system or systems

1 through which Project Water is to be conveyed after delivery to the Subcontractor at the
2 Subcontractor's Project turnout(s). Such system(s) shall include all pipelines, canals,
3 distribution systems, treatment, storage, and other facilities through or in which Project
4 Water is conveyed, stored, or treated after delivery to the Subcontractor at the
5 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
6 based upon a review by the United States of the Subcontractor's plans for taking and using
7 Project Water and will be given or withheld by the United States in accordance with the
8 Final Environmental Impact Statement – Water Allocations and Water Service Contracting
9 (FES 82-7, filed March 19, 1982) and the National Environmental Policy Act of 1969 (83
10 Stat. 852). Any additional action(s) required on behalf of the Subcontractor in order to
11 obtain final environmental clearance from the United States will be identified to the
12 Subcontractor by the United States, and no Project Water shall be delivered to the
13 Subcontractor unless and until the Subcontractor has completed all such action(s) to the
14 satisfaction of the United States.

14 4.4 Procedure for Ordering Water.

15 (a) At least 15 months prior to the date the Secretary expects
16 to issue the Notice of Completion of the Water Supply System, or as soon thereafter as is
17 practicable, the Contracting Officer shall announce by written notice to the Contractor the
18 amount of Project Water available for delivery during the Year in which said Notice of
19 Completion is issued (initial Year of water delivery) and during the following Year. Within
20 30 days of receiving such notice, the Contractor shall issue a notice of availability of Project
21 Water to the Subcontractor. The Subcontractor shall, within a reasonable period of time
22 as determined by the Contractor, submit a written schedule to the Contractor and the
23 Contracting Officer showing the quantity of water desired by the Subcontractor during each
24 month of said initial Year and the following Year. The Contractor shall notify the
25 Subcontractor by written notice of the Contractor's action on the requested schedule within
26 2 months of the date of receipt of such request.

(b) The amounts, times, and rates of delivery of Project Water to the Subcontractor during each Year subsequent to the Year following said 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 pursuant to this subcontract, the Contracting Officer shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Contractor. In arriving at this determination, the Contracting Officer, 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 water over the term of this subcontract. Within 30 days of receiving said notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor.

(ii) On or before October 1 of each Year beginning with the Year following said initial Year of water delivery, the Subcontractor shall submit in writing to the Contractor and the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Subcontractor during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding 2 years.

(iii) Upon receipt of the schedule, the Contractor and the Contracting Officer shall review it and, after consultation with the Subcontractor, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all subcontractors; Provided, That this provision shall not be construed to reduce annual deliveries to the Subcontractor.

(iv) On or before November 15 of each Year beginning with the Year following said initial Year of water delivery, the Contractor shall determine and furnish to the Subcontractor and the Contracting Officer the water delivery

1 schedule for the following Year which shall show the amount of water to be delivered to the
2 Subcontractor during each month of that Year, contingent upon the Subcontractor
remaining eligible to receive water under all terms contained herein.

3 (c) The monthly water delivery schedules may be amended
4 upon the Subcontractor's written request to the Contractor. Proposed amendments shall
5 be submitted by the Subcontractor to the Contractor no later than 15 days before the de-
6 sired change is to become effective, and shall be subject to review and modification in like
7 manner as the schedule. The Contractor shall notify the Subcontractor and the Contracting
8 Officer of its action on the Subcontractor's requested schedule modification within 10 days
9 of the Contractor's receipt of such request.

10 (d) The Contractor and the Subcontractor shall hold the United
11 States, its officers, agents, and employees, harmless on account of damage or claim of
12 damage of any nature whatsoever arising out of or connected with the actions of the
13 Contractor regarding water delivery schedules furnished to the Subcontractor.

14 (e) In no event shall the Contracting Officer or the Contractor
15 be required to deliver to the Subcontractor from the Water Supply System in any one month
16 a total amount of Project Water greater than 11 percent of the Subcontractor's maximum
17 entitlement; Provided, however, That the Contracting Officer may deliver a greater
18 percentage in any month if such increased delivery is compatible with the overall delivery
19 of Project Water to other subcontractors as determined by the Contracting Officer and the
20 Contractor and if the Subcontractor agrees to accept such increased deliveries.

21 4.5 Points of Delivery--Measurement and Responsibility for Distribution
22 of Water.

23 (a) The water to be furnished to the Subcontractor pursuant to
24 this subcontract shall be delivered at turnouts to be constructed by the United States at
25 such point(s) on the Water Supply System as may be agreed upon in writing by the
26 Contracting Officer and the Contractor, after consultation with the Subcontractor.

(b) Unless the United States and the Subcontractor agree by contract to the contrary, the Subcontractor shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Subcontractor's service area. The Subcontractor shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Subcontractor within the Water Supply System right-of-way 6 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 Contracting Officer.

(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 Subcontractor or the Contractor, the accuracy of such measurements shall be investigated by the Contracting Officer or the Operating Agency, Contractor, and Subcontractor, 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 Contracting Officer's determination shall be conclusive.

(d) Neither the United States, the Contractor, 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 Subarticle 4.5(a). The Subcontractor shall hold the United States, the Contractor, 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 Subcontractor's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

4.6 Temporary Reductions. In addition to the right of the United

1 States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or
2 reduce the amount of water to be delivered, the United States or the Operating Agency
3 may, after consultation with the Contractor, temporarily discontinue or reduce the quantity
4 of water to be furnished to the Subcontractor as herein provided for the purposes of
5 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities
6 or any part thereof necessary for the furnishing of water to the Subcontractor, but so far as
7 feasible the United States or the Operating Agency shall coordinate any such
8 discontinuance or reduction with the Subcontractor and shall give the Subcontractor due
9 notice in advance of such temporary discontinuance or reduction, except in case of
10 emergency, in which case no notice need be given. Neither the United States, its officers,
11 agents, and employees, nor the Operating Agency, its officers, agents, and employees,
12 shall be liable for damages when, for any reason whatsoever, any such temporary
13 discontinuance or reduction in delivery of water occurs. If any such discontinuance or tem-
14 porary reduction results in deliveries to the Subcontractor of less water than what has been
15 paid for in advance, the Subcontractor shall be entitled to be reimbursed for the appropriate
16 proportion of such advance payments prior to the date of the Subcontractor's next payment
17 of water service charges or the Subcontractor may be given credit toward the next payment
18 of water charges if the Subcontractor should so desire.

19 4.7 Priority in Case of Shortage. Subject to the provisions of Section
20 304(e) of the Basin Project Act, any Project Water furnished for non-Indians through Project
21 facilities shall, in the event of shortage thereof, as determined by the Contracting Officer
22 after consultation with the Contractor, be reduced pro rata until exhausted, first for
23 Miscellaneous Water uses and next for Agricultural Water uses before water furnished for
24 non-Indian M&I use is reduced. Thereafter, water for M&I uses shall be reduced pro rata
25 among all non-Indian M&I users. All Project Water converted from agricultural to M&I use
26 shall be delivered with the same priority as other Project M&I Water. 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 Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1505), and the Implementing 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.

4.8 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor'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 Contractor's Service Area if, in his judgment, such Return Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or sell its Return Flow; Provided, however, That such Return Flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and the Contractor:

- (i) The name and address of the prospective buyer.
- (ii) The location and proposed use of the Return Flow.
- (iii) The price to be charged for the Return Flow.

(b) The price charged for the Return Flow may cover the cost incurred by the Subcontractor for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is greater than the costs incurred by the Subcontractor, as described above, the excess amount shall be forthwith returned by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States. Costs required to make Return Flow usable shall include

1 but not be limited to capital costs and OM&R costs including transportation, treatment, and
2 distribution, and the portion thereof which may be retained by the Subcontractor shall be
3 subject to the advance approval of the Contractor and the Contracting Officer.

4 (c) Any Return Flow captured by the United States and
5 determined by the Contracting Officer and the Contractor to be suitable and available for
6 use by the Subcontractor may be delivered by the United States or Operating Agency to the
7 Subcontractor as a part of the water supply for which the Subcontractor subcontracts
8 hereunder and such water shall be accounted and paid for pursuant to the provisions
9 hereof.

10 (d) All capture, recapture, use, reuse, and sale of Return Flow
11 under this article shall be in accord with Arizona water law unless such law is inconsistent
12 with the Congressional directives applicable to the Central Arizona Project.

13 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
14 this subcontract, shall comply with all applicable water and air pollution laws and regulations
15 of the United States and the State of Arizona and shall obtain all required permits or
16 licenses from the appropriate Federal, State, or local authorities.

17 ***
18 4.10 Quality of Water. The operation and maintenance of Project
19 facilities shall be performed in such manner as is practicable to maintain the quality of water
20 made available through such facilities at the highest level reasonably attainable as
21 determined by the Contracting Officer. Neither the United States, the Contractor, nor the
22 Operating Agency warrants the quality of water and is under no obligation to construct or
23 furnish water treatment facilities to maintain or better the quality of water. The
24 Subcontractor waives its right to make a claim against the United States, the Operating
25 Agency, the Contractor, or another subcontractor because of changes in water quality
26 caused by the commingling of Project Water with other water.

4.11 Exchange Water.

(a) Where the Contracting Officer determines the Subcontractor
is physically able to receive Colorado River mainstream water in exchange for or in

1 replacement of existing supplies of water from surface sources other than the Colorado
2 River, the Contracting Officer may require that the Subcontractor accept said mainstream
3 water in exchange for or in replacement of said existing supplies pursuant to the provisions
4 of Section 304(d) of the Basin Project Act; Provided, however, That a subcontractor on the
5 Project aqueduct shall not be required to enter into exchanges in which existing supplies
6 of water from surface sources are diverted for use by other subcontractors downstream on
the Project aqueduct.

7 (b) If, in the event of shortages, the Subcontractor has yielded
8 water from other surface water sources in exchange for Colorado River mainstream water
9 supplied by the Contractor or the Operating Agency, the Subcontractor shall have first
10 priority against other users supplied with Project Water that have not yielded water from
11 other surface water sources but only in quantities adequate to replace the water so yielded.

12 4.12 Entitlement to Project M&I Water.

13 (a) For the Year in which the Secretary issues the Notice of
14 Completion of the Water Supply System, the Subcontractor's entitlement to Project Water
15 for M&I uses shall be determined by the Contractor after consultation with the
16 Subcontractor and the Contracting Officer. Commencing with the Year following that in
17 which the Secretary issues the Notice of Completion of the Water Supply System, the
18 Subcontractor is entitled to take a maximum of _____ acre-feet of Project Water for M&I
19 uses including but not limited to ground water recharge.

20 (b) If at any time during the term of this subcontract there is
21 available for allocation additional M&I Project Water, or Agricultural Water converted to M&I
22 use, it shall be delivered to the Subcontractor at the same water service charge per
23 acre-foot and with the same priority as other M&I Water, upon execution or amendment of
24 an appropriate subcontract among the United States, the Contractor, and the Subcontractor
25 and payment of an amount equal to the acre-foot charges previously paid by other
26 subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water

1 conversions, the payment shall be reduced by all previous payments of agricultural capital
2 charges for each acre-foot of water converted. The interest due shall be calculated for the
3 period between issuance of the Notice of Completion of the Water Supply System and
4 execution or amendment of the subcontract using the weighted interest rate received by the
5 Contractor on all investments during that period.

6 4.13 Delivery of Project Water Prior to Completion of Project Works.

7 Prior to the date of issuance of the Notice of Completion of the Water Supply System by
8 the Secretary, water may be made available for delivery by the Secretary on a "when
9 available" basis at a water rate and other terms to be determined by the Secretary after
10 consultation with the Contractor.

11 5. PAYMENTS:

12 5.1 Water Service Charges for Payment of Operation, Maintenance,
13 and Replacement Costs. Subject to the provisions of Article 5.4 hereof, the Subcontractor
14 shall pay in advance for Project OM&R costs estimated to be incurred by the United States
15 or the Operating Agency. At least 15 months prior to first delivery of Project Water, or as
16 soon thereafter as is practicable, the Contractor shall furnish the Subcontractor with an
17 estimate of the Subcontractor's share of OM&R costs to the end of the initial Year of water
18 delivery and an estimate of such costs for the following Year. Within a reasonable time of
19 the receipt of said estimates, as determined by the Contractor, but prior to the delivery of
20 water, the Subcontractor shall advance to the Contractor its share of such estimated costs
21 to the end of the initial month of water delivery and without further notice or demand shall
22 on or before the first day of each succeeding month of the initial Year of water delivery and
23 the following Year advance to the Contractor in equal monthly installments the Sub-
24 contractor's share of such estimated costs. Advances of monthly payments for each
25 subsequent Year shall be made by the Subcontractor to the Contractor on the basis of
26 annual estimates to be furnished by the Contractor on or before June 1 preceding each said

subsequent Year and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent Year. Differences between actual OM&R costs and estimated OM&R costs shall be determined by the Contractor and shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contractor the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contractor may increase the annual estimate of the Subcontractor's OM&R costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith increase its remaining monthly payments in such Year to the Contractor by the amount necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contractor in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the Subcontractor and the Contractor.

5.2 M&I Water Service Charges.

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I Water service capital charge based on a maximum entitlement of _____ acre-feet per year multiplied by the rates set forth in the following schedule.

<u>Payment for the</u> <u>calendar year of</u>	<u>Payment due for each acre-</u> <u>foot of purchased capacity</u>
1988-1993	\$ 5
1994	6
1995	8
1996	10
1997	12
1998	14
1999	15
2000	16
2001	17
2002	18
2003	19

1	2004	20
2	2005	21
3	2006	22
4	2007	23
5	2008	24
6	2009	25
7	2010	26
8	2011	27
9	2012	28
10	2013	29
11	2014	30
12	2015	31
13	2016	32
14	2017	33
15	2018	34
16	2019	35
17	2020	36
18	2021	37
19	2022	38
20	2023	39
21	2024	40
22	2025 - through the end of the	40
23	term of this subcontract	

(b) The M&I Water service capital charge may be adjusted periodically by the Contractor as a result of repayment determinations provided for in the Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot shall not be greater than the amount required to amortize Project capital costs allocated to the M&I function and determined by the Contracting Officer to be a part of the Contractor's Repayment Obligation. Such amortization shall include interest at 3.342 percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year, Provided, however, That the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in

1 accordance with the foregoing provisions shall be made in equal semiannual installments
2 on or before the December 1 preceding said subsequent Year and the June 1 of said
3 subsequent Year as may be specified by the Contractor in written notices to the
4 Subcontractor.

5 (c) On or before the first anniversary of execution of this
6 subcontract and on or before each succeeding anniversary, the Subcontractor shall pay,
7 in addition to all other payments required herein, an M&I subcontract charge. The
8 subcontract charge shall be \$2.00 per acre-foot for _____ acre-feet of M&I Water. Prior
9 to the date of issuance of the Notice of Completion of the Water Supply System, the
10 subcontract charge shall be paid each Year by the Subcontractor to the United States. The
11 Contracting Officer shall advise the Contractor of the amounts and dates of the
12 Subcontractor's payments. After the date of issuance of the Notice of Completion of the
13 Water Supply System, the subcontract charge shall be paid each Year to the Contractor by
14 the Subcontractor and the Contractor shall credit the revenues obtained from the
15 subcontract charge against the Subcontractor's water service charges payable to the
16 Contractor that Year.

17 (d) Funds advanced to the United States by the Subcontractor
18 pursuant to Article 5.2(c) as a subcontracting charge shall be credited by the Contractor
19 against the Subcontractor's initial capital charges for water deliveries under this subcontract.
20 Credit provided to the Subcontractor shall include interest from the date the
21 Subcontractor's funds are transferred to the United States through the effective date of
22 credit for payment of capital costs as recorded in the Contractor's records. Interest credited
23 to the Subcontractor shall be at an annual rate of 1 (one) percent less than the weighted
24 rate received by the Contractor on all investments during the period for which the
25 Subcontractor's payments earn an interest credit.

26 (e) Payment of all M&I Water service capital and
corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated

in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

INSERT (f) for Cities and Towns

(f) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this subcontract, nor shall such sources be liable for the payments, contributions, and other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the Subcontractor for the applicable budget year; and Provided, further, That no portion of this agreement shall ever be construed to create an obligation superior in lien to or on a parity with the Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the Subcontractor may meet its obligations hereunder and make in full all payments required under this subcontract on or before the date such payments become due.

5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery of water from Project facilities during any period in which the Subcontractor may be in arrears in the payment of any charges due the Contractor. The Contractor may sell to another entity any water determined to be available under the Subcontractor's entitlement for which payment is in arrears; Provided, however, that the Subcontractor may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the

subcontractual obligation and the price received in the sale of the water by the Contractor and payment of charges for the current period.

5.4 Refusal to Accept Delivery. In the event the Subcontractor 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 subcontract, or in the event the Subcontractor in any Year fails to submit a schedule for delivery as provided in Article 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to make the payments required in this subcontract.

5.5 Charge for Late Payments. The Subcontractor 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.

6. GENERAL PROVISIONS:

6.1 Repayment Contract Controlling. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Project Water to the various subcontractors within the Project Service Area; and the Contractor has obligated itself for the payment of various costs, expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the Repayment Contract. The Subcontractor expressly approves and agrees to all the terms presently set out in the Repayment Contract including Subarticle 8.8(b)(viii) thereof, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent exchange agreements with Indian entities which have received an allocation of

1 Project Water and receive all benefits from the exchange. If the Subcontractor chooses to
2 exchange directly with the Indians, then the Subcontractor's entitlement to Project Water
3 shall be reduced by the amount of Project Water received in exchange by the
4 Subcontractor. The Subcontractor may also offer raw sewage or effluent to the Contractor
5 for the purpose of exchanging such sewage or effluent for the benefit of all subcontractors.
6 If such an exchange is consummated, the Subcontractor's entitlement to Project Water
7 shall remain at the level specified in Article 4.12. A copy of the above referenced
8 agreements shall be filed with the Contractor and the Contracting Officer.

9 6.3 Notices. Any notice, demand or request authorized or required by
10 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
11 delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O.
12 Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
13 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
14 Phoenix, Arizona 85080-3020, on behalf of the United States or Subcontractor; and to the
15 States or Contractor. The designation of the addressee or the address may be changed
16 by notice given in the same manner as provided in this Article for other notices.

17 6.4 Water Conservation Program.

18 (a) While the contents and standards of a given water
19 conservation program are primarily matters of State and local determination, there is a
20 strong Federal interest in developing an effective water conservation program because of
21 this subcontract. The Subcontractor shall develop and implement an effective water
22 conservation program for all uses of water which is provided from or conveyed through
23 Federally constructed or Federally financed facilities. That water conservation program
24 shall contain definite goals, appropriate water conservation measures, and time schedules
25 for meeting the water conservation objectives.

26 (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.

6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate court of the United States or the State of Arizona which would otherwise be available to such parties even though provisions herein may declare that determinations or decisions of the Secretary or other persons are conclusive or (b) as depriving any party of any defense thereto which would otherwise be available.

6.9 Books, Records, and Reports. The Subcontractor 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 Contracting Officer may 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 subcontract.

6.10 Equal Opportunity. During the performance of this subcontract, the Subcontractor agrees as follows:

(a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor 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, 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 Subcontractor 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 Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Subcontractor 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 Contracting Officer, advising said labor union or workers' representative of the Subcontractor'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 Subcontractor 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 Subcontractor 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 Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this subcontract or with any of the such rules, regulations, or orders, this subcontract may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor 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 Subcontractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of

1 said amended Executive Order, so that such provisions shall be binding upon each
2 subcontractor or vendor. The Subcontractor shall take such action with respect to any
3 subcontract or purchase order as may be directed by the Secretary of Labor as a means
4 of enforcing such provisions, including sanctions for noncompliance; Provided, however,
5 That in the event a Subcontractor becomes involved in, or is threatened with, litigation with
6 a subcontractor or vendor as a result of such direction, the Subcontractor may request the
7 United States to enter into such litigation to protect the interest of the United States.

8 6.11 Title VI, Civil Rights Act of 1964.

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

18 (b) If any real property or structure thereon is provided or
19 improved with the aid of Federal financial assistance extended to the Subcontractor by the
20 United States, this assurance obligates the Subcontractor, or in the case of any transfer of
21 such property, any transferee for the period during which the real property or structure is
22 used for a purpose involving the provision of similar services or benefits. If any personal
23 property is so provided, this assurance obligates the Subcontractor for the period during
24 which it retains ownership or possession of the property. In all other cases, this assurance
25 obligates the Subcontractor for the period during which the Federal financial assistance is
26 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 Subcontractor 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
Subcontractor 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 Subcontractor, its successors, transferees, and
assignees.

20 6.12 Confirmation of Subcontract. The Subcontractor shall promptly
21 seek a final decree of the proper court of the State of Arizona approving and confirming the
22 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
23 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of such
24 decree and of all pertinent supporting records. This subcontract shall not be binding on the
25 United States, the Contractor, or the Subcontractor until such final decree has been
26 entered.

6.13 Contingent on Appropriation or Allotment of Funds.

1 The expenditure or advance of any money or the performance of any work by the United
2 States hereunder which may require appropriation of money by the Congress or the
3 allotment of funds shall be contingent upon such appropriation or allotment being made.
4 The failure of the Congress to appropriate funds or the absence of any allotment of funds
5 shall not relieve the Subcontractor from any obligation under this subcontract. No liability
6 shall accrue to the United States in case such funds are not appropriated or allotted.

7
8 IN WITNESS WHEREOF, the parties hereto have executed this subcontract

9 No. _____ the day and year first above-written.

10 Legal Review and Approval

11 THE UNITED STATES OF AMERICA

12 By: _____
13 Field Solicitor
14 Phoenix, Arizona

15 By: _____
16 Regional Director
17 Lower Colorado Region
18 Bureau of Reclamation

19 CENTRAL ARIZONA WATER
20 CONSERVATION DISTRICT

21 Attest: _____
22 Secretary

23 By: _____
24 President

25 [ENTITY] _____

26 Attest: _____

By: _____

Title: _____

Title: _____

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EXHIBIT 12.1

TUCSON AGREEMENT

TUCSON AGREEMENT

This Special Settlement Agreement is made and entered by and among the plaintiffs the Tohono O'odham Nation, a federally recognized Indian tribe ("Nation"), two classes of San Xavier Allottees and Fee Owners of Allotted Land (collectively "San Xavier Class Members") and the United States and defendant City of Tucson, a municipal corporation ("City"), relates to the San Xavier Reservation and the eastern Schuk Toak District, and is effective on the "Enforceability Date" of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("SAWRSA Amendments"). This Special Settlement Agreement is to be referred to as the "Tucson Agreement."

RECITALS:

A. The Nation, the San Xavier Class Members, and the United States are plaintiffs in United States et al. v. the City of Tucson et al., CV 75-39 TUC FRZ (consolidated with CV 75-051), consolidated for administrative purposes with Felicia Alvarez et al. v. City of Tucson, et al., CV 93-039 TUC FRZ (the "Consolidated Litigation").

B. The City is one of several defendants in the Consolidated Litigation.

C. In order to reach settlement of the Consolidated Litigation, the defendant City agrees with the plaintiff parties that there are certain issues that can best be resolved between the City and the plaintiffs without reference to the other defendants.

D. As a part of the settlement of the Consolidated Litigation, as against the City, the Nation and the San Xavier Class Members have requested that the City provide funds for the future reparation of Sinkholes. The City denies any responsibility or liability for the Sinkholes on the San Xavier Reservation. However, in order to avoid future claims and to reach full settlement of the Consolidated Litigation, the City is agreeing to provide funds as more fully set forth below.

E. In settlement of the Consolidated Litigation as against the City and in consideration for timely performance of the City's obligations pursuant to this Agreement, the United States, the Nation and the San Xavier Class Members agree to waive and limit certain claims for injuries to land as more fully set forth below.

F. Execution of the Tucson Agreement is a requirement of the Settlement Agreement, is referred to in Paragraph 12 of the Settlement Agreement and a copy of the Tucson Agreement is attached as Exhibit 12.1 of the Settlement Agreement.

G. In the event that the Secretarial statement of findings described in the SAWRSA Amendments is not published as provided in the SAWRSA Amendments and the SAWRSA Amendments do not take effect, the parties agree that this Tucson Agreement shall be void and of no further effect.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants agreed to herein the parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the terms used shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the following terms have the following respective meanings:

1.1 The term "Land Subsidence" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling is caused by the pumping of water; land subsidence shall not include "Sinkholes" as defined herein.

1.2 The term "Sinkhole" or "Sinkholes" means sinks, sinkholes or depressions occurring within the San Xavier Reservation and thought to be caused by several types of compaction and erosion of near surface materials. Sinkholes typically range in size and depth from shallow depressions of a few inches to 20 feet with steep sides.

ARTICLE 2. SINKHOLE REPARATION

2.1 Sinkhole Fund. Without admitting responsibility or liability for Sinkholes and as a part of the settlement of the Consolidated Litigation, the City agrees, upon timely adoption by the San Xavier District of the resolution described in Paragraph 2.2, to pay to the San Xavier District, in installments as provided below, the sum of Three Hundred Thousand Dollars (\$300,000), to be held by the San Xavier District in a separate interest bearing account, for the reparation of sinkholes (the "San Xavier Sinkhole Repair Fund"). The money shall be payable by the City to the San Xavier District in five annual installments of \$60,000 each, the first installment of which shall be paid on or before the 180th day after the Enforceability Date, and the remaining four installments shall each be paid on or before the anniversary date of the previous payment. The City shall bear no responsibility or liability whatsoever for the maintenance or management of such funds once paid in accordance with this Paragraph.

2.2 Use of Proceeds from the Sinkhole Fund. The resolution to be adopted by the San Xavier District will specify a procedure for the Nation and beneficial owners of land located on the San Xavier Reservation to obtain repairs of Sinkholes located on their land on the San Xavier Reservation, and will be adopted within ninety (90) days after the Enforceability Date. The District Council resolution shall provide that:

2.2.1 the cost of such repairs shall be paid from the San Xavier Sinkhole Repair Fund;

2.2.2 expenditures shall be made from the San Xavier Sinkhole Repair Fund for no other purpose;

2.2.3 if, at any time after ten (10) Years have elapsed after the Year in which the Enforceability Date occurs, no claims for sinkhole repairs have been received by the San Xavier District for a period of five (5) Years, and no expenditures have been made from the Fund for a period of five (5) Years, the San Xavier District may use any monies remaining in the San Xavier Sinkhole Repair Fund for projects to benefit and protect lands on the San Xavier Reservation, including, but not limited to, recharge, soil conservation, bank protection, erosion control and flood control.

ARTICLE 3. RELEASE AND LIMITATIONS OF CLAIMS

3.1 Releases of Claims by the Nation.

3.1.1 Release of Claims by the Nation Against the City. The Nation waives and releases. any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.1.2 Release of Claims by the Nation Against the United States. The Nation waives and releases. any and all claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes caused by the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2 Release of Claims by the San Xavier Class Members.

3.2.1 Release of Claims by the San Xavier Class Members Against the City. The San Xavier Class Members waive and release any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2.2 Release of Claims by the San Xavier Class Members Against the United States. The San Xavier Class Members waive and release any and all past, present and future claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion caused by or resulting from the actions or inactions of the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy. Nothing in this release of claims by the San

Xavier Class Members against the United States shall act to restrict or prohibit San Xavier Class Members, either individually or through the San Xavier Cooperative Association or other other organizations comprised of San Xavier Class Members, from seeking government assistance through available programmatic funds in the study and remediation of Sinkholes, Land Subsidence or erosion.

3.3 Release of Claims by the United States on behalf of the Nation and the Allottees.

3.3.1 Release of Claims by the United States on Behalf of the Nation. The United States on behalf of the Nation waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.4 Release of Claims by the United States on Behalf of the Allottees. The United States on behalf of members of those Allottees who are San Xavier Class Members waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.5 Effective Date of Releases. The releases of claims as provided herein shall be effective on the Enforceability Date.

3.6 Preservation of Claims for Land-related Injuries. With the exception of claims for injuries to land resulting from Sinkholes which are waived and released pursuant to Paragraph 3.1, there are preserved to the Nation claims ("Claim") for Land Subsidence, erosion or other injuries to land within the San Xavier Reservation or eastern Schuk Toak District, if any, provided that any such Claim is brought in accordance with the procedures established below.

3.6.1 Administrative Procedure.

3.6.1.1 The Nation will not initiate a suit unless the Nation has filed a Claim with the City Manager and followed the procedures outlined in this Paragraph 3.4.1. The Claim shall contain sufficient facts to enable the City to review the basis for liability, including a written opinion of an expert engaged by the Nation which concludes that there is reasonable basis for the Claim, including causation, in whole or in part, by the City. The opinion shall be filed with the Claim or within one hundred and eighty (180) days after the filing date of the Claim. The opinion shall not be deemed by the City to be a public record or disclosed to the public and may only be used for the purpose of resolving the Claim with the Nation either through the administrative procedure established herein or in a subsequent lawsuit filed by the Nation under this Agreement.

3.6.1.2 The City shall issue a decision on the Claim within Ninety (90) days after the later of the date the Claim is filed or the expert opinion is submitted. If no decision is issued within such period, the Nation may, at its option, deem the Claim denied. Any decision which offers a remedy to the Nation shall be deemed rejected if the Nation fails to respond or rejects the decision in writing within ninety (90) days after receipt.

3.6.1.3 The Nation shall not file suit against the City until the Nation receives a decision denying the Claim or the Claim is deemed denied.

3.6.1.4 During the period from the date a Claim is filed through the date of decision or deemed denial, any applicable statute of limitations shall be tolled.

3.6.2 Remedies. The Nation shall be entitled to seek whatever relief may be available under applicable law as relief for a Claim.

3.6.3 No Intention to Create a Cause of Action. The parties do not intend, by this Agreement, to create any cause of action for any claims by the Nation for Land Subsidence, erosion or other injuries to land. References in this Agreement to the preservation of claims for Land Subsidence, erosion or other injuries to land is not an agreement or recognition by the City that any such claims or causes of action exist under the law.

ARTICLE 4. JURISDICTION; LAW; DEFAULT AND REMEDIES

4.1 Applicable Law and Jurisdiction. The parties recognize and agree that all actions arising under this Agreement, including any Claim by the Nation against the City (a) arises under and is governed by the laws of the United States and (b) personal and subject matter jurisdiction with respect thereto is vested the Gila River Adjudication Court. The United States District Court for the District of Arizona (the "Federal Court") shall have concurrent jurisdiction to the extent otherwise provided by Federal law. Neither the other courts of the State of Arizona nor the courts of the Nation shall have jurisdiction over actions brought pursuant to this Agreement including any action brought for a Claim preserved to the Nation pursuant to Paragraph 3.4 of this Agreement.

4.2 Event of Default; Enforcement. Failure to remedy a breach of this Agreement, after written notice and a ninety (90) calendar day opportunity to cure the breach, shall constitute an event of default. Any action to enforce this Agreement against the City shall be brought and maintained by the Nation or the United States.

4.3 Remedies. Remedies for default shall be limited to termination of this Agreement, injunctive relief or, as against the City, for damages pursuant to Paragraph 3.4.

4.4 Waiver of Immunity. The immunity from suit of the United States, the Nation and the City is hereby waived solely for declaratory judgment or injunctive relief in any action arising under this Agreement. A waiver of immunity under this Agreement shall not extend to any claims for costs, attorneys' fees or other monetary relief, except that the City waives any

immunity it might have for damages in the event that a Claim is made after the requirements of Paragraph 3.4 of this Agreement have been met.

ARTICLE 5.
MISCELLANEOUS

5.1 Term. This Agreement is perpetual and commences on the Enforceability Date.

5.2 Notices. Notice required pursuant to the terms of this Agreement shall be in writing, and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, AZ 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, AZ 85634

Chairperson
San Xavier District
2018 W. San Xavier Road
Tucson, AZ 85746

Barassi & Curl
485 South Main Avenue
Tucson, AZ 85701

Chairperson
Schuk Toak District
P.O. Box 368
Sells, AZ 85634

City:

City Manager
City of Tucson
P.O. Box 27210
Tucson, AZ 85726-7210

With copies to:

Director
Tucson Water
P.O. Box 27210
Tucson, AZ 85726-7210

City Attorney
P.O. Box 27210
Tucson, AZ 85726-7210

San Xavier Class Members:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, AZ 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, NM 87102

United States:

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.3 Full Understanding. The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel prior to executing it.

5.4 Neutral Construction. Counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.5 Binding on Successors. This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

5.6 Multiple Counterparts. This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties hereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized; each of which shall be deemed an original document.

5.7 Further Actions. The parties agree to execute all contracts, agreements and documents, and to take all further actions reasonably necessary, as may be required to comply with the provisions of this Agreement and the intent hereof.

APPROVED AS TO FORM

By

City Attorney

CITY OF TUCSON

By

Mayor

ATTEST:

By Kathleen S. Detrick
City Clerk

APPROVED AS TO FORM

By Deed M. Paul
Attorney General

TOHONO O'ODHAM NATION

By Muriel Saunders
Chairperson

APPROVED AS TO FORM

UNITED STATES v. TUCSON SAN XAVIER
ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By Thomas E. Furler
Attorney for Certified Class

By [Signature]
Barbara Carley
John Ramon Kerson
Carl O. Webb
David McDoug
Michael J. Bair
W. F. Beyer
Lucinda Nunez

Its Class Representatives

APPROVED AS TO FORM

ALVAREZ V. TUCSON ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By Thomas E. Fulkner
Attorney for Certified Class

By [Signature]

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Its Class Representatives

THE UNITED STATES OF AMERICA

By Gale A. Norton
Secretary of the Interior

ALVAREZ v. TUCSON ALLOTTEE CLASS

By Bernard J. Alvarez

By Philip J. Alvarez

By Verma C. Alvarez

By Celestine Pablo

By David L. Alvarez

By Jocelyn Gross Bend

By Felicia Nunez

By Rafael J. Alvarez

By Jack Alvarez

By _____

By _____

By _____

By _____

By _____

By _____

Its Class Representatives

EXHIBIT 13.1

ASARCO AGREEMENT

ASARCO SETTLEMENT AGREEMENT

This settlement agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), three classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, and Asarco Incorporated, a New Jersey corporation ("Asarco") who are each a Party hereto and are collectively referred to as "Parties", and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("Amendments"). This settlement agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in United States v. Tucson, et al., a class action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. Asarco is one of several defendants in the Litigation.

C. In order to reach a final settlement of the unconsolidated portions of the Litigation, there are certain issues that may be resolved herein among the parties to this Agreement without reference to the other defendants in the Litigation.

D. The San Xavier Allottees are plaintiffs in Alvarez v. City of Tucson, et al., a class action pending in the United States District Court for the District of Arizona (No. CV 93-0039 TUC FRZ) ("Alvarez").

Now, therefore, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Accrual Date" means the date on which CAP water is first delivered to Asarco in lieu of groundwater pursuant to the terms of this Agreement.

1.2 "Accrual Period" is the fourteen-year period commencing with the Accrual Date.

1.3 "ADEQ" means the Arizona Department of Environmental Quality.

1.4 "ADWR" means the Arizona Department of Water Resources.

1.5 "Aquifer Protection Permit", or "APP," means any permits issued to Asarco by ADEQ pursuant to A.R.S. § 49-241 et seq. for the Mission Complex, and any amendments thereto.

1.6 "Boundaries of the Nation" means the geographic boundaries of the Tohono O'odham Nation, existing as of the Enforceability Date, including the San Xavier Reservation.

1.7 "Business Leases" means those 21 leases to Asarco of lands within the San Xavier Reservation for general mining purposes approved by the Bureau of Indian Affairs on May 12, 1959.

1.8 "CAP" or "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

1.9 "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.10 "Environmental Purposes" means specific environmental requirements or activities that involve well maintenance, reclamation, Mine Plan compliance, Aquifer Protection Permit compliance, closure requirements, or applicable governmentally imposed dictates, orders, laws or regulations relating to the environment.

1.11 "Mine Plan of Operations," or "MPO," means that plan for operating the Mission Complex approved by the United States Bureau of Land Management pursuant to 25 CFR Part 216 and 43 CFR Subpart 3592, and any amendments to such plan.

1.12 "Mining Leases" means Contract No. 14-20-450-2750, Lease No. 454-2-60, and Contract No. 14-20-450-2741, Lease No. 454-3-60, effective September 18, 1959.

1.13 "Mission Complex" means all of the mine, mill, processing, tailings, waste, well, road, building, and related facilities and properties owned, leased or used by Asarco and located south and east of the San Xavier Reservation and related facilities located on the San Xavier Reservation.

1.14 "San Xavier District," or "District," means one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.15 "San Xavier Reservation" means the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874 which is a part of the Tohono O'odham Nation.

1.16 "Storage Credit" means a storage credit granted by ADWR pursuant to Arizona law.

1.17 "Termination Date" means (a) for CAP water used for mining and processing ore at the Mission Complex, the earlier of 25 years after the Enforceability Date or the completion of such use, and (b) for CAP water used for Environmental Purposes, the earlier of 25 years after the Enforceability Date or the completion of such use.

1.18 "Tucson Management Area," or "TMA," means the area of land corresponding to

the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980 (session laws of the State of Arizona, 1980, thirty-fourth legislature, fourth special session, chapter 1), subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area pursuant to Arizona Laws of 1994, Ch. 296), and that part of the Upper Santa Cruz Basin not within the area initially designated as the Tucson Active Management Area.

1.19 "Well Site Lease" means that certain business lease No. H54-16-72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972. "New Well Site Lease" means a lease to be entered into pursuant to the provisions of paragraph 3.4.

ARTICLE 2

CENTRAL ARIZONA PROJECT WATER

2.1 The Nation shall deliver up to 10,000 acre-feet per annum of its CAP allocation to Asarco for use, in lieu of groundwater, in its mining, milling, processing, Environmental Purposes and related operations at the Mission Complex under terms and conditions set forth in a water agreement. The water shall be delivered at the CAP turnout south of Pima Mine Road pursuant to orders placed by Asarco in a manner consistent with the Nation's contracts with the United States dated December 11, 1980 and October 11, 1983, including any amendments thereto that hereafter may be made.

2.2 In years one through five starting on the Accrual Date, the delivery fee shall be \$15 per acre foot delivered in lieu of water pumpable under the Well Site Lease, and \$20 per acre foot for water delivered in lieu of other groundwater pumping. On the 6th and each succeeding five-year anniversary of the Accrual Date the delivery charges shall increase by 13% over the previous charges and the new charges shall remain in effect for the succeeding five years. Asarco shall make payments of the delivery charges on a monthly basis within 30 days after delivery. In any year during the term of this Agreement that Asarco uses more than 10,000 acre-feet of CAP water in lieu of pumping groundwater for the Mission Complex, it shall use a minimum of 10,000 acre-feet of CAP water pursuant to this Agreement if such water is available thereunder.

2.3 Nothing herein shall be construed as prohibiting Asarco from utilizing its off-Reservation wells or water rights for any purpose.

2.4 On or before March 31 of each year commencing with the Accrual Date, Asarco will report to the Nation its Mission Complex CAP and groundwater use for the previous year.

2.5 The Parties may not seek to shut off, terminate or otherwise interfere with the CAP water delivered to Asarco pursuant to this Agreement, which is subject only to the remedies provided under Article 10 hereof.

2.6 The Nation's obligation to deliver CAP water to Asarco under the terms of this Article shall cease on the Termination Date, except that if the Termination Date is 25 years after the Enforceability Date and if Asarco continues mining and processing ore at the Mission

Complex after that date, the Nation shall have the option, at its sole discretion, to continue the obligation to deliver in lieu CAP water to Asarco for an additional period of not less than 10 years or more than 25 years.

2.7 If at any time during the 35-year period after the Enforceability Date, Asarco intends to use its grandfathered water rights listed in Article 8 hereof for any purpose other than mining that is compatible with the use of CAP water by Asarco and also is compatible with the delivery of CAP water by the Nation ("new use"), not less than 180 days prior to the commencement of the new use Asarco shall give the Nation and the San Xavier District notice of the intended new use and the quantity of water required for the new use. Within the 180-day period, the Nation, with the concurrence of the San Xavier District, may exercise the right to supply the new use with CAP water for the lesser of the life of the use or 25 years.

2.8 The delivery charges for CAP water delivered to Asarco under paragraphs 2.6 and 2.7 shall be the charges set forth in paragraph 2.2 for the acre-feet for which Storage Credits are earned and for the remaining water the delivery charge shall be the lesser of the then current market rate for CAP municipal and industrial water or Asarco's cost for pumping an equivalent amount of groundwater.

ARTICLE 3

SAN XAVIER WELL SITE LEASE

3.1 The Asarco option to renew the Well Site Lease for an additional 25-year term is hereby recognized as having been validly exercised as of November 14, 1997.

3.2 The rental adjustment provisions of 25 C.F.R. § 162.8 are hereby waived for the renewed Well Site Lease.

3.3 It is agreed among the parties that Asarco's rights to use water for the purposes described in paragraph 7 of the Well Site Lease shall include uses for San Xavier Reservation Environmental Purposes; provided that (a) the Nation and Asarco shall consult to determine whether a mutual agreement can be reached on the feasibility of first withdrawing water from Asarco's off-Reservation wells to use for San Xavier Reservation Environmental Purposes and (b) if it is necessary to withdraw water under the Well Site Lease for San Xavier Reservation Environmental Purposes which cannot reasonably be used on the San Xavier Reservation or to process San Xavier Reservation ore at the Mission Complex, the Nation and Asarco shall consult and use the water for a mutually agreed purpose.

3.4 Asarco agrees to reduce its pumping under the Well Site Lease by reducing such quantity by each acre-foot of CAP water delivered to Asarco under the Water Lease.

3.5 Except as otherwise provided herein, all other terms of the Well Site Lease shall remain in full force and effect.

3.6 If Asarco has not completed use of the wells for the purposes authorized under the Well Site Lease prior to its expiration date, the Nation and Asarco shall enter into a New Well Site Lease on the same material terms and conditions as the existing Well Site Lease except as

set forth below:

3.6.1 The effective date of the New Well Site Lease shall be the day following the termination date of the Well Site Lease, subject to approval of the Secretary of the Interior.

3.6.2 The term shall end on the earlier of (1) the date 25 years after the termination date of the Well Site Lease or (2) the date on which Asarco completes (A) mining and processing San Xavier Reservation ore and (B) use of water for San Xavier Reservation Environmental Purposes.

3.6.3 The following provisions shall be incorporated as affirmative rights and obligations:

3.6.3.1 Paragraphs 3.2 and 3.4 hereof;

3.6.3.2 Asarco agrees not to exercise the distance and use limitations on well development and operation prescribed in paragraph 5 of the Well Site Lease on the following conditions:

3.6.3.2.1 The Nation shall have the right to drill and operate a well, or grant such right to any person, at a site which is more than four tenths (.4) of a mile from any existing Asarco well operated under the Well Site Lease.

3.6.3.2.2 Water withdrawn from any such well may be used for any purpose, which does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.2.3 Costs associated with the construction, operation, maintenance, repair or other activity related to any such well shall be solely the responsibility of the Nation, or any person granted rights to use the well.

3.6.3.2.4 Water withdrawn pursuant to this subparagraph 3.6.3.2 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.3.3 Asarco agrees not to exercise the use and quantity limitations in paragraph 6 of the Well Site Lease related to direct withdrawals from Asarco wells on the following conditions:

3.6.3.3.1 The Nation shall have the right to withdraw water from any Asarco well, or grant such right to any person, and to use the water for any purpose that does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.3.2 Asarco shall have the right to impose a charge on each acre-foot of water withdrawn by the Nation or the Nation's grantee which shall be no greater than Asarco's average operation, maintenance and repair costs for withdrawal of an acre-foot of water in the preceding calendar year. The Nation or other user shall pay the withdrawal charge within 15 days after the end of each month in which water is withdrawn.

3.6.3.3.3 Groundwater withdrawn pursuant to this paragraph 3.6.3.3 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.4 Upon completion of processing San Xavier Reservation ore, the Nation shall have the right to withdraw the number of acre-feet of water directly or from constructed wells, as authorized by the Amendments, that does not interfere with Asarco's use or non-use of the wells for San Xavier Reservation Environmental Purposes.

3.6.5 Asarco shall make lease payments as follows: (1) until processing of San Xavier Reservation ore is complete (A) \$5 per acre-foot withdrawn and (B) paragraph 3.2 shall apply; and (2) effective as of the date San Xavier Reservation ore processing is completed, 25 CFR § 162.8 shall apply for the water withdrawable for San Xavier Reservation Environmental Purposes.

3.6.6 The provisions of this paragraph 3.6 shall not limit the Nation and Asarco from agreeing to negotiate a New Well Site Lease on other terms and conditions or for other purposes.

ARTICLE 4

CAP WATER DELIVERY INFRASTRUCTURE COSTS

4.1 Asarco shall construct and own the infrastructure necessary to take delivery of up to 10,000 acre-feet annually of CAP water under a water agreement at its own expense, except for the financing provided for in paragraph 4.2 below. Asarco may, in its discretion and at its expense, construct the infrastructure necessary to take delivery of additional water.

4.2 Upon Asarco's providing to the Nation reasonable security for any requested loan, the Nation will loan Asarco up to \$800,000 at Asarco's option for up to 14 years, plus interest at the rate of 6% per annum, compounded annually on the outstanding balance, to finance infrastructure costs necessary to make use of the CAP water pursuant to this Agreement. The loan shall be funded by the Nation in the manner that construction loans are normally funded upon being presented with evidence of the expenditures necessary for the construction of the infrastructure. The loan is to be repaid first by crediting Storage Credits earned as set forth in paragraph 5.3 of this Agreement and if any balance remains at the end of the term of the loan by Asarco in cash within 30 days.

4.3 The obligations under this Article 4 of this Agreement are independent of and separable from the remaining Articles of this Agreement. Even if this Article is not assumable or assignable under 11 U.S.C. §365 (c)(2), the remaining portion of this Agreement may be assumed or assigned even though executory.

ARTICLE 5

STORAGE CREDITS

5.1 Except as otherwise provided in this Agreement, Storage Credits earned under this Agreement shall be owned by the Nation.

5.2 Solely for purposes of this Agreement, each Storage Credit for one acre-foot of water shall be valued at \$40.

5.3 Any Storage Credits earned by the Nation shall first be treated as repayment of the principal and interest of the loan referred to in paragraph 4.2, and then shall be allocated as further provided by internal agreement between the Nation and the District.

ARTICLE 6

WAIVER AND RELEASE

6.1 The Nation, the District and the Allottees waive and release all claims against Asarco arising out of Asarco's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

6.2 The Nation, the District and the Allottees waive and release all claims against Asarco that may arise after the Enforceability Date to the extent that such claims arise out of Asarco's withdrawal of water within the Tucson Management Area pursuant to its existing Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

6.3 The United States waives and releases all claims referred to in 6.1 and 6.2 above against Asarco in so far as said Claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

6.4 Asarco waives and releases all claims against the United States, the Nation, the District and the Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

6.5 Asarco waives and releases all claims after the Enforceability Date against the United States, the Nation, the District and the Allottees to the extent that such claims arise out of their withdrawal of water as authorized under the Amendments, and hereby confirms such parties' rights to withdraw water as authorized by said Amendments.

ARTICLE 7

ALVAREZ LAWSUIT CLAIMS

7.1 Payments made by Asarco under this Agreement shall be made and disbursed as follows:

7.1.1 During the Accrual Period and commencing on the Accrual Date, payments for delivery of CAP in lieu water made under this Agreement shall be paid by Asarco into a fund to be called the "Alvarez Groundwater Settlement Fund" (the "Fund"), which shall be maintained as a segregated account by the San Xavier Allottees Association as provided in paragraph 7.2.

7.1.2 Asarco shall make additional payments to the Fund ("Advance Minimum Payments") within 30 days of the following specified anniversaries of the Accrual Date if required to ensure that the Fund has received the corresponding specified minimum cumulative totals of payments, exclusive of all interest or dividends earned by the Fund on balances in the Fund:

- (a) Second Anniversary - \$100,000.
- (b) Fifth Anniversary - \$350,000.
- (c) Eighth Anniversary - \$600,000.
- (d) Eleventh Anniversary - \$1,050,000.
- (e) Fourteenth Anniversary - \$1,500,000.

7.1.3 Any Advance Minimum Payments made by Asarco shall be credited against future charges for CAP in lieu water that would otherwise be due for water delivered under this Agreement.

7.1.4 When Asarco has paid a total of \$1.5 million of payments to the Fund, all subsequent payments due under this Agreement shall be paid by Asarco 55% to the Nation and 45% to the District.

7.2 The Board of Directors of the San Xavier Allottees Association ("Board") shall establish, maintain, control, invest, administer and expend the Fund. The Board shall establish a procedure for the orderly administration and protection of the corpus of the Fund. Payments from the Fund shall only be made upon written application showing a need for such compensation pursuant to the purposes of the Fund as stated herein. The Fund shall be expended by the Board at its discretion for an ongoing groundwater quality testing program; water supply development and individual or community water treatment systems to provide good quality water for any development that may take place in the future on lands affected by groundwater contamination, including but not limited to, Total Dissolved Solids ("TDS") and sulfate contamination within the San Xavier Reservation and within the Upper Santa Cruz subbasin as defined by ADWR; administration of the Fund by the Allottees Association; compensation payments to allottee landowners based upon a reasonable showing that TDS or sulfate levels in groundwater under their allotments are unsuitable for an existing or imminent use and for other purposes to be determined by the SXAA, including reimbursement to the District for Asarco-related Alvarez litigation expenses. The Nation shall be eligible to receive groundwater contamination benefits from the Fund on the same basis as any other owner of Indian trust lands on the San Xavier Reservation.

7.3 The San Xavier Allottees Association shall prepare and distribute to the San Xavier Allottee landowners an annual report of the financial status of the Fund on a calendar year basis. The Allottees Association shall provide a copy of such annual report to Asarco within 30 days of its completion and in no case later than 90 days after year-end. Asarco shall maintain the confidentiality of the annual report.

7.4 In the event Asarco fails to make any payment to the Fund when due under paragraph 7.1.2, any member of the allottee class in Alvarez may invoke any remedy available under Article 10 for the benefit of the Fund.

7.5 Subject to the conditions stated in the following subparagraphs, the Nation, the District, the San Xavier Allottees and the United States, to the extent of its trust responsibility, hereby waive and release Asarco from claims for damages arising out of the degradation of groundwater quality caused by (a) the withdrawal of groundwater by Asarco as permitted by the Well Site Lease, (b) the use of CAP water by Asarco pursuant to this Agreement or (c) Asarco's mining operations at the Mission Complex pursuant to the Mining Leases, the Business Leases, the Mine Plan of Operations and any Aquifer Protection Permit:

7.5.1 This waiver and release shall be effective only upon the Accrual Date.

7.5.2 This Article 7 and this waiver and release shall be of no force and effect if the Accrual Date has not occurred prior to the third anniversary of the Enforceability Date.

7.5.3 The named class representative plaintiffs (San Xavier Allottees) in Alvarez agree to file a stipulated motion to certify a non-opt-out subclass consisting of all original allottees, heirs and devisees of original allottees, and purchasers and grantees of allotments in the San Xavier Reservation, together with a stipulated motion to dismiss the plaintiffs' Fourth Cause of Action with prejudice, within 30 days of the commencement of the Accrual Period.

7.5.4 This waiver and release shall not be effective to the extent that Asarco's activities violate any federal or state law regulating discharges of toxic or hazardous substances to groundwater; as to which all common law, statutory and regulatory remedies shall be preserved.

ARTICLE 8

STATE LAW WATER RIGHTS

8.1 The Nation and the Allottees confirm the full validity of Asarco's existing certificated and permitted state law water rights listed as follows, copies of which are attached hereto as Exhibit 1, subject to the provisions of this Agreement:

Type 2 Right Certificate # 58-160032
Type 2 Right Certificate # 58-115187.0002
Type 2 Right Certificate # 58-100315.0004
Type 1 Right Certificate # 58-100306

8.2 Except in connection with a sale or transfer of the Mission Complex, or a substantial portion thereof, Asarco will provide the Nation and the District with 90-days notice of its intent to sell its Type 1 or Type 2 water rights to any buyer, together with the price and any substantive terms of the sale, who intends to use such rights for other than mining purposes, so that the Nation may have an opportunity to seek to acquire the property offered for sale. Information concerning any intent to sell, including information regarding the price and terms of

sale, shall be kept confidential by the Nation and the District. Nothing herein shall be deemed to constitute a right of first refusal or an option to buy Asarco's water rights.

ARTICLE 9

MISCELLANEOUS

9.1 Payment of the minimum royalties provided for in paragraphs V.A(2) and V.A(3) of the Settlement Agreement of November 3, 1971 in Cause No. CIV. 70-83 TUC shall be deemed to satisfy Asarco's covenants under the mining leases to diligently prospect, develop and operate the leased premises, and shall be deemed to constitute mining in paying quantities as required by paragraph 2 of such leases and any applicable laws.

9.2 Asarco will not unreasonably protest any groundwater recharge facility permit applications by the Nation or the District, or unreasonably oppose any unpermitted recharge facility on the San Xavier Reservation.

ARTICLE 10

REMEDIES

10.1 The party claiming a breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking enforcement of this Agreement.

10.2 The remedies of a party for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief and shall not include the payment of damages, except for payments due from Asarco under this Agreement.

ARTICLE 11

GENERAL

11.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, Arizona 85634

Asarco:

General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier District:

Chairman
San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Louis W. Barassi
Barassi & Curl
485 So. Main Ave.
Tucson, AZ 85701

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87012

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

11.2 The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advise of independent counsel.

11.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

11.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

11.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties thereto, such counterparts taken together shall constitute


a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed and original document.

11.6 The parties agree to execute all contracts, agreements and documents, to take all further action reasonably necessary as may be required to comply with the provisions of this Agreement and the intent hereof and to cooperate with each other in effectuating this Agreement and carrying out its terms.

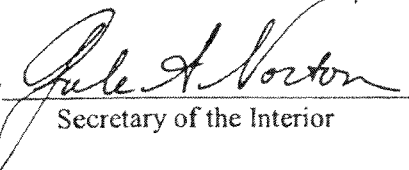
11.7 Should any party hereto be placed into bankruptcy under the laws of the United States, this Agreement, including all waivers and releases, will be of no force or effect unless all Articles hereof, except Article 4, are accepted in toto by the bankruptcy court or trustee as permitted by said laws.

DATED this 12th day of June, 2006

TOHONO O'ODHAM NATION

By 
Chairperson

UNITED STATES OF AMERICA

By 
Secretary of the Interior

SAN XAVIER DISTRICT

By 
Chairperson

ASARCO INCORPORATED

By 
President

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UP Env. Affair

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: Rocinda Munez

By: Samuel Encinas

By: Patricia Campos

By: Alma C. Ojiguel

By: Celestine Pablos

By: Carolyn H. Ray

By: Jalla Cressa Benall

By: Felicia Munez

By: Rafael Diaz

By: Jeffrey

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____


By: _____

Its Class Representatives

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: 

By: 

By: 

By: 

By: 

By: 

By: 

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: 

By: 

By: 

By: 

By: 

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Cause of Action 4)

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

EXHIBIT 14.1
FICO AGREEMENT

FICO SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), two classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, Farmers Investment Co., an Arizona corporation and Farmers Water Co., an Arizona corporation (collectively "FICO"), who are each a party hereto and are collectively referred to as "Parties," and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("Amendments"). This Settlement Agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in an action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. FICO is one of several defendants in the Litigation.

C. The Parties desire to reach a final settlement of the Litigation as between them. .

D. The Nation, the San Xavier Allottees, and FICO are users of the water resources of the Upper Santa Cruz Basin and have a mutual interest in conserving those resources.

E. The Parties desire to further provide for water conservation.

F. The Parties further desire to release each other from certain claims and liabilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Enforceability Date. The term "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.2 FICO Lands. The term "FICO Lands" shall mean all lands owned by FICO described on Exhibit "A" hereto.

1.3 San Xavier District or District. The terms "San Xavier District" or "District" shall mean one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.4 San Xavier Reservation. The term "San Xavier Reservation" shall mean the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874, which is a part of the Tohono O'odham Nation.

ARTICLE 2

WITHDRAWALS

2.1 FICO agrees to limit total withdrawals of water from FICO Lands within two miles of the San Xavier Reservation as described in Exhibit B to no more than 850 acre-feet per annum on a three-year rolling average. This limit includes withdrawals of stored water as defined in A.R.S. § 45-802.01 on the Enforceability Date, except for withdrawals from a recovery well within one mile of an underground storage facility so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

2.2 FICO agrees to limit withdrawals of water from all FICO Lands to 36,000 acre-feet per annum on a three-year rolling average not including withdrawals of stored water (as defined in A.R.S. § 45-802.01 on the Enforceability Date) that has been stored within these lands.

2.3 FICO agrees not to sell any groundwater credits accumulated pursuant to A.R.S. § 45-467 for use by third parties for withdrawal of water from within three miles of the exterior boundaries of the Tohono O'odham Nation as such boundaries exist on the Enforceability Date.

2.4 The Nation, the District and the San Xavier Allottees agree to limit their withdrawals from the San Xavier Reservation to those amounts authorized by the Amendments.

2.5 In order to monitor compliance with the limitations provided in this Article above, the Nation and FICO mutually agree to provide the other with water use reports on or before April 30 of each year for the year preceding. FICO may comply with this obligation by providing the Nation with a copy of relevant reports required to be filed under State law.

ARTICLE 3

WAIVER AND RELEASE

3.1 The Nation and the San Xavier Allottees waive and release all claims against FICO arising out of FICO's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

3.2 The Nation and the San Xavier Allottees waive and release all claims against FICO that may arise after the Enforceability Date to the extent that such claims arise out of FICO's withdrawal of water within the Tucson Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

3.3 The United States waives and releases all claims referred to in 3.1 and 3.2 above against FICO insofar as said claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

3.4 FICO waives and releases all claims against the United States, the Nation and the San Xavier Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

3.5 FICO waives and releases all claims after the Enforceability Date against the United States, the Nation and the San Xavier Allottees to the extent that such claims arise out of their withdrawal of water as authorized under Amendments, and hereby confirms such parties' rights to withdraw water as authorized by said amendments.

ARTICLE 4

REMEDIES

4.1 The Party claiming any breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking any remedy hereunder.

4.2 The remedies of the Parties for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief including avoidance of this Agreement and the waivers provided in Article 3 and shall not include the payment of damages.

ARTICLE 5

GENERAL

5.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such Party set forth herein, or to such other address as shall have previously been specified in writing by such Party to all Parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P. O. Box 837
Sells, Arizona 85634

With copies to:

Attorney General
Tohono O'odham Nation
P. O. Box 830
Sells, Arizona 85634

FICO:

Mr. Richard S. Walden
President
FARMERS INVESTMENT CO.
1525 Sahuarita Road
P.O. Box 7
Sahuarita, Arizona 85629

With a copy to:

Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier District:

Chairman San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Louis W. Barassi
Barassi & Curl PLC
485 S. Main Ave.
Tucson, Arizona 85701

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

With a copy to:

Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87012

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.2 The Parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no Party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel.

5.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the Parties. The lands described in Exhibit A hereto and the owners thereof shall benefit from Article 3 hereof unless and until the withdrawal

limitations of Article 2 are exceeded after the expiration of the cure period provided by paragraph 4.1 hereof. In order to carry out the intent of this paragraph, FICO shall record this Agreement in the official records of Pima County upon the occurrence of the Enforceability Date.

5.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the Parties thereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed an original document.

5.6 The Parties agree to cooperate with each other in effectuation this Agreement and carrying out its terms.

DATED this 12th day of June, 2003⁶

TOHONO O'ODHAM NATION

By Muriel Saunders
Chairperson

UNITED STATES OF AMERICA

By Gale A. Norton
Secretary of the Interior

SAN XAVIER DISTRICT

By A ✓
Chairman

FARMERS INVESTMENT CO.

By Richard Walden

President

STATE OF ARIZONA)

)SS

COUNTY OF Pima)

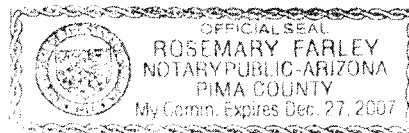
The foregoing was acknowledged before me this 12th day of June, 2006, by
Richard Walden, President of Farmers Investment Co.

Rosemary Farley

Notary Public

My Commission expires:

12/27/07



FARMERS WATER CO.

By Richard Walden

President

STATE OF ARIZONA)

)SS

COUNTY OF Pima)

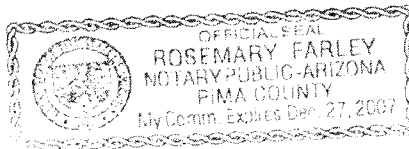
The foregoing was acknowledged before me this 12th day of June, 2006, by
Richard Walden, President of Farmers Water Co.

Rosemary Farley

Notary Public

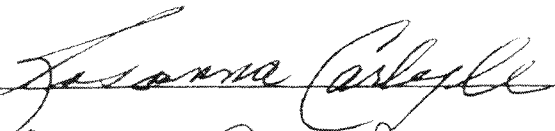
My Commission expires:

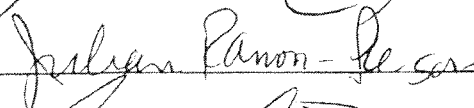
12/27/07



UNITED STATES V. TUCSON ALLOTTEE CLASS

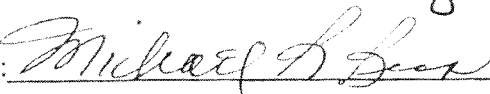
By: 

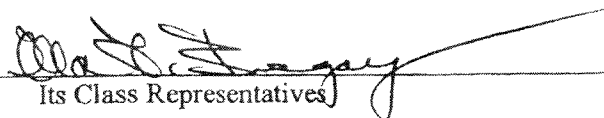
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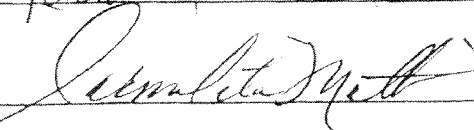
By: 
Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: 

By: 

By: 

By: 

By: 
Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: Lucinda Muñoz

By: Barrett Encinas

By: April C.

By: Yvonne E. O'Higuel

By: Celestine Pablos

By: Carly

By: Jocelyn Orsola Benell

By: Felicia Muñoz

By: Ruth J. Jay

By: John

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

HOLDINGS OF
FARMERS INVESTMENT CO. & FARMERS WATER CO.
(a subsidiary of Farmers Investment Co.)
in
PIMA COUNTY, ARIZONA

January 19, 2004

SAHUARITA
LEGAL DESCRIPTION

Parcel 1:

All that portion of Section 31, Township 16 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that part within Pima Mine Road; and

EXCEPT that portion described in Docket 1788 at Page 546.

Parcel 2:

All that portion of Section 6, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established.

Parcel 3:

All that portion of Section 7, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that portion of said Section within the right-of-way of Sahuarita Road as now established;

EXCEPT that portion described in Docket 1788 at Page 536; and

EXCEPT that portion described in Docket 5007 at Page 286.

Parcel 4:

The South half of the Southeast quarter of Section 12, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the right-of-way of Sahuarita Road as now established;

ALSO EXCEPT the West 45 feet thereof as conveyed to Pima County in Docket 4535 at Page 467.

Parcel 5:

The Northeast quarter of the Southeast quarter of Section 12, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the West 528.00 feet of the South half of the South half of the Northeast quarter of the Southeast quarter of Section 12.

Parcel 6:

The East half of Section 13, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the Sahuarita Road right-of-way as now established;

EXCEPT the Southern Pacific Railroad Spur described in Docket 6101 at Page 1026; and

EXCEPT that portion conveyed to Pima County, Arizona in Docket 10276 at Page 849.

Parcel 7:

All that portion of Section 18, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that portion within the right-of-way of Southern Pacific Railroad as now established;

EXCEPT that portion described in Docket 6101 at Page 1026 and in Docket 7829 at Page 1377; and

EXCEPT any portion lying within Sahuarita Road.

Parcel 8:

That portion of the West half of Section 19, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established.

Parcel 9:

The East half of Section 24, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT any portion lying within La Villita Road as now established.

Parcel 10:

All of Section 25, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the West half of the Southwest quarter of said Section 25;

EXCEPT the East half of the Southeast quarter of said Section lying Southerly of Duval Mine Road/Tucson-Nogales Highway as now established;

EXCEPT that parcel of land described in Docket 5600 at Page 34; and

EXCEPT any portion lying within Duval Mine Road/Tucson-Nogales Highway.

Parcel 11:

All that portion of the Northwest quarter of Section 30, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of the Southern Pacific Railroad;

EXCEPT any portion lying within Duval Mine Road/Tucson-Nogales Highway and the Old Nogales Highway.

Parcel 12:

That portion of the East half of Section 31, Township 16 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad as now established;

EXCEPT that portion described in Docket 1788 at Page 523; and

EXCEPT a strip of land 33.00 feet wide adjacent to the East right-of-way line of the Southern Pacific Railroad in the Northeast quarter of said Section 31.

Parcel 13:

The West half of Section 5, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Parcel 14:

All that portion of Section 6, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of the Southern Pacific Railroad as now established.

Parcel 15:

All that portion of Section 7, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad as now established;

EXCEPT the following described parcel:

BEGINNING at the Northeast corner of Section 7;

EXCEPT any portion described in Docket 4469 at Pages 493 and 513, Docket 5171 at Page 547, Docket 5993 at Page 640, Docket 10312 at Page 862; and Docket 7094 at Page 1031, Docket 7829 at Page 1377 (church properties) and

FURTHER EXCEPTING Sahuarita Road and right-of-way as now established.

Parcel 16:

All of Section 8, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the East half of the East half of said Section 8;

EXCEPT the South half of the Southeast quarter of the Southwest quarter of said Section 8;

EXCEPT that portion of the West half of the Northeast quarter of said Section 8, being described as follows:

BEGINNING at a point on the East line of the West half of the Northeast quarter of said Section 8, which is 500.00 feet South of the North 1/16th corner;

THENCE South 0°04'55" West, along said East line, a distance of 1020.00 feet;

THENCE North 44°55'05" West, a distance of 721.25 feet;

THENCE North 45°04'55" East, a distance of 721.25 feet to the POINT OF BEGINNING; and

FURTHER EXCEPT any portion of said Section 8 within the right-of-way of Sahuarita road as now established.

Parcel 17:

The North half of the North half of the Northwest quarter of Section 17, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the right-of-way of Sahuarita Road as now established.

Parcel 18:

All that portion of Section 18, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad;

EXCEPT that portion described in Docket 3681 at Page 310.

Parcel 19:

All that portion of Section 19, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad;

EXCEPT the Southeast quarter of the Northeast quarter of Section 19;

EXCEPT the East half of the Southeast quarter of said Section 19;

EXCEPT that parcel described in Docket 1138 at Page 104.

Parcel 20:

All that portion of Section 30, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of the Southern Pacific Railroad;

EXCEPT the East half of the Northeast quarter of said Section 30; and

EXCEPT the Southeast quarter of said Section 30.

CONTINENTAL
LEGAL DESCRIPTION

Parcel 21:

That portion of the North half of the San Ignacio de la Canoa Private Land Grant, Pima County, Arizona, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, which said survey is now on file in the United States Surveyor General's office at Phoenix in the State of Arizona, said portion lying West of the West right-of-way line of Nogales Branch of the Southern Pacific Railroad as now established;

COMMENCING at the Southeast corner of said North half of the San Ignacio de la Canoa Private Land Grant as shown in Roadhaven Resort, Inc., Lots 1 through 425 and Common Areas A & B, a subdivision as recorded in Book 37 of Maps and Plats at Page 4, records of Pima County, Arizona;

THENCE North 59°12'41" West, along the South line of said North half, a distance of 3790.40 feet to a point on the Westerly right-of-way line of the Southern Pacific Railroad, said point being the POINT OF BEGINNING;

THENCE continue North 59°12'41" West, along the South line of said North half, a distance of 705.00 feet;

THENCE departing said South line, North 04°31'51" East, a distance of 550.00 feet;

THENCE North 17°44'48" West, a distance of 1522.12 feet;

THENCE North 18°26'38" East, a distance of 5812.36 feet;

THENCE North 21°39'23" East, a distance of 112.00 feet;

THENCE North 28°41'19" East, a distance of 2033.45 feet;

THENCE North 05°48'33" East, a distance of 2869.19 feet;

THENCE North 12°48'58" East, a distance of 1366.80 feet;

THENCE North 30°59'55" East, a distance of 1796.96 feet;

THENCE North 09°45'08" East, a distance of 1443.96 feet;

THENCE North 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'15" East, a distance of 250.00 feet;

THENCE South 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'16" East, along the projected East line of the Green Valley Desert Meadows, a subdivision as recorded in Book 22 of Maps and Plats at Page 65, a distance of 1944.11 feet to the Northeast corner of said subdivision, said corner also being the Southeast corner of the Green Valley Fairways #3 as recorded in Book 18 of Maps and Plats at Page 51, records of Pima County;

THENCE North 13°14'25" East, along the East boundary line of said Green Valley Fairway #3, a distance of 867.97 feet;

THENCE North 28°23'31" East, along said boundary line, a distance of 592.14 feet;

THENCE North 11°58'29" East, a distance of 729.46 feet to the Southeast corner of the Tucson Green Valley Unit No. 1, a subdivision as recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 10°30'00" East, along the East boundary line of said subdivision, a distance of 467.35 feet;

THENCE North 15°10'27" East, along said boundary line, a distance of 852.31 feet;

THENCE North 13°22'39" East, along said line, a distance of 1002.51 feet;

THENCE North 10°22'19" East, along said line, a distance of 377.99 feet;

THENCE North 19°43'59" East, a distance of 365.40 feet;

THENCE North 36°51'49" East, a distance of 508.85 feet;

THENCE North 36°33'39" East, a distance of 80.77 feet to the Southeast corner of the Tucson Green Valley Unit No. 1 recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 36°33'39" East, along the East line, a distance of 499.00 feet;

THENCE North 00°34'46" East, along said East line, a distance of 656.10 feet;

THENCE North 05°33'44" East, along said East line, a distance of 596.54 feet;

THENCE North 10°12'43" East, along said East line, a distance of 675.61 feet;

THENCE North 10°36'01" East, along said East line, a distance of 502.77 feet;

THENCE North 37°24'33" East, along said East line, a distance of 697.42 feet;

THENCE North 04°09'06" West, along said East line, a distance of 450.06 feet;

THENCE North 17°14'13" East, along said East line, a distance of 706.82 feet;

THENCE North 22°59'37" East, along said East line, a distance of 633.96 feet;

THENCE North 07°52'58" West, along said East line, a distance of 620.62 feet to a point on the North boundary line of said San Ignacio de la Canoa Private Land Grant;

THENCE South 59°19'09" East, along said boundary line, a distance of 2401.52 feet to a point on the West right-of-way line of the Tucson-Nogales U.S. Highway 89 as dedicated in Book 7 of Road Dedications at Page 268, Pima County;

THENCE South 16°21'30" West, along said right-of-way line, a distance of 726.44 feet to a point of tangent curve to the left having a radius of 3894.72 feet;

THENCE Southerly along the arc of said curved right-of-way line through a central angle of 11°52'48", a distance of 807.55 feet;

THENCE South 85°31'18" East, a distance of 30.00 feet;

THENCE South 04°28'42" West, along said right-of-way line, a distance of 6427.29 feet to a point of tangent curve to the left having a radius of 2743.82 feet;

THENCE Southerly along the curve to the right, a distance of 638.37 feet and an interior angle of 13°19'49" to the point of tangent;

THENCE South 17°48'31" West, a distance of 2786.32 feet;

THENCE South 72°11'29" East, a distance of 71.00 feet to a point on the West right-of-way line of the Southern Pacific Railroad;

THENCE South 17°48'31" West, along said Westerly right-of-way line, a distance of 7309.23 feet to a point of tangent curve with a radius of 5679.65 feet;

THENCE Southerly along the arc of said curve to the right through a central angle of 14°33'33", a distance of 1443.23 feet to the point of tangent;

THENCE South 32°22'04" West, a distance of 45.01 feet;

THENCE North 57°37'56" West, a distance of 100.00 feet;

THENCE South 32°22'04" West, a distance of 2535.54 feet to the point of tangent curve with a radius of 11,609.19 feet;

THENCE Southerly along the arc of said curve to the left through a central angle of 03°04'08", a distance of 743.39 feet to a point of non-tangent;

THENCE South $61^{\circ}18'04''$ East, a distance of 100.00 feet to a point of a non-tangent curve with a radius of 11509.19 feet and a radial line that bears South $61^{\circ}18'04''$ East;

THENCE Southerly along the arc of said curve to the left through a central angle of $08^{\circ}20'51''$, a distance of 1676.79 feet to a point of tangent;

THENCE South $20^{\circ}21'05''$ West, a distance of 4430.47 feet;

THENCE North $69^{\circ}38'55''$ West, a distance of 100.00 feet;

THENCE South $20^{\circ}21'05''$ West, a distance of 1000.00 feet;

THENCE South $69^{\circ}38'55''$ East, a distance of 100.00 feet;

THENCE South $20^{\circ}21'05''$ West, a distance of 194.08 feet to the POINT OF BEGINNING;

EXCEPT any portion lying within the property described Docket 3903 at Page 468, Docket 4038 at Page 721, and Docket 7858 at Page 1363;

EXCEPT any portion lying within the Park Centre Subdivision, Lots 1 through 180 and Common Area A, a subdivision recorded in Book 41 of Maps and Plats at Page 19 thereof, records of Pima County, Arizona;

EXCEPT any portion lying within the property conveyed to Pima County as described in Docket 8195 at page 1483;

EXCEPT the parcel conveyed to Farmers Water Co., an Arizona corporation in Docket 11409 at Page 1418; and

EXCEPT the parcel conveyed to the Town of Sahuarita in Docket 11481 at Page 3594;

BUT TOGETHER WITH those portions of abandoned Continental Road/Tucson Nogales Highway described in the Deed from Pima County recorded in Docket 8270, Page 1106, which was rerecorded in Docket 10095, Page 645.

Parcel 22:

R. K. Walden residence (two parcels). See Attachment A.

Parcel 23:

R. S. Walden residence. See Attachment B.

Parcel 24:

Roadhaven (DeAnza) Booster. See Attachment C

Parcel 25:

W-11 (DeAnza) Well Site. See Attachment D.

Parcel 26:

W-12 (DeAnza) Well Site. See Attachment E.

Parcel 27:

NP-1 Well Site. Described in Docket 7928 on Pages 2537 & 2538. See Attachment F.

Parcel 28:

NP-2 Well Site. Described in Docket 7928 on Pages 2539 & 2540. See Attachment F.

Parcel 29:

E-2 Well Site. Described in Docket 7928 on Pages 2533 & 2534. See Attachment F.

Parcel 30:

E-7 Well Site. Described in Docket 7928 on Page 2535. See Attachment F.

Parcel 31:

E-14 Well Site.. Described in Docket 7928 on Page 2536. See Attachment F.

Parcel 32:

FICO (Continental) Housing. Described in Docket 7928 on Pages 2507 & 2508, except School District #39 Property, described in Docket 154 on Page 166 and Docket 7349 on Page 509. See Attachment G.

LEGAL DESCRIPTION

EAST PARCEL
DJA JOB NO. FICO005
AUGUST 20, 1997

That certain parcel of land situated in the San Ignacio de la Canoa private land grant, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, and which said survey is now on file in the United States General's Office at Phoenix, in the State of Arizona, and which reference is being made, within Pima County, Arizona, more particularly described as follows:

Commencing at the northeast corner of Lot 61 as shown in the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, said corner being a 2" aluminum capped pipe tagged P.E. 7076;

Thence North $87^{\circ}17'37''$ East along the south property line of the Green Valley Foothills No. 2 Subdivision, as recorded in Book 19 of Maps & Plats at Page 65, Pima County, Arizona, a distance of 941.69 feet, to a point, said point being a $5/8$ " rebar with no tag;

Thence continue along said south property line South $47^{\circ}10'49''$ East a distance of 724.88 feet to a point, said point being a $1/2$ " rebar tagged R.L.S. 1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 Subdivision, South $69^{\circ}25'01''$ East a distance of 340.00 feet to the POINT OF BEGINNING;

Thence continue South $69^{\circ}25'01''$ East a distance of 1009.22 feet to a point, said point being a $1/2$ " rebar tagged R.L.S. 1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 subdivision South $59^{\circ}48'43''$ East a distance of 680.44 feet to a point on the west right-of-way line of the Tucson-Nogales Highway (I-19), said point being a point of a non-tangent curve with a radius of 11589.16, with a radial line that bears South $68^{\circ}20'08''$ East;

Thence southwesterly along the arc of said curve concave to the southeast a distance of 1372.62 feet and an interior angle of $6^{\circ}47'10''$ to a point, said point being A.D.O.T. aluminum cap and on said west right-of-way line;

Thence South $15^{\circ}17'22''$ West along said west right-of-way line of Tucson-Nogales Highway, a distance of 152.28 feet to a point, said point being a $1/2$ " rebar tagged P.E. 2067;

Thence departing said west right-of-way line North 74°21'57" West a distance of 277.74 feet to a point, said point being a 2" aluminum capped pipe tagged P.E. 7076, said point shown on the north property line of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona;

Thence continue along said north property line North 74°43'26" West a distance of 1370.62 feet to a point, said point being a 2" aluminum capped pipe;

Thence North 63°34'01" West along said north property line of said subdivision a distance of 510.00 feet to a point;

Thence departing said north property line North 61°29'02" East a distance of 190.00 feet to a point;

Thence North 84°54'38" East a distance of 125.00 feet to a point;

Thence North 20°19'26" East a distance of 163.58 feet to a point;

Thence North 21°05'18" West a distance of 49.07 feet to a point;

Thence North 68°54'42" East a distance of 50.00 feet to a point;

Thence North 21°05'18" West a distance of 495.00 feet to a point;

Thence North 69°25'15" East a distance of 202.45 feet to a point;

Thence South 63°07'44" East a distance of 165.00 feet to a point;

Thence North 24°01'59" East a distance of 260.00 feet to a point;

Thence South 57°21'21" East a distance of 20.00 feet to a point;

Thence North 32°38'39" East a distance of 50.00 feet to a point;

Thence North 36°50'46" East a distance of 470.00 feet to the POINT OF BEGINNING.

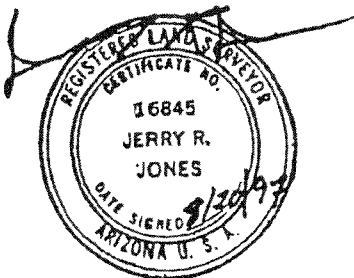
Said parcel contains 71.82 acres more or less.

Subject to all easements, encumbrances, restrictions, and reservation of record or otherwise.

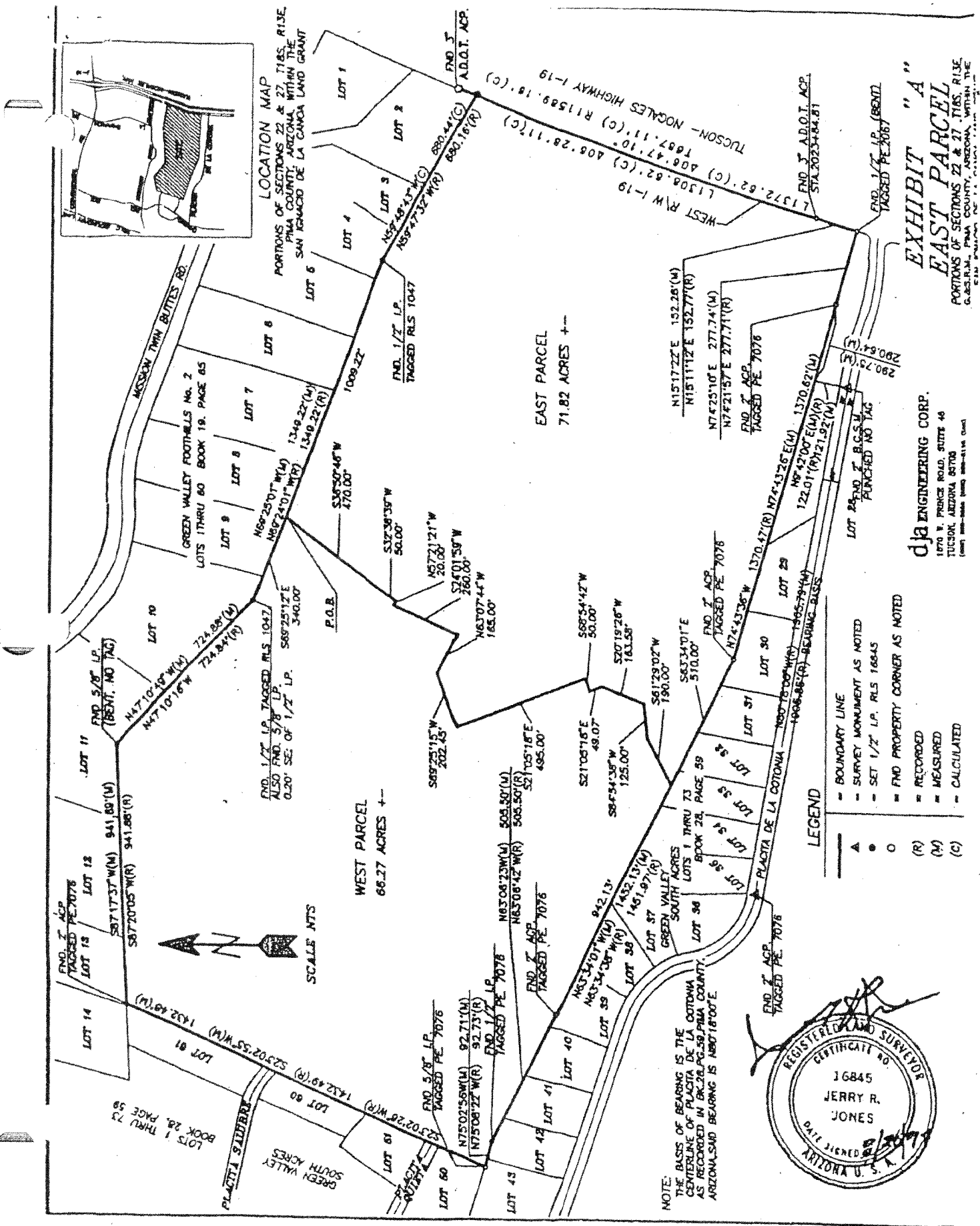
See attached Exhibit "A".

Page 2 of 2

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Attachment A



LEGAL DESCRIPTION

WEST PARCEL
DJA JOB NO. FICO005
AUGUST 20, 1997

That certain parcel of land situated in the San Ignacio de la Canoa private land grant, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, and which said survey is now on file in the United States General's Office at Phoenix, in the State of Arizona, and which reference is being made, within Pima County, Arizona, more particularly described as follows:

Beginning at the northeast corner of Lot 61 as shown in the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, said corner being a 2" aluminum capped pipe tagged P.E. 7076,

Thence North $87^{\circ}17'37''$ East along the south property line of the Green Valley Foothills No. 2 Subdivision, as recorded in Book 19 of Maps & Plats at Page 65, Pima County, Arizona, a distance of 941.69 feet to a point, said point being a $5/8''$ rebar with no tag;

Thence continue along said south property line South $47^{\circ}10'49''$ East a distance of 724.88 feet to a point, said point being a $1/2''$ rebar tagged R.L.S. 1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 Subdivision, South $69^{\circ}25'01''$ East a distance of 340.00 feet to a point;

Thence departing said south property line South $36^{\circ}50'46''$ West a distance of 470.00 feet to a point;

Thence South $32^{\circ}38'39''$ West a distance of 50.00 feet to a point;

Thence North $57^{\circ}21'21''$ West a distance of 20.00 feet to a point;

Thence South $24^{\circ}01'59''$ West a distance of 260.00 feet to a point;

Thence North $63^{\circ}07'44''$ West a distance of 165.00 feet to a point;

Thence South $69^{\circ}25'15''$ West a distance of 202.45 feet to a point;

Thence South $21^{\circ}05'18''$ East a distance of 495.00 feet to a point;

Page 1 of 2

(d:\legals\fico5wst.pcl)

Attachment A

Thence South 68°54'42" West a distance of 50.00 feet to a point;

Thence South 21°05'18" East a distance of 49.07 feet to a point;

Thence South 20°19'26" West a distance of 163.58 feet to a point;

Thence South 84°54'38" West a distance of 125.00 feet to a point;

Thence South 61°29'02" West a distance of 190.00 feet to a point on the north property line of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats, at Page 59, Pima County, Arizona;

Thence along said north property line North 63°34'01" West a distance of 942.13 feet to a point, said point being a 2" aluminum capped pipe, tagged P.E. 7076;

Thence continue along said north property line North 63°06'42" West a distance of 505.50 feet to a point, said point being a 1/2" rebar tagged P.E. 7076;

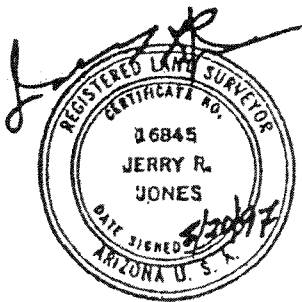
Thence North 75°02'56" West a distance of 92.71 feet to a point, said point being a 5/8" rebar tagged P.E. 7076;

Thence North 23°02'55" East along the east property line of Lots 50, 51, 60 and 61 of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, a distance of 1432.48 feet to the POINT OF BEGINNING.

Said parcel of land contains 66.27 acres more or less.

Subject to all easements, encumbrances, restrictions, and reservation of record or otherwise.

See attached Exhibit "A".





F. ANN RODRIGUEZ, RECORDER
RECORDED BY: JLW
DEPUTY RECORDER
1541 PE2

REZMS.
EZ MESSENGER ATTORNEY SERVICE
EZ-SNELL



DOCKET: 11960
PAGE: 403
NO. OF PAGES: 10
SEQUENCE: 20030030143
01/06/2003
WTDEED 10:23

PICKUP

AMOUNT PAID \$ 14.00

Snell & Wilmer L.L.P.
One S. Church Ave., #1500
Tucson, Arizona 85701

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars (\$10.00) and other valuable considerations, Lawyers Title of Arizona, as Trustee under Trust No. 7950-T ("Grantor"), hereby conveys to Farmers Investment Company, an Arizona corporation ("Grantee"), the following real property situated in Pima County, Arizona, together with all rights and privileges appurtenant thereto:

See Exhibit A attached hereto and incorporated herein by this reference (the "Property").

SUBJECT to the Reservations, Covenants and Easements Requiring Metering, Inspection and Entry attached hereto as Exhibit B and incorporated herein by this reference; and

SUBJECT to all taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, all leases, and all matters which an accurate survey of the Property or a physical inspection of the Property would disclose.

Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of Grantor herein and none other, subject to the matters above set forth.

DATED this 30th day of December, 2002

Note: This Deed is exempt pursuant
to A.R.S. Section
11-1134(A) (7)

GRANTOR:

LAWYERS TITLE OF ARIZONA, as Trustee
under Trust No. 7950-T

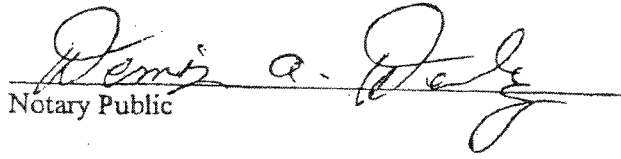
By: Doris J. Clark
Name: DORIS J. CLARK
Title: ASST. TRUST OFFICER

STATE OF ARIZONA

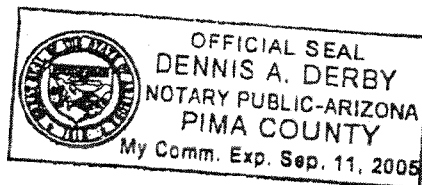
County of Pima

) ss.
)

The foregoing instrument was acknowledged before me this 31st day of December, 2003 by Doris J. Clark, the Asst. Trust Off of Lawyers Title of Arizona, as Trustee under Trust No. 7950-T.


Notary Public

My Commission Expires:



Attachment B

11560404

12/23/02 13:57 FAX 480 348 8976
12/23/02 12:67 FAX

HARVARD - A HILL CO.

004
004

BENEFICIARY APPROVAL:

Madera Highlands, L.L.C., an
Arizona limited liability company

By: Paul A. Bowen
Name: Paul A. Bowen
Title: Project Manager

500000JUDX255989.1

Attachment B

1119600405

EXHIBIT A

Property Description
[Attached]

1196004000

Attachment B

Stantec Consulting Inc.
201 North Bonita Avenue
Tucson AZ 85745-2999
Tel: (520) 750-7474 Fax: (520) 750-7470
stantec.com



Stantec

Legal Description of Parcel of Land

DESCRIPTION of a parcel of land located within a portion of the San Ignacio De La Canoa Land Grant, which lies within Township 18 South, Ranges 13 & 14 East, Gila & Salt River Meridian, Pima County, Arizona. Said parcel being more fully described as follows:

COMMENCING at a point said point being the northeast corner of said land grant, Thence South 23°01'34" West a distance of 1272.25 feet;

Thence South 23°01'11" West a distance of 2701.26 feet;

Thence South 23°05'55" West a distance of 267.49 feet;

Thence North 66°54'05" West a distance of 2214.24 feet to the **TRUE POINT OF BEGINNING**;

Thence South 70°24'07" West a distance of 121.31 feet;

Thence South 49°50'32" West a distance of 56.77 feet;

Thence South 25°57'03" West a distance of 70.00 feet;

Buildings

Thence South 01°26'48" East a distance of 206.01 feet;

Environment

Thence North 77°29'37" West a distance of 400.05 feet;

Industrial

Thence North 04°25'13" East a distance of 155.02 feet;

Transportation

Thence North 48°51'51" West a distance of 114.75 feet;

Urban Land

Thence North 41°08'09" East a distance of 171.21 feet;

Thence along a tangent curve to the left, with a radius of 120.00 feet, through a central angle of 34°37'56" (the chord of which bears North 23°49'11" East, a distance of 71.43 feet) for an arc length of 72.53 feet;

Attachment B

3 December 2002

Reference: 85610664-15 Madera Highlands Infrastructure

Page 2 of 3

Thence along a reverse curve to the right, with a radius of 25.00 feet, through a central angle of $69^{\circ}24'57''$ (the chord of which bears North $41^{\circ}12'42''$ East, a distance of 28.47 feet) for an arc length of 30.29 feet;

Thence along a reverse curve to the left, with a radius of 350.00 feet, through a central angle of $1^{\circ}09'58''$ (the chord of which bears North $75^{\circ}20'12''$ East, a distance of 7.12 feet) for an arc length of 7.12 feet;

Thence along a reverse curve to the right, with a radius of 300.00 feet, through a central angle of $33^{\circ}27'03''$ (the chord of which bears South $88^{\circ}31'16''$ East, a distance of 172.67 feet) for an arc length of 175.15 feet;

Thence South $71^{\circ}47'45''$ East a distance of 211.50 feet;

Thence along a tangent curve to the right, with a radius of 162.50 feet, through a central angle of $58^{\circ}40'24''$ (the chord of which bears South $42^{\circ}27'33''$ East, a distance of 159.23 feet) for an arc length of 166.41 feet to the **TRUE POINT OF BEGINNING**.

Said parcel containing an approximate area of 213,363 square feet or 4.90 acres of land, more or less.

Stantec

Attachment B

EXHIBIT B

Reservations, Covenants and Easements Requiring Metering, Inspection and Entry

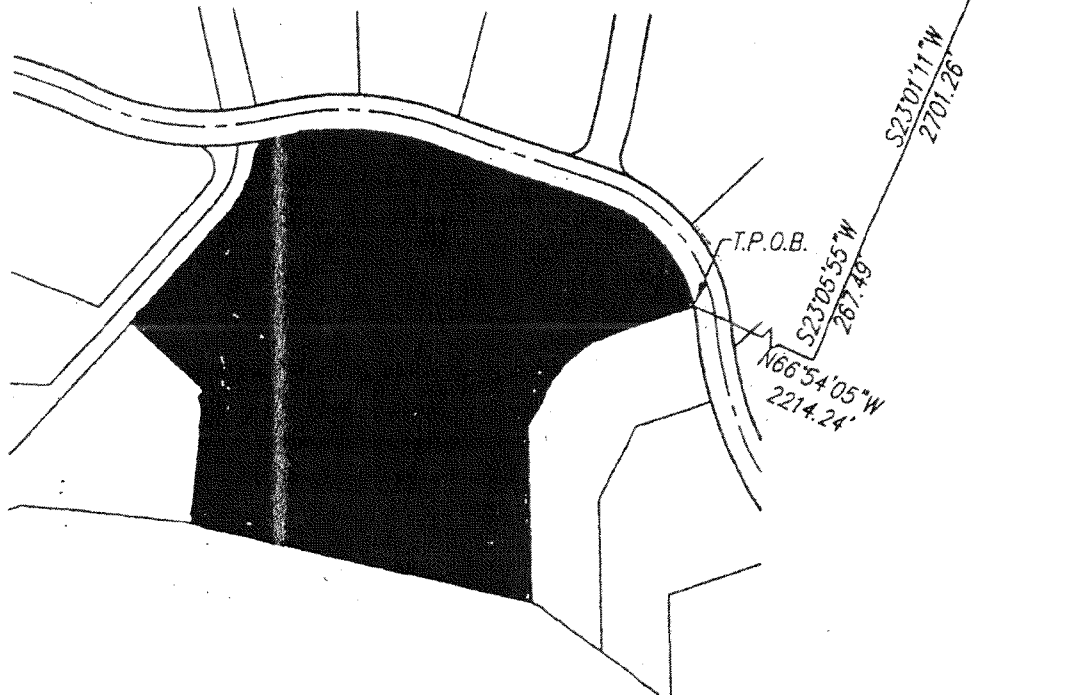
The Property described herein which is the subject of this conveyance (the "Property") is subject to an agreement made and entered into as of December 31, 1978 (the "Agreement") by and among Farmers Investment Co., an Arizona corporation, Anamax Mining Company, a partnership consisting of the Anaconda Company, a Delaware corporation, and AMAX Arizona, Inc., a Nevada corporation, and Duval Corporation, a Delaware corporation (the "Parties") and to a Declaration of Reservations, Covenants, and Easements running with the land recorded on November 20, 1979, in Book 6179, page 719, and re-recorded February 26, 1980 in Book 6223 at page 671 in the records of Pima County, Arizona (the "Declaration"). As provided in and in accordance with paragraph 2 of the Declaration, the prohibitions in paragraph 1 of the Declaration on taking, withdrawing, transferring, assigning, or using water underlying the surface of the Property are hereby modified and released on the following terms and conditions. Grantee hereunder by acceptance of any contract of sale or deed to the Property covenants to be personally bound hereby, to include this paragraph in all future agreements of sale, and deeds of conveyance of the Property or any part thereof, and to require all lessees or any other persons who enjoy any beneficial interest in the Property through Grantee to comply with the terms hereof. The following reservations, covenants and easements are hereby declared to attach to and run with the land, in favor of the Parties, to be binding upon the land and all owners, mortgagees (excepting mortgagees pursuant to mortgages of record on the date of recordation of the Declaration), lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof. The taking, withdrawal, transfer, assignment or use in any manner whatsoever of water underlying the surface of the Property is prohibited except in compliance with the following provisions. Each well on the Property shall be equipped by Grantee with a recording device which will within acceptable engineering standards measure accurately the gallonage of water produced by such well. The production of each well shall be recorded and the records maintained. Each Party shall be entitled at reasonable times to inspect each measuring and recording device on the Property and its installation, and to copy the recording and recorded data as made. Each Party shall also, upon reasonable notice, be entitled to have any such device checked for accuracy, provided that such activity shall be so conducted as not to unreasonably interfere with the usage of the well being checked. Grantee hereunder shall maintain for periods of not less than five years accurate records, which shall disclose the total production in gallons of all water produced for each well on the Property, which records shall be open to inspection and copying by the Parties. Any Party requesting an accuracy check of any water measuring device shall bear the actual expense thereof. Grantee shall submit to each of the Parties (or to such other persons as the Parties may be written notice to Grantee designate in writing) on or before February 15 of each year an annual report stating the total amount of water pumped from each well on the Property during the preceding calendar year. Grantee shall promptly respond to requests for additional information from the Parties related to the amount of water used and such other information as may reasonably be related to the fact, amount and purpose of water use during the year. At the time of delivery of the annual pumping reports, Grantee shall also notify the Parties of any additional wells which have been drilled, any wells which have been deepened, and any wells which have been abandoned during the preceding calendar year. Such information shall include the location of the well by legal

Attachment B

description, and, as to new and deepened wells, their size, depth, source of power supply, current production or actual productive capacity and productive capacity when last in use. Each Party shall be entitled at reasonable times upon reasonable notice to enter and inspect the Property to determine that the terms hereof are being complied with and shall have the right to enforce the provisions hereof and to enjoin any violations hereof. The restrictions of this paragraph shall terminate as provided in paragraph 7 of the Declaration. The terms "Party," "Parties," "Farmers Investment Co.," "Anamax Mining Company," and "Duval Corporation" mean the Parties and their successors as defined in paragraph 10 of the Declaration. Except as specifically modified herein, all other reservations, covenants and easements of the Declaration shall remain in full force and effect as to the Property and all owners, mortgagees, lessees, and other person having or acquiring any right, title or interest in and to the Property or any part thereof.

Attachment B

COMMENCE AT THE NE CORNER
OF THE SAN IGNACIO DE LA CANOA
LAND GRANT



SCALE: 1 INCH = 200 FEET

EXHIBIT OF A PARCEL OF LAND
SAID PARCEL IS LOCATED IN PART OF
SAN IGNACIO DE LA CANOA LAND GRANT WITHIN
TOWNSHIP 18 SOUTH, RANGE 13 EAST
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

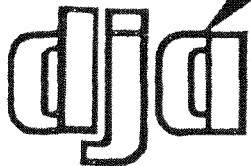
DRAWN	WLA
DATE	12-03-2002
JOB No.	85810664-15
SHT.	1 OF 1



Stantec

201 NORTH BONITA AVENUE
TUCSON, AZ 85745-2999
PH: [520] 750-7474
FAX: [520] 750-7470

ENGINEERING . PLANNING .
LANDSCAPE ARCHITECTURE .
WATER RESOURCES .
SURVEYING . TRANSPORTATION .



Dooley-Jones & Associates, Inc.

CONSULTING ENGINEERS / PLANNERS / ARCHITECTS / SURVEYORS

Tucson
35 E. Toole Avenue
Mail: P.O. Box 1830
Tucson, AZ 85702-1830
(602) 624-2391

E. W. "Bud" Dooley, P.E.
Jerry R. Jones, P.E.
Hubert A. Duncan, P.E.
David C. Logue, P.E.
James R. Wise, P.E.
Richard H. Bourque, P.E.
Frank G. Castro, P.E.
Roger E. Basle, P.E.
Shi-En Shiau, P.E.
John Panchalk, R.L.S.
James D. Lynch, A.P.A.

Phoenix
4747 N 22nd St
Suite 302
Phoenix, AZ 85016
(602) 956-9850

William D. Mathews, P.E.
James A. Catterfeld, P.E.
Richard M. Presio, A.I.A., A.S.L.A.
Carroll M. Lenderking, R.L.S.

PREPARED FOR
FARMERS INVESTMENT COMPANY

DICK WALDEN

DJA JOB NO. 83-089

SEPTEMBER 25, 1983

REVISED OCTOBER 25, 1983

DeAnza Booster Station Site

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the south line of the north 1/2 of San Ignacio de Canoa Private Land Grant, said corner being on the east right-of-way line of I-19, Tucson-Nogales Highway, thence North $22^{\circ}27'31''$ East along said right-of-way line a distance of 2700.00 feet;

Thence departing said right-of-way line South $67^{\circ}32'29''$ East a distance of 60.00 feet to the TRUE POINT OF BEGINNING;

Thence North $22^{\circ}27'31''$ East a distance of 60.00 feet;

Thence North $45^{\circ}04'43''$ East a distance of 97.50 feet;

Thence South $67^{\circ}32'29''$ East a distance of 162.50 feet;

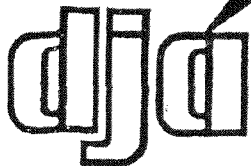
Thence South $22^{\circ}27'31''$ West a distance of 150.00 feet;

Thence North $67^{\circ}32'29''$ West a distance of 200.00 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 0.65 acre, more or less.

MO:HA D:RAB:dmh

Attachment C



Dooley-Jones & Associates, Inc.

CONSULTING ENGINEERS / PLANNERS / ARCHITECTS / SURVEYORS

Tucson
35 E. Toole Avenue
Mail: P.O. Box 1830
Tucson, AZ 85702-1830
(602) 624-2391

E. W. "Bud" Dooley, P.E.
Jerry R. Jones, P.E.
Hubert A. Duncan, P.E.
David C. Logue, P.E.
James R. Wise, P.E.
Richard H. Bourque, P.E.
Frank G. Castro, P.E.
Roger E. Baale, P.E.
Shi-En Shiao, P.E.
John Panchaik, R.L.S.
James D. Lynch, A.P.A.

Phoenix
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Phoenix, AZ 85016
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James A. Catterfeld, P.E.
Richard M. Presto, A.I.A., A.S.L.A.
Carroll M. Lenderking, R.L.S.

PREPARED FOR
FARMERS INVESTMENT COMPANY

DICK WALDEN

DJA JOB NO. 83-089

SEPTEMBER 25, 1983

REVISED OCTOBER 25, 1983

DeAnza Well Site W-11

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the south line of the north 1/2 of San Ignacio de La Canoa Private Land Grant, said corner being on the east right-of-way line of I-19, Tucson-Nogales Highway;

Thence North $22^{\circ}27'31''$ East along said right-of-way line a distance of 2692.64 feet;

Thence departing said right-of-way line South $67^{\circ}32'29''$ East distance of 1749.36 feet to the northwest corner of proposed well site W-11, said point also being the TRUE POINT OF BEGINNING;

Thence South $71^{\circ}33'22''$ East a distance of 100.00 feet;

Thence South $18^{\circ}26'38''$ West a distance of 100.00 feet;

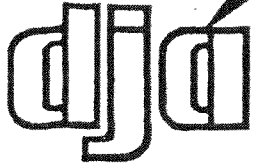
Thence North $71^{\circ}33'22''$ West a distance of 100.00 feet;

Thence North $18^{\circ}26'38''$ East a distance of 100.00 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 0.23 acre, more or less.

MO:HAD:RAB:dmh

Attachment D



Dooley-Jones & Associates, Inc.

CONSULTING ENGINEERS / PLANNERS / ARCHITECTS / SURVEYORS

Tucson
35 E. Toole Avenue
Mail: P.O. Box 1830
Tucson, AZ 85702-1830
(602) 624-2391

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Hubert A. Duncan, P.E.
David C. Logue, P.E.
James R. Wise, P.E.
Richard H. Bourque, P.E.
Frank G. Castro, P.E.
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Shi-En Shiau, P.E.
John Panchalk, R.L.S.
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William D. Mathews, P.E.
James A. Catterfeld, P.E.
Richard M. Presio, A.I.A., A.S.L.A.
Carroll M. Lenderking, R.L.S.

PREPARED FOR
FARMERS INVESTMENT COMPANY

DICK WALDEN

DJA JOB NO. 83-089

SEPTEMBER 25, 1983

REVISED OCTOBER 25, 1983

DeAnza Well Site W-12

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the east right-of-way of Interstate 19, said point be the southwest corner of Green Valley Desert Meadows #3 as recorded in Book 25, Page 73, thence South $32^{\circ}24'19''$ East a distance of 1756.07 feet to the northwest corner of proposed well site W-12, said point also being the TRUE POINT OF BEGINNING;

Thence South $74^{\circ}46'34''$ East a distance of 100.00 feet;

Thence South $15^{\circ}13'26''$ West a distance of 100.00 feet;

Thence North $74^{\circ}46'34''$ West a distance of 100.00 feet;

Thence North $15^{\circ}13'26''$ East a distance of 100.00 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 0.23 acre, more or less.

MO:HAD:RAB:dmh

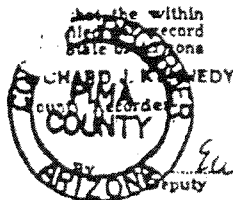
Attachment E

STATE OF ARIZONA
COUNTY OF PIMA
Witness my hand and Official Seal.

Indexed	Paged	Blotted

FORM 4-12

I h.
instr.
in Pim.



No. 75244
Book 7 Page 2524-
Date: Dec 10 1986 4 PM 2540
Request of:

STEWART TITLE & TRUST OF TUCSON

Fee: 17.00

WHEN RECORDED, RETURN TO:

QUITCLAIM DEED

For consideration of Ten Dollars, and other valuable consideration,
the undersigned Grantor,

E.C. GARCIA AND COMPANY, INC.,
an Arizona corporation,

does hereby quitclaim to the undersigned Grantee,

FARMERS WATER CO.,
an Arizona corporation,

all right, title and interest it may have in and to the following described
real property located in the County of Pima, State of Arizona, together with
all rights, water rights, improvements, irrigation ditches, privileges, and
appurtenances thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND
HEREBY INCORPORATED BY REFERENCE
(hereinafter referred to as the
"Property")

SUBJECT TO the following reservations, covenants and easements:

The Property described herein which is the subject of
this conveyance (the "Property") is subject to an Agreement
made and entered into as of December 31, 1978 (the
"Agreement") by and among Farmers Investment Co., an
Arizona corporation, Anamax Mining Company, a partnership
consisting of the Anaconda Company, a Delaware corporation,
and AMAX Arizona, Inc., a Nevada corporation, and Duval
Corporation, a Delaware corporation (the "Parties") and to
a Declaration of Reservations, Covenants, and Easements
running with the land recorded on December 24, 1979, in
Docket 6179, page 719, et seq., and rerecorded on
February 26, 1980 in Docket 6223, page 671, et seq., in the
records of Pima County, Arizona (the "Declaration"). As
provided in and in accordance with paragraph 2 of the
Declaration, the prohibitions in paragraph 1 of the
Declaration on taking, withdrawing, transferring,
assigning, or using water underlying the surface of the

7928 2529

Property are hereby modified and released on the following terms and conditions. The Grantee hereunder by acceptance of any contract of sale or deed to the Property covenants to be personally bound hereby, to include this paragraph in all future agreements of sale, and deeds of conveyance of the Property or any part thereof, and to require all lessees or any other persons who enjoy any beneficial interest in the Property through the Grantee to comply with the terms hereof. The following reservations, covenants and assessments are hereby declared to attach to and run with the land, in favor of the Parties, to be binding upon the land and all owners, mortgagees (excepting mortgagees pursuant to mortgages of record on the date of recordation of the Declaration), lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof. The taking, withdrawal, transfer, assignment or use in any manner whatsoever of water underlying the surface of the Property is prohibited except in compliance with the following provisions. Each well on the Property shall be equipped by the Grantee with a recording device which will within acceptable engineering standards measure accurately the gallons of water produced by such well. The production of each well shall be recorded and the records maintained. Each Party shall be entitled at reasonable times to inspect each measuring and recording device on the Property and its installation, and to copy the recording and recorded data as made. Each Party shall also, upon reasonable notice, be entitled to have any such device checked for accuracy, provided that such activity shall be so conducted as not to unreasonably interfere with the usage of the well being checked. The Grantee hereunder shall maintain for periods of not less than five years accurate records, which shall disclose the total production in gallons of all water produced for each well on the Property, which records shall be open to inspection and copying by the Parties. Any Party requesting an accuracy check of any water measuring device shall bear the actual expense thereof. The Grantee shall submit to each of the Parties (or to such other persons as the Parties may by written notice to the Grantee designate in writing) on or before February 15 of each year an annual report stating the total amount of water pumped from each well on the Property during the preceding calendar year. The Grantee shall promptly respond to requests for additional information from the Parties related to the amount of water used and such other information as may reasonably be related to the fact, amount and purpose of water use during the year. At the time of delivery of the annual pumping reports, the Grantee shall also notify the Parties of any additional wells which have been drilled, any wells which have been deepened, and any wells which have been abandoned during the preceding calendar year.

Such information shall include the location of the well by legal description, and, as to new and deepened wells, their size, depth, source of power supply, current production or actual productive capacity and productive capacity when last in use. Each Party shall be entitled at reasonable times upon reasonable notice to enter and inspect the Property to determine that the terms hereof are being complied with and shall have the right to enforce the provisions hereof and to enjoin any violations hereof. The restrictions of this paragraph shall terminate as provided in paragraph 7 of the Declaration. The terms "Party", "Parties", "Farmers Investment Co.", "Anamax Mining Company", and "Duval Corporation" mean the Parties and their successors as defined in paragraph 10 of the Declaration. Except as specifically modified herein, all other reservations, covenants and easements of the Declaration shall remain in full force and effect as to the Property and all owners, mortgagees, lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof.

Grantee, by signature hereto and acknowledgement hereof, accepts the conveyance of the Property and agrees to be bound by the reservations, covenants, and easements above set forth.

DATED: December 10th, 1986.

E.C. GARCIA AND COMPANY, INC.,
an Arizona corporation

By William D. M. [Signature]
Its E.C. V.P.

"GRANTOR"

ACCEPTED BY THE UNDERSIGNED
GRANTEE:

FARMERS WATER CO.,
an Arizona corporation

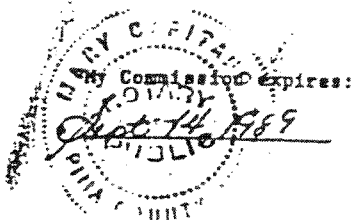
By [Signature]
Its President

"GRANTEE"

STATE OF ARIZONA)
)ss
COUNTY OF PIMA)

On this, the 10TH day of December, 1986, before me, the undersigned Notary Public, personally appeared WILLIAM D. MARTIN who acknowledged himself to be the EXECUTIVE VICE PRESIDENT of E. C. GARCIA AND COMPANY, INC., an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

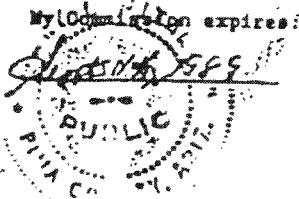


Mary Capetana
Notary Public

STATE OF ARIZONA)
)ss
COUNTY OF PIMA)

On this, the 10TH day of December, 1986, before me, the undersigned Notary Public, personally appeared R. KEITH WALDEN who acknowledged himself to be the PRESIDENT of FARMERS WATER CO., an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Mary Capetana
Notary Public

7928 2532

Legal Description For Well Site E-2

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIHA COUNTY, ARIZONA, BEARS SOUTH 59°19'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH 04°28'42" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF 08°58'56" TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF 04°20'53" TO A POINT OF TANGENCY;

THENCE SOUTH 17°48'31" WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH 17°48'31" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 4968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";

EXHIBIT A

7928 2533

Well Site E-2
Page 2 of 2

THENCE SOUTH 72°11'29" EAST A DISTANCE OF 100.00 FEET TO
A POINT ON THE EASTERLY RIGHT-OF-WAY LINE, SAID POINT
BEING THE TRUE POINT OF BEGINNING OF SAID WELL SITE E-2;

THENCE CONTINUE SOUTH 72°11'29" EAST A DISTANCE OF 100.00
FEET;

THENCE SOUTH 17°48'31" WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH 72°11'29" WEST A DISTANCE OF 100.00 FEET TO
A POINT ON SAID RIGHT-OF-WAY LINE;

THENCE NORTH 17°48'31" EAST A DISTANCE OF 100.00 FEET TO
THE TRUE POINT OF BEGINNING;

7928 2534

Attachment F

Legal Description For Well Site E-7

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 59°18'09" EAST A DISTANCE OF 2678.88 FEET:

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

THENCE NORTH 85°31'18" EAST A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID RAILROAD;

THENCE SOUTH 85°02'04" EAST A DISTANCE OF 1142.87 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "C";

BEGINNING AT THE AFOREMENTIONED POINT "C":

THENCE NORTH 04°57'56" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 85°02'04" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 04°57'56" WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH 85°02'04" WEST A DISTANCE OF 100.00 FEET;



7928 2535

Legal Description For Well Site E-14

①
THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 59°18'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH 04°28'42" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF 08°58'56" TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

THENCE DEPARTING SAID CENTERLINE SOUTH 76°32'22" EAST A DISTANCE OF 818.34 FEET TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 76°00'00" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 14°00'00" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 76°00'00" WEST A DISTANCE OF 100.00 FEET

THENCE NORTH 14°00'00" WEST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING.



7928 2536

Legal Description For Well Site NP-1

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH $59^{\circ}19'09''$ EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH $20^{\circ}51'30''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF $16^{\circ}22'48''$ TO A POINT OF TANGENCY;

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH $04^{\circ}28'42''$ WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF $08^{\circ}58'56''$ TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF $04^{\circ}20'53''$ TO A POINT OF TANGENCY;

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 4968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";



7928 2537

BEGINNING AT THE AFOREMENTIONED POINT "F":

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1168.00 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 5729.65 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 1455.93 FEET THROUGH A CENTRAL ANGLE OF $14^{\circ}33'33''$ TO A POINT OF TANGENCY;

THENCE SOUTH $32^{\circ}22'04''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 2580.54 FEET TO A POINT OF TANGENT CURVE TO THE LEFT WITH A RADIUS OF 11,459.19 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 698.06 FEET THROUGH A CENTRAL ANGLE OF $03^{\circ}29'25''$ TO A POINT HEREINAFTER REFERRED TO AS POINT "G";

THENCE DEPARTING SAID CENTERLINE SOUTH $61^{\circ}07'21''$ EAST A DISTANCE OF 724.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $69^{\circ}38'55''$ EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH $20^{\circ}21'05''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $69^{\circ}38'55''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $20^{\circ}21'05''$ EAST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING;

7928 2538

Legal Description For Well Site N-P2

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.D. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH $59^{\circ}19'09''$ EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH $20^{\circ}51'30''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF $16^{\circ}22'48''$ TO A POINT OF TANGENCY;

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH $04^{\circ}28'42''$ WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF $08^{\circ}58'56''$ TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF $04^{\circ}20'53''$ TO A POINT OF TANGENCY;

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 4968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";



7928 2539

BEGINNING AT THE AFOREMENTIONED POINT "F":

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1168.00 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 5729.65 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 1455.93 FEET THROUGH A CENTRAL ANGLE OF $14^{\circ}33'33''$ TO A POINT OF TANGENCY;

THENCE SOUTH $32^{\circ}22'04''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 2580.54 FEET TO A POINT OF TANGENT CURVE TO THE LEFT WITH A RADIUS OF 11,459.19 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 698.06 FEET THROUGH A CENTRAL ANGLE OF $03^{\circ}29'25''$ TO A POINT HEREINAFTER REFERRED TO AS POINT "G":

BEGINNING AT THE AFOREMENTIONED POINT "G":

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 11,459.19 FEET THROUGH A CENTRAL ANGLE OF $08^{\circ}31'34''$ A DISTANCE OF 1705.23 FEET TO A POINT OF TANGENCY;

THENCE SOUTH $20^{\circ}21'05''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 1298.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "H":

THENCE DEPARTING SAID CENTERLINE SOUTH $69^{\circ}38'55''$ EAST A DISTANCE OF 660.63 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $69^{\circ}38'55''$ EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH $20^{\circ}21'05''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $69^{\circ}38'55''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $20^{\circ}21'05''$ EAST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING.

7928 2540

FICO (Continental) Housing
Legal Description

That portion of land situated in the north one-half of said Land Grant, more particularly described as follows:

Beginning at the intersection of centerline of Southern Pacific Railroad with north boundary line of said Canos Land Grant, from which the GLO closing corner monument of Section 12, Township 18 South, Range 13 East, and Section 7, Township 18 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, bears south 59 degrees 19 minutes 09 seconds east a distance of 2673.88 feet;

Thence south 20 degrees 51 minutes 30 seconds west along the centerline of said railroad a distance of 477.20 feet to a point of tangent curve to the left having a radius of 2864.82 feet;

Thence southerly along the arc of said curve a distance of 819.01 feet through a central angle of 16 degrees 22 minutes 48 seconds to a point of tangency;

Thence south 04 degrees 28 minutes 42 seconds west along said railroad centerline a distance of 2954.64 feet to a point hereinafter referred to as point "A";

Thence continue south 04 degrees 28 minutes 42 seconds west a distance of 2497.92 feet to a point hereinafter referred to as point "B";

Beginning at the aforementioned point B;

Thence south 04 degrees 28 minutes 42 seconds west along the centerline of said railroad a distance of 1138.53 feet to a point of tangent curve to the right with a radius of 2864.82 feet;

Thence southerly along the arc of said curve a distance of 449.11 feet through a central angle of 08 degrees 58 minutes 56 seconds to a point hereinafter referred to as point "D";

BEGINNING at the aforementioned point "D";

Thence southerly along the arc of said curved centerline a distance of 217.41 feet through a central angle of 04 degrees 20 minutes 53 seconds to a point of tangency;

Thence south 17 degrees 48 minutes 31 seconds west along said centerline a distance of 3959.06 feet to a point hereinafter referred as point "E";

Thence departing said centerline south 72 degrees 11 minutes 29 seconds east a distance of 100.00 feet to a point of intersection with the easterly right-of-way line of said railroad and southerly right-of-way line of Whitehouse Canyon

7928 2507

Road as recorded in Book 9 at page 82 of Road Maps, said point being the TRUE POINT OF BEGINNING;

Thence south 34 degrees 23 minutes 51 seconds east along said south right-of-way line of Whitehouse Canyon Road a distance of 73.29 feet to a point of tangent curve to the left with a radius of 584.28 feet;

Thence easterly along the arc of said curve a distance of 241.20 feet through a central angle of 23 degrees 39 minutes 09 seconds to a point of tangency;

Thence south 58 degrees 03 minutes 00 seconds east along said right-of-way line a distance of 251.11 feet to a point of tangent curve to the left with a radius of 776.89 feet;

Thence easterly along said right-of-way line a distance of 80.10 feet through a central angle of 05 degrees 54 minutes 28 seconds to a point of tangency;

Thence south 63 degrees 57 minutes 28 seconds east a distance of 423.61 feet;

Thence departing said right-of-way line south 17 degrees 48 minutes 31 seconds west a distance of 576.85 feet;

Thence north 72 degrees 11 minutes 29 seconds west a distance of 1014.52 feet to a point on the east right-of-way line of said railroad;

Thence north 17 degrees 48 minutes 31 seconds east along said right-of-way line a distance of 864.18 feet to the TRUE POINT OF BEGINNING.

7928 2508

Attachment G

Schoolhouse District No. 39, Pima County
Legal Description

AND FURTHER EXCEPTING that certain parcel conveyed to the Board of Trustees, School District No. 39, Pima County, by instrument recorded in Book 164 of Deeds at page 89, described as follows: Beginning at a point 130 feet easterly, measured at right angles from center line of Tucson-Nogales Railroad main track of Southern Pacific Lines and 125 feet, measured on a line 130 feet distant from and parallel to said center line of the Railroad, northerly from pipe valve structure number 2, said valve structure being on pipe line from Well E-3; thence north 17 degrees 45.5 minutes east, 266.1 feet to a point; thence south 13 degrees 35.5 minutes east 392.3 feet to a point; thence south 17 degrees 45.5 minutes west 62 feet to a point; thence north 72 degrees 14.5 minutes west, 335 feet to a point or place of beginning.

BOOK 154 PAGE 166

Basketball Court School District No. 39, Pima County
Legal Description

9. EXCEPTING THEREFROM the following described parcel:

All that part of the said San Ignacio de La Canea Private Land Grant, Pima County, Arizona, described as follows:

BEGINNING at a point 130 feet Easterly, measured at right angles from center line of Tucson Nogales Railroad main track of Southern Pacific Lines and 124 feet, measured on a line 130 feet distant from and parallel to said center line of the Railroad, Northerly from pipe valve structure No. 2, said valve structure being on pipe line from Well E 3, which point of beginning is the Southwest corner of that certain parcel conveyed to the Board of Trustees School District No. 39, Pima County, by instrument recorded in Book 164 of Deeds at Page 89, in the Office of the County Recorder, Pima County, Arizona; thence South 72 degrees 14 minutes 30 seconds East along the Southerly boundary of the parcel so conveyed, 109.00 feet;
thence South 17 degrees 45 minutes 30 seconds West, 124.50 feet;
thence North 72 degrees 14 minutes 30 seconds West, 109.00 feet;
thence North 17 degrees 45 minutes 30 seconds East, 124.50 feet to the Point of Beginning.

EXHIBIT 16.2

STIPULATION AND

FORM OF JUDGMENT

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Admitted to practice in this Court by certificates dated 2/13/90 and 7/17/91
12 Attorneys for Allottee Plaintiffs

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16

17
18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 UNITED STATES, et al.,

21 Plaintiffs,

22 v.

23 CITY OF TUCSON, et. al.,

24 Defendants.

No. CV 75-039 TUC FRZ

(Consolidated with CV No. 75-051)

**STIPULATION FOR FINAL
JUDGMENT**

1 FELICIA ALVAREZ, et al.,

2 Plaintiffs,

3 v.

4 CITY OF TUCSON, et al.,

5 Defendants.

No. CV 93-039 TUC FRZ

STIPULATION FOR PARTIAL
JUDGMENT

7
8 The parties hereto, by and through their undersigned attorneys herewith, stipulate to
9 the entry of judgment and dismissal with prejudice of the actions identified below, effective
10 upon the publication by the Secretary of the Interior of a notice in the Federal Register of
11 the completion of all actions necessary to make the settlement effective as required by
12 Section 302(b) of the Arizona Water Settlements Act of 2004, Public Law 108-451, 118
13 Stat. 3478:

14 1. *United States v. Tucson*, Action No. CV 75-039 TUC FRZ (Consolidated
15 with CV No. 75-051) in the United States District Court for the District of Arizona.

16 2. Causes of Action 1, 2, and 3 of *Alvarez v. Tucson*, Action No. CV 93-039
17 TUC FRZ in the United States District Court for the District of Arizona.

18 Each party shall bear its own costs and attorneys' fees.

19 This stipulation shall not affect the remaining Causes of Action 4 and 5 of *Alvarez v.*
20 *Tucson*.

21 Dated this ____ day of _____, 200__.

23 SACKS TIERNEY P.A.

24
25 By _____
26 Attorneys for City of Tucson

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OFFICE OF THE ATTORNEY GENERAL

By _____
Attorney for Tohono O'odham Nation

LUEBBEN, JOHNSON & BARNHOUSE

By _____
Attorneys for *United States v. City of*
Tucson Allottee Class
Attorneys for *Felicia Alvarez v. City of*
Tucson Allottee Classes

SOMACH, SIMMONS & DUNN

By: _____
Attorney for Farmers Investment Co.

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES, et al.,

Plaintiffs,

v.

CITY OF TUCSON, et. al.,

Defendants.

No. CV 75-039 TUC FRZ

(Consolidated with CV No. 75-051)

FINAL JUDGMENT

FELICIA ALVAREZ, et al.,

Plaintiffs,

v.

CITY OF TUCSON, et al.,

Defendants.

No. CV 93-039 TUC FRZ

PARTIAL JUDGMENT

This matter having come before the court for hearing, pursuant to the Order of the Court, dated _____, on the Joint Motion of plaintiffs and defendants for approval of the settlement set forth in the Tohono O'odham Settlement Agreement ("Settlement Agreement") dated April 30, 2003, amended to conform with Public Law 108-451, 118 Stat. 3478, due and adequate notice having been given to the Plaintiff Allottee Classes as required in the Order, the Court having considered all papers filed, and argument and evidence provided at the proceeding and otherwise being fully informed in the matter, and good cause appearing therefore,
IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1 1. This Final Judgment in Case No. CV 75-039 TUC FRZ (Consolidated with
2 CV No. 75-051) and Partial Judgment in Case No. CV 93-039 TUC FRZ (collectively, the
3 "Judgment") incorporates by reference the definitions set forth in the Settlement
4 Agreement, and all terms used herein shall have the same meanings as set forth in the
5 Settlement Agreement.
6

7 2. This Court has jurisdiction over the subject matter of this litigation and over
8 all parties to this litigation, including all members of the Plaintiff Allottee Classes.
9

10 3. This Court hereby approves the settlement set forth in the Settlement
11 Agreement (the "Settlement") and finds that the Settlement is, in all respects, fair,
12 reasonable, adequate and in the best interests of the Plaintiff Allottee Classes.
13 Consummation of the Settlement in accordance with the terms and provisions of the
14 Settlement Agreement is approved.
15

16 4. The Settlement is binding upon: all parties to this consolidated litigation
17 including (a) the Tohono O'odham Nation, (b) all original allottees, heirs and devisees of
18 original allottees, and purchasers and grantees of allotments in the San Xavier Indian
19 Reservation who have not timely elected to be excluded from the Classes by no later than
20 January 13, 2006 as provided by the Court in its Order dated October 12, 2005, (c) the
21 United States, (d) the city of Tucson, (e) Farmers Investment Company and the Farmers
22 Water Company (together referred to as "FICO"), (f) Asarco Mining Company ("Asarco")
23 and all other defendant parties.
24
25

26 5. By reason of the Settlement, members of the Allottee Classes (along with the
27 San Xavier District) are entitled to:
28

1 a. a first right of beneficial use to 35,000 acre feet per year of Central
2 Arizona Project ("CAP") water of the 50,000 acre feet per year of CAP water deliverable to
3 the San Xavier District,
4

5 b. 10,000 acre feet per year of groundwater pumping right,

6 c. a right to "bank" in a deferred pumping storage account groundwater
7 not pumped in any year and pump up to an additional 10,000 acre feet per year or a
8 maximum of 50,000 acre feet in any 10-year period of deferred groundwater pumping
9 credits,
10

11 d. a right to pump groundwater from Exempt Wells,

12 e. a right to the use of direct recharge credits to pump water from the
13 ground that are not marketable under state law,
14

15 f. protections for due process and other rights pursuant to an allottee
16 water rights code,

17 g. the right to have the San Xavier District elect to accept a cash-out of
18 \$18,300,000 (plus interest from January 1, 2008 until the cash-out) in lieu of construction
19 of a new farm within the San Xavier Reservation, funds to be controlled, managed and
20 invested by the San Xavier District and used for governmental and social services for the
21 San Xavier community and the allottees,
22

23 h. state limitations on approval of new pumping from the area in close
24 proximity to the San Xavier Reservation,
25

26 i. the sum of up to \$891,200 for a water management plan for the San
27 Xavier Reservation,
28

1 j. the sum of \$300,000 from the city of Tucson in 5 annual installments
2 of \$60,000 for the repair of Sinkholes that have occurred on the San Xavier Reservation,

3 k. an agreement with FICO to limit pumping by FICO to no more than
4 850 acre feet per year from within 2 miles of the San Xavier Reservation and to further
5 limit pumping to 36,000 acre feet per year not including water stored in the ground from all
6 FICO's lands,

7 l. an agreement with Asarco to use CAP water thereby limiting Asarco's
8 groundwater pumping on and near the San Xavier Reservation, and

9 m. a right to benefit from the sale of marketable groundwater credits
10 obtained through the use by Asarco of CAP rather than groundwater.

11 6. In exchange for the benefits provided in the Settlement Agreement and
12 effective on the Enforceability Date, each Plaintiff Allottee Class irrevocably and
13 unconditionally waives and releases:

14 a. any and all past, present, and future claims for Water Rights (including
15 claims based on aboriginal occupancy) arising from time immemorial and, thereafter,
16 forever, claims for Injury to Water Rights from time immemorial through the
17 Enforceability Date, and claims for future Injury to Water Rights for land within the San
18 Xavier Reservation, against the State (or any agency or political subdivision of the State),
19 any municipal corporation; and any other person or entity (other than the Nation);

20 b. any and all claims for Water Rights arising from time immemorial
21 and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial
22 through the Enforceability Date, claims for failure to protect, acquire, or develop Water
23
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1 Rights for land within the San Xavier Reservation from time immemorial through the
2 Enforceability Date, against the United States, in any capacity, (including any agency,
3 officer, and employee of the United States);
4

5 c. any and all claims for Injury to Water Rights arising after the
6 Enforceability Date for land within the San Xavier Reservation resulting from the off-
7 Reservation diversion or use of water in a manner not in violation of this Agreement or
8 State law against the United States, in any capacity, the State (or any agency or political
9 subdivision of the State), any municipal corporation, and any other person or entity;
10

11 d. any and all past, present, and future claims arising out of or relating to
12 the negotiation or execution of this Agreement or the negotiation or enactment of the
13 SAWRSA Amendments, against the United States, the State (or any agency or political
14 subdivision of the State), any municipal corporation; and any other person or entity; and
15

16 e. any and all past, present, and future claims for Water Rights arising
17 from time immemorial and, thereafter, forever, and claims for Injury to Water Rights
18 arising from time immemorial through the Enforceability Date, against the Nation (except
19 that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308 of the
20 SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall retain rights
21 to share in the water resources granted or confirmed under the SAWRSA Amendments and
22 this Agreement with respect to uses within the San Xavier Reservation).
23
24

25 7. In exchange for the benefits provided in the Tucson Agreement and effective
26 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
27 waives and releases:
28

1 a. any and all claims against the city of Tucson (including any agency,
2 officer and employee of the City) for injuries to land within the Tucson Management Area
3 resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws
4 which may otherwise have been enforceable by money damages, declaratory relief,
5 injunction, or other remedy arising from time immemorial to the Enforceability Date and
6 thereafter forever; and
7

8 b. any and all past, present and future claims against the United States
9 (including any agency, officer and employee of the United States) for injuries to land
10 within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion
11 caused by or resulting from the actions or inactions of the City of Tucson under Federal,
12 State and other laws which may otherwise have been enforceable by money damages,
13 declaratory relief, injunction, or other remedy.
14

15 8. In exchange for the benefits provided in the Asarco Agreement and effective
16 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
17 waives and releases:
18

19 a. all claims against Asarco arising out of Asarco's withdrawal of water
20 from beneath the ground within the Tucson Management Area from time immemorial
21 through the Enforceability Date; and
22

23 b. all claims against Asarco that may arise after the Enforceability Date
24 to the extent that such claims arise out of Asarco's withdrawal of water within the Tucson
25 Management Area pursuant to its existing Type 1 and Type 2 state law water rights and
26
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1 withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01,
2 except as such rights are agreed to be limited in this Agreement.

3 9. In exchange for the benefits provided in the FICO Agreement and effective
4 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
5 waives and releases:
6

7 a. all claims against FICO arising out of FICO's withdrawal of water
8 from beneath the ground within the Tucson Management Area from time immemorial
9 through the Enforceability Date; and
10

11 b. all claims against FICO that may arise after the Enforceability Date to
12 the extent that such claims arise out of FICO's withdrawal of water within the Tucson
13 Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law water
14 rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S.
15 § 45-802.01, except as such rights are agreed to be limited in this Agreement.
16

17 10. With respect to the releases contained in the Settlement Agreement, the Court
18 finds that the Plaintiff Allottee Classes expressly understand and agree that the Settlement
19 fully and finally releases and forever resolves the matters released and discharged in
20 paragraphs 6 through 9 above and in the Settlement Agreement, including those which may
21 be unknown, unanticipated or unsuspected. Each Plaintiff Allottee Class acknowledges
22 that it is aware that the class members may hereafter discover facts relevant to the subject
23 matter of this Settlement, but that it is the intention of each member of the Plaintiff Allottee
24 Class hereby to fully, finally and forever settle and release all of the claims, disputes and
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1 differences known or unknown, suspected or unsuspected, except as otherwise expressly
2 provided herein.

3
4 11. The Defendant parties to the Settlement agree that the Settlement represents a
5 compromise of disputed claims without admission of any fact or allegation.

6
7 12. Following entry of this Judgment, the representatives of the Plaintiff Allottee
8 Classes shall execute the Settlement Agreement on behalf of the members of the respective
9 classes.

10
11 13. This Judgment shall be an exhibit to the Stipulation and Request for Entry of
12 Judgment and Decree in the Arizona state court adjudication proceeding entitled In re the
13 General Adjudication of All Rights to Use Water in the Gila River System and Source, No.
14 W-1, W-2, W-3 and W-4 (the "Gila River Adjudication Court").

15
16 14. With the exception of the use of this Judgment in the Gila River Adjudication
17 Court, neither this Judgment nor any other order entered in this consolidated litigation shall
18 constitute an admission of liability or of any other fact by any party, and no such document
19 or order shall have any res judicata, collateral estoppel or issue preclusive effect in any
20 other or subsequent proceeding.

21
22 15. The Settlement Agreement and all exhibits and attachments thereto including
23 the separate agreements referred to as the Tucson Agreement, the FICO Agreement and the
24 Asarco Agreement are incorporated herein by this reference and are made a part of this
25 Judgment.

26
27 16. The above-captioned case of *United States v. Tucson*, CV 75-039 TUC FRZ
28 (consolidated with CV 75-051) and Causes of Action 1 through 3 of *Alvarez v. Tucson*, CV

1 93-039 TUC FRZ, are dismissed with prejudice effective upon the publication by the
2 Secretary of the Interior of a notice in the Federal Register of completion of all actions
3 necessary to make the settlement effective as required by Section 302(b) of the Arizona
4 Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478. Without limiting the
5 generality and legal effect of the foregoing, the dismissal with prejudice extends to all
6 claims ever asserted in this Consolidated Litigation individually or on behalf of the Plaintiff
7 Allottee Classes except those claims raised in Causes of Action 4 and 5 of *Alvarez v.*
8 *Tucson*, CV 93-039 TUC FRZ.
9

10
11 17. All members of the Plaintiff Allottee Classes as of January 13, 2006 shall
12 conclusively be deemed to be and remain members of the Plaintiff Allottee Classes, to have
13 given the releases described in Paragraphs 6 through 9 above, and to be bound by the
14 Settlement and this Judgment.
15

16 18. All members of the Plaintiff Allottee Classes are barred and permanently
17 enjoined from instituting, asserting or prosecuting, directly, representatively, derivatively
18 or in any other capacity, any claims against any of the Released Parties.
19

20 19. The Notice given to the Plaintiff Allottee Classes of the Settlement as
21 described in the Joint Motion and the Order constituted the best notice practicable under the
22 circumstances. The Notice provided due and adequate notice of these proceedings and of
23 the matters set forth in the Notice, including the Settlement set forth in the Joint Motion, to
24 all persons entitled to such Notice, and the Notice fully satisfied the requirements of due
25 process and applicable law.
26
27
28

1 20. The Court having considered any objections filed by members of the Plaintiff
2 Allottee Classes to entry of this Judgment, and having found those objections, if any, to be
3 without merit in the circumstances, all such objections are overruled and denied.
4

5 21. Upon publication of the notice in the Federal Register identified in paragraph
6 16, the parties are directed to file a copy of the Federal Register notice with the Court.
7

8 22. Causes of Action 4 and 5 of *Alvarez v. Tucson* are not dismissed.
9

10 23. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court
11 further expressly finds and determines that there is no just reason for delay and therefore
12 expressly directs that this Judgment be entered as a final judgment.
13

14 DATED this ____ day of _____, 20 ____.

15 _____
16 District Court Judge
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EXHIBIT 17.1
STIPULATION
AND
JUDGMENT AND DECREE

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA

3 IN RE THE GENERAL
4 ADJUDICATION OF ALL RIGHTS
5 OT USE WATER IN THE GILA
6 RIVER SYSTEM AND SOURCE,

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

7 **STIPULATION AND REQUEST**
8 **FOR ENTRY OF JUDGMENT AND**
9 **DECREE**

10 THIS STIPULATION, dated as of _____, 200_, is entered into by
11 the Tohono O'Odham Nation (hereinafter referred to as the "Nation"), the United States of
12 America on behalf of the Nation and the Allottees, the city of Tucson, Asarco Incorporated,
13 and Farmers Investment Co. This Stipulation incorporates the definitions of capitalized
14 terms as provided in the Tohono O'odham Settlement Agreement.

15 WHEREAS,

16 Water rights claimed by the Nation, the Allottees, and the United States on behalf of
17 the Nation and Allottees are to be permanently settled by agreement between the parties to
18 this Stipulation. The terms of the Tohono O'Odham Settlement Agreement between the
19 parties were ratified and approved by Congress in the Arizona Water Settlements Act of
20 2004, P.L.108-451, 118 Stat. 3478. A copy of the Tohono O'Odham Settlement Agreement
21 is attached hereto as Exhibit 1 and by this reference incorporated herein.

22 The parties to this Stipulation have submitted the Tohono O'Odham Settlement
23 Agreement to this court for its approval pursuant to Section 302(b)(5) of the Southern
24 Arizona Water Rights Settlement Amendments Act of 2004, Title III of the Arizona Water
25 Settlements Act of 2004, and the Arizona Supreme Court's Special Procedural Order
26 Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian
27 Tribes, dated May 16, 1991.

1 NOW, THEREFORE,

2 The parties to this Stipulation request that, upon this court's approval of the
3 Stipulation and Settlement Agreement, and upon the date the Secretary of the Interior
4 causes to be published in the Federal Register a statement of findings that the conditions set
5 forth in Section 302(b) of the Southern Arizona Water Rights Settlement Amendments Act
6 of 2004 have occurred, the court (i) enter the Judgment and Decree attached as Exhibit 2
7 hereto, fully, finally and permanently adjudicating the rights of the Nation, the Allottees,
8 and the United States on behalf of the Nation and the Allottees to that portion of the Gila
9 River System and Source within the Tucson Management Area and (ii) retain jurisdiction
10 over this matter for enforcement of the Judgment and Decree and the Settlement
11 Agreement, including the entry of injunctions, restraining orders or other remedies under
12 law or equity and to carry out the provisions of sections 312(d) and 312(h) of the Act.

13 RESPECTUFLY SUBMITTED this ____ day of ____, 2005.

14 ATTORNEYS FOR:

15 THE UNITED STATES OF AMERICA

16

17

18

By _____

19

20

TOHONO O'ODHAM NATION

21

22

By _____

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CITY OF TUCSON

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By _____

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ASARCO INCORPORATED

By _____

FARMERS INVESTMENT CO.

By _____

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA
3

4 IN RE THE GENERAL ADJUDICATION) No. W-1 (Salt)
5 OF ALL RIGHTS TO USE WATER IN THE) No. W-2 (Verde)
6 GILA RIVER SYSTEM AND SOURCE.) No. W-3 (Upper Gila)
7) No. W-4 (San Pedro)
8)
9) CONTESTED CASE NO. _____
10)
11) JUDGMENT AND DECREE
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12 The Court has considered the Tohono O'odham Settlement Agreement dated April
13 30, 2003, as amended to conform to Public Law 108-451, 118 Stat. 3478, which
14 permanently resolves the water rights claims of the Tohono O'odham Nation, the Allottees
15 and the United States on behalf of the Nation and the Allottees to that portion of the Gila
16 River System and Source within the Tucson Management Area. A copy of the Tohono
17 O'odham Settlement Agreement is attached as Exhibit 1 to the Stipulation and Request for
18 Entry of Judgment and Decree.

19 This Judgment and Decree will only become effective and enforceable if and when
20 the United States Secretary of the Interior publishes in the Federal Register a notice of
21 completion of all actions necessary to make the settlement effective, as required by Section
22 302(b) of the Arizona Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478.
23 The parties are directed to file a notice with the Court upon such publication.

24 NOW, THEREFORE, it is hereby adjudged and decreed effective as of the
25 publication of the Federal Register notice referred to above as follows:

26 1. The capitalized terms used in this Judgment and Decree shall be defined as
27 stated in the Tohono O'odham Settlement Agreement.

1 2. The Tohono O'odham Settlement Agreement is hereby approved in its
2 entirety.

3 3. Subject to the terms of paragraph 4 of the Tohono O'odham Settlement
4 Agreement, the Nation shall have rights to a total of 79,200 acre-feet per year of water
5 within the Tucson Management Area, which shall be held in trust by the United States on
6 behalf of the Nation and the Allottees.

7 4. Included within the 79,200 acre-feet is 66,000 acre-feet per year of CAP
8 water of which 37,800 acre-feet per year has a priority of CAP Indian Priority Water and
9 28,200 acre-feet per year has a priority of CAP NIA Priority Water.

10 5. Subject to the terms of paragraph 8 of the Tohono O'odham Settlement
11 Agreement and included within the 79,200 acre-feet per year, the Nation has a right to
12 withdraw 13,200 acre-feet per year from non-exempt wells on the Nation's Reservation
13 within the Tucson Management Area.

14 6. The Nation may use the water provided in the Tohono O'odham Settlement
15 Agreement for any use and at any location within the Nation's Reservation.

16 7. Except as provided in subparagraph 4.4 of the Tohono O'odham Settlement
17 Agreement, none of the water that is the subject of the Tohono O'odham Settlement
18 Agreement may be leased, exchanged, transferred or in any way used off the Reservation.

19 8. In exchange for the benefits realized under the Tohono O'odham Settlement
20 Agreement and as authorized by the Act, the Nation has waived and released claims
21 enumerated in paragraph 15.1 of the Tohono O'odham Settlement Agreement, certain
22 Allottees have waived and released claims as defined and enumerated in paragraph 15.2 of
23 the Tohono O'odham Settlement Agreement and the United States on behalf of the Nation
24 and the Allottees has waived and released claims enumerated in paragraph 15.3 of the
25 Tohono O'odham Settlement Agreement. The waivers and releases are effective on the
26 Enforceability Date.

9. The Water Rights and other benefits granted, confirmed or recognized to or for the Nation, the Allottees and the United States on behalf of the Nation and the Allottees by the Tohono O'odham Settlement Agreement and the Act shall be in replacement of, in substitution for, and in full satisfaction of all claims for Water Rights and Injuries to Water Rights by the Nation, the Allottees and the United States on behalf of the Nation and the Allottees in the Tucson Management Area. Except as provided in Paragraph 12 of this Stipulation, the claims of the Nation, the Allottees and the United States on behalf of the Nation and the Allottees to water of the Gila River System and Source within the Tucson Management Area are fully, finally and permanently adjudicated by this Judgment and Decree.

10. 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 Nation and the United States acting on behalf of the Nation.

11. Nothing in the Tohono O'odham Settlement Agreement shall affect the right of any party, other than the Nation and the United States, 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.

12. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree and the Tohono O'odham Settlement Agreement, including the entry of injunctions, restraining orders or other remedies under law or equity and to carry out the provisions of sections 312(d) and 312(h) of the Act.

DATED this ____ day of _____, 200__.

Judge of the Superior Court