

6-7-2002

Zuni Indian Tribe Water Rights Settlement in the Little CO River Basin

Zuni Indian Tribe et al

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ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT AGREEMENT IN THE LITTLE COLORADO RIVER BASIN TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1 Recitals.....	2
ARTICLE 2 Definitions.....	3
ARTICLE 3 Conditions Precedent	8
ARTICLE 4 Surface Water Rights and Adjudication	10
ARTICLE 5 Underground Water	15
ARTICLE 6 Trust Lands.....	20
ARTICLE 7 Development Fund and Contributions.....	24
ARTICLE 8 Authorized Uses.....	29
ARTICLE 9 Other Considerations	30
ARTICLE 10 Administration	32
ARTICLE 11 Waivers	33

ATTACHMENTS:

Exhibit 2.1	Legislation
Exhibit 2.10	Eastern LCR Basin (Norviel Decree Area)
Exhibit 2.48	Zuni Protection Area Zuni Pumping Lands
Exhibit 4.1.A(1) <i>et seq.</i>	Zuni Abstracts
Exhibit 4.1.C(1) <i>et seq.</i>	LWC and SJIC Abstracts
Exhibit 4.1.D.(2).....	Local Landowner Letters
Exhibit 4.6.B	Zuni Abstract for unappropriated flows
Exhibit 4.7	AGAF Monitoring Plan
Exhibit 5.7.B	Pumping Protection Agreement (Form)
Exhibit 5.8.A	SRP Agreement
Exhibit 5.8.B	TEP Agreement
Exhibit 5.8.C	ASLD Agreement
Exhibit 6.1.A	Proposed Trust Lands
Exhibit 11.1	Waiver by Parties
Exhibit 11.2	Waiver by Zuni Tribe and U.S.
Exhibit 11.3	Waiver by Zuni against U.S.
Exhibit 11.9	Judgment and Decree

ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT AGREEMENT IN THE LITTLE COLORADO RIVER BASIN

THIS SETTLEMENT AGREEMENT dated as of June 7, 2002, is entered into by the Zuni Indian Tribe on behalf of itself and its members; the United States of America on behalf of the Zuni Indian Tribe and its members; the State of Arizona; the Arizona Game and Fish Commission; the Arizona State Land Department; the Arizona State Parks Board; the St. Johns Irrigation and Ditch Co.; the Lyman Water Co.; the Round Valley Water Users' Association; the Salt River Project Agricultural Improvement and Power District; the Tucson Electric Power Company; the City of St. Johns; the Town of Eagar; and the Town of Springerville. When enforceable, this Settlement Agreement resolves the water rights claims of the Zuni Indian Tribe, its members, and the United States on their behalf in the Little Colorado River basin in Arizona.

ARTICLE 1 – RECITALS

1.1 The continued development of the Little Colorado River basin, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by unresolved litigation regarding water rights based upon federal, state, and other law. These include claims by the Zuni Indian Tribe and its members to a tribal water right sufficient to maintain the Zuni Heaven Reservation for long-standing religious and sustenance activities, as recognized and protected by Congress in Pub. L. No. 98-498, Conveyance of Lands to the Zuni Indian Tribe, 98 Stat. 1533 (August 28, 1984), as amended by Pub. L. No. 101-486, 104 Stat. 1174 (Oct. 31, 1990). In addition, the validity of certain non-Indian claims to water and the liability of other water users and the United States to the Zuni Indian Tribe have been raised. These issues are the subject of extensive and complex litigation pending in the Arizona state courts.

1.2 It is acknowledged by all of the Parties that the resolution of these conflicts must recognize vested water rights arising under federal law, state law, the Norviel Decree, and through contractual relationships with St. Johns Irrigation & Ditch Co., Lyman Water Co., and Round Valley Water Users' Association.

1.3 The Parties have agreed to permanently settle the water rights of the Zuni Tribe in the Little Colorado River basin in Arizona, to finally resolve pending litigation on water rights and damage claims, and to seek funding for the implementation of the Settlement Agreement.

1.4 The Parties agree to cooperate in good faith at all times from and after the day this Settlement Agreement is executed to facilitate the successful completion of all conditions precedent to make this Settlement Agreement enforceable. In addition, the Parties agree to seek State legislation allowing for the severance and transfer of surface water rights to the Zuni Tribe for the purposes set forth in this Settlement Agreement.

1.5 It is the policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination, religious freedom, political integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.6 The objective of this Settlement Agreement is to resolve all outstanding water-related litigation and to settle, once and forever, the water rights of the Zuni Tribe to surface water

and underground water within the Little Colorado River basin in the state of Arizona based upon federal, state, and other laws by providing to the Zuni Tribe sufficient water from various sources to satisfy the purposes of the 1984 Act, as amended, establishing the Zuni Heaven Reservation.

1.7 The Zuni Tribe intends to reestablish and maintain the wetland environment that previously existed within its Zuni Heaven Reservation, Kolhu/wala:wa, including restoration of water to its Sacred Lake, Hadin Kyaya. The restoration project will include aggradation of the Little Colorado River, enhancement of river flows, and reintroduction and maintenance of native animal and plant species essential for religious and sustenance activities. To accomplish these wetland restoration goals, the Zuni Tribe will use a minimum of 5,500 acre-feet of water per annum. The sources of water to be used to accomplish the settlement goals include the appropriation of unappropriated surface water flows reaching the Zuni Heaven Reservation, water from Zuni Lands upstream of the Zuni Heaven Reservation, acquired surface water rights, and underground water. Pursuant to this Settlement Agreement and with the cooperation of the Parties, the Zuni Tribe will acquire rights to 3,600 acre-feet per annum of surface water and will waive its water rights claims when it has acquired rights to 2,350 acre-feet per annum of surface water. The Zuni Tribe will also have a right to use up to 1,500 acre-feet per annum of underground water from the Zuni Pumping Lands for its restoration activities at the Zuni Heaven Reservation and to provide water for the Sacred Lake.

1.8 It is the objective of the Parties to provide for the Zuni Tribe's acquisition of surface water on a voluntary basis so that the wetland restoration goals for the Zuni Heaven Reservation will be met without disrupting existing surface water or underground water use by other water users within the Little Colorado River basin in Arizona.

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

ARTICLE 2 - DEFINITIONS

This Settlement Agreement employs abbreviated terms that have the following meanings:

- 2.1 "Act" means, unless otherwise indicated, legislation by Congress that authorizes federal action required to carry out this Settlement Agreement in the form of Exhibit 2.1.
- 2.2 "AFA" means acre-foot per annum.
- 2.3 "AGAF" means Arizona Game and Fish Department or Commission, or both.
- 2.4 "ASLD" means the Arizona State Land Department.
- 2.5 "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, as it now exists or as it may be amended.
- 2.6 "Deadline" means December 31, 2004, unless and until the Parties jointly agree in writing to another Deadline.

- 2.7 “Decree Court” means the court with jurisdiction over the judgment and decree entered in accordance with this Settlement Agreement.
- 2.8 “*de minimis* use” means a surface water use for domestic purposes not to exceed one acre-foot per annum, for stockwatering uses or wildlife uses, or a pond having a capacity of not more than 15 acre-feet that is used primarily for watering livestock or wildlife.
- 2.9 “DWR” means the Arizona Department of Water Resources.
- 2.10 “Eastern LCR” means the portion of the LCR basin in Arizona upstream of the confluence of Silver Creek and the LCR, as identified on Exhibit 2.10.
- 2.11 “Eastern LCR Decree” means that portion of the decree entered in the LCR Adjudication that includes water rights in the Eastern LCR.
- 2.12 “Effective Date” means the date on which all of the Parties except the United States have executed the Settlement Agreement and any exhibits that call for their signatures.
- 2.13 “Enforcement Date” means the date on which all of the actions described in Article 3 have been completed.
- 2.14 “exempt well” means a well having a pumping capacity of 35 gpm or less. For purposes of determining whether a well is exempt, a series of wells serving the same Facility shall be counted as a single well.
- 2.15 “existing” means, when referring to a water use, that the use began before or on the Enforcement Date. When referring to a well, “existing” means that the well is completed before or on the Enforcement Date or drilling of the well commenced before or on the Enforcement Date and the well is completed within the time authorized by its permit. A replacement well is also considered an existing well if it does not exceed the capacity of the existing well it is replacing. When referring to a decree, “existing” means the decree was entered before or on the Enforcement Date.
- 2.16 “Facility” as used in the definition of “exempt well” and “well” means all buildings, equipment, structures and lands served by a common water conveyance system, which buildings, equipment, structures, lands and common water conveyance system are owned and operated by or under common control of the same person, persons, or entity and are located on a single site or on contiguous or adjacent sites, and are operated as a single complex with water used primarily for one purpose.
- 2.17 “Fund” means the fund described in paragraph 7.1 of this Settlement Agreement and in section 6 of Exhibit 2.1.

- 2.18 “groundwater” means all water beneath the surface of the earth other than surface water and other than recharged water subject to recovery under state law.
- 2.19 “Hazardous Substance” means those substances included within the definition of that term under 42 U.S.C. § 9601(14), as it now exists or as it may be amended.
- 2.19.A “Judgment and Decree” means Exhibit 11.9.
- 2.20 “LCR” means the Little Colorado River and its tributaries in Arizona.
- 2.21 “LCR Adjudication” refers to *In Re: The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, Superior Court No. 6417, Apache County, Arizona.
- 2.22 “LWC” means Lyman Water Co.
- 2.23 “new” means any occurrence or action taken after the Enforcement Date. A new well is any well that is not an existing well.
- 2.24 “Norviel Decree” means a series of judgments and orders entered in Apache County Superior Court Case No. 569 adjudicating rights to water in the Norviel Decree Area.
- 2.25 “Norviel Decree Area” means the portion of the Eastern LCR basin subject to the jurisdiction of the Norviel Decree, as identified on Exhibit 2.10.
- 2.26 “oil” means those substances included within the definition of that term under 33 U.S.C. § 2701 (23), as it now exists or as it may be amended.
- 2.27 “Oil Pollution Act ” means the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, as it now exists or as it may be amended.
- 2.28 “Party” is the singular form of “Parties,” which means the persons and entities represented by the signatories to this Settlement Agreement.
- 2.29 “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as it now exists or as it may be amended.
- 2.30 “reservoir” means a surface water impoundment other than a *de minimis* use.
- 2.31 “Sacred Lake” means the lake located within the Zuni Heaven Reservation that has been used by the Zuni Tribe for religious purposes.
- 2.32 “Settlement Agreement” means this document including all exhibits.
- 2.33 “SJIC” means St. Johns Irrigation and Ditch Company.
- 2.34 “SRP” means Salt River Project Agricultural Improvement and Power District.

- 2.35 “Stream Rehabilitation Program” means AGAF’s management objectives for the LCR, in which AGAF shall acquire riverine or riparian habitat with physical and biological features essential to the establishment or continued existence of threatened, endangered or sensitive species, and convert associated water rights to wildlife purposes in order to specifically benefit those threatened, endangered or sensitive species that have historically occupied or currently occupy the Eastern LCR.
- 2.36 “surface water” means all water that is appropriable under State law.
- 2.37 “SWR” means surface water right.
- 2.38 “TEP” means Tucson Electric Power Co.
- 2.39 “underground water” means any water beneath the surface of the earth regardless of its legal characterization as appropriable or non-appropriable under any applicable law.
- 2.40 “United States,” unless otherwise indicated, means the United States in its capacity as trustee for the Zuni Tribe or its members or otherwise acting on behalf of the Zuni Tribe or its members.
- 2.41 “well” means a man-made opening in the earth through which water may be withdrawn. It includes a combination of wells serving the same Facility.
- 2.42 “Wetland Restoration Project” means the restoration to near original condition and the maintenance of wetland areas on the Zuni Heaven Reservation, and may include a reservoir or other short-term storage facility. The Wetland Restoration Project shall use plant and animal species indigenous to the area.
- 2.43 “Zuni Fee Lands” means lands in Arizona in the LCR basin owned on the Enforcement Date by the Zuni Tribe, whether in its own name or through any related entity, but not held in trust by the United States.
- 2.44 “Zuni Heaven Reservation” see “Zuni Indian Reservation in Arizona”.
- 2.45 “Zuni Indian Reservation in Arizona,” also referred to as “Zuni Heaven Reservation,” “Reservation,” and “Kolhu:wala:wa,” means the following property in Apache County, Arizona:

Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and

Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

- 2.46 “Zuni Indian Tribe” also referred to as the “Tribe” or the “Zuni Tribe,” means a body politic and federally recognized Indian nation, and its members.
- 2.47 “Zuni Lands” means the following lands in Arizona that on the Enforcement Date are
- A. within the Zuni Heaven Reservation; or
 - B. held in trust by the United States for the benefit of the Tribe; or
 - C. Zuni Fee Lands.
- 2.48 “Zuni Protection Area” means the area of land described by that name on Exhibit 2.48.
- 2.49 “Zuni Pumping Lands” means the area of land described by that name on Exhibit 2.48.

ARTICLE 3 – CONDITIONS PRECEDENT

3.1 This Settlement Agreement is effective and binding on the Effective Date. This Settlement Agreement is enforceable when and if, by the Deadline, the events described in subparagraphs 3.1.A – 3.1.L occur:

- A. The Act is approved by Congress in substantially the same form as Exhibit 2.1. Any act of Congress that materially amends Exhibit 2.1 prior to the Enforcement Date of this Settlement Agreement without the written consent of the Parties adversely affected by the amendment shall relieve all Parties of their obligations under this Settlement Agreement; and
- B. The appropriations required by paragraphs 7.5 and 7.6 are deposited in the Fund; and
- C. The Zuni Tribe or the United States acquires either SWRs or options to purchase SWRs, subject to the Norviel Decree, sufficient to provide at least 2,350 AFA, as measured at Lyman Reservoir; and
- D. The Norviel Decree Judge conditionally approves the severance and transfer of rights to water subject to the Norviel Decree, sufficient to provide at least 2,350 AFA, as measured at Lyman Reservoir, for use by the Zuni Tribe on the Zuni Heaven Reservation; and
- E. The Zuni Tribe and LWC execute an agreement, in consultation with SJIC and the City of St. Johns, relating to the process of severance and transfer of SWRs acquired by the Zuni Tribe or the United States, and the pass-through, use or storage of Zuni Tribe SWRs in Lyman Lake and the operation of Lyman Dam, and, if necessary, LWC amends any operating procedures or by-laws in furtherance of their agreement; and
- F. The Parties agree and stipulate to AGAF abstracts for the following water uses existing on the Effective Date: Becker Lake, Becker Lands, Cross L, Lee Valley Reservoir, Nelson Reservoir and Lands, Sipes, Slade, Wenima Wildlife Area, Ocote and Enders, if that property has been acquired by AGAF on or before the Effective Date. When the Parties agree to the form and content of the AGAF abstracts, subparagraphs 4.1.B and 4.2.B shall be amended to incorporate the abstracts and the agreements with respect to the abstracts. At a minimum, amended subparagraph 4.2.B shall provide that AGAF reserves the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to it than those set forth in the attached abstracts, and that the Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to AGAF than those set forth in the attached abstracts; and
- G. The Parties agree to the location of the observation well used to determine static water levels in subparagraph 5.7.D and that well is installed before the Enforcement Date; and

- H. The Zuni Tribe, the State of Arizona, and Apache County execute an intergovernmental agreement that satisfies all of the conditions in paragraph 6.2; and
- I. The Zuni Tribe acquires title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian; and
- J. The Settlement Agreement and all exhibits requiring signatures are executed; and
- K. The Decree Court approves this Settlement Agreement by a final judgment and decree that is substantially the same form as Exhibit 11.9; and
- L. The Secretary of the United States Department of the Interior publishes in the Federal Register a statement of finding that conditions in subparagraphs 3.1.A – 3.1.K have occurred.

3.2 The Zuni Tribe may, in its discretion, waive the conditions in subparagraphs 3.1.C or 3.1.D, or both. Once waived by the Tribe, these subparagraphs shall have no force or effect and shall not be conditions precedent to the Enforcement Date.

3.3 Other than to take all necessary steps to cause the events described in this Article 3 and paragraph 7.3 to occur, no Party shall be required to perform any of the obligations, or be entitled to any of the benefits, under this Settlement Agreement before the Enforcement Date. After the Enforcement Date, the Parties shall be bound by all provisions of this Settlement Agreement.

3.4 Subject to paragraph 3.2, if each of the events listed in subparagraphs 3.1.A – 3.1.L has not occurred by the Deadline, this Settlement Agreement shall be of no further force or effect and any monies in the Fund, together with any income earned, must be returned to the depositing entity.

ARTICLE 4 – SURFACE WATER RIGHTS AND ADJUDICATION

4.1 Adjudicating Existing Surface Water Uses in the Eastern LCR Basin Based on State Law.

- A. Zuni Abstracts. All existing non-*de minimis* surface water uses on Zuni Lands owned as of the Effective Date are described in abstracts attached as Exhibits 4.1.A(1) *et seq.* Surface water uses on lands acquired between the Effective Date and the Enforcement Date shall be abstracted as agreed upon by the Parties unless these water uses are conditionally severed and transferred pursuant to subparagraph 4.6.D(4). At the time the Decree Court directs, these abstracts shall be used by DWR to propose water rights attributes for Zuni Lands in the manner described in subparagraph 4.1.D. Zuni Tribe *de minimis* uses shall be subject to subparagraphs 4.1.D – 4.1.F.
- B. AGAF Abstracts. Certain existing surface water uses on lands owned by AGAF, described in abstracts prepared in accordance with subparagraph 3.1.F, shall be attached as exhibits to an amendment to this Settlement Agreement. At the time the Decree Court directs, those abstracts shall be used by DWR to propose water rights attributes for AGAF lands in the manner described in subparagraph 4.1.D.
- C. Other Abstracts. LWC and SJIC surface water uses are described in abstracts attached as Exhibits 4.1.C(1) *et seq.* At the time the Decree Court directs, these abstracts shall be used by DWR to propose water rights attributes for LWC and SJIC lands in the manner described in subparagraph 4.1.D.
- D. Preliminary Determinations. For all surface water uses in the Eastern LCR basin, at the time the Decree Court directs, DWR shall prepare a preliminary report assessing and proposing attributes for each surface water use at issue as follows:
 - (1) The Decree Court shall direct the scope of each report, stating the specific geographic area that will be included in each report.
 - (2) The basis for DWR’s assessment shall be the abstracts referenced in subparagraphs 4.1.A, 4.1.B, and 4.1.C, the “Inventory of Water Uses” published by DWR in the fall of 1994, data contained in the Norviel Decree, the letters contained in Exhibit 4.1.D(2), and existing documentation on file with DWR.
 - (3) Existing information shall be supplemented as needed with additional research and investigation including reliance on remote sensing data.
- E. DWR shall give notice that the preliminary report is available and allow comment as prescribed in A.R.S. § 45-456(H). Then, in accordance with A.R.S. § 45-256(H), DWR shall revise the preliminary report as may be appropriate, and file with the Decree Court a final report.

- F. DWR shall file a final report in accordance with A.R.S. §§ 45-256(B) and (H). Water rights claimants in the LCR basin may object to the final report or any part of the final report as provided in A.R.S. § 45-256(B). Based on the evidence, the Decree Court shall determine the proper attributes of each water right.

4.2 Permissible Adjudication Objections.

- A. Zuni Abstracted Uses. The Parties stipulate and agree to the entry of a decree for the Zuni Tribe abstracted water uses described in Exhibits 4.1.A(1) *et seq.* on terms no more favorable than those set forth in the attached abstracts. The United States and the Zuni Tribe reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to the Zuni Tribe than those set forth in the attached abstracts. The Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to the Zuni Tribe than those set forth in the attached abstracts.
- B. AGAF Abstracted Uses. This subparagraph 4.2.B shall be amended as provided in subparagraph 3.1.F when the Parties have executed an amendment to this Agreement approving AGAF abstracts.
- C. Other Abstracted Uses. The Parties stipulate and agree to the entry of a decree for the LWC and SJIC abstracted water uses described in Exhibits 4.1.C(1) *et seq.* on terms no more favorable than those set forth in the attached abstracts. LWC and SJIC reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to them than those set forth in the attached abstracts. The Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to LWC or SJIC than those set forth in the attached abstracts.
- D. Zuni Tribe Adjudication Objections. The Zuni Tribe and the United States shall not object to *de minimis* water uses or to SWRs based upon an existing decree. The Zuni Tribe and the United States may object to the adjudication of water uses in the LCR basin, other than those water uses described in the previous sentence, only if:
 - (1) the objection is permitted under subparagraph 4.2.A, 4.2.B or 4.2.C;
or

- (2) the objection is based on state law and the surface water use being adjudicated would reduce or otherwise limit the Zuni Tribe's ability to use its state law-based SWRs, or its SWR described in subparagraph 4.6.B, on Zuni Lands or other lands acquired by or for the Zuni Tribe after the Enforcement Date; provided, however, that at no time shall the Zuni Tribe or the United States object based upon a federal right to surface water or a federal right to underground water.

4.3 New Surface Water Appropriations.

- A. The Judgment and Decree shall contain findings that as of the Effective Date there is no additional surface water available to appropriate in the Norviel Decree Area. Therefore, the Eastern LCR Decree shall prohibit the filing of new applications to appropriate surface water in the Norviel Decree Area for uses commenced after the Effective Date, unless those new surface water uses are located in closed basins.
- B. In the portion of the Eastern LCR that is not currently under the jurisdiction of the Norviel Decree, new appropriations of surface water may be initiated in accordance with state law and the Eastern LCR Decree.

4.4 The Judgment and Decree shall provide that no new reservoirs or dams shall be constructed on the LCR between Lyman Dam and the western boundary of the Zuni Heaven Reservation without the written consent of the Tribe unless

- A. the new dam or reservoir is used for *de minimis* uses, effluent impoundments, tailwater ponds or impoundments of underground water; or
- B. the reservoir is wholly contained within a closed basin; or
- C. the reservoir has no permanent water storage and is operated solely for flood control purposes; or
- D. the water stored in the new reservoir results from a change of use, change in point of diversion, or severance and transfer; provided, however, that the Zuni Tribe retains any state-law objections to severance and transfers.

4.5. The Judgment and Decree shall provide that Zion Dam, formerly known as Udall Reservoir, may be repaired or rebuilt only with the written consent of the Tribe.

4.6 Zuni Tribe SWRs.

- A. As described in subparagraph 4.1.A, the existing surface water uses on Zuni Lands owned on the Effective Date are set forth in abstracts and, subject to subparagraph 4.2.A, are recognized by the other Parties.
- B. The Tribe's SWR for unappropriated flows is set forth in an abstract attached as Exhibit 4.6.B and the Parties shall not object to this abstract. This abstract

shall be filed with the Decree Court and shall be approved by the Decree Court in conjunction with the approval of this Settlement Agreement.

- C. As described in paragraph 7.7, AGAF shall sever and transfer certain SWRs to the Zuni Tribe or to the United States for use on the Zuni Heaven Reservation.
- D. In addition to the water available to the Zuni Tribe and to the United States under subparagraphs 4.6.A and 4.6.B, the Zuni Tribe or the United States is entitled to purchase up to 3,600 AFA minus any state contribution of SWRs in accordance with paragraph 7.7, as measured at Lyman Reservoir, from willing sellers in the Norviel Decree Area. If the Zuni Tribe acquires SWRs below Lyman Dam, then the SWR shall be measured, for purposes of this Settlement Agreement, by the amount of water that would be available at Lyman Reservoir.
 - (1) Purchase of SWR. Promptly after the Effective Date, the Parties shall communicate the terms of this Settlement Agreement to other SWR holders in the Norviel Decree Area, including offers to purchase land or water rights subject to the Norviel Decree upon terms and conditions as determined by the Zuni Tribe or by the United States. The Parties shall cooperate in good faith in any solicitation process, such as by sharing lists of SWR holders and addresses and providing related information that may be requested by one Party and in the possession of another Party.
 - (2) Priority. The priority date of the SWRs purchased by the Zuni Tribe for severance, transfer and delivery to the Zuni Heaven Reservation shall be the priority date of those SWRs as set forth in the Norviel Decree.
 - (3) Party Cooperation. After the Enforcement Date, each Party agrees to not unreasonably withhold its written consent and approval for severance and transfers under subparagraph 4.6.D(5) and paragraph 7.7. Before the Enforcement Date, each Party agrees to not unreasonably withhold its written consent and approval to conditional severance and transfers under subparagraph 4.6.D(4) and paragraph 7.7. Furthermore, the Parties agree not to object to the severance and transfer of SWRs to the Zuni Tribe or to the United States for the Wetland Restoration Project on the ground that the uses contemplated in connection with the Wetland Restoration Project are not irrigation uses.

- (4) Conditional Severance and Transfers. Before the Enforcement Date, the Zuni Tribe, the United States, or AGAF may apply to the Norviel Decree Court for a conditional severance and transfer of any SWRs purchased for the Tribe's benefit in accordance with this Settlement Agreement. Conditional severance and transfers do not become final and non-conditional until the Enforcement Date.
 - (5) Severance and Transfers. After the Enforcement Date, the Zuni Tribe shall apply to sever and transfer a SWR in accordance with Arizona law.
- E. Nothing in this Settlement Agreement precludes the Zuni Tribe from purchasing or severing and transferring SWRs, in addition to those specified in subparagraph 4.6.D, in accordance with state law.

4.7 Surface Water Quality Monitoring. AGAF shall periodically, but no less than twice annually, sample and test surface water at AGAF's Wenima property. AGAF shall test in accordance with Exhibit 4.7, which may be amended by the mutual agreement of the Zuni Tribe and AGAF. AGAF will provide results of each test to the Zuni Tribe within 15 days of when AGAF obtains final results.

4.8 Timing for Surface Water Quality Monitoring. After 30 years after the Enforcement Date, AGAF may terminate its obligations under paragraph 4.7.

ARTICLE 5 – UNDERGROUND WATER

5.1 Existing Wells. The Zuni Tribe and the United States shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the withdrawal or use of underground water in the Eastern LCR basin, whether the source is appropriable or non-appropriable, from existing wells. This prohibition includes, but is not limited to, the withdrawal or use of underground water that interferes with surface water flow.

5.2 Cataloging Existing Wells. To aid the Parties in identifying existing wells in the Eastern LCR, DWR shall compile a catalog that identifies all existing wells by well registration number, legal description and owner. This catalog, and its subsequent amendments, shall be listed in the Eastern LCR Decree.

- A. Exempt wells. Exempt wells shall not be cataloged.
- B. Non-Exempt Wells. DWR shall compile the catalog using existing well registrations and the letters contained in Exhibit 4.1.D(2). In addition, for existing wells that are not currently registered, a voluntary well registration program shall be created to allow registration and inclusion in the catalog. DWR shall verify the location of all non-exempt registered wells through the use of global positioning system units.
- C. Catalog. Once the locations of the registered wells have been verified and after the Enforcement Date, DWR shall submit the catalog of non-exempt wells to the Decree Court with notice as ordered by the Decree Court.
- D. Objections. The only objection the Zuni Tribe or the United States may assert in connection with the catalog of non-exempt wells is that a well description is inaccurate. Owners of wells may object that the catalog contains an improper description of a well they own. No other objections shall be permitted. The Decree Court shall resolve any objections as to the accuracy of the list.
- E. Procedures. The procedures described by subparagraphs 5.2.B – 5.2.D must be conducted on a sequential basis by DWR and the Decree Court, focusing on a relatively small group of wells or a limited geographic area at one time.
- F. Time Limit. The catalog in the Eastern LCR Decree of non-exempt wells must be completed within 3 years after the Enforcement Date. The catalog may be supplemented, however, upon application to the Decree Court, for existing wells that were omitted.

5.3 Zuni Use of Underground Water. The Parties recognize and shall not object to, dispute or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the Zuni Tribe's withdrawal or use of 1,500 AFA of underground water from wells on the Zuni Pumping Lands if the water is used on those lands.

5.4 Except as provided in this Settlement Agreement, the Parties recognize and shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the Zuni Tribe's withdrawal of underground water on Zuni Lands in accordance with applicable law.

5.5 Exempt Wells. The Zuni Tribe and the United States shall not object to, dispute or challenge any exempt well in the LCR basin.

5.6 New Non-Exempt Wells Outside the Zuni Protection Area. The Zuni Tribe and the United States shall not object to, dispute, or challenge in any judicial or administrative forum or proceeding the construction of any new well outside the Zuni Protection Area unless the new well is being constructed on lands owned by or for the Zuni Tribe. The Zuni Tribe and the United States shall not object to, dispute or challenge, in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the withdrawal of underground water from any new non-exempt well located outside the Zuni Protection Area unless all of the conditions in subparagraphs 5.6.A through 5.6.C are met. The Zuni Tribe and the United States bear the same burdens of proof and persuasion that any state party would when objecting to, disputing or challenging another state party's water use in the LCR basin.

- A. Such wells are interfering, as defined by applicable state law, with the Zuni Tribe's SWR, other than with the flow rights described in subparagraph 4.6.B; and
- B. The Zuni Tribe SWR at issue was appurtenant to the place of use before the new well was drilled; and
- C. The objection, dispute, or challenge relates to a stream or other surface water condition established before the new well was drilled.

5.7 New Wells Inside the Zuni Protection Area. Inside the Zuni Protection Area, the Zuni Tribe and the United States retain claims against new non-exempt wells or withdrawals from those new wells, under state or federal law, for groundwater rights and for injury to surface water rights, injury to groundwater rights and injury to water quality, with the following qualifications:

- A. Burden of Proof. The Zuni Tribe and the United States shall bear the same burdens of proof and persuasion that any state party would when objecting to, disputing, or challenging another state party's water use in the LCR basin.

- B. **Pumping Protection Agreement Exception.** The Zuni Tribe and the United States shall enter into a Pumping Protection Agreement with any landowner in the Zuni Protection Area who agrees to limit the capacity of new wells on his land to a total of 500 gpm per section of land, or a prorated amount if the lands are less than one section. This Pumping Protection Agreement shall be in the form of Exhibit 5.7.B. If the landowner, the Zuni Tribe and the United States enter into a Pumping Protection Agreement, then the Zuni Tribe and the United States shall waive any right to make a claim against or object to new wells or to withdrawals of underground water, in any judicial or administrative forum or proceeding, that are consistent with the terms of that Pumping Protection Agreement. Executed Pumping Protection Agreements shall be filed with the Decree Court.
- C. **Zuni Pumping Limitation.** If the Zuni Tribe or the United States withdraw more than 1,500 AFA (as determined by a continuous 3 year rolling average of the amount pumped during each calendar year) from the Zuni Pumping Lands, then the Zuni Tribe and the United States waive permanently any and all rights to make a claim against or object to, dispute or challenge new wells or withdrawals of underground water in the Zuni Protection Area. The Zuni Tribe or the United States shall report the Tribe's annual pumping to the Decree Court by April 15 of each year.
- D. **Claim Initiation.** The Zuni Tribe and the United States shall not assert any claims against, object to, dispute or challenge new wells or withdrawals of underground water from new wells in the Zuni Protection Area unless the Static Water Level Decline is more than 50 feet. The determination of Static Water Level Decline is subject to the following definitions and directives:
- (1) "Static Water Level Decline" means the decline in the underground water level, determined by comparing the average annual static water level with the existing static water level in the regional aquifer (presently referred to as the "C Aquifer").
 - (2) The point of measurement shall always be an observation well existing on the Enforcement Date located in accordance with subparagraph 3.1.G, or, in the future, a reasonably chosen replacement well.
 - (3) All static water level measurements, including the existing static water level measurement, shall be taken annually on or about March 1; provided that the well has not been operated at any time during the four months immediately preceding the date of measurement. The existing static water level shall be determined by the first static water level measurement taken following the Effective Date of this Settlement Agreement. The average annual static water level shall be determined on the basis of a continuous 3 year rolling average of the annual static water level measurement in the well.

- (4) The Zuni Tribe or the United States shall report the static water level measurements to the Decree Court by April 15 of each year. The Zuni Tribe shall provide reasonable access to the measurement well for verification and monitoring purposes.

5.8 Other Agreements. The Zuni Tribe and the United States have entered into agreements with SRP, TEP and ASLD that recognize certain intended uses of underground water. These agreements are attached to this Settlement Agreement as Exhibits 5.8.A, 5.8.B and 5.8.C. To the extent that the agreements are inconsistent with this Settlement Agreement, the terms of the agreements must prevail as among the parties to the agreements.

5.9 Vested Rights. Except as described in paragraph 5.3, recognizing the Zuni Tribe's use of 1,500 AFA of underground water, this Settlement Agreement does not create any vested right to groundwater under state law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under state law, whether through this Settlement Agreement, by incorporation of any abstract, agreement or stipulation prepared under this Settlement Agreement, or through Congressional legislation approving, confirming or ratifying this Settlement Agreement or any abstract, agreement or stipulation prepared under this Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph 5.8, as among themselves, shall be as stated in those agreements. Furthermore, if a priority system to groundwater is established, all Parties retain the right to assert their respective priorities.

5.10 State and Federal Water Quality Data. When a Party submits water quality data for wells in the Eastern LCR basin pumping underground water to the Arizona Department of Environmental Quality ("ADEQ"), DWR, or the United States Environmental Protection Agency ("USEPA"), that Party shall provide the Zuni Tribe with a copy. When the Zuni Tribe or the United States submits water quality data for wells on Zuni Lands to the ADEQ, DWR, or USEPA, the Zuni Tribe shall provide any Party who has previously provided data to the Zuni Tribe pursuant to this paragraph 5.10 with a copy. The copies will be provided within 15 working days from the date the data is provided to the department or agency.

5.11 Underground Water Quality Monitoring.

- A. SRP will undertake, at its own expense, to monitor the following wells and provide this water quality testing data to the Zuni Tribe:
 - (1) SRP will provide one initial test from well 42W.
 - (2) SRP will test wells 26W, 43W, 45W, 46W, 47W, and 48W on a triennial basis.

B. Well Testing

- (1) SRP will test using the following EPA Methods
VOCs 8260AZ
Semi-VOCs 8270AZ
Mercury 7470A
Metals 6010B
- (2) For VOCs and Semi-VOCs, GC/MS will be run to scan for detection of pesticides and herbicides. If any herbicide or pesticide is detected, the laboratory will provide an estimated concentration of the substance.
- (3) For each sampling event, SRP will test for 13 priority pollutant metals: antimony, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, thallium, and zinc.
- (4) SRP will provide a Sampling and Analysis Plan (SAP) for the program. SRP will only sample a well if the sampling protocol can be followed at the time of sampling. SRP will make reasonable efforts to follow the sampling protocol.
- (5) All sample analysis will be conducted by SRP or by another laboratory licensed by the State of Arizona's Environmental Laboratory Licensure Program.
- (6) SRP will test wells only if SRP is given the necessary access to take the appropriate samples. SRP will make reasonable efforts to gain access to well sites.
- (7) Monitoring will commence within one year after the Enforcement Date. That initial sampling date will determine when any future monitoring is due.

5.12 Timing for Underground Water Quality Monitoring. After 30 years after the Enforcement Date any Party may terminate its obligations under paragraphs 5.10 and 5.11.

ARTICLE 6 – TRUST LANDS

6.1 Lands to be Taken Into Trust.

- A. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe:

(1) In T.14N., R.27E., Gila and Salt River Base and Meridian:

Section 13: SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 23: N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 24: NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
Section 25: N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

(2) In T.14N., R.28E., Gila and Salt River Base and Meridian:

Section 19: W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$
Section 29: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 30: W $\frac{1}{2}$, SE $\frac{1}{4}$
Section 31: N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, E $\frac{1}{2}$
SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

- B. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe upon acquisition by the Zuni Tribe:

(1) In T.14N., R.26E., Gila and Salt River Base and Meridian:

Section 25: N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$
NW $\frac{1}{4}$ SW $\frac{1}{4}$

(2) In T.14N., R.27E., Gila and Salt River Base and Meridian:

Section 14: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$
Section 16: S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 19: S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 20: S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 21: N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 22: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$
SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 24: N $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$
Section 29: N $\frac{1}{2}$ N $\frac{1}{2}$
Section 30: N $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
Section 36: SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

(3) In T.14N., R.28E., Gila and Salt River Base and Meridian:

Section 18: S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$
SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 30: S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
Section 32: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$,
SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$

- C. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Reservation in Arizona upon acquisition by the Zuni Tribe:

Section 34, T.14 N., R.26 E., Gila and Salt River Base and Meridian.

6.2 Conditions Precedent to Taking Lands Into Trust. The United States shall take the legal title of the lands identified in subparagraphs 6.1.A, 6.1.B, and 6.1.C and hold such title in trust for the benefit of the Zuni Tribe and also shall make the lands identified in subparagraph 6.1.C part of the Zuni Indian Reservation in Arizona when all of the following conditions are satisfied:

- A. The Zuni Tribe, the State of Arizona, and Apache County execute an intergovernmental agreement that includes all of the following provisions:
- (1) For lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C, the Zuni Tribe shall not claim federal reserved rights to either underground water or surface water.
 - (2) The rights to surface water for the lands taken into trust pursuant to subparagraphs 6.1.A and 6.1.C are subject to the terms of this Settlement Agreement, including but not limited to, subparagraph 4.1.A. For lands taken into trust pursuant to subparagraph 6.1.B, the Zuni Tribe retains any rights or claims to surface water associated with these lands under state law, subject to the terms of this Settlement Agreement. Moreover, any water rights appurtenant to lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C shall not be subject to forfeiture or abandonment.

- (3) For lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C, the ability to withdraw groundwater shall be subject to Article 5.
- (4) For lands taken into trust pursuant to subparagraphs 6.1.A and 6.1.B, the Zuni Tribe shall pay in lieu payments equal to all ad valorem property taxes assessed by any state, county, or local taxing entity that would otherwise be applicable to those lands, if they were not in trust status.
- (5) The Zuni Tribe and the United States shall not unreasonably withhold consent for easements and rights-of-way for roads, utilities, and other necessary accommodations for adjoining landowners across the lands identified in subparagraphs 6.1.A and 6.1.B unless such easements and rights-of-way will cause significant and substantial harm to the Wetland Restoration Project. If such harm is anticipated, the Zuni Tribe shall negotiate in good faith with the person or entity seeking the easements or rights-of-way for a reasonable accommodation of their mutual interests.
- (6) The Zuni Tribe shall adopt a water code regulating water uses on the trust lands identified in subparagraphs 6.1.A and 6.1.B that is reasonably equivalent to state water law, including but not limited to, statutes relating to dam safety and groundwater management. Until the Zuni Tribe adopts a water code, state law controls water use and water regulation on the lands referred to in subparagraphs 6.1.A and 6.1.B.
- (7) The Zuni Tribe shall exercise jurisdiction over wildlife management on the trust lands identified in subparagraphs 6.1.A and 6.1.B. If the Zuni Tribe authorizes hunting, trapping or fishing, other than for Zuni religious practices, tribal law will establish a permit and fee system reasonably equivalent to state law. Zuni Tribe jurisdiction over these lands shall provide for wildlife resource management that is at least as stringent as comparable state law, except for religious practices exercised by the Tribe.
- (8)
 - (a) The Parties agree that the lands identified in subparagraphs 6.1.A and 6.1.B must be treated as other state lands, and not as Indian Country, for purposes of jurisdiction under the Clean Air Act and the Safe Drinking Water Act. The Zuni Tribe will not seek to regulate, or accept any delegation of authority to regulate, air quality or water quality on, under, or above these trust lands.
 - (b) The United States Environmental Protection Agency shall have authority to administer all programs under the Clean

Water Act for the lands identified in subparagraphs 6.1.A and 6.1.B. The Zuni Tribe will not seek to regulate, or accept any delegation of authority to regulate, water quality on, under, or above these trust lands. In issuing any permits for the lands identified in subparagraphs 6.1.A and 6.1.B, the United States Environmental Protection Agency shall incorporate only standards promulgated by the United States Environmental Protection Agency or the Arizona Department of Environmental Quality, and not tribal standards.

- (9) With respect to Zuni Fee Lands within the LCR basin that are outside of the lands described in subparagraphs 6.1.A, 6.1.B, and 6.1.C, the State of Arizona and Apache County acknowledge that portions of such lands, including but not limited to, the Tribe's pilgrimage route, are associated with the Tribe's religious practices. When acting in a proprietary capacity with respect to such lands, the State of Arizona and Apache County shall not unreasonably withhold any necessary approvals for the Zuni Tribe to use such lands for religious, sustenance and related purposes. When acting in either a governmental or proprietary capacity with respect to such lands, the State of Arizona and Apache County agree that they shall consult with the Zuni Tribe with regard to the Zuni Tribe's use of such lands for religious, sustenance and related purposes before taking action that knowingly affects such use, and shall cooperate with the Zuni Tribe, to the extent permitted by State law, to accommodate such use.
 - (10) The Tribe waives its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the intergovernmental agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the intergovernmental agreement; however, any such waiver of immunity from suit shall exclude claims for monetary awards, except as specifically provided in the intergovernmental agreement.
- B. The Secretary of the Interior publishes in the Federal Register a written certification to the Governor of the State of Arizona that all of the conditions in this paragraph 6.2 have been satisfied for the lands described in subparagraphs 6.1.A – 6.1.C.

ARTICLE 7 – DEVELOPMENT FUND; CONTRIBUTIONS

7.1 Establishment of the Fund. In accordance with the Act, an account to be managed by the Secretary of the Interior shall be established in the Treasury of the United States, referred to as the Zuni Indian Tribe Development Fund. The Fund shall consist of the amounts to be contributed in paragraphs 7.5 and 7.6. The Secretary shall deposit into the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

7.2 Investment of the Fund. The Secretary shall invest amounts in the Fund in accordance with

- A. the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. § 161);
- B. the first section of the Act approved June 24, 1938, as amended (25 U.S.C. § 162a).

7.3 Management of and Withdrawal From the Fund. The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001 *et seq.*) (“Trust Fund Reform Act”) and the Settlement Agreement. Notwithstanding the foregoing, before the Enforcement Date, up to \$3,500,000 of the monies under paragraph 7.5 shall be distributed to the Zuni Tribe solely upon a written request stating the need for the funds for water rights or options purchases. If the Zuni Tribe exercises its right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over or liability for the accounting, disbursement or investment of the monies withdrawn from the Fund, except as provided in the withdrawal plan.

7.4 Availability of Monies From the Fund

- A. Those monies allocated by the Secretary to the accounts in the Fund established under subsection 6(a) of the Act shall draw interest consistent with paragraphs 7.2 and 7.3 upon appropriation.
- B. Except as provided in paragraph 7.3 and subparagraph 7.4.C, the monies contributed in accordance with paragraphs 7.5 and 7.6 shall be available for expenditure or withdrawal only after the Enforcement Date.
- C. If this Settlement Agreement has become null and void under Article 3, the United States shall be entitled to set-off any monies expended or withdrawn as provided in paragraph 7.3, together with any interest accrued thereon, against any claims asserted by the Zuni Tribe against the United States related to water rights at the Zuni Heaven Reservation. Any water rights acquired with these monies shall be credited against any water rights secured by the Zuni Tribe or by the United States for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of these claims.

7.5 United States Appropriation. The United States shall appropriate \$19,250,000 for use by the Zuni Tribe or by the United States. After the monies authorized in this paragraph 7.5 have been appropriated and the same has been deposited in the Fund, the United States shall have no further obligation for any operation, maintenance or repair costs for the Zuni Wetland Restoration Project or water deliveries thereto; provided, however, that this provision shall not affect programmatic support from the United States for the implementation of this Settlement Agreement and shall not affect any potential United States liability for actions it takes in furtherance of this Settlement Agreement.

7.6 Arizona Appropriation. The State of Arizona shall appropriate \$1,613,000 for use by the Zuni Tribe or by the United States. From this appropriation, \$613,000 must be used in conformity with the purposes of the Water Protection Fund (see A.R.S. § 45-2101). Any grants approved by the Water Protection Fund Commission to the Zuni Tribe from and after March 1, 2000, up to a maximum of \$613,000, must be credited against this obligation. This paragraph 7.6 is not intended to alter the terms of any past or future agreements between the Zuni Tribe and the Arizona Water Protection Fund Commission.

7.7 AGAF Contribution. As part of the State of Arizona's contribution to this settlement, AGAF shall expand an ongoing Stream Rehabilitation Program ("Program") above the Zuni Heaven Reservation. The objectives of the Program are to provide habitat for endangered, threatened, or candidate species and other wildlife and to enhance stream flow. These goals have been achieved by acquiring agricultural land with irrigation water rights under the Norviel Decree, and then dedicating these rights to wildlife uses. As a contribution to this settlement, it is AGAF's goal to sever and transfer 1,000 AFA of surface water for use at the Zuni Tribe's Wetland Restoration Project. AGAF's contribution to this settlement is subject to the following qualifications:

- A. Water for Zuni Wetland Restoration Project. AGAF shall spend \$5,000,000 from Heritage Program funds or other sources to acquire additional lands with irrigation rights or surface water rights alone for inclusion in the Program. AGAF shall determine, in its sole discretion, what portion of the water rights appurtenant to lands presently dedicated to the Program, or acquired in the future, are not required for wildlife purposes ("Excess Rights"). To the extent permissible under state law, AGAF shall sever and transfer up to 1,000 AFA of Excess Rights, as measured at Lyman Reservoir, to the Zuni Tribe or to the United States for wetland irrigation use at the Zuni Tribe's Wetland Restoration Project. All water deliverable to the Wetland Restoration Project under this paragraph 7.7 must be deliverable via a natural tributary or the LCR, or both, and must provide benefit for wildlife at the wetland. Despite paragraphs 8.1 and 8.2, if the Zuni Tribe does not use the Excess Rights as required in this subparagraph 7.7.A, the Excess Rights shall revert back to AGAF, and the Parties shall not object to the reversion.
- B. Timing. Subject to the terms stated in subparagraphs 7.7.C – 7.7.G, and the lawful purposes associated with the funds used to purchase existing and later acquired properties, AGAF shall have 15 years from the Effective Date to sever and transfer to the Zuni Tribe or to the United States the rights to

receive 1,000 AFA, which shall be severed from existing and later acquired properties.

C. Contingencies.

- (1) The Zuni Tribe and the United States acknowledge that the transferred water rights may yield less than 1,000 AFA of water at Lyman Reservoir due to factors beyond AGAF's control. For example, AGAF cannot assure that property meeting criteria for AGAF controlled funds and having sufficient Excess Rights can be acquired, or that water rights can be severed and transferred to the Zuni Tribe or the United States within the allotted time for performance. AGAF's obligations under this Settlement Agreement shall be deemed satisfied upon either
 - (a) the severance and transfer to the Zuni Tribe or to the United States of the rights to 1,000 AFA, as measured at Lyman Reservoir, from properties currently owned or to be acquired in the future by AGAF; or
 - (b) the expenditure of a total of \$6,000,000 under the Program. If AGAF has satisfied this subparagraph (b) but not subparagraph (a), then AGAF shall continue severing and transferring the Excess Rights in connection with future acquisitions, if any, under the Program until a total of 1,000 AFA of water rights have been severed and transferred to the Zuni Tribe or to the United States.

D. Program Acquisitions. Unless the Zuni Tribe and AGAF otherwise agree, the land and water rights that count towards the five to six million dollar expenditure include acquisitions in which the Zuni Tribe and AGAF have agreed, prior to an acquisition, that

- (1) the value of the water rights as a percentage of the total appraised value of each acquisition, as determined according to the buyer's final appraisal, is at least 25% of the total appraised value of the acquisition; and

- (2) any portion of the Excess Rights associated with an acquisition is physically capable of reaching Lyman Reservoir in a year equivalent to typical hydrologic conditions as defined by median flow. If AGAF and the Zuni Tribe do not agree that the Excess Rights can reach Lyman Reservoir, then either may seek the opinion of an independent hydrologist that AGAF and the Zuni Tribe approve. The Zuni Tribe shall not withhold its agreement to include the acquisition if the independent hydrologist certifies that water is physically capable of reaching Lyman Reservoir. If the independent hydrologist does not certify that water is physically capable of reaching Lyman reservoir, then the property will not count towards AGAF's contribution, unless the Zuni Tribe otherwise agrees to include the acquisition towards AGAF's contribution.
- E. Severance and Transfer. Severance and transfer of Excess Rights for the Program must follow subparagraph 4.6.D(4) before the Enforcement Date and subparagraph 4.6.D(5) after the Enforcement Date. AGAF shall conduct any studies required in support of its application. The Arizona Attorney General's Office shall petition the Court for a conditional severance and transfer of Excess Rights at Wenima, an existing AGAF rehabilitation site above Lyman Reservoir, as soon as practicable, in order to establish an efficient transfer procedure. The Parties shall cooperate in seeking approval of this petition, as set forth in subparagraph 4.6.D(3).
- F. Party Assistance. Many of the water rights that could be acquired by AGAF in the future are located within areas served by LWC, SJIC, or Round Valley Water Users' Association. These Parties agree to assist AGAF in evaluation of water rights or parcels of available land with water rights for inclusion in the Program.
- G. Consultation with Zuni. AGAF shall consult specifically with the Zuni Tribe about a proposed acquisition and seek the Zuni Tribe's advice on the amount of water the Zuni Tribe estimates will return to the LCR by converting existing rights to wildlife purposes. AGAF shall notify the Zuni Tribe at the start of the public review process of any proposed acquisition that may qualify towards AGAF's obligation under this Settlement Agreement. AGAF shall provide the Zuni Tribe with management plans and other appropriate documents as may exist during the public review process, and provide the Zuni Tribe the opportunity to review and comment on the proposed acquisition and present its views to AGAF prior to a final decision by AGAF.

7.8 SRP Contribution. SRP shall contribute a total of \$1,000,000.00 to be used towards providing a water supply to the Sacred Lake and the re-establishment of riparian vegetation on the Zuni Heaven Reservation. This contribution may not be used for land acquisition. To satisfy its contribution, SRP shall make an initial payment of \$500,000.00 to the Tribe within 60 days after the Enforcement Date. The second and final payment of \$500,000.00 is due one year after the date of the initial payment.

7.9 ASLD Contribution. ASLD shall release and quitclaim to the Zuni Tribe or the United States all of ASLD's right, title and interest in the surface water rights in Section 32, Township 14 North, Range 28 East, Gila and Salt River Base and Meridian, that are more particularly described in SOC # 39-86042 and Exhibit 4.1.A(1) *et seq.*

ARTICLE 8 – AUTHORIZED USES

8.1 Authorized Water Uses on Zuni Fee Lands. The Zuni Tribe may use water appurtenant to its Zuni Fee Lands outside the Zuni Heaven Reservation for any purpose permissible under state law.

8.2 Authorized Water Uses on the Reservation. Water rights made available under this Settlement Agreement and used on the Zuni Heaven Reservation shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment. State law does not apply to water uses on the Zuni Heaven Reservation. Furthermore, the State of Arizona may not regulate or tax such water or uses of such water, but the Decree Court or the Norviel Decree Court may assess administrative fees for delivery of such water. Subject to paragraph 7.7, the Zuni Tribe shall use water made available to it under this Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable. The Zuni Tribe or the United States shall not, however, sell, lease, transfer, or transport water made available to it for use on the Zuni Heaven Reservation to any other place; provided, however, that water may be severed and transferred from the Zuni Heaven Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance with state law. Once transferred to any lands held in fee, that water shall be subject to state law.

ARTICLE 9 – OTHER CONSIDERATIONS

9.1 Disclaimer. Nothing in this Settlement 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 or lands in any judicial or administrative forum or proceeding.

9.2 Evidentiary Effect of Negotiations. This Settlement Agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all Parties agree that no conduct, statements, offers or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding other than one for approval, confirmation, interpretation, or enforcement of this Settlement Agreement.

9.3 Effect of Execution by the State of Arizona.

- A. Execution by the Governor. Execution of this Settlement Agreement by the Governor of the State of Arizona constitutes the commitment of the State to assist in carrying out the provisions of the Settlement Agreement to the extent it may do so in accordance with its responsibility and authority under the law.
- B. Execution by State Agencies. Execution of this Settlement Agreement by ASLD, AGAF, and the Arizona State Parks Board signifies that provisions of this Settlement Agreement affecting the State as an adjudication claimant have been approved by ASLD, AGAF, and the Arizona State Parks Board, and these agencies assume the obligations of and are entitled to the benefits of this Settlement Agreement.
- C. Exceptions. It is not intended that this Settlement Agreement shall limit the enforcement or regulatory authority of any State agency or shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory or rule making proceeding not inconsistent with this Settlement Agreement. Except as provided in this Settlement Agreement, nothing in this paragraph 9.3 shall be construed as a waiver of any rights that the State of Arizona has as to its natural resources.

9.4 Contingent on Appropriation of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Settlement Agreement is contingent upon appropriation of funds therefor. If funds are not appropriated, the United States shall accrue no liability.

9.5 Further Negotiations Regarding Future Operation of Lyman Lake. The Zuni Tribe, the United States, and LWC agree that, in conjunction with the negotiation of the agreement described in subparagraph 3.1.E, they shall negotiate with the Arizona State Parks Board regarding terms and conditions on which they would agree to maintain a minimum pool in Lyman Lake for recreational use.

9.6 Negotiations with SJIC. The Zuni Tribe, the United States, and SJIC agree to negotiate an operating agreement that recognizes the Zuni Tribe's participation as a shareholder in SJIC in a manner similar to any other shareholder in SJIC, and further recognizes that the Tribe shall bear any expenses associated with delivery of the Zuni Tribe's SWRs through SJIC facilities.

9.7 SJIC and City of St. Johns Claims. By entering into this Settlement Agreement, neither the City of St. Johns nor SJIC waives any rights or is estopped from making any claims they may have under state law, excluding punitive damages, against any Party to this Settlement Agreement resulting from water discharges from Lyman Dam to supply water to lands owned by or for the Zuni Tribe. The Zuni Tribe hereby waives any claim of sovereign immunity for purposes of any such suit or claims under this paragraph 9.7.

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

9.9 State Law Requirements. This Settlement Agreement is subject to the provisions of A.R.S. § 38-511.

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

9.11 Consultation. Upon request by the Zuni Tribe, the Parties agree to consult with the Zuni Tribe if any data provided to the Zuni Tribe under paragraphs 4.7, 5.10, and 5.11 demonstrates the presence of a Hazardous Substance or oil.

ARTICLE 10 – ADMINISTRATION

10.1 Jurisdiction. Notwithstanding paragraph 8.2, the Decree Court retains jurisdiction over the Judgment and Decree and the Settlement Agreement. Unless barred by Arizona law, any hearings pertaining to the Decree shall be conducted in Apache County.

10.2 New and Existing Uses. Water uses under the Norviel Decree shall be administered in accordance with that decree, until modified by the Decree Court.

10.3 Zuni Calls. The Zuni Tribe or the United States shall not enforce the priority of non-Norviel Decree water rights that it holds against Norviel Decree water rights.

10.4 Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the State of Arizona and applicable federal law.

10.5 Successors and Assigns. This Settlement Agreement and the attached waivers and agreements shall, unless otherwise indicated, be binding on and inure to the benefit of the Parties, and their respective successors and assigns.

10.6 Enforcement by Non-Parties. The provisions of subparagraph 4.2.D and Articles 5 and 11 of this Settlement Agreement are intended to protect and benefit all landowners and water users in the LCR basin, whether or not they are parties to the Settlement Agreement or to the LCR Adjudication; the benefits to such non-parties are a consideration for this Settlement Agreement; such non-parties are intended third-party beneficiaries of this Settlement Agreement; and such provisions may be enforced or asserted by any landowner or water user in the LCR basin.

10.7 Integration. This Settlement Agreement incorporates all the exhibits and sets forth the entire agreement of the Parties with respect to the subject matter hereof. This Settlement Agreement, exclusive of Exhibits 5.8.A, 5.8.B., and 5.8.C, may be amended only by written agreement executed by the Parties. The agreements in Exhibits 5.8.A, 5.8.B, and 5.8.C may be amended by the written agreement of the parties to those agreements.

ARTICLE 11 – WAIVERS

11.1 Parties Waiver. The waiver and release described in this paragraph shall be in the form set out in Exhibit 11.1. Except as provided in paragraph 11.5, the State Parties (which, for the purpose of this paragraph 11.1 and paragraph 11.5, are defined as the State of Arizona, acting solely in its proprietary capacity, and all other parties to the Settlement Agreement, except the Zuni Indian Tribe and the United States) shall execute a waiver and release for claims against the Zuni Tribe and the United States for:

- A. Any and all past and present claims for injuries to their water rights or water quality (including water rights in groundwater, surface water, and effluent) accruing from time immemorial through the Enforcement Date that the State Parties may have against the Tribe or against the United States, under the laws of the United States, the State of Arizona, or otherwise, caused by diversions of surface water in the Eastern LCR basin or withdrawals of groundwater on Zuni Lands.
- B. Future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin caused by the following actions on Zuni Lands:
 - (1) the lawful diversion or use of surface water; or
 - (2) the lawful withdrawal or use of underground water; or
 - (3) the Parties' performance of their obligations under this Settlement Agreement; or
 - (4) discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures; or
 - (5) discharge of oil associated with routine start-up and operation of well pumps; or
 - (6) any combination thereof.

11.2 Waiver of Claims by the Zuni Tribe and the United States. The waiver and release described in this paragraph shall be in the form set out in Exhibit 11.2. Except as provided in paragraph 11.4, the Zuni Tribe and the United States shall execute a waiver and release for claims against the state, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all:

- A. Past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the Enforcement Date and any time thereafter, except for claims within the Zuni Protection Area as provided in Article 5;
- B. Past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date;

- C. Past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;
- D. Past and present claims for injuries to water quality accruing from time immemorial through the Enforcement Date for lands within the LCR basin; and
- E. Future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin caused by
 - (1) the lawful diversion or use of surface water; or
 - (2) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5; or
 - (3) the Parties' performance of their obligations under this Settlement Agreement; or
 - (4) discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures; or
 - (5) discharge of oil associated with routine start-up and operation of well pumps; or
 - (6) any combination thereof.

11.3 Waiver of Claims by the Zuni Tribe against the United States. The waiver and release described in this paragraph 11.3 shall be in the form set out in Exhibit 11.3. Except as provided in paragraph 11.4 and 11.6, the Zuni Tribe shall execute a waiver and release for claims against the United States, including any agencies, officials, or employees thereof, for any and all:

- A. Past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the Enforcement Date and any time thereafter;
- B. Past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the Enforcement Date;
- C. Past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors; and

- D. Past and present claims for failure to protect, acquire, or develop water rights, or failure to protect water quality of the Zuni Tribe within the LCR basin in Arizona from time immemorial through the Enforcement Date.

11.4 Retention of Claims by Zuni Tribe and the United States. Notwithstanding the waivers and releases described in paragraphs 11.2 and 11.3, the Zuni Tribe and the United States shall retain the right to assert the following claims:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights; or
- B. Except as provided in subparagraph 11.2.C, claims for water rights, including injuries to those water rights, for lands acquired after the Enforcement Date, subject to the terms of this Settlement Agreement, including but not limited to, subparagraph 4.2.D and paragraph 5.6; or
- C. Claims for groundwater rights and injuries to surface water, groundwater and water quality, as provided in Article 5; or
- D. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraph 11.2 E; or
 - (2) Except as provided in subparagraphs 11.2.E(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against any person or entity that is responsible for initially disposing of or initially releasing a Hazardous Substance or oil, even if the migration of that Hazardous Substance or oil to lands owned by or for the Zuni Tribe is caused by that person's or entity's lawful diversion of surface water or lawful withdrawal of underground water; or
 - (3) Notwithstanding subparagraph 11.2.E, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance; or
 - (4) Notwithstanding subparagraph 11.2.E., claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures and the discharge of oil associated with routine start up and operation of well pumps; or
 - (5) Notwithstanding subparagraph 11.2.E, claims accruing at least 30 years after the Enforcement Date under Subtitle I of RCRA for

injuries to water quality caused by the discharge of petroleum from underground storage tanks.

11.5 Notwithstanding the waivers and releases described in paragraph 11.1, the State Parties shall retain the right to assert the following claims against the Zuni Tribe and the United States:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights; or
- B. Claims for water rights, including injuries to those water rights, subject to the terms of this Settlement Agreement, including but not limited to, subparagraphs 4.2.A and 4.6.A; or
- C. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraph 11.1 B; or
 - (2) Except as provided in subparagraphs 11.1.B(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against the Tribe or the United States if the Tribe or the United States is responsible for initially disposing of or initially releasing a Hazardous Substance or oil, even if the migration of that Hazardous Substance or oil is caused by the Tribe's or the United States' lawful diversion of surface water or lawful withdrawal of underground water.
 - (3) Notwithstanding subparagraph 11.1.B, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance; or
 - (4) Notwithstanding subparagraph 11.1.B., claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures and the discharge of oil associated with routine start up and operation of well pumps; or
 - (5) Notwithstanding subparagraph 11.1.B, claims accruing at least 30 years after the Enforcement Date under Subtitle I of RCRA for injuries to water quality caused by the discharge of petroleum from underground storage tanks.
- D. Nothing in this waiver and release of claims affects the State Parties' ability to make any claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against

any other Indian tribe, band, or community or against the United States on behalf of any such tribe, band, or community.

11.6 Other Federal Claims. Nothing in this Settlement Agreement shall be construed to affect the water right claims or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band or community, other than Zuni Tribe. Furthermore, nothing in this Settlement Agreement waives the ability of any such federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water right claims or entitlements to the extent permitted by law. The Zuni Tribe and the United States retain all claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

11.7 Environmental Regulation. Nothing in this Settlement Agreement shall be construed to affect any right of the United States or of the State of Arizona to take any actions, including enforcement actions, under any statutes, regulations, or any other applicable laws relating to water quality or the environment, even where such actions incidentally benefit the Zuni Tribe. For purposes of this paragraph, the United States means any federal department, agency or component thereof, acting in its sovereign capacities, except when acting solely on behalf of the Zuni Tribe.

11.8 Claim Accrual. For purposes of this Article 11, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

11.9 Judgment and Decree. The Parties to this Settlement Agreement shall file a Judgment and Decree in the LCR Adjudication in the form of Exhibit 11.9. The United States and the Zuni Tribe shall be permitted to support any claim of any party to this Settlement Agreement filed in the LCR Adjudication from which the Zuni Tribe's water rights under this Settlement Agreement are derived.

11.10 Interpretation. Nothing in the waiver and release shall prevent the Zuni Tribe or the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

11.11 Tribal Member Entitlements. Any entitlement to water (including groundwater, surface water and effluent) of any individual member of the Zuni Tribe for Zuni Lands shall be satisfied out of the water resources provided to the Zuni Tribe in this Settlement Agreement.

ARTICLE 12 – NOTICE AND SIGNATURES

12.1 Notices. Any notice or other communication given under this Settlement Agreement must be in writing and delivered by overnight courier service or certified mail, return receipt requested, postage prepaid and properly addressed to the Parties at the addresses listed below (or to any other or further addresses the Parties may subsequently designate by notice in this manner). All these notices and communication shall be effective when delivery to the required recipient is completed in accordance with this paragraph:

To the United States of America:

Asst. Secretary for Indian Affairs
U.S. Department of the Interior
1849 C St. NW 4104 MIB
Washington, DC 20240-0001

Chief
U.S. Dept. of Justice
Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, DC 20026-4378

cc:

Regional Director
Bureau of Indian Affairs
P.O. Box 26567
Albuquerque, NM 87125-6567

To the Zuni Tribe:

Office of the Governor
Zuni Indian Tribe
P.O. Box 339
Zuni, NM 87327-0339

To the State of Arizona

Office of the Governor
1700 W. Washington
Phoenix, AZ 85007

Office of the Attorney General
Attn: Water Rts. Adjudication Team
1275 W. Washington
Phoenix, AZ 85007

Director
Department of Water Resources
500 North Third St.
Phoenix, AZ 85004

To Arizona Game and Fish Commission:

Director
Arizona Game and Fish Commission

	2221 W. Greenway Phoenix, AZ 85023
To Arizona State Land Department:	State Land Commissioner Arizona State Land Department 1616 W. Adams Phoenix, AZ 85007
To the Arizona State Parks Board:	Executive Director Arizona State Parks Board 1300 West Washington Phoenix, Arizona 85007
To St. Johns Irrigation and Ditch Co.:	St. Johns Irrigation and Ditch Co. P.O. Box 38 St. Johns, AZ 85936
To Lyman Water Co.:	Lyman Water Company President P.O. Box 397 St. Johns, AZ 85936
	Lyman Water Company Secretary P.O. Box 521 St. Johns, AZ 85936
cc:	David A. Brown Brown & Brown Law Offices, P.C. 1546 E. White Mountain Blvd. P.O. Box 3128 Pinetop, AZ 85935
To Round Valley Water Users' Association:	Round Valley Water Users' Assn. President P.O. Box 69 Eagar, AZ 85925
cc:	David A. Brown Brown & Brown Law Offices, P.C. 1546 E. White Mountain Blvd. P.O. Box 3128 Pinetop, AZ 85935
To Salt River Project Agricultural Improvement and Power District:	General Manager Salt River Project Agricultural Improvement and Power District

P.O. Box 52025
Phoenix, AZ 85072-2025

To Tucson Electric Power Company: Corporate Secretary
Tucson Electric Power Company:
P.O. Box 711
Tucson, AZ 85702

To the City of St. Johns: City of St. Johns
P.O. Box 455
St. Johns, AZ 85936

To the Town of Eagar: Town of Eagar
P.O. Box 1300
Eagar, AZ 85925

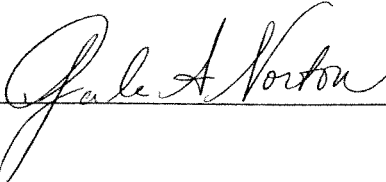
cc: David A. Brown
Brown & Brown Law Offices, P.C.
1546 E. White Mountain Blvd.
P.O. Box 3128
Pinetop, AZ 85935

To the Town of Springerville: Town of Springerville
P.O. Box 390
Springerville, AZ 85938

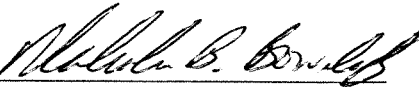
cc: David A. Brown
Brown & Brown Law Offices, P.C.
1546 E. White Mountain Blvd.
P.O. Box 3128
Pinetop, AZ 85935

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

THE UNITED STATES OF AMERICA

By: 


THE ZUNI INDIAN TRIBE

By: 


THE STATE OF ARIZONA

By: 

THE ARIZONA GAME AND FISH COMMISSION

By: 

THE ARIZONA STATE LAND DEPARTMENT

By: 

THE ARIZONA STATE PARKS BOARD

By: 

ST. JOHNS IRRIGATION & DITCH COMPANY

By: 

LYMAN WATER COMPANY

By: Jane Hauer

ROUND VALLEY WATER USERS'
ASSOCIATION

By: Richard A. Wall

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By: William C. Schader

TUCSON ELECTRIC POWER COMPANY

By: W.A. Delwood

CITY OF ST. JOHNS

By: Russell Peterson

TOWN OF EAGAR

By: Louise L. Quik

TOWN OF SPRINGVILLE

By: Ray Dorn

**ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT
AGREEMENT IN THE LITTLE COLORADO RIVER BASIN
EXHIBITS**

Exhibit 2.1	Legislation
Exhibit 2.10.....	Eastern LCR Basin (Norviel Decree Area)
Exhibit 2.48.....	Zuni Protection Area/Zuni Pumping Lands
Exhibit 4.1A(1) <i>et seq.</i>	Zuni Abstracts
Exhibit 4.1.C(1) <i>et seq.</i>	LWC and SJIC Abstracts
Exhibit 4.1.D(2)	Local Landowner Letters
Exhibit 4.6.B	Zuni Abstract for unappropriated flows
Exhibit 4.7	AGAF Monitoring Plan
Exhibit 5.7.B	Pumping Protection Agreement (Form)
Exhibit 5.8.A	SRP Agreement
Exhibit 5.8.B	TEP Agreement
Exhibit 5.8.C	ASLD Agreement
Exhibit 6.1.A	Proposed Trust Lands
Exhibit 11.1	Waiver by Parties
Exhibit 11.2.....	Waiver by Zuni Tribe and U.S.
Exhibit 11.3.....	Waiver by Zuni Tribe against U.S.
Exhibit 11.9.....	Judgment and Decree

PUBLIC LAW 108-34—JUNE 23, 2003

ZUNI INDIAN TRIBE WATER RIGHTS
SETTLEMENT ACT OF 2003

Public Law 108-34
108th Congress

An Act

June 23, 2003
[S. 222]

To approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

Zuni Indian
Tribe Water
Rights
Settlement
Act of 2003.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Zuni Indian Tribe Water Rights Settlement Act of 2003”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) It is the policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination, religious freedom, political and cultural integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

(2) Quantification of rights to water and development of facilities needed to use tribal water supplies effectively is essential to the development of viable Indian reservation communities, particularly in arid western States.

(3) On August 28, 1984, and by actions subsequent thereto, the United States established a reservation for the Zuni Indian Tribe in Apache County, Arizona upstream from the confluence of the Little Colorado and Zuni Rivers for long-standing religious and sustenance activities.

(4) The water rights of all water users in the Little Colorado River basin in Arizona have been in litigation since 1979, in the Superior Court of the State of Arizona in and for the County of Apache in Civil No. 6417, *In re The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*.

(5) Recognizing that the final resolution of the Zuni Indian Tribe's water claims through litigation will take many years and entail great expense to all parties, continue to limit the Tribe's access to water with economic, social, and cultural consequences to the Tribe, prolong uncertainty as to the availability of water supplies, and seriously impair the long-term economic planning and development of all parties, the Tribe and neighboring non-Indians have sought to settle their disputes to water and reduce the burdens of litigation.

(6) After more than 4 years of negotiations, which included participation by representatives of the United States, the Zuni Indian Tribe, the State of Arizona, and neighboring non-Indian

communities in the Little Colorado River basin, the parties have entered into a Settlement Agreement to resolve all of the Zuni Indian Tribe's water rights claims and to assist the Tribe in acquiring surface water rights, to provide for the Tribe's use of groundwater, and to provide for the wetland restoration of the Tribe's lands in Arizona.

(7) To facilitate the wetland restoration project contemplated under the Settlement Agreement, the Zuni Indian Tribe acquired certain lands along the Little Colorado River near or adjacent to its Reservation that are important for the success of the project and will likely acquire a small amount of similarly situated additional lands. The parties have agreed not to object to the United States taking title to certain of these lands into trust status; other lands shall remain in tribal fee status. The parties have worked extensively to resolve various governmental concerns regarding use of and control over those lands, and to provide a successful model for these types of situations, the State, local, and tribal governments intend to enter into an Intergovernmental Agreement that addresses the parties' governmental concerns.

(8) Pursuant to the Settlement Agreement, the neighboring non-Indian entities will assist in the Tribe's acquisition of surface water rights and development of groundwater, store surface water supplies for the Zuni Indian Tribe, and make substantial additional contributions to carry out the Settlement Agreement's provisions.

(9) To advance the goals of Federal Indian policy and consistent with the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and contribute funds for the rehabilitation of religious riparian areas and other purposes to enable the Tribe to use its water entitlement in developing its Reservation.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and neighboring non-Indians;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers;

(3) to authorize and direct the United States to take legal title and hold such title to certain lands in trust for the benefit of the Zuni Indian Tribe; and

(4) to authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) EASTERN LCR BASIN.—The term "Eastern LCR basin" means the portion of the Little Colorado River basin in Arizona upstream of the confluence of Silver Creek and the Little Colorado River, as identified on Exhibit 2.10 of the Settlement Agreement.

(2) FUND.—The term "Fund" means the Zuni Indian Tribe Water Rights Development Fund established by section 6(a).

(3) INTERGOVERNMENTAL AGREEMENT.—The term "Intergovernmental Agreement" means the intergovernmental agreement between the Zuni Indian Tribe, Apache County, Arizona and

the State of Arizona described in article 6 of the Settlement Agreement.

(4) PUMPING PROTECTION AGREEMENT.—The term “Pumping Protection Agreement” means an agreement, described in article 5 of the Settlement Agreement, between the Zuni Tribe, the United States on behalf of the Tribe, and a local landowner under which the landowner agrees to limit pumping of groundwater on his lands in exchange for a waiver of certain claims by the Zuni Tribe and the United States on behalf of the Tribe.

(5) RESERVATION; ZUNI HEAVEN RESERVATION.—The term “Reservation” or “Zuni Heaven Reservation”, also referred to as “Kolhu:wala:wa”, means the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means that agreement dated June 7, 2002, together with all exhibits thereto. The parties to the Settlement Agreement include the Zuni Indian Tribe and its members, the United States on behalf of the Tribe and its members, the State of Arizona, the Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State Parks Board, the St. Johns Irrigation and Ditch Co., the Lyman Water Co., the Round Valley Water Users’ Association, the Salt River Project Agricultural Improvement and Power District, the Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the Town of Springerville.

(8) SRP.—The term “SRP” means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(9) TEP.—The term “TEP” means Tucson Electric Power Company.

(10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN TRIBE.—The terms “Tribe”, “Zuni Tribe”, or “Zuni Indian Tribe” means the body politic and federally recognized Indian nation, and its members.

(11) ZUNI LANDS.—The term “Zuni Lands” means all the following lands, in the State of Arizona, that, on the effective date described in section 9(a), are—

- (A) within the Zuni Heaven Reservation;
- (B) held in trust by the United States for the benefit of the Tribe or its members; or
- (C) held in fee within the Little Colorado River basin by or for the Tribe.

SEC. 4. AUTHORIZATION, RATIFICATIONS, AND CONFIRMATIONS.

(a) SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this Act, such Settlement Agreement is hereby approved, ratified, confirmed, and declared to be valid. The Secretary is authorized and directed to execute the Settlement Agreement and any amendments approved by the parties necessary to make the Settlement Agreement consistent with this Act. The Secretary is further authorized

to perform any actions required by the Settlement Agreement and any amendments to the Settlement Agreement that may be mutually agreed upon by the parties to the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Zuni Indian Tribe Water Rights Development Fund established in section 6(a), \$19,250,000, to be allocated by the Secretary as follows:

(1) \$3,500,000 for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out, by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 acre-feet per year of water rights before the deadline described in section 9(b).

(2) \$15,750,000, of which \$5,250,000 shall be made available for each of fiscal years 2004, 2005, and 2006, to take actions necessary to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas as provided for in the Settlement Agreement and under this Act.

(c) OTHER AGREEMENTS.—Except as provided in section 9, the following 3 separate agreements, together with all amendments thereto, are approved, ratified, confirmed, and declared to be valid:

(1) The agreement between SRP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(2) The agreement between TEP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(3) The agreement between the Arizona State Land Department, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

SEC. 5. TRUST LANDS.

(a) NEW TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, and after the requirements of section 9(a) have been met, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 13: SW 1/4, S 1/2 NE 1/4 SE 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4;

(B) Section 23: N 1/2, N 1/2 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SW 1/4 SE 1/4;

(C) Section 24: NW 1/4, SW 1/4, S 1/2 NE 1/4, N 1/2 SE 1/4; and

(D) Section 25: N 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4.

(2) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 19: W 1/2 E 1/2 NW 1/4, W 1/2 NW 1/4, W 1/2 NE 1/4 SW 1/4, NW 1/4 SW 1/4, S 1/2 SW 1/4;

(B) Section 29: SW 1/4 SW 1/4 NW 1/4, NW 1/4 NW 1/4 SW 1/4, S 1/2 N 1/2 SW 1/4, S 1/2 SW 1/4, S 1/2 NW 1/4 SE 1/4, SW 1/4 SE 1/4;

(C) Section 30: W 1/2, SE 1/4; and

(D) Section 31: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, E 1/2 SW 1/4, N 1/2 NW 1/4 SW 1/4, SE 1/4 NW 1/4 SW 1/4, E 1/2 SW 1/4 SW 1/4, SW 1/4 SW 1/4 SW 1/4.

(b) FUTURE TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 26E., Gila and Salt River Base and Meridian: Section 25: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, NW 1/4, N 1/2 NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4.

(2) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 14: SE 1/4 SW 1/4, SE 1/4;

(B) Section 16: S 1/2 SW 1/4 SE 1/4;

(C) Section 19: S 1/2 SE 1/4 SE 1/4;

(D) Section 20: S 1/2 SW 1/4 SW 1/4, E 1/2 SE 1/4 SE 1/4;

(E) Section 21: N 1/2 NE 1/4, E 1/2 NE 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4 NE 1/4, N 1/2 NE 1/4 SW 1/4, SW 1/4 NE 1/4 SW 1/4, E 1/2 NW 1/4 SW 1/4, SW 1/4 NW 1/4 SW 1/4, W 1/2 SW 1/4 SW 1/4;

(F) Section 22: SW 1/4 NE 1/4 NE 1/4, NW 1/4 NE 1/4, S 1/2 NE 1/4, N 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4 NW 1/4, SE 1/4 SW 1/4 NW 1/4, N 1/2 N 1/2 SE 1/4, N 1/2 NE 1/4 SW 1/4;

(G) Section 24: N 1/2 NE 1/4, S 1/2 SE 1/4;

(H) Section 29: N 1/2 N 1/2;

(I) Section 30: N 1/2 N 1/2, N 1/2 S 1/2 NW 1/4, N 1/2 SW 1/4 NE 1/4; and

(J) Section 36: SE 1/4 SE 1/4 NE 1/4, NE 1/4 NE 1/4 SE 1/4.

(3) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 18: S 1/2 NE 1/4, NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4, S 1/2 NW 1/4 SW 1/4, S 1/2 SW 1/4, N 1/2 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SE 1/4;

(B) Section 30: S 1/2 NE 1/4, W 1/2 NW 1/4 NE 1/4; and

(C) Section 32: N 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, SW 1/4, N 1/2 SE 1/4, SW 1/4 SE 1/4, N 1/2 SE 1/4 SE 1/4, SW 1/4 SE 1/4 SE 1/4.

(c) NEW RESERVATION LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands in Arizona into trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Tribe Reservation in Arizona: Section 34, T. 14 N., R. 26 E., Gila and Salt River Base and Meridian.

(d) LIMITATION ON SECRETARIAL DISCRETION.—The Secretary shall have no discretion regarding the acquisitions described in subsections (a), (b), and (c).

(e) **LANDS REMAINING IN FEE STATUS.**—The Zuni Tribe may seek to have the legal title to additional lands in Arizona, other than the lands described in subsection (a), (b), or (c), taken into trust by the United States for the benefit of the Zuni Indian Tribe pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Zuni Tribe.

(f) **FINAL AGENCY ACTION.**—Any written certification by the Secretary under subparagraph 6.2.B of the Settlement Agreement constitutes final agency action under the Administrative Procedure Act and is reviewable as provided for under chapter 7 of title 5, United States Code.

(g) **NO FEDERAL WATER RIGHTS.**—Lands taken into trust pursuant to subsection (a), (b), or (c) shall not have Federal reserved rights to surface water or groundwater.

(h) **STATE WATER RIGHTS.**—The water rights and uses for the lands taken into trust pursuant to subsection (a) or (c) must be determined under subparagraph 4.1.A and article 5 of the Settlement Agreement. With respect to the lands taken into trust pursuant to subsection (b), the Zuni Tribe retains any rights or claims to water associated with these lands under State law, subject to the terms of the Settlement Agreement.

(i) **FORFEITURE AND ABANDONMENT.**—Water rights that are appurtenant to lands taken into trust pursuant to subsection (a), (b), or (c) shall not be subject to forfeiture and abandonment.

(j) **AD VALOREM TAXES.**—With respect to lands that are taken into trust pursuant to subsection (a) or (b), the Zuni Tribe shall make payments in lieu of all current and future State, county, and local ad valorem property taxes that would otherwise be applicable to those lands if they were not in trust.

(k) **AUTHORITY OF TRIBE.**—For purposes of complying with this section and article 6 of the Settlement Agreement, the Tribe is authorized to enter into—

(1) the Intergovernmental Agreement between the Zuni Tribe, Apache County, Arizona, and the State of Arizona; and

(2) any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement.

(l) **FEDERAL ACKNOWLEDGEMENT OF INTERGOVERNMENTAL AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary shall acknowledge the terms of any intergovernmental agreement entered into by the Tribe under this section.

(2) **NO ABROGATION.**—The Secretary shall not seek to abrogate, in any administrative or judicial action, the terms of any intergovernmental agreement that are consistent with subparagraph 6.2.A of the Settlement Agreement and this Act.

(3) **REMOVAL.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), if a judicial action is commenced during a dispute over any intergovernmental agreement entered into under this section, and the United States is allowed to intervene in such action, the United States shall not remove such action to the Federal courts.

(B) **EXCEPTION.**—The United States may seek removal if—

(i) the action concerns the Secretary's decision regarding the issuance of rights-of-way under section 8(c);

(ii) the action concerns the authority of a Federal agency to administer programs or the issuance of a permit under—

(I) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(II) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(III) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(IV) any other Federal law specifically addressed in intergovernmental agreements; or

(iii) the intergovernmental agreement is inconsistent with a Federal law for the protection of civil rights, public health, or welfare.

(m) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to affect the application of the Act of May 25, 1918 (25 U.S.C. 211) within the State of Arizona.

(n) **DISCLAIMER.**—Nothing in this section repeals, modifies, amends, changes, or otherwise affects the Secretary's obligations to the Zuni Tribe pursuant to the Act entitled "An Act to convey certain lands to the Zuni Indian Tribe for religious purposes" approved August 28, 1984 (Public Law 98-408; 98 Stat. 1533) (and as amended by the Zuni Land Conservation Act of 1990 (Public Law 101-486; 104 Stat. 1174)).

SEC. 6. DEVELOPMENT FUND.

(a) **ESTABLISHMENT OF THE FUND.**—

(1) **IN GENERAL.**—There is established in the Treasury of the United States a fund to be known as the "Zuni Indian Tribe Water Rights Development Fund", to be managed and invested by the Secretary, consisting of—

(A) the amounts authorized to be appropriated in section 4(b); and

(B) the appropriation to be contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement.

(2) **ADDITIONAL DEPOSITS.**—The Secretary shall deposit in the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

(b) **MANAGEMENT OF THE FUND.**—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the "Trust Fund Reform Act"), this Act, and the Settlement Agreement.

(c) **INVESTMENT OF THE FUND.**—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) subsection (b).

(d) AVAILABILITY OF AMOUNTS FROM THE FUND.—The funds authorized to be appropriated pursuant to section 3104(b)(2) and funds contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement shall be available for expenditure or withdrawal only after the requirements of section 9(a) have been met.

(e) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Zuni Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Zuni Tribe spend any funds in accordance with the purposes described in section 4(b).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this Act.

(3) LIABILITY.—If the Zuni Tribe exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Zuni Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this Act that the Zuni Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Zuni Tribe remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Zuni Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

(1) WATER RIGHTS ACQUISITIONS.—Notwithstanding subsection (e), the funds authorized to be appropriated pursuant to section 4(b)(1)—

(A) shall be available upon appropriation for use in accordance with section 4(b)(1); and

(B) shall be distributed by the Secretary to the Zuni Tribe on receipt by the Secretary from the Zuni Tribe of a written notice and a tribal council resolution that describe the purposes for which the funds will be used.

(2) RIGHT TO SET OFF.—In the event the requirements of section 9(a) have not been met and the Settlement Agreement has become null and void under section 9(b), the United States shall be entitled to set off any funds expended or withdrawn from the amount appropriated pursuant to section 4(b)(1), together with any interest accrued, against any claims asserted

by the Zuni Tribe against the United States relating to water rights at the Zuni Heaven Reservation.

(3) **WATER RIGHTS.**—Any water rights acquired with funds described in paragraph (1) shall be credited against any water rights secured by the Zuni Tribe, or the United States on behalf of the Zuni Tribe, for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of claims for those water rights.

(g) **NO PER CAPITA DISTRIBUTIONS.**—No part of the Fund shall be distributed on a per capita basis to members of the Zuni Tribe.

SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a) **FULL SATISFACTION OF MEMBERS' CLAIMS.**—

(1) **IN GENERAL.**—The benefits realized by the Tribe and its members under this Act, including retention of any claims and rights, shall constitute full and complete satisfaction of all members' claims for—

(A) water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 9(a) and any time thereafter; and

(B) injuries to water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent, claims for damages for deprivation of water rights, and claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 9(a).

(2) **NO RECOGNITION OR ESTABLISHMENT OF INDIVIDUAL WATER RIGHT.**—Nothing in this Act recognizes or establishes any right of a member of the Tribe to water on the Reservation.

(b) **TRIBE AND UNITED STATES AUTHORIZATION AND WATER QUANTITY WAIVERS.**—The Tribe, on behalf of itself and its members and the Secretary on behalf of the United States in its capacity as trustee for the Zuni Tribe and its members, are authorized, as part of the performance of their obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraph 11.4 of the Settlement Agreement, for claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 9(a) and any time thereafter, except for claims within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 9(a); and

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater,

surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors.

(c) **TRIBAL WAIVERS AGAINST THE UNITED STATES.**—The Tribe is authorized, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraphs 11.4 and 11.6 of the Settlement Agreement, for claims against the United States (acting in its capacity as trustee for the Zuni Tribe or its members, or otherwise acting on behalf of the Zuni Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the effective date described in section 9(a) and any time thereafter;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the effective date described in section 9(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the Little Colorado River basin in Arizona from time immemorial through the effective date described in section 9(a); and

(5) claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(d) **TRIBAL WAIVER OF WATER QUALITY CLAIMS AND INTERFERENCE WITH TRUST CLAIMS.**—

(1) **CLAIMS AGAINST THE STATE AND OTHERS.**—

(A) **INTERFERENCE WITH TRUST RESPONSIBILITY.**—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under the Settlement Agreement, to waive and release all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for claims of interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(B) **INJURY OR THREAT OF INJURY TO WATER QUALITY.**—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under

the Settlement Agreement, to waive and release, subject to paragraphs 11.4, 11.6, and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i) any and all past and present claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury to water quality accruing from time immemorial through the effective date described in section 9(a), for lands within the Little Colorado River basin in the State of Arizona; and

(ii) any and all future claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury or threat of injury to water quality, accruing after the effective date described in section 9(a), for any lands within the Eastern LCR basin caused by—

(I) the lawful diversion or use of surface water;

(II) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(III) the Parties' performance of any obligations under the Settlement Agreement;

(IV) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(V) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(VI) any combination of the causes described in subclauses (I) through (V).

(2) CLAIMS OF THE UNITED STATES.—The Tribe, on behalf of itself and its members, is authorized to waive its right to request that the United States bring—

(A) any claims for injuries to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) or any other applicable statute, for lands within the Little Colorado River Basin in the State of Arizona, accruing from time immemorial through the effective date described in section 9(a); and

(B) any future claims for injuries or threat of injury to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et

seq.), or any other applicable statute, accruing after the effective date described in section 9(a), for any lands within the Eastern LCR basin, caused by—

- (i) the lawful diversion or use of surface water;
- (ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;
- (iii) the Parties' performance of any obligations under the Settlement Agreement;
- (iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
- (v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (vi) any combination of the causes described in clauses (i) through (v).

(3) LIMITATIONS.—Notwithstanding the authorization for the Tribe's waiver of future water quality claims in paragraph (1)(B)(ii) and the waiver in paragraph (2)(B), the Tribe, on behalf of itself and its members, retains any statutory claims for injury or threat of injury to water quality under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), as described in subparagraph 11.4(D) (3) and (4) of the Settlement Agreement, that accrue at least 30 years after the effective date described in section 9(a).

(e) WAIVER OF UNITED STATES WATER QUALITY CLAIMS RELATED TO SETTLEMENT LAND AND WATER.—

(1) PAST AND PRESENT CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all past and present common law claims accruing from time immemorial through the effective date described in section 9(a) arising from or relating to water quality in which the injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Little Colorado River basin in the State of Arizona; and

(B) all past and present natural resource damage claims accruing through the effective date described in section 9(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Little Colorado River basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations.

(2) FUTURE CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States

waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all future common law claims arising from or relating to water quality in which the injury or threat of injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Eastern LCR basin in Arizona accruing after the effective date described in section 9(a) caused by—

- (i) the lawful diversion or use of surface water;
- (ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;
- (iii) the Parties' performance of any obligations under the Settlement Agreement;
- (iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
- (v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (vi) any combination of the causes described in clauses (i) through (v); and

(B) all future natural resource damage claims accruing after the effective date described in section 9(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Eastern LCR basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations, caused by—

- (i) the lawful diversion or use of surface water;
- (ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;
- (iii) the Parties' performance of their obligations under this Settlement Agreement;
- (iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
- (v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (vi) any combination of the causes described in clauses (i) through (v).

(f) EFFECT.—Subject to subsections (b) and (e), nothing in this Act or the Settlement Agreement affects any right of the United States, or the State of Arizona, to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) **WAIVER OF SOVEREIGN IMMUNITY.**—If any party to the Settlement Agreement or a Pumping Protection Agreement files a lawsuit only relating directly to the interpretation or enforcement of this Act, the Settlement Agreement, an agreement described in paragraph (1), (2), or (3) of section 4(c), or a Pumping Protection Agreement, naming the United States or the Tribe as a party, or if any other landowner or water user in the Little Colorado River basin in Arizona files a lawsuit only relating directly to the interpretation or enforcement of article 11, the rights of de minimis users in subparagraph 4.2.D or the rights of underground water users under article 5 of the Settlement Agreement, naming the United States or the Tribe as a party—

(1) the United States, the Tribe, or both may be added as a party to any such litigation, and any claim by the United States or the Tribe to sovereign immunity from such suit is hereby waived, other than with respect to claims for monetary awards except as specifically provided for in the Settlement Agreement; and

(2) the Tribe may waive its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the Intergovernmental Agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement, other than with respect to claims for monetary awards except as specifically provided in the Intergovernmental Agreement.

(b) **TRIBAL USE OF WATER.**—

(1) **IN GENERAL.**—With respect to water rights made available under the Settlement Agreement and used on the Zuni Heaven Reservation—

(A) such water rights shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment;

(B) State law shall not apply to water uses on the Reservation;

(C) the State of Arizona may not regulate or tax such water rights or uses (except that the court with jurisdiction over the decree entered pursuant to the Settlement Agreement or the Norviel Decree Court may assess administrative fees for delivery of this water);

(D) subject to paragraph 7.7 of the Settlement Agreement, the Zuni Tribe shall use water made available to the Zuni Tribe under the Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable;

(E) water use by the Zuni Tribe or the United States on behalf of the Zuni Tribe for wildlife or instream flow use, or for irrigation to establish or maintain wetland on the Reservation, shall be considered to be consistent with the purposes of the Reservation; and

(F)(i) not later than 3 years after the deadline described in section 9(b), the Zuni Tribe shall adopt a water code to be approved by the Secretary for regulation of water use on the lands identified in subsections (a) and (b) of section 5 that is reasonably equivalent to State water law (including statutes relating to dam safety and groundwater management); and

Deadline.

(ii) until such date as the Zuni Tribe adopts a water code described in clause (i), the Secretary, in consultation with the State of Arizona, shall administer water use and water regulation on lands described in that clause in a manner that is reasonably equivalent to State law (including statutes relating to dam safety and groundwater management).

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Zuni Tribe or the United States shall not sell, lease, transfer, or transport water made available for use on the Zuni Heaven Reservation to any other place.

(B) EXCEPTION.—Water made available to the Zuni Tribe or the United States for use on the Zuni Heaven Reservation may be severed and transferred from the Reservation to other Zuni Lands if the severance and transfer is accomplished in accordance with State law (and once transferred to any lands held in fee, such water shall be subject to State law).

(c) RIGHTS-OF-WAY.—

(1) NEW AND FUTURE TRUST LAND.—The land taken into trust under subsections (a) and (b) of section 5 shall be subject to existing easements and rights-of-way.

(2) ADDITIONAL RIGHTS-OF-WAY.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, in consultation with the Tribe, shall grant additional rights-of-way or expansions of existing rights-of-way for roads, utilities, and other accommodations to adjoining landowners if—

(i) the proposed right-of-way is necessary to the needs of the applicant;

(ii) the proposed right-of-way will not cause significant and substantial harm to the Tribe's wetland restoration project or religious practices; and

(iii) the proposed right-of-way acquisition will comply with the procedures in part 169 of title 25, Code of Federal Regulations, not inconsistent with this subsection and other generally applicable Federal laws unrelated to the acquisition of interests across trust lands.

(B) ALTERNATIVES.—If the criteria described in clauses

(i) through (iii) of subparagraph (A) are not met, the Secretary may propose an alternative right-of-way, or other accommodation that complies with the criteria.

(d) CERTAIN CLAIMS PROHIBITED.—The United States shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Settlement Agreement against any Indian-owned land within the Tribe's Reservation, and no assessment shall be made in regard to such costs against such lands.

(e) VESTED RIGHTS.—Except as described in paragraph 5.3 of the Settlement Agreement (recognizing the Zuni Tribe's use of 1,500 acre-feet per annum of groundwater) this Act and the Settlement Agreement do not create any vested right to groundwater under Federal or State law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under Federal or State law, whether through this Act, the

Settlement Agreement, or by incorporation of any abstract, agreement, or stipulation prepared under the Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph (1), (2), or (3) of section 4(c) and paragraph 5.8 of the Settlement Agreement, as among themselves, shall be as stated in those agreements.

(f) OTHER CLAIMS.—Nothing in the Settlement Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Zuni Indian Tribe.

(g) NO MAJOR FEDERAL ACTION.—

(1) IN GENERAL.—Execution of the Settlement Agreement by the Secretary as provided for in section 4(a) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(2) SETTLEMENT AGREEMENT.—In implementing the Settlement Agreement, the Secretary shall comply with all aspects of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) all other applicable environmental laws (including regulations).

SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AUTHORIZATIONS.

(a) IN GENERAL.—The waiver and release authorizations contained in subsections (b) and (c) of section 7 shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of all the following findings:

(1) This Act has been enacted in a form approved by the parties in paragraph 3.1.A of the Settlement Agreement.

(2) The funds authorized by section 4(b) have been appropriated and deposited into the Fund.

(3) The State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement.

(4) The Zuni Indian Tribe has either purchased or acquired the right to purchase at least 2,350 acre-feet per annum of surface water rights, or waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(5) Pursuant to subparagraph 3.1.D of the Settlement Agreement, the severance and transfer of surface water rights that the Tribe owns or has the right to purchase have been conditionally approved, or the Tribe has waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(6) Pursuant to subparagraph 3.1.E of the Settlement Agreement, the Tribe and Lyman Water Company have executed an agreement relating to the process of the severance and transfer of surface water rights acquired by the Zuni Tribe or the United States, the pass-through, use, or storage of the Tribe's surface water rights in Lyman Lake, and the operation of Lyman Dam.

(7) Pursuant to subparagraph 3.1.F of the Settlement Agreement, all the parties to the Settlement Agreement have

Federal Register,
publication.

agreed and stipulated to certain Arizona Game and Fish abstracts of water uses.

(8) Pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed.

(9) Pursuant to subparagraph 3.1.H of the Settlement Agreement, the Zuni Tribe, Apache County, Arizona and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement.

(10) The Zuni Tribe has acquired title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(11) The Settlement Agreement has been modified if and to the extent it is in conflict with this Act and such modification has been agreed to by all the parties to the Settlement Agreement.

(12) A court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree.

(b) DEADLINE FOR EFFECTIVE DATE.—If the publication in the Federal Register required under subsection (a) has not occurred by December 31, 2006, sections 4 and 5, and any agreements entered into pursuant to sections 4 and 5 (including the Settlement Agreement and the Intergovernmental Agreement) shall not thereafter be effective and shall be null and void. Any funds and the interest accrued thereon appropriated pursuant to section 4(b)(2) shall revert to the Treasury, and any funds and the interest accrued thereon appropriated pursuant to paragraph 7.6 of the Settlement Agreement shall revert to the State of Arizona.

Approved June 23, 2003.

LEGISLATIVE HISTORY—S. 222:

SENATE REPORTS: No. 108-18 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Mar. 13, considered and passed Senate.







June 3, considered and rejected in House.

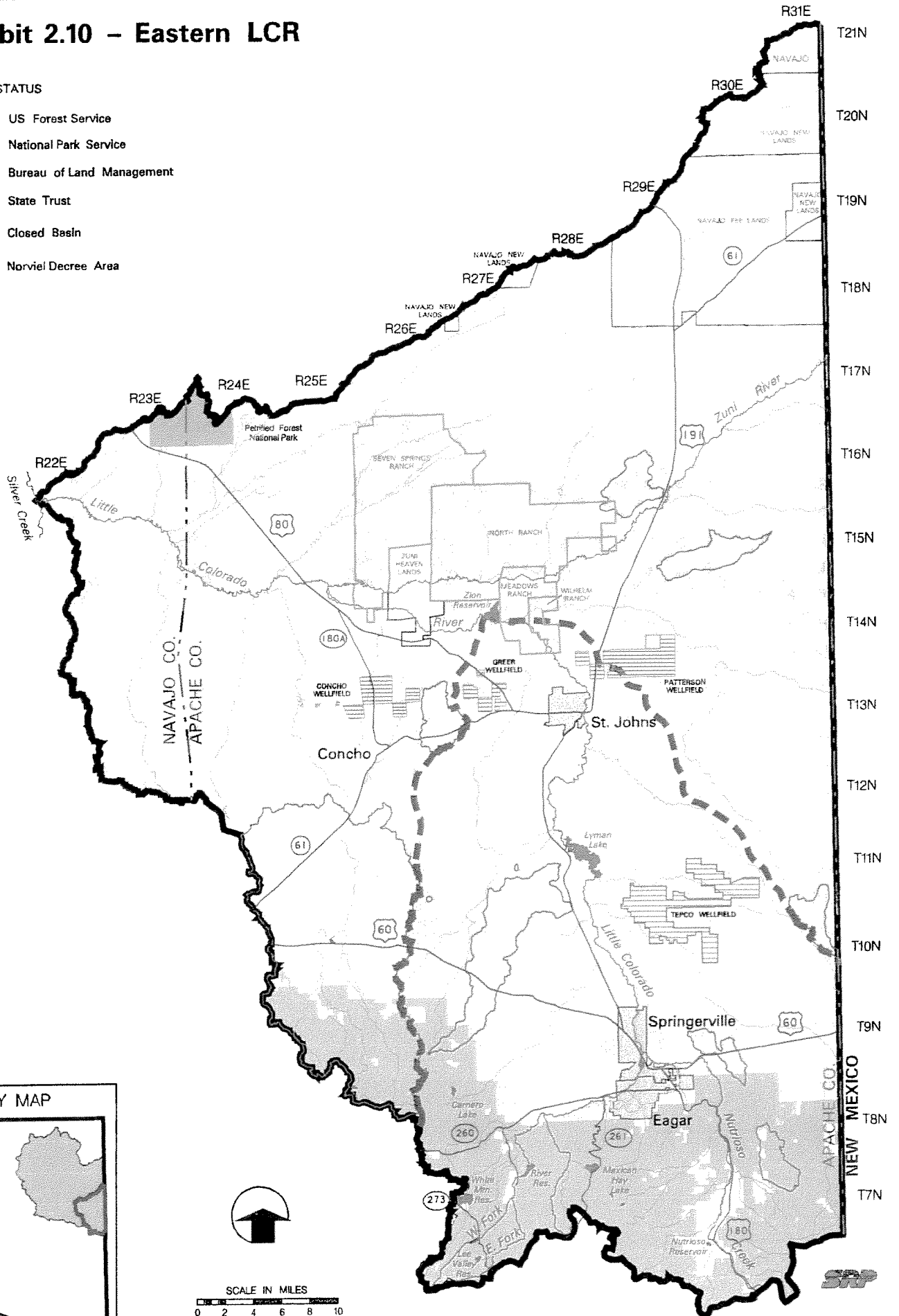
June 5, considered and passed House.

○

Exhibit 2.10 – Eastern LCR

LAND STATUS

-  US Forest Service
-  National Park Service
-  Bureau of Land Management
-  State Trust
-  Closed Basin
-  Norviel Decree Area



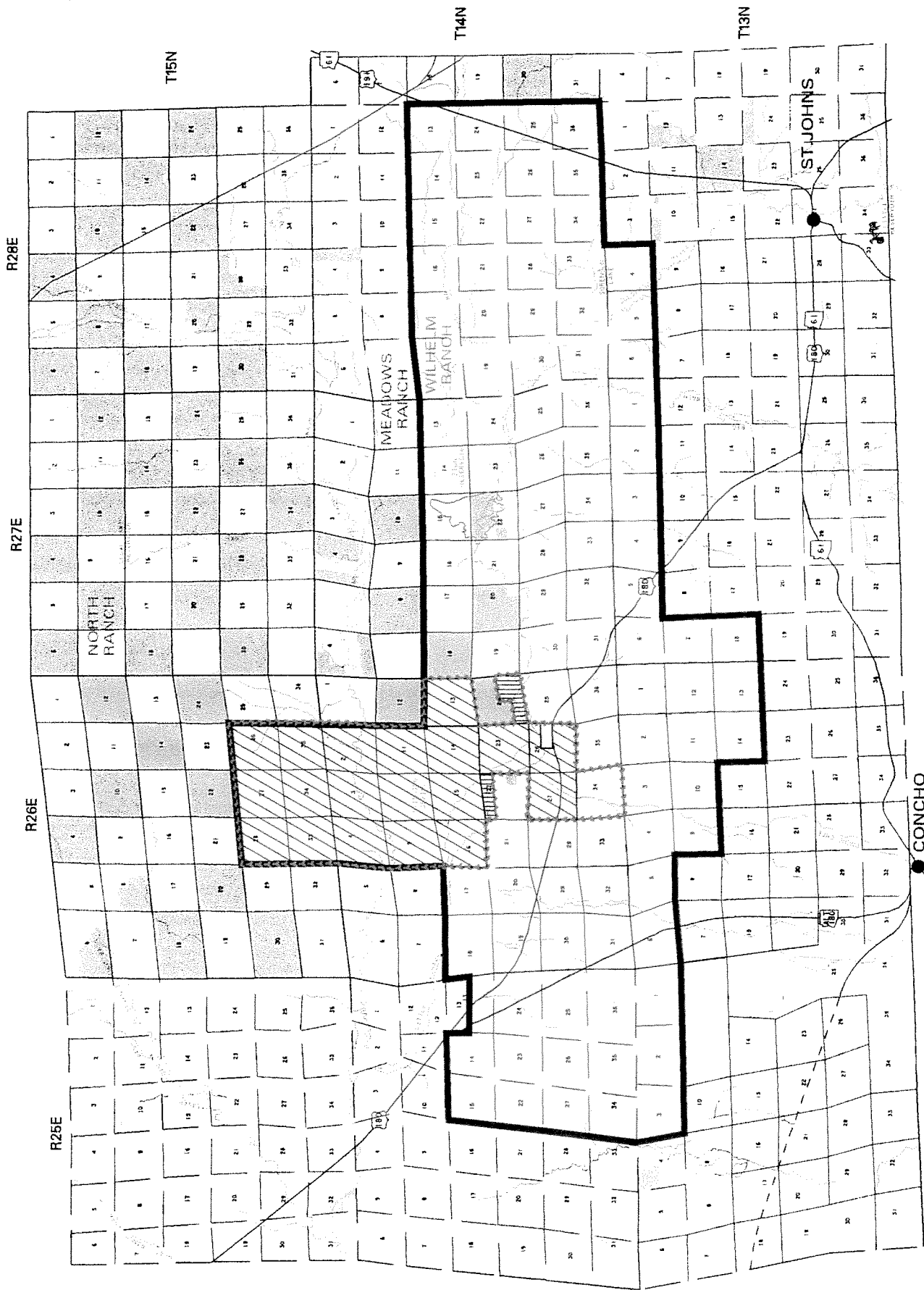


Exhibit 2.48 ZUNI PUMPING LANDS

Zuni Hunt Valley Area Irrigation Diversions—Surface Water

Facility Name: Zuni Hunt Valley Area Historic Irrigation Diversions—Surface Water
Water Right Holder: Zuni Tribe
Water Right Number: DV 1,2,3,4, & 5
Statement of Claimant #: 39-88868 & 39-82094 (see remark 4)

Data Source*

Water Source(s)	Little Colorado River (LCR), Concho Creek	1,2,4
Acres Served	2493 (see remarks 2,6, & 7)	2,4
Total Diversion	Maximum historical beneficial use (see remarks 8,9, & 11)	
Diversion Capacity	DV1: North side LCR -- 5.3 cfs (see remarks 8 & 11) DV2: South side LCR -- max. historical capacity (see remarks 8 & 11) DV3: Concho Creek -- maximum historical capacity DV4: North side LCR -- max. historical capacity (see remark 4) DV5: Concho Creek -- maximum historical capacity	2
Beneficial Use	Irrigation (see remark 7)	1,2,4
Diversion Location(s)	DV1: SESE, S15, T14N,R26E (North side LCR) (see remark 3) DV2: SWSE, S15, T14N,R26E (South side LCR) (see remark 3) DV3: SESW, S27, T14N,R26E (Concho Creek) (see remark 3) DV4: NENW, S17, T14N,R26E (North side LCR) (see remarks 3 & 4) DV5: NESW, S34, T14N, R26E (Concho Creek) (see remark 3)	1,2,4
Use Locations	DV1: S6,7,8,9,10,15,16, T14N,R26E (see remarks 7 & 10) DV2: S15,16,T14N,R26E (see remarks 7 & 10) DV3: S27,T14N,R26E (see remarks 6, 7 & 10) DV4: S8, T14N,R26E (see remark 4) DV5: S34,T14N, R26E (see remarks 6,7, & 10)	1,2,4
Period of Use	February through December	1,2,4
Priority Dates	10/25/1897 (see remarks 5 & 9) for 2291 acres (see remark 2) from LCR 1890 for 202 acres from Concho Creek (see remarks 6 & 9)	2,4
Basis of Right	1921 Supplemental Decree, CWR 559, 39-82094, 39-88868, 36-27960, 36-29377, 36-72667, 36-72668 (see remarks 4,5, & 6)	1,4
Remarks:	<ol style="list-style-type: none"> 1. Data Source 4—1921 Supplemental Decree, CWR 559, 36-27960, 36-29377, 36-72667, 36-72668, 10-0102239.0301(1897 Notice of Appropriation by Issac Isaacson), and aerial photos of the Hunt Valley area. 2. Acres served—determined by measuring irrigated areas shown on maps in Data Source 2, plus CWR 559 for that portion of surface water irrigation in section 27. 3. Diversion locations -- based on aerial photographs & USGS quad maps (with guidance from Data Sources 1 & 2), CWR 559, & 36-72668 4. Claims 39-88868 & 36-27960 filed by the Seven Springs Ranch apply to irrigation on the north side of the LCR from DV1 (see remark 5 regarding Zion Reservoir). Claim 36-29377 applies to irrigation on the south side of the LCR on Zuni & Isaacson lands. Claim 36-72668 applies to DV4. Claim 39-82094 filed by Ellsworth applies to irrigation from DV5. 5. A 1921 Supplemental Decree ruling on the Udall Reservoir Company awarded irrigation from the LCR for 4550 acres with a October 25, 1897 priority date in an area generally including the current use area listed in this abstract. See the Lyman Reservoir abstract for discussion of the waiver of Udall (Zion) Reservoir storage rights to the Lyman Water Company. 6. The 1890 priority date for the Concho Creek diversions DV3 & DV5 is based on filing 36-72667. The amount of irrigated acres served from Concho Creek is 101 acres in section 34 (based on maps in Data Source 2) and 101 acres (based on CWR 559) of the 232 irrigated acres mapped by ADWR in section 27, T14N,R26E. The remaining irrigation in section 27 is from groundwater. 7. This abstract includes irrigation uses on the Zuni Reservation as well as the recently acquired Seven Springs Ranch, and includes associated land leased from the State in section 34, T14N,R26E. 8. Total Diversion and Diversion Capacities -- DV1 & DV2 are shared prorata based on acreage historically irrigated from these facilities (see the Isaacson & Crosby abstracts). 9. The service area described in this abstract has historically never made a call and will not make a call on upstream Norviel Decree and Concho Decree rights. 10. Pursuant to the settlement agreement, the Tribe can use water as deemed appropriate anywhere on the Reservation. 11. Any new water right acquisitions by the Tribe, not associated with either DV1 or DV2, do not have to be shared prorata with Isaacson or Crosby. 	

***Data Source**

- 1=Statement of Claimant
- 2=ADWR Inventory of Water Uses
- 3= Silver Creek HSR
- 4= Other—See remarks

Zuni Hunt Valley Large Irrigation Wells

Facility Name: Zuni Hunt Valley Large Irrigation Wells
Water Right Holder: Zuni Tribe
Water Right Number: N/A
Statement of Claimant #: N/A

Well Registration Number	Well Legal Description
55-600440	SESE, S27, T14N, R26E
55-626054	SESE, S6, T14N, R26E
55-626055	NENE, S7, T14N, R26E
55-626056	SE, S18, T14N, R26E
55-626057	SE, S18, T14N, R26E

Zuni Meadows Area Acquisition Irrigation Diversions

Facility Name: Zuni Meadows Area Historic Irrigation Diversions
Water Right Holder: Zuni Tribe
Water Right Number: DV 1,2,3,4, 5 & 6
Statement of Claimant #: 39-89021

Data Source*

Water Source(s)	Little Colorado River (LCR), Carrizo Wash, Big Hollow Wash	1,2,4
Acres Served	1594 (see remarks 2,4,& 5)	2
Total Diversion	Maximum historical beneficial use	
Diversion Capacity	DV1: West Side LCR -- 10.95 cfs DV2: East Side LCR -- 13.00 cfs DV3: Big Hollow Wash —maximum historical capacity DV4: North Side LCR -- 2.00 cfs DV5: Carrizo Wash – maximum historical capacity DV6: North Side LCR—maximum historical capacity	2
Beneficial Use	Irrigation	1,2,4
Diversion Location(s)	DV1: NESE, S5, T13N,R28E (West side LCR) (see remark 3) DV2 : NESE, S5, T13N,R28E (East side LCR) (see remark 3) DV3: SWNW, S31,T14N,R28E (Big Hollow Wash)(see remark 3) DV4: NWNW, S30, T14N,R28E (North side LCR) (see remark 3) DV5: NENE, S24, T14N,R27E (Carrizo Wash) (see remark 3) DV6: SESE, S24, T14N,R27E (North side LCR) (see remark 3)	1,2,4
Use Locations	DV1 & 2: S25,T14N,R27E; S19,29,30,31,T14N,R28E (see remark 4) DV3: S25,T14N,R27E; S30,T14N,R28E (see remark 4) DV4 & 5: S13,23,24,T14N,R27E (see remark 4) DV6: S23,24,T14N,R27E (see remark 4)	2,4
Period of Use	April 15 to September 15 for decreed acres. Non-decreed acres receive water outside the irrigation season and during flood flows.	4
Priority Dates	1881 for 170 decreed acres from LCR (rights #1918-13G & 13I) 1882 for 15 decreed acres from LCR (right #1923-61A) 1882 for 80 decreed acres from LCR flood water (right #1923-61B) 1884 for same 150 acres as right #1918-13G from LCR (right #1918-16C) 1916 for 30 decreed acres from LCR (right #1923-60A) 1916 for 35 decreed acres from Big Hollow Wash flood water (right #1923-60B) 1916 (per 36-28628 & 28629) for remaining 1164 non-decreed acres from LCR 1940 for 100 acres from Carrizo Wash, per CWR 1174	1,2,4
Basis of Right	Norviel Decree, CWR's 74,75,& 1174, 39-89021, 36-28628, 36-28629 , & shares in St. Johns Irrigation Company.	1,2,4
Remarks:	1. Data Source 4—Norviel Decree, CWR 74 (covers decreed right #60 A & B), CWR 75 (covers decreed right #61A & B), CWR 1174 (Carrizo Wash), 36-28628 & 36-28629(LCR) and aerial photos of the Meadows area. 2. Acres served—determined by measuring irrigated areas shown on maps in Data Source 2. 3. Diversion locations are based on aerial photographs & USGS quad maps with guidance from Data Sources 1 & 2. Data Source 2 lists 3 diversions in NESE,S5,T13N,R28E; however, claims and filings indicate only 2 diversions at this location. 4. This abstract includes irrigation uses on the former Platt & Wilhelm ranches but does not include claimed irrigation by the State on associated leased State land. 5. In addition to the above decreed rights, the Zuni Meadows area is also served by 322 shares of St. Johns Irr. Co. based on work sessions with St. Johns Irr. Co.	
*Data Source 1=Statement of Claimant 2=ADWR Inventory of Water Uses 3= Silver Creek HSR 4= Other—See remarks		

Zuni River Area Historic Irrigation

Facility Name: Zuni River Area Historic Irrigation
Water Right Holder: Zuni Tribe
Water Right Number: N/A
Statement of Claimant #: 39-89022 (see remark 2)

Data Source*

Water Source	Zuni River flood waters	1,4
Acres Served	801 (see remark 3)	4
Total Diversion	Maximum historical beneficial use	
Diversion Capacity	Maximum historical capacity	
Beneficial Use	Irrigation	1,4
Diversion Location	NE, S5, T14N,R28E plus other locations on various channels throughout S 6, T14N,R28E & S 1,T14N,R27E (see remark 4)	1,4
Use Locations	S 1, T14N,R27E (see remark 4)	1,4
Period of Use	July through October (per 36-28627)	4
Priority Date	1916	1,4
Basis of Right	39-89022 and 36-28627 (see remark 2)	1,4
Remarks:	<ol style="list-style-type: none"> 1. Data Source 4: 36-28627 and 1984 aerial photos of the Zuni River area 2. 39-89022 was originally filed by Limited Partnership of Meadows Ranch, while 36-28627 was filed by H.B. Heap. Both are former owners of land now owned by the Zuni Tribe. 3. Acres served based on measurements from aerial photo interpretation within section 1,T14N,R27E (see remark 4). 4. Diversion and Use Locations—aerial photos indicate a major diversion point from the main channel of the Zuni River in the NE, section 5, T14N,R28E upstream of the irrigated area. Claim 39-89022 indicates and aerial photos verify that the Zuni River water also spreads out into several channels or stringers in section 6,T14N,R28E and sections 1 & 2, T14N,R27E from which a network of several spreaders and headgates further spread out the water onto the land in these sections . This abstract covers irrigation only in section 1,T14N,R27E owned by Zuni Tribe, and does not include claimed irrigation on land it leases from the State of Arizona in section 6,T14N,R28E, and section 2,T14N, R27E. 	

***Data Source**

- 1=Statement of Claimant
- 2=ADWR Inventory of Water Uses
- 3= Silver Creek HSR
- 4= Other—See remarks

Exhibit 4.1.C (1)

St. Johns Irrigation and Ditch Company Diversions

Facility Name:	St. Johns Irrigation and Ditch Company Ditches	Data Source*
Water Right Holder:	St. Johns Irrigation and Ditch Company	1, 2, 4
Water Right Number:	DV 1, 2, and 3	1, 2, 4
Statement of Claimant #:	39-85024	1

Water Source(s)	Little Colorado River	1, 2, 4
Acres Served	1,821 acres (<i>See Remarks</i>)	4
Total Diversion	Maximum historical beneficial use	—
Diversion Capacity (cfs)	1. 15.0 (Little Reservoir filling ditch) 2. 15.0 (Egypt Ditch, east side) 3. 17.8 (West Ditch) (<i>See Remarks</i> for additional diversion information)	2, 4
Beneficial Use(s)	Irrigation	1
Diversion Location(s)	1. NW SW S2, T12N, R28E (Little Reservoir filing ditch) 2. NESW S27, T13N, R28E (Egypt Ditch, east side) 3. NESW S27, T13N, R28E (West Ditch) (<i>See Remarks</i> for additional diversion information)	2
Use Location(s)	St. Johns Irrigation and Ditch Company and shareholder lands in: S4, 5, 9, 10, 15, 16, 21, 22, 27, 28, 33, 34, T13N, R28E; S33, T14N, R28E (<i>See Remarks</i>)	4
Period of Use	April 15 to September 15 unless winter irrigation is required to maintain perennial crops during a dry year. (<i>See Remarks</i>)	4
Priority Date	750 ac. (1875, 1881); 19 ac. (1877); 750 ac. (1885); 302 ac. (1888); certificate for supplemental supply (11/10/1921) (<i>See Remarks</i>)	1, 4
Basis of Right	Norviel Decree, Certificate of Water Right	1, 4
Remarks	<div> <p>*Data Source 1 = Statement of Claimant 2 = ADWR Inventory of Water Uses 3 = Silver Creek HSR 4 = Other — <i>See Remarks</i></p> </div> <ol style="list-style-type: none"> 1. Data Source 4 — Norviel Decree and Apache County Superior Court records; St. Johns Irrigation and Ditch Company information; Certificate of Water Right No. 87. 2. Acres — Based on the decreed acreages for 1918 Norviel Decree rights 5D/13H, 9C, 17B; 20B, and 20C. Certificate of Water Right No. 87 provides a supplemental water supply to 70 acres of decreed rights. 3. Diversions and Uses — Historical diversions of water by the St. Johns Irrigation and Ditch Company include ditches on both sides of the Little Colorado River in Section 5, Township 13N, Range 28E for delivery of water to shareholder land in Section 5, Township 13N, Range 28E and 322 shares of water to shareholder land in the Meadows and Wilhelm Ranches, Township 14N, Range 28E. Diversions of up to 400 AFA are delivered to Little Reservoir by the Lyman Canal Company. <i>See Norviel Decree</i> Judgement dated November 30, 1948 and the abstracts for Little Reservoir and Lyman Reservoir. SJIC also delivers water to Rights 9B, 10A, 10B, and 11F in S2, T12N, R28E and S 34, T13N, R28E; however, these decreed rights are not owned by SJIC. 4. Period of Use — Additional exceptions to the period of use are provided in the Norviel Decree. 5. Stockholder use of water is based on the stock shares held by the stockholder in proportion to all outstanding shares, and other provisions of the bylaws. 6. The acres served, diversion locations, use locations, and priority dates may be expanded to include any other water rights or uses that are later determined to have been owned by SJIC on the Effective Date of the Zuni Indian Tribe Water Rights Settlement Agreement. 	

Exhibit 4.1.C (2)

Little Reservoir

Facility Name:	Little Reservoir	Data Source*
Water Right Holder:	St. Johns Irrigation and Ditch Company	1, 2, 4
Water Right Number:	PS1	1, 2, 4
Statement of Claimant #:	39-85024	1

Water Source(s)	Little Colorado River	1, 2, 4
Acres Served	1,821 acres (<i>See Remarks</i>)	4
Total Diversion	419.48 af capacity (<i>See Remarks</i>)	1, 4
Diversion Capacity (cfs)	15.0 plus Lyman Canal (<i>See Remarks</i>)	
Beneficial Use(s)	Irrigation	1, 4
Diversion Location(s)	S9, T11N, R28E (Lyman Reservoir and Canal); NWSW S2, T12, R28E	1, 4
Use Location(s)	St. Johns Irrigation and Ditch Company and shareholder lands in: S4, 5, 9, 10, 15, 16, 21, 22, 27, 28, 33, 34, T13N, R28E; S33, T14N, R28E (<i>See Remarks</i>)	4
Period of Use	Reservoir filling between September 15 and April 15 plus deliveries from the Lyman Canal between April 15 and July 1. (<i>See Remarks</i>)	1, 4
Priority Date	1886 (<i>See Remarks</i>)	1, 4
Basis of Right	Norviel Decree	1, 4
Remarks	<ol style="list-style-type: none"> 1. Data Source 4 — Norviel Decree and Apache County Superior Court records. 2. Acres — Based on the decreed acreages for 1918 Norviel Decree rights 5D/13H, 9C, 17B, 20B, and 20C. This is a supplemental supply for the same shareholder lands described in the abstract for DV1, DV2, and DV3 of the St. Johns Irrigation and Ditch Company. 3. Total Diversion — Historical use includes operation for continuous fills including 400 af to be delivered through the Lyman Canal—200 af on or before May 15, 200 af between June 15 and July 1 of each year. 4. Diversion Capacity — A portion of Lyman Canal capacity is used to fill Little Reservoir. The capacity of the direct diversion from the Little Colorado River also is listed with the abstract of SJIC diversions. 5. Diversions and Uses — Historical diversions of water by the St. Johns Irrigation and Ditch Company include ditches on both sides of the Little Colorado River in Section 5, Township 13N, Range 28E for delivery of water to shareholder land in Section 5, Township 13N, Range 28 E and 322 shares of water to shareholder land in the Meadows and Wilhelm Ranches, Township 14N, Range 28E. Diversions of up to 400 AFA are delivered to Little Reservoir by the Lyman Canal Company. <i>See Norviel Decree Judgement dated November 30, 1948 and the abstracts for Little Reservoir and Lyman Reservoir.</i> Although water stored in Little Reservoir cannot be directly used on certain shareholder lands located above the delivery system from the reservoir, these lands benefit from the stored water because they receive a proportionate share of all water available to SJIC. SJIC also delivers water to Rights 9B, 10A, 10B, and 11F in S2, T12N, R28E and S 34, T13N, R28E; however, these decreed rights are not owned by SJIC. 6. Period of Use — Additional exceptions to the period of use are provided in the Norviel Decree. 7. Priority Date — Second Reservoir right under the 1918 Norviel Decree. 8. Stockholder use of water is based on the stock shares held by the stockholder in proportion to all outstanding shares, and other provisions of the bylaws. 9. The acres served, diversion locations, use locations, and priority dates may be expanded to include any other water rights or uses that are later determined to have been owned by SJIC on the Effective Date of the Zuni Indian Tribe Water Rights Settlement Agreement. 	

***Data Source**

- 1 = Statement of Claimant
- 2 = ADWR Inventory of Water Uses
- 3 = Silver Creek HSR
- 4 = Other — *See Remarks*

Exhibit 4.1.C (3)

Lyman Reservoir

Facility Name:	Lyman Reservoir	Data Source*
Water Right Holder:	Lyman Water Company	1, 2, 4
Water Right Number:	PS1	1, 2, 4
Statement of Claimant #:	39-89196	1

Water Source(s)	Little Colorado River	1, 2, 4
Acres Served	Up to 2,500 acres	2
Total Diversion	32,964 AF capacity (<i>See Remarks</i>)	1, 4
Diversion Capacity (cfs)	74 cfs	2
Beneficial Use(s)	Irrigation	1, 4
Diversion Location(s)	S9, T11N, R28E	1, 4
Use Location(s)	Lyman Water Company shareholder lands in: S5, T11N, R28E; S4, 5, 7, 8, 17-19, 29, 30, T12N, R28E; S7, 8, 17-21, 27-33, T13N, R28E; S35, 36, T13N, R27E	
Period of Use	April 15 to September 15 unless winter irrigation is required to maintain perennial crops during a dry year. (<i>See Remarks</i>)	4
Priority Date	February 3, 1911 (<i>See Remarks</i>)	4
Basis of Right	Norviel Decree	4
Remarks	<p>1. Data Source 4 — Information from Norviel Decree.</p> <p>2. Total Diversion — 4,500 AF is dead storage, 28,464 AF is active capacity (Norviel Decree). Historical use includes operation for continuous fills subject to releases for senior downstream water rights and the provisions of the Norviel Decree. One of these provisions is for delivery of up to 400 AFA to Little Reservoir through the Lyman Canal for the benefit of, and under the decreed right of, St. Johns Irrigation and Ditch Company. <i>See Norviel Decree Judgement</i> dated November 30, 1948. Historical operation is subject to modification as a result of settlement or adjudication of Zuni Pueblo claims to water.</p> <p>3. Priority Date — The storage rights of Lyman Reservoir incorporate the Fifth Right under the Norviel Decree for First Salado Reservoir (1894, 1,300 AF) and the Seventh Right under the Norviel Decree for Big Salado Reservoir (1898, 17,260 AF) conveyed by St. Johns Irrigation and Ditch Company to Lyman Water Company on September 3, 1918. The storage rights of Lyman Reservoir also include a waiver for 9,532 AF with a priority date of October 25, 1897 from the Udall Reservoir Company. The 1894 storage appropriation of 900 AF was quit-claimed from the Meadows Reservoir Irrigation Company to the Udall Reservoir Company prior to the waiver given to Lyman Water Company as described above.</p> <p>4. Period of Use — Additional exceptions to the period of use are provided in the Norviel Decree.</p> <p>5. Stockholder use of water is based on the stock shares held by the stockholder in proportion to all outstanding shares, and other provisions of the bylaws.</p>	

*Data Source

- 1 = Statement of Claimant
- 2 = ADWR Inventory of Water Uses
- 3 = Silver Creek HSR
- 4 = Other — *See Remarks*



SUPERIOR COURT OF ARIZONA
Apache County

MICHAEL C. NELSON
Presiding Judge

November 24, 1999

Steve Crosby
P.O. Box 533
St. Johns, AZ 85936

RE: Zuni Water Rights Settlement

Dear Mr. Crosby:

This is a follow-up to the informational meeting on the proposed Zuni Water Rights Settlement on September 14 that you attended. As we discussed at that meeting, one of the components of the possible settlement is that all parties to the agreement would agree to the entry of a decree that recognizes existing surface water uses on your property as described below (also see Article 4.2.a below). The relevant portions of the draft agreement reads as follows:

ARTICLE 4 – SURFACE WATER RIGHTS [SWRs]

4.1 Adjudicating Existing Surface Water Uses in the Eastern LCR Basin Based on State Law

- a. Zuni Lands Abstracts. Existing surface water uses on Zuni Lands are described in abstracts attached hereto as Exhibits 4.1.a et seq. Abstracts shall be filed with the Decree Court in the same manner as stipulations described in subparagraphs 4.1.e and 4.1.f.*
- b. Abstracts. Certain surface water uses are described in abstracts attached hereto as Exhibits 4.1.b et seq. Abstracts shall be filed with the Decree Court in the same manner as stipulations described in subparagraphs 4.1.e and 4.1.f.*
- c. Preliminary Determinations. For all surface water uses based on state law other than those described in subparagraphs 4.1.a and 4.1.b, at such time as the adjudication court directs, DWR shall assess and make a preliminary determination of the attributes of each surface water use as follows:*
 - (1) The basis for this process shall be the existing "Inventory of Water Uses" published by DWR in the fall of 1994, data contained in the Norviel Decree, and existing documentation on file with DWR.*
 - (2) Existing information shall be supplemented with additional research and investigation including reliance on remote sensing data.*

- d. *Stipulation and Objection Process.* Based on the findings reached pursuant to subparagraphs 4.1.c.(1) and (2), DWR shall then offer to stipulate with the claimant that its preliminary determination accurately describes the claimant's water right.
- e. *If the claimant agrees with DWR's determination, a stipulation between DWR and the claimant shall be filed with the Decree Court. If the claimant refuses to so stipulate, notice of failure to stipulate shall be filed with the Decree Court. Stipulations and notices of failure to stipulate shall include DWR's determination of the attributes of the water right.*
- f. *Upon the filing of a stipulation or notice of failure to stipulate, notice shall be given to other claimants by entry in the docket and service on the mailing list, and such other claimants shall have 180 days to object to DWR's preliminary determination. If there is no objection to a stipulation, the Decree Court shall enter a final determination of the water right into the Eastern LCR Decree. In the event an objection or notice of failure to stipulate is filed, the Decree Court shall determine the proper attributes of the water right.*

4.2 *Permissible Objections*

- a. *Abstracted Uses.* The Parties stipulate and agree to the entry of a decree for abstracted water uses on terms no more favorable to the water user(s) than those set forth in the attached abstracts. The Parties may not object to the adjudication of an abstracted use unless it purports to provide a water right that is more favorable to the water user(s) than those described in the abstract.
- b. *Zuni Tribe Adjudication Objections.* The Zuni Tribe and the United States on behalf of the Tribe shall only object to the adjudication of surface water uses in the LCR basin when: 1) the Zuni Tribe or the United States on behalf of the Tribe is objecting on the basis of state law and the surface water use being adjudicated would reduce or otherwise limit the Zuni Tribe's ability to use its state law-based SWRs on Zuni Lands, or; 2) paragraph 4.2.a is applicable. Nevertheless, at no time shall the Zuni Tribe object to any SWRs based upon an existing decree.

Our information indicates that you have surface water uses on your property located in Section 8, T14N, R26E as described in the attached abstract. It is our understanding that this is the major water use on your property (not including stockwells, stockponds, or incidental irrigation from flood waters). If this is not accurate, please describe the other major uses on this property.

Enclosed is another copy of this letter and an envelope addressed back to me. If the information is correct, you may simply sign the copy of the letter and return it to me. If the information is not accurate, please make the appropriate changes and mail it back to me.

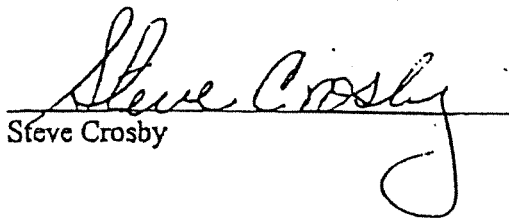
Thank you for your assistance. Please feel free to call my Judicial Assistant, Barbara Neuzil, with any questions. If you would like to discuss the content of this letter with me, Craig Sommers, and Ron Billstein, there will be another meeting held at the Apache County Courthouse in St. Johns at 2:30 p.m. on December 8, 1999.

Sincerely,



MICHAEL C. NELSON
Presiding Judge

The attached description of my surface water uses on this property is accurate to the best of my knowledge.


Steve Crosby

11-29-99
Date

11/18/99 Draft
Exhibit 4.1.b.____
Abstract of Surface Water Use for Steve Crosby

Data Source*

Facility Name: N/A

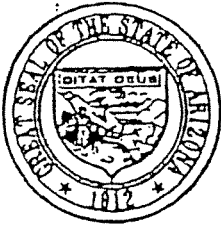
Water Right Holder: Steve Crosby

4

Water Right Number: DV 1

Statement of Claimant Number: N/A

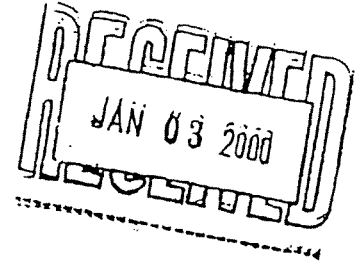
Water Source(s):	Little Colorado River	2, 4
Acres Served:	321 acres	2
Total Diversion:	Maximum historical beneficial use (See Remarks)	--
Diversion Capacity (cfs):	Maximum historical capacity (See Remarks)	4
Beneficial Use(s):	Irrigation	2, 4
Diversion Location(s):	SE Section 15, T14N, R26E	2, 4
Use Location(s):	E½ Section 8, T14N, R26E	2, 4
Period of Use:	Irrigation season	4
Priority Date:	10/25/1897 (See Remarks)	4
Basis of Right:	Historical Beneficial Use	4
Remarks: Data Source: 1 = Statement of Claimant 2 = ADWR Inventory of Water Uses 3 = Silver Creek HSR 4 = Other - See Remarks	1. Data Source 4—Field observations and conversations with the landowners and their predecessor. 2. Total Diversion and Diversion Capacity—Diversions are shared prorata based on acreage historically irrigated from these facilities. 3. Priority Date—Water Appropriation Notice filed by Isaac Isaacson (ADWR #10-0102239.0301).	



SUPERIOR COURT OF ARIZONA
Apache County

MICHAEL C. NELSON
Presiding Judge

November 15, 1999



Edward and Jinx Johnson
c/o Laron DeWitt
Johnson-Stewart Companies
1132 W. McLellan
Mesa, AZ 85201

RE: Zuni Water Rights Settlement

Dear Mr. and Mrs. Johnson:

This is a follow-up to the informational meeting on the proposed Zuni Water Rights Settlement on September 14. As we discussed at that meeting, one of the components of the possible settlement is that the United States and the Zuni Tribe will not object to the use of water from existing wells on your property as described below. The relevant portion of the draft agreement reads as follows:

ARTICLE 5 – UNDERGROUND WATER

5.1 The Zuni Tribe or the United States on behalf of the Tribe shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative proceeding, the withdrawal or use of underground water in the Eastern LCR basin, whether the source is appropriable or non-appropriable, from wells existing on the Effective Date, regardless of whether the withdrawal or use of underground water interferes with surface water flows.

5.2 To aid the Parties in identifying existing wells in the Eastern LCR basin, DWR shall compile a catalog that identifies all existing wells by well registration number, legal description and owner. This catalog, and its subsequent amendments, shall be listed in the decree.

- a. Exempt wells [35 gpm or less]. Exempt wells existing on the Effective Date shall not be cataloged.*
- b. Non-Exempt Wells. DWR shall compile the catalog using existing well registrations. In addition, for existing wells that are not currently registered, a voluntary well registration program shall be created to allow registration and inclusion in the catalog. DWR shall verify the location of all non-exempt registered wells through the use of Global Positioning System Units.*

- c. *Catalog.* Once the locations of the registered wells have been verified, DWR shall prepare the catalog of non-exempt wells and submit it to the Decree Court with notice as ordered by the Decree Court.
- d. *Objections.* The only objection the Zuni Indian Tribe or the United States on behalf of the Tribe may assert in connection with the catalog of non-exempt wells is that a well description is inaccurate. Owners of wells may object that the catalog contains an improper description of a well they own. No other objections shall be permitted. The Decree Court shall resolve any objections as to the accuracy of the list.
- e. *Procedures.* The procedures described by 5.2(a)-(d) shall be conducted on a sequential basis by DWR and the Decree Court, focusing on a relatively small group of claims or a limited geographic area at one time.
- f. *Time Limit.* The tabulation in the Eastern LCR Decree of non-exempt wells shall be completed within three (3) years from the Enforceability Date. The tabulation may be supplemented, however, upon application to the Decree Court, for wells that existed on the Effective Date.

Our information indicates that you currently own and use the following well on your property in Section 1, T14N, R25E:


Well Registration Number	Well Legal Description
55-610661	SENENE Section 1, T14N, R25E

It is our understanding that this well is the only major water uses on your property, not including domestic wells, stockponds, or incidental irrigation from flood waters. If this is not accurate, please describe the other major uses on this property.

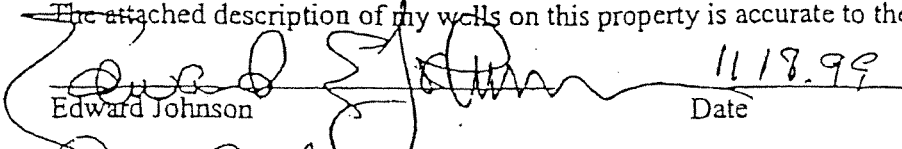
Enclosed is another copy of this letter and an envelope addressed back to me. If the information above is accurate, simply sign the copy of the letter and return it to me. If the information is not accurate, please make the appropriate changes and mail it back to me.

Thank you for your assistance. Please feel free to call my Judicial Assistant, Barbara Neuzil, with any questions. If you would like to discuss the content of this letter with me, Craig Sommers, and Ron Billstein, there will be another meeting held at the Apache County Courthouse in St. Johns at 2:30 p.m. on December 8, 1999.

Sincerely,


MICHAEL C. NELSON
Presiding Judge

The attached description of my wells on this property is accurate to the best of my knowledge.


Edward Johnson

11.18.99
Date


Jinx Johnson

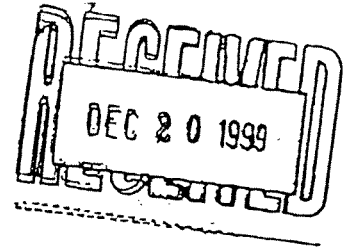
11.18.99
Date



SUPERIOR COURT OF ARIZONA
Apache County

MICHAEL C. NELSON
Presiding Judge

November 15, 1999



Verl and Dawn Heap
P.O. Box 803
St. Johns, AZ 85936

RE: Zuni Water Rights Settlement

Dear Mr. and Mrs. Heap:


Thank you for attending the informational meeting on the proposed Zuni Water Rights Settlement on September 14. As we discussed at that meeting, one of the components of the possible settlement is that the United States and the Zuni Tribe will not object to the uses of water on your property as described below.

Our information indicates that you currently own property in Section 20, T14N, R28E. It is our understanding that the only major water use on your property (not including stockponds or stockwells) is incidental irrigation from flood waters and that you desire to maintain that incidental irrigation use. If this is not accurate, please describe the other major uses on this property.

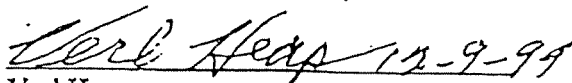
Enclosed is another copy of this letter and an envelope addressed back to me. If the information above is accurate, simply sign the copy of the letter and return it to me. If the information is not accurate, please make the appropriate changes and mail it back to me.

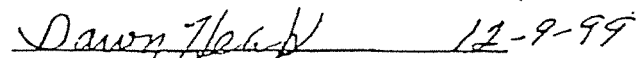
Thank you for your assistance. Please feel free to call my Judicial Assistant, Barbara Neuzil, with any questions. If you would like to discuss the content of this letter with me, Craig Sommers, and Ron Billstein, there will be another meeting held at the Apache County Courthouse in St. Johns at 2:30 p.m. on December 8, 1999.

Sincerely,


MICHAEL C. NELSON
Presiding Judge

The above description of my water uses on this property is accurate to the best of my knowledge.


Verl Heap
Date


Dawn Heap
Date

Abstract of Zuni Tribe For Unappropriated LCR Flows in the Hunt Valley

Facility Name: Zuni Heaven Wetland Restoration Project
Water Right Holder: Zuni Tribe
Water Right Number: N/A
Statement of Claimant #: 39-91736, 39-91737

Data Source*

Water Source	Little Colorado River (see remark 5)	1,2
Acres Served	828 (see remarks 1, 2)	2
Total Diversion	5500 acre-feet (see remark 4)	4
Diversion Capacity	20 cfs (see remarks 1,3)	4
Beneficial Use(s)	Wetlands, irrigation, and cultural	1,4
Diversion Location	Zuni Heaven Reservation (see remark 6)	4
Use Locations	S 9,10,15,16,22,23,26, T14N,R26E (see remarks 1,6)	2,4
Period of Use	Year round	4
Priority Date	August 28, 1984 (see remark 7)	
Basis of Right	Zuni Indian Tribe Water Rights Settlement Agreement	4
Remarks: *Data Source 1=Statement of Claimant 2=ADWR Inventory of Water Uses 3= Silver Creek HSR 4= Other—See remarks	<ol style="list-style-type: none"> 1. Data Source 4 -- The Zuni Project is described in the report entitled "Proposed Zuni Heaven Wetland Restoration Project, Little Colorado River Basin, Arizona", October 15, 1999. This report serves as a planning document only, and the diversion and use locations described therein are not to be considered as finalized. 2. Acres served is projected to ultimately expand from the levels identified in the Zuni Project report to the historically irrigated land base identified on the Reservation by ADWR in sections 9,10,15,16 of T14N,R26E. 3. Diversion capacity is increased from 16.6 cfs (Zuni Project report) to 20 cfs to deliver water to the expanded service area. 4. The estimated annual water requirements for a fully developed Zuni Heaven Project is 5500 acre feet. 5. This abstract is for the unappropriated flow of the Little Colorado River that reaches the Zuni Heaven Reservation. 6. The project may involve multiple diversion points whose location may change over time as river aggradation occurs and wetlands are established and maintained. Hence a general reservation-wide diversion location is used in this abstract. Water use may also include an upstream diversion of up to 40 cfs for a reservoir with a capacity of up to 1000 acre-feet. This upstream diversion and off-stream storage reservoir may be located off the Zuni Heaven Reservation. 7. Pursuant to the settlement agreement, the priority date is based on Public Law 98-498, 98 Stat.1533 (August 28, 1984). 8. Claims 39-91736 and 39-91737 document the type of beneficial use claimed but do not specifically include the Zuni Heaven Wetland Restoration Project and hence are not used as the basis of claim. 	

Arizona Department of Health Services
State Laboratory

Environmental Laboratory Licensure Invoice Detail

Monday, March 05, 2001

Page 1-1

AZLicense : <u>AZ0020</u>	LabName : <u>ARIZONA GAME AND FISH DEPARTMENT</u>
Division : <u>WILDLIFE MANAGEMENT</u> MailStreet : <u>2221 WEST GREENWAY</u> MailCity : <u>PHOENIX</u> MailST : <u>AZ</u> MailZip : <u>85023</u> MainPhone : <u>(602) 789-3266</u> EXT : <u> </u> FAX : <u>(602) 789-3265</u>	EntryDate : <u>6/29/1992</u> CertDate : <u>3/26/1993</u> Owner/Rep. : <u>MARC DAHLBERG</u> LabDirector : <u>MARC DAHLBERG</u> Title : <u>LABORATORY DIRECTOR</u>

PROGRAM : WW

PARAMETER	METHOD	DATE
ALKALINITY	EPA 310.2	4/2/1997
AMMONIA	EPA 350.1	4/2/1997
ARSENIC	SM 3500-AS B	3/2/1998
BIOCHEMICAL OXYGEN DEMAND	SM 5210B	4/2/1997
CADMIUM	EPA 213.1	3/7/1995
CALCIUM	EPA 215.1	3/7/1995
CHLORIDE	EPA 300.0	4/2/1997
CHROMIUM TOTAL	EPA 218.1	3/7/1995
COPPER	EPA 220.1	3/7/1995
HARDNESS	SM 2340B	3/2/1998
HYDROGEN ION (pH)	EPA 150.1	4/2/1997
IRON	EPA 236.1	3/7/1995
KJELDAHL NITROGEN	EPA 351.2	4/2/1997
KJELDAHL NITROGEN	EPA 351.4	6/9/1994
LEAD	EPA 239.1	3/7/1995
MAGNESIUM	EPA 242.1	3/7/1995
MANGANESE	EPA 243.1	3/7/1995
NITRATE	EPA 353.2	3/2/1998
NITRATE	EPA 353.3	6/9/1994
NITRATE	EPA 300.0	4/2/1997
OXYGEN DISSOLVED	EPA 360.2	6/9/1994
PHOSPHATE ORTHO	EPA 365.1	4/2/1997
PHOSPHORUS TOTAL	EPA 365.1	5/1/2000
PHOSPHORUS TOTAL	EPA 365.2	6/9/1994
POTASSIUM	EPA 258.1	3/7/1995
RESIDUE FILTERABLE (TDS)	SM 2540C	6/9/1994

Programs:

Arizona Department of Health Services
State Laboratory

Environmental Laboratory Licensure Invoice Detail

Monday, March 05, 2001

Page 1-2

AZLicense : AZ0020

LabName : ARIZONA GAME AND FISH DEPARTMENT

PROGRAM : WW

PARAMETER	METHOD	DATE
RESIDUE NONFILTERABLE (TSS)	SM 2540D	6/9/1994
RESIDUE SETTLEABLE	SM 2540F	6/9/1994
SELENIUM	SM 3114B	3/2/1998
SILVER	EPA 272.1	3/7/1995
SODIUM	EPA 273.1	3/7/1995
SULFATE	EPA 300.0	4/2/1997
TURBIDITY	SM 2130B	5/1/2000
ZINC	EPA 289.1	3/7/1995

Total Licensed Parameters in this Program: 34

Total Licensed Parameters for this Lab: 34

INSTRUMENTS	QUANTITY	DATE
ATOMIC ABSORPTION SPECTROPHOTOMETER	1	6/9/1994
ION CHROMATOGRAPH	1	4/2/1997

Programs:

(FORM)

PUMPING PROTECTION AGREEMENT

PARTIES:

This Pumping Protection Agreement is entered into by and among the Zuni Indian Tribe and its members ("Zuni Tribe"), the United State of America in its capacity as trustee or otherwise acting on behalf of the Zuni Tribe ("United States"), and _____ ("Landowner").

RECITALS:

1.1 Certain parties, including the Zuni Tribe and the United States, have entered into a separate comprehensive settlement agreement dated _____, 2002 ("Settlement Agreement") to settle and forever resolve various claims of the Zuni Tribe to underground water and surface water in the Little Colorado River basin in the State of Arizona. The complete text of the Settlement Agreement is filed with the Decree Court.

1.2 This Pumping Protection Agreement employs abbreviated terms that have the following meanings:

- A. "AFA" means acre-foot per annum.
- B. "Exempt well" means a well having a pumping capacity of 35 gpm or less. For purposes of determining whether a well is exempt, a series of wells serving the same facility shall be counted as a single well. For purposes of this definition, "facility" means all buildings, equipment, structures and lands served by a common water conveyance system, which buildings, equipment, structures, lands and common water conveyance system are owned and operated by or under common control of the same person, persons, or entity and are located on a single site or on contiguous or adjacent sites, and are operated as a single complex with water used primarily for one purpose.
- C. "Decree Court" means the court with jurisdiction over the judgment and decree entered in accordance with this Settlement Agreement.
- D. "Zuni Protection Area" means the area of land described by that name on Attachment 1, which is incorporated into this Pumping Protection Agreement in its entirety.
- E. "Zuni Pumping Lands" means the area of land described by that name on Attachment 1 (attached and incorporated into this Pumping Protection Agreement).

1.3 The United States owns and holds certain lands in trust for the Zuni Tribe in Apache County, Arizona, referred to as the Zuni Heaven Reservation (see Attachment 1).

1.4 Landowner owns certain lands in Apache County, Arizona ("Landowner's Restricted Lands") that are the subject of this Pumping Protection Agreement, which are more particularly described as follows:

See Attachment 2 (attached and incorporated into this Pumping Protection Agreement)

1.5 The Zuni Tribe and the United States claim that unrestricted pumping of underground water by other landowners within the Zuni Protection Area (see Attachment 1) is likely to adversely affect the ability of the Zuni Tribe and the United States to pump 1,500 acre-feet per year of underground water from Zuni Pumping Lands for purposes of restoration and maintenance of the Wetland Restoration Project on the Zuni Heaven Reservation.

1.6 Except as otherwise expressly provided in the Settlement Agreement or in this and other Pumping Protection Agreements, the Zuni Tribe and the United States have reserved claims to groundwater rights and claims for damage or injury to surface water and to groundwater rights and to water quality as against persons or entities who pump underground water from lands within the Zuni Protection Area.

1.7 The Zuni Tribe and the United States have agreed to enter into Pumping Protection Agreements with any landowners who wish to voluntarily subject their lands within the Zuni Protection Area to restrictions as to the pumping of underground water, in return for a waiver of any and all claims by the Zuni Tribe and the United States as set forth in this Pumping Protection Agreement.

AGREEMENT:

Now, therefore, in consideration of the covenants contained herein, the parties agree as follows:

2.1 This Pumping Protection Agreement, Attachment 1, and the Settlement Agreement (to the extent it is applicable), represent the entire and complete agreement of the Zuni Tribe, the United States, and Landowner with respect to pumping underground water on Landowner's Restricted Lands. This Pumping Protection Agreement must be interpreted and enforced under the laws of the State of Arizona and the United States and must be enforced in the Decree Court.

2.2 Landowner shall not construct or operate on any individual section of Landowner's Restricted Lands new wells or other new devices having a capacity, individually or collectively, to pump more than 500 gallons of water per minute, or a prorated amount if Landowner's Restricted Lands are less than one section of land. This Pumping Protection

Agreement does not limit the ability of Landowner to construct Exempt Wells and replacement wells. Replacement wells must not exceed the capacity of the well being replaced.

2.3 This Pumping Protection Agreement establishes by covenant a perpetual restriction on Landowner's Restricted Lands, which runs with the land, and a corresponding waiver of claims by the Zuni Tribe and the United States against Landowner or any successor-in-interest to Landowner. This Pumping Protection Agreement must be recorded in the records of Apache County, Arizona, to give notice of these restrictions to the public and to any successor-in-interest to Landowner. This Pumping Protection Agreement must also be filed with the Decree Court.

2.4 So long as this Pumping Protection Agreement remains in effect, the Zuni Tribe and the United States shall not assert any claims against Landowner or Landowner's successor-in-interest arising from or in any way related to the pumping of underground water, on Landowner's Restricted Lands, in a quantity that does not exceed the limitations provided in this Pumping Protection Agreement. In addition, the Zuni Tribe and the United States shall not assert any objections to any new well that may be constructed on Landowner's Restricted Lands in conformity with the limitations described in paragraph 2.2.

2.5 This Pumping Protection Agreement does not diminish or otherwise alter or affect in any way the waivers of claims or reservation of rights by the Zuni Tribe and the United States as provided in Article 11 of the Settlement Agreement, or any other waiver, covenant or other provision contained in the Settlement Agreement. Landowner, the Zuni Tribe and the United States are entitled to the benefits of these provisions despite any contrary provision in this Pumping Protection Agreement and whether or not Landowner is in compliance with the provisions of this Pumping Protection Agreement.

2.6 The Zuni Tribe and the United States shall not bring any legal action for breach of this Pumping Protection Agreement against Landowner or Landowner's successor-in-interest without first giving thirty (30) days written notice of the basis of their claim, and an opportunity to cure or correct any condition that is the basis of their claim. Any action for breach must be brought in the Decree Court. If the Decree Court determines that Landowner or Landowner's successor-in-interest has breached this Pumping Protection Agreement by constructing or operating one or more wells in a manner prohibited by this Pumping Protection Agreement, the Zuni Tribe and the United States are entitled to any remedy available, at law or in equity, under state or federal law.

2.7 This Pumping Protection Agreement is enforceable either on the date the Settlement Agreement becomes enforceable, or if signed after that date, then on the date this Pumping Protection Agreement has been signed by all the parties.

DATED this _____ day of _____, 20__.

Zuni Indian Tribe

By
Its

Address:

The United States of America, as trustee

By
Its

Gale A. Norton

Address:

Landowner

By
Its

Address:

SRP & Zuni Tribe Underground Water Agreement

THIS AGREEMENT, dated as of June 7, 2002, is entered into among the Salt River Project Agricultural Improvement and Power District, ("SRP"); the Zuni Indian Tribe and its members, ("Tribe" or "Zuni Tribe"); and the United States of America, on behalf of the Zuni Tribe, ("United States on behalf of the Tribe").

WHEREAS, the parties to this Agreement and others have entered into an agreement dated June 7, 2002 (the "Settlement Agreement"), which references in paragraph 5.8 this Agreement, to settle and forever resolve the rights of the Zuni Tribe and of the United States on behalf of the Tribe to underground water and surface water in the Little Colorado River System and Source in the State of Arizona, and;

WHEREAS, this Agreement recognizes the terms and conditions which apply when SRP withdraws underground water for uses at the Coronado Generating Station plant site in St. Johns, Arizona, as well as for other future uses in the Little Colorado River basin in Arizona, without objection by the Zuni Tribe or by the United States on behalf of the Tribe.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS CONTAINED IN THIS AGREEMENT, IT IS AGREED THAT:

1. Definitions

For the purposes of this Agreement:

- 1.1. "AFA" means acre-feet per annum.
- 1.2. "Coronado Generating Station" means the existing electrical generating facility at the Coronado Generating Station Site as well as any expansions or replacements of the existing facility located anywhere within the LCR basin.
- 1.3. "Coronado Generating Station Site" means lands owned by SRP in Sections 27, 29, 33 and 34, Township 14 North, Range 29 East, Gila and Salt River Base and Meridian; Sections 3, 4, 5, 6, 7, 8, 9, and 10, Township 13 North, Range 29 East, Gila and Salt River Base and Meridian; and Sections 1, 3, 11 and 12, Township 13 North, Range 28 East, Gila and Salt River Base and Meridian, together with any contiguous lands that SRP may acquire in the future.
- 1.4. "Eastern LCR Decree" means that portion of the decree entered in the Little Colorado River Adjudication that includes water rights in the Eastern Little Colorado River area, which includes the portion of the LCR basin upstream from the confluence of Silver Creek and the Little Colorado River.
- 1.5. "Hazardous Substance" means those substances included within the definition of that term under 42 U.S.C. § 9601(14), as it now exists or as it may be amended.

1.6 “LCR basin” means the Little Colorado River basin in Arizona.

1.7 “Oil” means those substances included within the definition of that term under 33 U.S.C. § 2701 (23), as it now exists or as it may be amended.

1.8 “Static Water Level Decline” must be determined by comparing the average annual static water level with the existing static water level in the regional aquifer (presently referred to as the “C Aquifer”), as measured at an agreed on well site. Static water level measurements must be taken annually on or about March 1; provided that the well in which the measurements are to be taken, and any Zuni well within one-half mile of that measurement well pumping from the C Aquifer, has not been operated at any time during the four months immediately preceding the date of measurement. If the measurement well or any Zuni well within one-half mile of that measurement well pumping from the C aquifer has been operated in the four months preceding the date of measurement, other water level measurements taken at the well must be used to establish a static water level acceptable to both the Zuni Tribe and SRP. The point of measurement must always be a well existing on the enforcement date of the Settlement Agreement in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian that the parties to this Agreement agree to use, or, in the future, a mutually agreed upon replacement well in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian. The existing static water level must be determined by the static water level measurement taken following the date this Agreement becomes enforceable. The average annual static water level must be determined on the basis of a continuous 3 year rolling average of the annual static water level measurement in the well. The Zuni Tribe or the United States on behalf of the Tribe shall take the static water level measurements and provide SRP with a written report of the results within 30 days of each measurement. The Zuni Tribe shall provide reasonable access to the measuring well for verification and monitoring purposes.

1.9 “TDS” means total dissolved solids.

1.10 “Zuni Indian Reservation in Arizona,” also referred to as Zuni Heaven Reservation and Kolhu:wala:wa, refers to the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

1.11 “Zuni Lands” means all the following lands in Arizona (as identified on Exhibit A, attached and incorporated into this Agreement) that on the date the Settlement Agreement becomes enforceable are

- A. within the Zuni Indian Reservation in Arizona;
- B. held in trust by the United States for the benefit of the Tribe or its members; or
- C. held in fee by or for the Tribe.

2. Term

2.1 Enforceable Date. This Agreement shall become enforceable on the date that the Settlement Agreement becomes enforceable, and shall remain enforceable until the water uses authorized in paragraph 7.6 permanently cease.

3. Zuni Tribe Underground Water Use

3.1 Zuni Use. SRP recognizes, confirms, and shall not object to, dispute or challenge the withdrawal and use of up to an annual average of 1,500 AFA of underground water by the Zuni Tribe or by the United States on behalf of the Tribe from the Zuni Pumping Lands, identified on Exhibit A. The annual average pumping shall be determined by a continuous 3 year rolling average of the pumping from each calendar year.

3.2 If the Zuni Tribe or the United States on behalf of the Tribe withdraws more than an annual average of 1,500 AFA of underground water from wells located on the Zuni Pumping Lands and SRP is not pumping more than 21,000 AFA of underground water from wells in the LCR basin supplying the Coronado Generating Station, then the Zuni Tribe and the United States on behalf of the Tribe waive permanently all their rights under federal and tribal law, including but not limited to any rights based on aboriginal claims or federal reserved rights to groundwater in Arizona, to object to, dispute, or challenge SRP's withdrawals of underground water in the LCR basin of an amount up to 21,000 AFA. Nevertheless, regardless of the amount of water the Zuni Tribe or the United States on behalf of the Zuni Tribe is pumping, the Zuni Tribe and the United States on behalf of the Tribe retain the same rights as any non-Indian, non-federal groundwater user in Arizona to object, only as permitted under state law affecting groundwater, whether statutory or common law, to SRP's withdrawals of underground water in the LCR basin in excess of 15,000 AFA. If SRP withdraws more than 21,000 AFA from wells in the LCR basin supplying The Coronado Generating Station, then the Zuni Tribe and the United States retain all rights to object to, dispute, or challenge, as provided in paragraph 6.1, only the portion of those withdrawals greater than 21,000 AFA.

3.3 Future Rights within Zuni Pumping Lands. Except as provided in this Agreement, the Zuni Tribe and the United States on behalf of the Tribe retain the right to initiate new withdrawals of underground water or to expand existing withdrawals of underground water above an annual average of 1,500 AFA on the Zuni Pumping Lands.

3.4 Future Rights outside Zuni Pumping Lands. Except as provided in paragraph 7.2, the Zuni Tribe or the United States on behalf of the Zuni Tribe may initiate new withdrawals of underground water on the Zuni Lands located outside of the Zuni Pumping Lands, and on any lands located outside the Zuni Pumping Lands acquired in the future either by or for the Zuni Tribe.

4. SRP Underground Water Use: 0 – 15,000 AFA

4.1 Zuni Tribe Objections. The Zuni Tribe and the United States on behalf of the Tribe recognize, confirm, and shall not object to, dispute or challenge SRP's

withdrawal and use of a maximum of 15,000 AFA of underground water withdrawn from wells in the LCR basin supplying water to the Coronado Generating Station for uses authorized in paragraph 7.6, unless the Tribe or the United States on behalf of the Tribe proves in the court administering the Eastern LCR Decree that SRP's withdrawal of a maximum of 15,000 AFA of underground water is causing a Static Water Level Decline in excess of 75 feet.

4.2 SRP may withdraw this 15,000 AFA whether the water withdrawn from those wells is surface water, groundwater or is legally appropriable, non-appropriable, or subject to claims based on federal law. The withdrawal of 15,000 AFA or less of water in any year or series of years, both prior to and after the date of this Agreement, shall not affect SRP's right to withdraw its full entitlement to 15,000 AFA in subsequent years.

4.3 Claims and Remedies. If the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands and if the Zuni Tribe or the United States on behalf of the Tribe proves a Static Water Level Decline in excess of 75 feet caused by SRP's withdrawal of a maximum of 15,000 AFA of underground water from wells supplying the Coronado Generating Station, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim it may have under state or federal law for injuries to it for the amount of Static Water Level Decline in excess of 75 feet that is caused by SRP's withdrawals. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 4.3 based on state law. The remedies available to the Zuni Tribe and to the United States on behalf of the Tribe against SRP shall be limited to compensatory damages and shall not include injunctive relief. SRP shall have the right, if it chooses, at its sole discretion, to avoid liability for payment of damages by reasonably mitigating the impacts of its withdrawals. In addition, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim retained in paragraph 11.4 of the Settlement Agreement.

5. SRP Underground Water Use: 15,001 – 21,000 AFA

5.1 Claims. Except as provided in paragraph 5.2, and if the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim it may have under state or federal law for injuries to it caused by SRP's withdrawal and use of underground water in amounts greater than 15,000 AFA but no more than 21,000 AFA. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 5.1 based on state law.

5.2 Water Quality Claims. If the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground

water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe may also assert any claim it may have under state or federal law for damages to the quality of underground water beneath the Reservation caused by SRP's withdrawal or use of underground water in excess of 15,000 AFA but no more than 21,000 AFA if all of the conditions precedent in subparagraphs 5.2.A, B, and C are satisfied. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 5.2 based on state law.

A. The Static Water Level Decline caused by SRP's withdrawals must be in excess of 75 feet.

B. The TDS in the regional aquifer beneath the Reservation has reached 3000 mg/l and the increase is causing significant harm to species native to the area on the Reservation. TDS levels are based on a continuous 3 year rolling average of the annual TDS measurement.

C. The Zuni Tribe or the United States must measure TDS annually from a well in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian, to be agreed on by the parties; this may be a different well than the well used to measure Static Water Level Decline. Water samples for TDS measurements must be taken using standard sampling protocols. TDS may be estimated annually by electrical conductivity, but only annual tests performed by an Arizona state certified lab may be used to compute TDS in subparagraph 5.2(B). The Zuni Tribe or the United States on behalf of the Tribe shall report to SRP the results of the annual TDS measurement within 30 days of each measurement. The Zuni Tribe shall provide reasonable access to the measuring well for verification and monitoring purposes.

5.3 Remedies. The remedies available to the Zuni Tribe and to the United States on behalf of the Tribe against SRP for claims permitted under paragraph 5.1 and paragraph 5.2 shall be limited to compensatory damages and shall not include injunctive relief. Furthermore, for claims asserted pursuant to paragraphs 5.1 and 5.2, SRP shall have the right, if it chooses, at its sole discretion, to avoid liability for payment of damages by reasonably mitigating the impacts of its withdrawals. Furthermore, the remedies of the Zuni Tribe or of the United States on behalf of the Tribe under paragraph 5.1 and under paragraph 5.2 are limited to the damage caused by the impact of the portion of SRP's withdrawals that are in excess of 15,000 AFA but no more than 21,000 AFA.

5.4 In addition to the claims permitted under paragraphs 5.1 and 5.2, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim retained in paragraph 11.4 of the Settlement Agreement.

6. SRP Underground Water Use: 21,001 AFA or more

6.1 Claims and Remedies. If SRP is withdrawing more than 21,000 AFA of underground water from wells supplying the Coronado Generating Station, and irrespective of the amount of underground water that is withdrawn by the Zuni Tribe or the United States on behalf of the Tribe on Zuni Pumping Lands, the Zuni Tribe and the United States on behalf of the Tribe retain all rights and claims, including all water quality claims, under federal and state law to object to the portion of SRP's withdrawal and use of underground water in excess of 21,000 AFA.

6.2 Future Rights. Except as provided in this Agreement, SRP retains the right to initiate new withdrawals of underground water or to expand existing withdrawals of underground water above 21,000 AFA.

7. Other Provisions

7.1 SRP Well Placement. SRP shall be permitted to maintain, operate, repair, deepen and replace existing wells and drill, maintain, operate, repair, deepen and replace future wells. Nevertheless, SRP shall not locate any replacement wells or new wells developed for the future use of underground water within the SRP Exclusion Area identified on Exhibit A.

7.2 Zuni Tribe Well Placement. The Zuni Tribe or the United States on behalf of the Tribe shall be permitted to maintain, operate, repair, deepen and replace existing wells and drill, maintain, operate, repair, deepen and replace future wells. Nevertheless, the Zuni Tribe and the United States on behalf of the Tribe shall not locate any replacement wells or new wells developed for the future use of underground water within the Zuni Exclusion Area identified on Exhibit A.

7.3 Measurements. The Zuni Tribe or the United States on behalf of the Tribe shall install and maintain industry-standard flow measurement devices on all active wells located on Zuni Lands having a pumping capacity greater than 35 gallons per minute. SRP shall also install and maintain industry-standard flow measurement devices on all active wells located in the LCR basin supplying the Coronado Generating Station that have a pumping capacity greater than 35 gallons per minute. SRP and the Zuni Tribe or the United States on behalf of the Tribe shall exchange annual pumping amounts for each active well (which must include estimates of water use for any unmeasured well) and static water levels each year on approximately April 1.

7.4 Water Quantity Data. Beginning with the date this Agreement is enforceable, SRP and the Zuni Tribe shall provide each other with water quantity data as provided for in this paragraph 7.4.

A. SRP's Water Quantity Data. The Zuni Tribe may request from SRP water quantity data for any active wells in the LCR basin pumping underground water for the Coronado Generating Station. Within 30 calendar days of its receipt of the request, SRP shall provide to the Zuni Tribe all water quantity data SRP has collected for the specified wells in the one-year period preceding the

request. The Zuni Tribe, and the United States on behalf of the Zuni Tribe, must keep that data confidential, except to the extent disclosure is required by law.

B. Zuni Tribe's Water Quantity Data. SRP may request from the Zuni Tribe or from the United States on behalf of the Zuni Tribe water quantity data for any active wells pumping underground water on Zuni Lands. Within 30 calendar days of receipt of the request the Zuni Tribe or the United States on behalf of the Zuni Tribe shall provide to SRP all water quantity data collected for the specified wells in the one-year period preceding the request. SRP must keep that data confidential except to the extent disclosure is required by law.

C. Data Included. The water quantity data to be provided by the Parties upon request includes, but is not limited to, pumping schedules, well logs, and results of pump tests.

7.5 Water Quality Data. In addition to the data that SRP provides to the Zuni Tribe under paragraph 5.11 of the Settlement Agreement, beginning with the date this Agreement is enforceable, SRP and the Zuni Tribe shall provide each other with water quality data, and consult with each other regarding water quality in some circumstances, as provided for in this paragraph 7.5.

A. Provision of Water Quality Data. When SRP submits water quality data for wells pumping underground water for the Coronado Generating Station to the Arizona Department of Environmental Quality ("DEQ"), the Arizona Department of Water Resources ("DWR"), or the United States Environmental Protection Agency ("USEPA"), SRP shall provide the Zuni Tribe with a copy. When the Zuni Tribe or the United States on behalf of the Zuni Tribe submits water quality data for wells on Zuni Lands to DEQ, DWR, or USEPA, the Zuni Tribe shall provide SRP with a copy. The copies must be provided at the same time the data is provided to the department or agency, or within fifteen working days thereafter.

B. Consultation. SRP and the Zuni Tribe agree to consult with each other if any data provided under subparagraph 7.5.A demonstrates the presence of a Hazardous Substance or constituents of Oil in an amount greater than an Arizona Numeric Aquifer Water Quality Standard or a Maximum Contaminant Level established by the USEPA. SRP and the Zuni Tribe may agree to cooperate in further investigating or responding to any contamination, but nothing in this Agreement requires SRP or the Zuni Tribe to agree or to take any action in response.

7.6 Authorized SRP Water Uses.

A. Underground water withdrawn pursuant to this Agreement may be used by SRP only for electrical power generation at the Coronado Generating Station and industrial, domestic, recreational and stock watering uses on the Coronado Generating Station Site. Stock watering through connections to SRP's

water pipeline from its wellfields to the Coronado Generating Station is also a permissible use.

B. Usage of underground water pursuant to this Agreement for electrical power generation may continue until operations at the Coronado Generating Station permanently cease. When power generation permanently ceases, usage of underground water for industrial, domestic, recreational and stock watering uses on the Coronado Generating Station Site by SRP and its tenants or customers as provided in subparagraph 7.7.B shall not exceed 7,500 AFA.

C. SRP shall not sell, lease, transfer, or transport underground water subject to this Agreement outside the LCR basin.

7.7 SRP Assignment.

A. SRP may assign or transfer, without the necessity of consent by the Zuni Tribe or by the United States on behalf of the Tribe, all or any portion of this Agreement in connection with the assignment, transfer or sale of all or any portion of its interest in the Coronado Generating Station. Any assignees or transferees shall automatically be deemed parties to this Agreement with all the benefits and burdens of this Agreement.

B. SRP may also assign or transfer, without the consent of the Zuni Tribe or of the United States on behalf of the Tribe, up to 7,500 AFA of its water entitlement under this Agreement to tenants or customers of SRP at the Coronado Generating Station Site, which right of assignment or transfer remains effective after generation of power at the Coronado Generating Station permanently ceases. Any assignee or transferee under this paragraph shall automatically be deemed a party to this Agreement with all the benefits and burdens of this Agreement up to a maximum water use of 7,500 AFA.

C. For purposes of this Agreement, power generation at the Coronado Generating Station permanently ceases if all applicable air quality permits are not renewed as a result of the permanent cessation of power generation at the Coronado Generating Station or if the Coronado Generating Station has not generated power at all for 10 consecutive years.

7.8 Zuni Tribe Assignment. The Zuni Tribe or the United States on behalf of the Tribe shall not assign or transfer their interests under this Agreement and any such purported assignment or transfer shall be void. Any obligation made in this Agreement shall not run with the land nor be a benefit to any successor in interest of the Zuni Tribe or of the United States on behalf of the Tribe.

7.9 Amendments. This Agreement may be amended by the written agreement of SRP, the Zuni Tribe, and the United States on behalf of the Zuni Tribe.

7.10 Active Management Areas. If a municipal user, industrial user or other user of underground water within the LCR basin, their instrumentalities or agents, or the State of Arizona or its agencies initiates administrative or judicial action to establish an

Active Management Area, define rights to withdraw and use underground water, or regulate underground water withdrawals in part or all of the LCR basin, the Zuni Tribe, the United States on behalf of the Tribe or SRP may move to intervene in such proceedings to protect its interests.

7.11 Zuni New Mexico Lands. By this Agreement, the Zuni Tribe and the United States on behalf of the Tribe do not waive any rights associated with lands owned by or for the Zuni Indian Tribe in New Mexico or water on those lands.

7.12 Applicable Law. This Agreement and its exhibit, together with the Settlement Agreement, represent the complete and entire agreement of the parties to this Agreement. This Agreement must be interpreted and enforced in accordance with the laws of the State of Arizona and of the United States of America, and must be enforced in the court that administers the Eastern LCR Decree.

7.13 Except where the Settlement Agreement is inconsistent with this Agreement, the Settlement Agreement, including, but not limited to the waivers and retentions of claims in the Settlement Agreement, continues to apply to SRP, the Zuni Tribe, and the United States on behalf of the Tribe.

DATED this 7th day of June, 2002.

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

By William P. Schrad

ZUNI TRIBE OF INDIANS

By Melvin B. Bonnell

UNITED STATES OF AMERICA, AS
TRUSTEE FOR THE ZUNI TRIBE

By Gale A. Norton

EXHIBIT A

LEGEND

SALT RIVER PROJECT
EXCLUSION AREA:

AREA WHERE SRP WILL NOT LOCATE
ANY REPLACEMENT WELLS AND/OR
WELLS DEVELOPED FOR FUTURE USE
OF UNDERGROUND WATER

ZUNI EXCLUSION AREA:

AREA WHERE ZUNI TRIBE WILL NOT
LOCATE ANY REPLACEMENT WELLS
AND/OR WELLS DEVELOPED FOR
FUTURE USE OF UNDERGROUND WATER

ZUNI LANDS

ZUNIFEE SIMPLE LANDS

ZUNI TRUST LANDS

ZUNI PUMPING LANDS

STATE LAND

BLM LAND

SALT RIVER PROJECT LANDS

SRP WELL

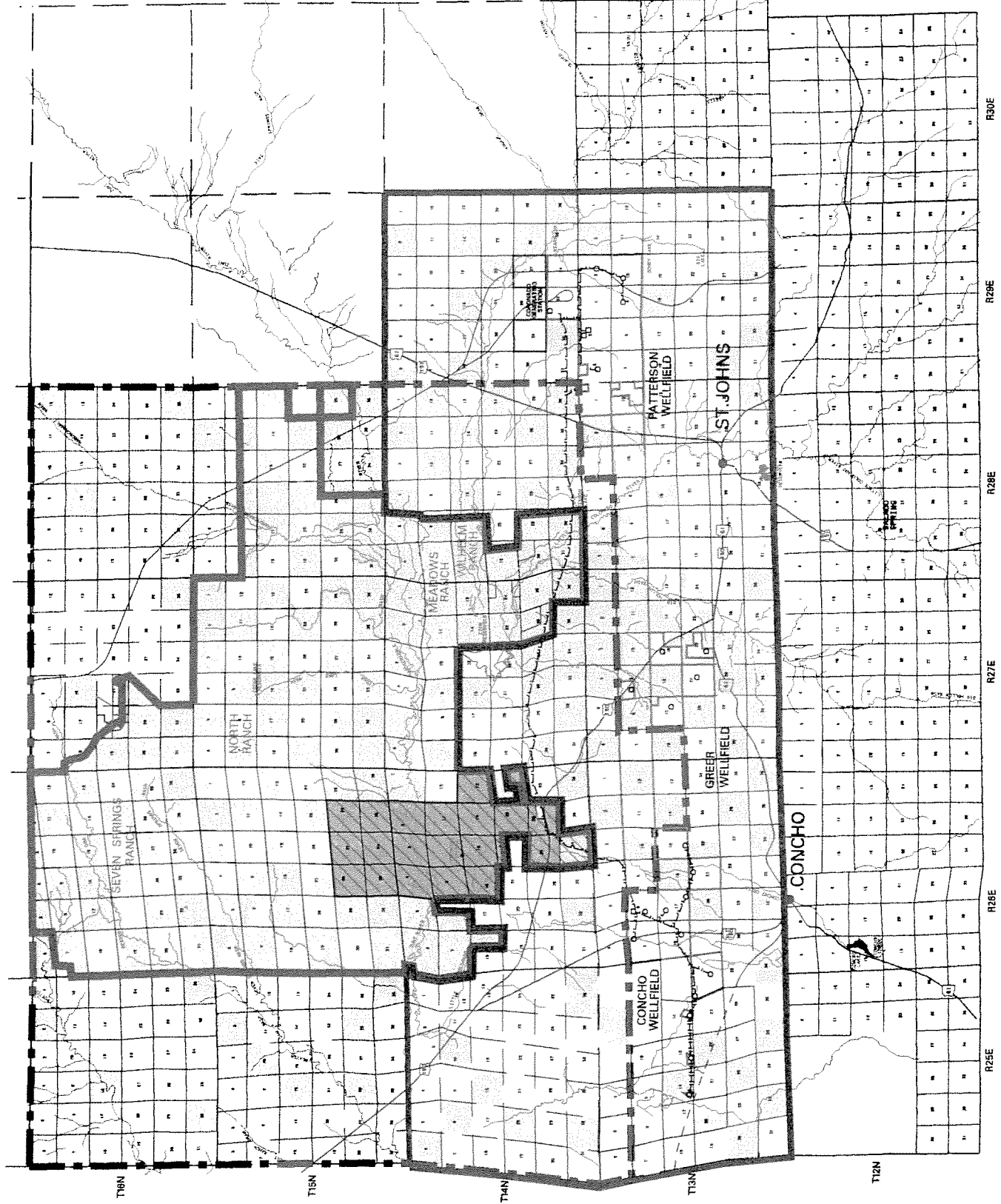


EXHIBIT 5.8.B

ZUNI/TEP AGREEMENT

THIS AGREEMENT is entered into among Tucson Electric Power Company ("TEP"); the Zuni Indian Tribe; and the United States of America on behalf of the Zuni Indian Tribe.

WHEREAS, the Zuni Indian Tribe has asserted certain reserved water rights within the Little Colorado River Basin which it believes may be affected now or in the future by underground water use, including that by TEP in conjunction with its operation of the Springerville Generating Station ("SGS") properties in Apache County, Arizona; and,

WHEREAS, the parties to this Agreement and other water users within the Little Colorado River Basin have entered into a comprehensive agreement entitled the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin ("Zuni Settlement Agreement") to resolve the Zuni Indian Tribe's asserted reserved water rights; and,

WHEREAS, this Agreement sets forth the terms and conditions under which TEP can withdraw underground water and initiate new wells for use at SGS free of any objection whatsoever by the Zuni Indian Tribe or the United States on behalf of the Tribe, consistent with the terms of the Zuni Settlement Agreement.

NOW, THEREFORE, IT IS AGREED THAT:

1. Definitions. For purposes of this Agreement:

1.1 "AFA" means acre-feet per annum.

1.2 "Annual Low Flow Rate" means the lowest measured natural (*i.e.*, adjusted for diversions and releases) flow rate of the Little Colorado River ("LCR") as measured at the streamflow gaging station described in Section 6.2 calculated on the basis of the lowest 30-day rolling average flow rate during a complete calendar year and averaged for the three most recent complete calendar years.

1.3 "Base Flow Decline" means any reduction in the Baseline Flow Rate of the LCR, as measured at the streamflow gaging station described in Section 6.2, which occurs after underground water pumping at Springerville Generating Station ("SGS") exceeds 11,000 AFA. The Base Flow Decline shall be determined by comparing the Baseline Flow Rate with the Annual Low Flow Rate for each calendar year following, and including, the year in which pumping at SGS exceeds 11,000 AFA.

1.4 "Baseline Flow Rate" means the flow established by calculating the Annual Low Flow Rate for the three complete calendar years immediately following the commencement of operation of the streamflow gaging station described in Section 6.2. Should pumping at SGS exceed 11,000 AFA prior to the Enforcement Date, the Baseline Flow Rate will be established on the basis of the Annual Low Flow Rate for the three complete calendar years immediately preceding the calendar year in which pumping at SGS exceeds 11,000 AFA.

1.5 "Enforcement Date" means the date the Zuni Settlement Agreement becomes enforceable.

1.6 "Springerville Generating Station" ("SGS") means that certain contiguous set of parcels owned or held for the generation of electricity within T. 10N and 11N, R. 29E and 30E, in Apache County, Arizona, as described in that certain document recorded at Book 703, Pages 53-57 of Apache County Records, containing approximately 22.3 square miles, and any other contiguous lands subsequently acquired for the generation of electricity.

2. TEP Geographic Restrictions. TEP covenants for the purposes of this Agreement that it will not initiate new underground water production wells for use at SGS within the following described areas of Apache County, Arizona:

a. That portion of T. 11N., R. 29E., described as: Sections 4 through 9, and Sections 16 through 21; N/2 of Section 28; NE/4, E/2 of NW/4, and NW/4 of NW/4 of Section 29; Section 30; and NW/4, W/2 of SW/4, and NE/4 of SW/4 of Section 31.

b. That portion of T. 10N., R. 29E., described as: Sections 6 (except Lot 1), 7, 8, 17 through 20, and 29 through 32;

c. All lands lying north of the south line of T. 12N; and,

d. All lands lying west of the east line of R. 28E.

3. TEP Underground Water Use Up To 11,000 AFA. Subject to the geographic restrictions in Section 2 of this Agreement, TEP may operate, deepen, increase capacity of, and replace any SGS wells existing as of the date of this Agreement, and may drill, open, operate, and maintain any new SGS wells and use underground water in an amount up to 11,000 AFA without objection or challenge by the Zuni Indian Tribe or the United States on behalf of the Tribe in any appropriate judicial or administrative proceeding.

4. TEP Underground Water Use Between 11,000 AFA And 20,000 AFA.

4.1 Subject to the geographic restrictions in Section 2 of this Agreement, TEP may withdraw and use underground water in amounts between 11,000 AFA and 20,000

AFA from SGS wells without objection by the Zuni Indian Tribe or the United States on behalf of the Tribe, unless the Tribe or the United States proves in the court administering the Decree in the Little Colorado River Adjudication that TEP's withdrawal of underground water is causing a Base Flow Decline in the Little Colorado River.

4.2 If the Zuni Indian Tribe or the United States on behalf of the Tribe proves a Base Flow Decline caused by TEP's withdrawals of underground water at SGS, the Zuni Indian Tribe, in its sole discretion, shall be entitled to replacement of water or compensatory damages or other costs but shall not be entitled to injunctive relief. TEP shall have the right to avoid liability for payment of damages by mitigating its impacts of its withdrawals in a manner acceptable to the parties to this Agreement.

5. TEP Underground Water Use Greater Than 20,000 AFA.

5.1 Subject to the geographic restrictions in Section 2 of this Agreement, nothing in this Agreement precludes TEP from initiating new underground water withdrawals in amounts above 20,000 AFA at SGS.

5.2 If TEP withdraws more than 20,000 AFA at SGS, the Zuni Indian Tribe and the United States on behalf of the Tribe retain all rights under federal, state, and tribal law to object to TEP's withdrawal and use of underground water in excess of 20,000 AFA at SGS.

6. TEP Monitoring Program.

6.1 Underground Water. TEP shall continue to conduct a well monitoring and reporting program at SGS in the same manner (*i.e.*, providing the same type, quantity, and quality of data collected at a similar frequency) as it carried out or contributed to in calendar year 2000. The monitoring reports shall be provided to the Tribe within a reasonable time after completion. TEP shall provide all data collected for each well pumping underground water for SGS, including but not limited to monthly quantity pumped by each well, well logs, water quality data, and pump tests, to the Tribe when requested by the Tribe.

6.2 Surface Water. In addition to the monitoring program described in Section 6.1, TEP shall fund a Little Colorado River streamflow monitoring and reporting program which meets the following conditions:

a. The measurement site shall be located at the existing gaging station referred to as "Little Colorado River below Salado Springs near St. Johns, Arizona" (USGS #09385700) or at an alternative site mutually agreed upon by TEP and the Tribe.

b. The gaging station shall be designed, operated, and maintained to continuously measure and record accurate river stage at time intervals of one (1) hour or less.

c. The river stage data shall be accessible remotely through a telemetry system which can provide recorded data to the Tribe substantially within six (6) hours of measurement.

d. A rating table which correlates as accurately as reasonably possible river stage to stream discharge for the gaging station shall be developed and maintained.

e. To the extent that TEP collects or receives river data not otherwise available to the Zuni Indian Tribe, TEP shall provide monitoring reports to the Tribe within a reasonable time after completion. All data collected for the gaging station, including but not limited to raw and corrected stage data, manual discharge measurements, and maintenance records, shall be made available to the Tribe when requested by the Tribe. The Tribe or the United States on behalf of the Tribe shall have access to the gaging station for taking its own measurements.

f. TEP may contract with any agency or entity to perform the duties and obligations created within this Section.

7. Other Provisions.

7.1 TEP may freely assign or transfer all or any portion of its rights and obligations under this Agreement in connection with the assignment, transfer, or sale of all or any portion of its interest in SGS, but all such rights or obligations shall remain in force with the assignee and shall not be diminished or terminated by any such assignment.

7.2 This Agreement shall be personal between the parties, and it shall remain in force only as long as the SGS site is operated for electric generating purposes by TEP or its successors-in-interest. No real property interest is created, conveyed, or encumbered by the terms of this Agreement.

7.3 Upon request from any party, the technical representatives for each party shall meet within a reasonable time to discuss a disagreement or question arising from new data received from the monitoring program. If the technical representatives agree on a resolution, that agreement shall be submitted to the parties for consideration and implementation. In the event that the technical representatives are unable to resolve a matter, or are unable to make a unanimous recommendation to the parties, the technical representatives shall make a written report to the parties explaining the areas of agreement, if any, the subject or subjects of disagreement, and each party's argument in favor of its position along with supporting data and background. This report shall be made within thirty (30) calendar days after the technical representative meeting, unless the parties agree to a longer time period.

7.4 This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona and applicable federal law. To the extent that any term of this Agreement is inconsistent with the Zuni Settlement

Agreement, the term of this Agreement shall prevail. This Agreement shall be enforceable in the court which administers the Decree in the Little Colorado River Adjudication.

DATED this 7th day of June, 2002.

TUCSON ELECTRIC POWER COMPANY

PA. DeLauro

Vice President
Title

ZUNI INDIAN TRIBE

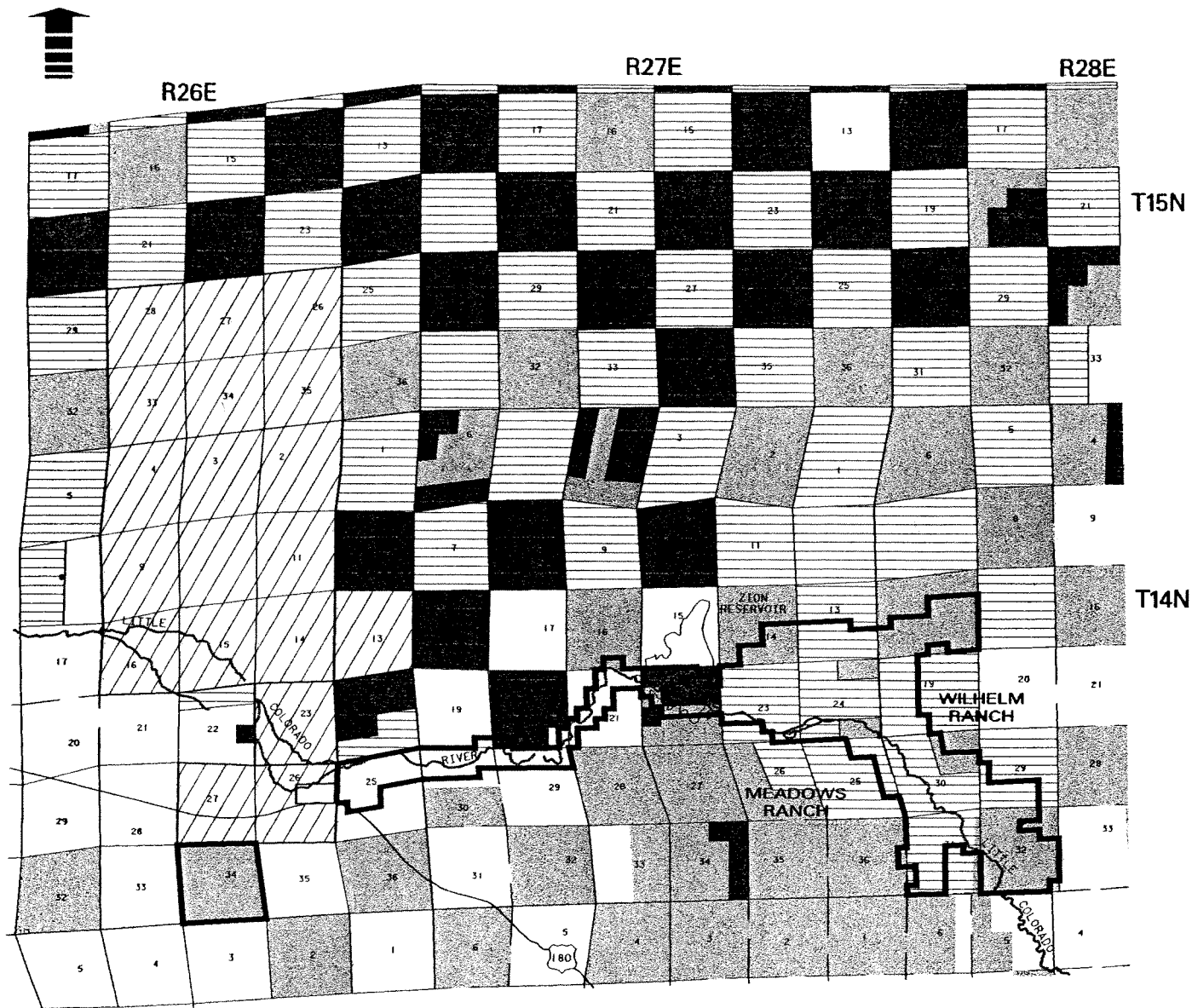
Michael B. Bowles

Governor
Title

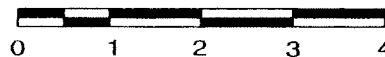
THE UNITED STATES OF AMERICA as Trustee

Gale A. Norton

Title



Scale in Miles



BOUNDARY OF POTENTIAL LANDS TO BE TAKEN INTO TRUST



ZUNI FEE SIMPLE LANDS



STATE LAND



ZUNI RESERVATION LANDS



BLM LAND

Exhibit 6.1
POTENTIAL LANDS TO
BE TAKEN INTO TRUST
FOR ZUNI WETLAND
RESTORATION PROJECT

ATTACHMENT NO. 1

EXHIBIT 11.1 (revised)

STATE PARTIES WAIVER AND RELEASE OF CLAIMS

1. Except as provided in paragraph 2, the State Parties (which for the purpose of this Exhibit 11.1, are defined as the State of Arizona, acting solely in its proprietary capacity, and all other parties to the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), except the Zuni Indian Tribe, its members (collectively, the "Tribe"), and the United States, in its capacity as trustee for the Zuni Tribe or its members (the "United States")) in consideration of the benefits realized under the Settlement Agreement and in accordance with the commitments under paragraphs 11.1 and 11.5 of the Settlement Agreement, hereby waive and release claims against the Zuni Tribe and the United States, under Federal, State or other law, for:
 - A. All past and present claims for injuries to water rights or water quality (including injuries to water rights in groundwater, surface water, and effluent) accruing from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) that the State Parties may have against the Tribe or against the United States, caused by diversions of surface water in the Eastern LCR basin (as that basin is defined in the Settlement Agreement) or withdrawals of groundwater on Zuni Lands (as those Lands are defined in the Settlement Agreement); and
 - B. All future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin (as that term is defined in the Settlement Agreement) caused by the following actions on Zuni Lands:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water;
 - (3) The Parties' performance of their obligations under the Settlement Agreement;
 - (4) The discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
 - (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
 - (6) Any combination of the causes described in subparagraphs (1) through (5).
2. Notwithstanding the execution by the State Parties of this Waiver and Release of Claims, the State Parties shall retain the right to assert, as provided in paragraph 11.5 of the Settlement Agreement, the following claims against the Zuni Tribe and the United States:
 - A. Claims for breach or enforcement of the terms of the Settlement Agreement or of rights recognized in the Settlement Agreement or in the Zuni Indian

Tribe Water Rights Settlement Act of 2003, including claims for future injuries to such rights;

B. Claims for water rights, including injuries to those water rights, subject to the terms of the Settlement Agreement, including but not limited to subparagraphs 4.2.A and 4.6.A of the Settlement Agreement; and

C. Claims for future injuries to water quality, as described below:

- (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraph 1.B;
- (2) Except as provided in subparagraphs 1.B(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against the Tribe or the United States if the Tribe or the United States is responsible for initially disposing of or initially releasing a Hazardous Substance (as Hazardous Substance is defined in the Settlement Agreement) or oil, even if the migration of that Hazardous Substance or oil is caused by the Tribe's or the United States' lawful diversion of surface water or lawful withdrawal of underground water;
- (3) Notwithstanding subparagraph 1.B, claims accruing at least 30 years after the Enforcement Date under CERCLA (as CERCLA is defined in the Settlement Agreement) for injuries to water quality caused by release of a Hazardous Substance; and
- (4) Notwithstanding subparagraph 1.B, claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act (as that Act is defined in the Settlement Agreement) for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures and the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law.

3. Nothing in this Waiver and Release of Claims affects the State Parties' ability to make any claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

4. Nothing in this Waiver and Release of Claims affects any right of the State of Arizona to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

6. Nothing in this Waiver and Release of Claims prevents the State Parties from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004.

THE STATE OF ARIZONA

By: [Signature]

THE ARIZONA GAME AND FISH COMMISSION

By: [Signature]

THE ARIZONA STATE PARKS BOARD

By: [Signature]

THE ARIZONA STATE LAND DEPARTMENT

By: [Signature]

ST. JOHNS IRRIGATION & DITCH COMPANY

By: [Signature]

LYMAN WATER COMPANY

By: [Signature]

ROUND VALLEY WATER USERS' ASSOCIATION

By: Richard A. Wall

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By: William P. Schradu

TUCSON ELECTRIC POWER COMPANY

By: M. J. [Signature]

CITY OF ST. JOHNS

By: _____

TOWN OF EAGAR

By: Sandra L. Burk

TOWN OF SPRINGVILLE

By: Kay Dym

ATTACHMENT NO. 2

EXHIBIT 11.2.1

ZUNI TRIBE AND UNITED STATES WATER QUANTITY WAIVER AND RELEASE OF CLAIMS

1. Except as provided in paragraph 2, the Zuni Indian Tribe on behalf of itself and its members (collectively, "Zuni Tribe"), and the Secretary of the Interior on behalf of the United States in its capacity as trustee for the Zuni Indian Tribe and its members, in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2.1 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waive and release claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for:

- A. All past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands (as those lands are defined in the Settlement Agreement) from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) and any time thereafter, except for claims within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
- B. All past and present claims for injuries to water rights (including injuries to water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date; and
- C. All past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin (as that basin is defined in the Settlement Agreement), based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors.

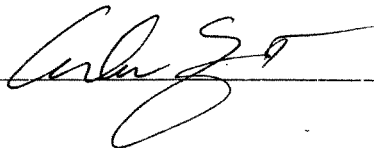
2. Notwithstanding the execution by the Tribe and the United States of this Waiver and Release of Claims, the Zuni Tribe and the United States in its capacity as trustee for the Zuni Tribe and its members, shall retain the right to assert, as provided in paragraph 11.4 of the Settlement Agreement, the following claims:

- A. Claims for breach or enforcement of the terms of the Settlement Agreement or of rights recognized in the Settlement Agreement, or in the Act, including claims for future injuries to such rights;
 - B. Except as provided in subparagraph 1.C, claims for water rights, including injuries to those water rights, for lands acquired by or on behalf of the Zuni Tribe after the Enforcement Date, subject to the terms of the Settlement Agreement, including but not limited to subparagraph 4.2.D and paragraph 5.6 of the Settlement Agreement; and
 - C. Claims for groundwater rights and injuries to surface water and groundwater, as provided in Article 5 of the Settlement Agreement.
3. Nothing in this Waiver and Release of Claims quantifies or otherwise affects the water rights, claims, or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band, or community, other than the Zuni Tribe. Furthermore, nothing in this Waiver and Release of Claims waives the ability of any federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water rights, claims or entitlements to the extent permitted by law. The Zuni Tribe and the United States retain all claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.
4. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.
5. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe or the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.
6. The benefits realized by the Tribe and its members under this Waiver and Release of Claims, including retention of any claims and rights, shall constitute full and complete satisfaction of all members' claims for:
- A. Water rights under federal, state, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the Enforcement Date and any time thereafter; and
 - B. Injuries to water rights under federal, state and other laws (including claims for water rights in groundwater, surface water, and effluent, claims for damages for deprivation of water rights, and claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date.

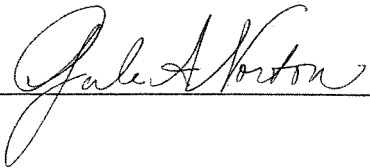
7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004.

THE ZUNI INDIAN TRIBE

By: 

THE UNITED STATES OF AMERICA
SECRETARY OF THE INTERIOR

By: 

ATTACHMENT NO. 3

EXHIBIT 11.2.2

ZUNI TRIBE WATER QUALITY AND INTERFERENCE WITH TRUST RESPONSIBILITY WAIVER AND RELEASE OF CLAIMS AGAINST THE STATE AND OTHER PARTIES

1. Except as provided in paragraphs 2, 3 and 4, the Zuni Indian Tribe on behalf of itself and its members (collectively, "Zuni Tribe"), in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2.2 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waives and releases claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for:

- A. All past and present claims, including natural resource damage claims under CERCLA (as CERCLA is defined in the Settlement Agreement), the Oil Pollution Act (as that Act is defined in the Settlement Agreement), or any other applicable statute, for injury to water quality accruing from time immemorial through the Enforcement Date for lands within the LCR basin;
- B. The right to request that the United States bring any past and present claims for injuries to water quality under the natural resource damage provisions of CERCLA, the Oil Pollution Act, or any other applicable statute, for lands within the LCR basin accruing from time immemorial through the Enforcement Date;
- C. All future claims, including natural resource damage claims under CERCLA, the Oil Pollution Act, or any other applicable statute, for injury or threat of injury to water quality accruing after the Enforcement Date, for any lands within the Eastern LCR basin (as that term is defined in the Settlement Agreement) caused by:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
 - (3) The Parties' performance of any obligations under the Settlement Agreement;
 - (4) The discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
 - (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

- (6) Any combination of the causes described in subparagraphs (1) through (5);
 - D. The right to request that the United States bring any future claims for injuries or threat of injury to water quality under the natural resource damage provisions of CERCLA, the Oil Pollution Act, or any other applicable statute, accruing after the Enforcement Date, for any lands within the Eastern LCR basin, caused by:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
 - (3) The Parties' performance of any obligations under the Settlement Agreement;
 - (4) The discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
 - (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
 - (6) Any combination of the causes described in subparagraphs (1) through (5); and
 - E. All claims of interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or the Act.
- 2. Notwithstanding the execution by the Tribe of this Waiver and Release of Claims, the Zuni Tribe shall retain the right to assert, as provided in subparagraph 11.4.A of the Settlement Agreement, the following claims:
 - A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights.
 - B. Claims for injuries to surface water, groundwater and water quality as provided in Article 5 of the Settlement Agreement; and
 - C. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraphs 1.C and D;
 - (2) Except as provided in subparagraphs 1.C(4) and (5), and 1.D(4) and (5), claims for injuries to water quality accruing after the Enforcement

Date against any person or entity that is responsible for initially disposing of or initially releasing a Hazardous Substance (as Hazardous Substance is defined in the Settlement Agreement) or oil, even if the migration of that Hazardous Substance or oil to lands owned by or for the Zuni Tribe is caused by that person's or entity's lawful diversion of surface water or lawful withdrawal of underground water;

- (3) Notwithstanding subparagraphs 1.C and D, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance, and the right to request that the United States bring such claims solely on its behalf; and
- (4) Notwithstanding subparagraphs 1.C and D, claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures and the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law, and the right to request that the United States bring such claims solely on its behalf.

3. Nothing in this Waiver and Release of Claims quantifies or otherwise affects the water rights, claims, or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band, or community, other than the Zuni Tribe. Furthermore, nothing in this Waiver and Release of Claims waives the ability of any federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water rights, claims or entitlements to the extent permitted by law. The Zuni Tribe retains all claims of injuries to water quality against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

4. Except as provided in paragraph 1, nothing in this Waiver and Release of Claims affects any right of the United States or the State of Arizona to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

6. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004.

THE ZUNI INDIAN TRIBE

By: 

ATTACHMENT NO. 4

EXHIBIT 11.2.3

UNITED STATES WATER QUALITY WAIVER AND RELEASE OF CLAIMS

1. Except as provided in paragraphs 2, 3 and 4, the United States, in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2.3 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waives and releases claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for:

- A. All past and present common law claims accruing from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) arising from or relating to water quality in which the injury asserted is to the Tribe's interest in water, trust land, and natural resources in the LCR basin (as that term is defined in the Settlement Agreement);
- B. All past and present natural resource damage claims accruing through the Enforcement Date arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the LCR basin, only for those cases in which the United States, through the Secretary of the Interior or other designated federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of the Zuni Indian Tribe Water Rights Settlement Act of 2003, in section 300.600(b)(2) of title 40, Code of Federal Regulations;
- C. All future common law claims arising from or relating to water quality in which the injury or threat of injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Eastern LCR basin (as that term is defined in the Settlement Agreement) accruing after the Enforcement Date caused by:
 - (1) The lawful diversion or use of surface water;
 - (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
 - (3) The Parties' performance of any obligations under the Settlement Agreement;
 - (4) The discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

- (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (6) Any combination of the causes described in subparagraphs (1) through (5); and

D. All future natural resource damage claims accruing after the Enforcement Date arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Eastern LCR basin, only for those cases in which the United States, through the Secretary of the Interior or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of the Zuni Indian Tribe Water Rights Settlement Act of 2003, in section 300.600(b)(2) of title 40, Code of Federal Regulations, caused by:

- (1) The lawful diversion or use of surface water;
- (2) The lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
- (3) The Parties' performance of their obligations under the Settlement Agreement;
- (4) The discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;
- (5) The discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or
- (6) Any combination of the causes described in subparagraphs (1) through (5).

2. Notwithstanding the execution by the United States of this Waiver and Release of Claims, the United States shall retain the right to assert, as provided in paragraph 11.4.B of the Settlement Agreement, the following claims:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights;
- B. Claims for injuries to surface water, groundwater and water quality as provided in Article 5 of the Settlement Agreement; and
- C. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraphs 1.C and D; and

(2) Claims brought at the request of the Tribe pursuant to subparagraphs 11.4.A(4)(c) and (d) of the Settlement Agreement.

3. Nothing in this Waiver and Release of Claims quantifies or otherwise affects the water rights, claims, or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band, or community, other than the Zuni Tribe. Furthermore, nothing in this Waiver and Release of Claims waives the ability of any federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water rights, claims or entitlements to the extent permitted by law. The United States retains all claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community.

4. Except as provided in paragraph 1, nothing in this Waiver and Release of Claims affects any right of the United States or the State of Arizona to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

6. Nothing in this Waiver and Release of Claims prevents the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004

THE UNITED STATES OF AMERICA
SECRETARY OF THE INTERIOR

By: 

EXHIBIT 11.2
ZUNI TRIBE AND UNITED STATES WAIVER AND RELEASE OF CLAIMS

1. Except as provided in paragraph 2, the Zuni Indian Tribe on behalf of itself and its members (collectively, "Zuni Tribe"), and the United States on behalf of the Tribe and its members, in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.2 of the Settlement Agreement and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 200__ ("the Act"), hereby waives and releases claims against the State of Arizona, or any agency or political subdivision of the State of Arizona, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all:

- A. Past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands (as those Lands are defined in the Settlement Agreement) from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) and any time thereafter, except for claims within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
- B. Past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date;
- C. Past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin (as that basin is defined in the Settlement Agreement), based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;
- D. Past and present claims for injuries to water quality accruing from time immemorial through the Enforcement Date for lands within the LCR basin; and
- E. Future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin (as that term is defined in the Settlement Agreement) caused by

- (1) the lawful diversion or use of surface water;
- (2) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;
- (3) the Parties' performance of their obligations under the Settlement Agreement;
- (4) discharge of oil (as oil is defined in the Settlement Agreement) associated with routine physical or mechanical maintenance of wells or diversions structures;
- (5) discharge of oil associated with routine start-up and operation of well pumps; or
- (6) any combination thereof.

2. Notwithstanding the execution by the Tribe and the United States of this Waiver and Release of Claims, the Zuni Tribe and the United States on behalf of the Tribe and its members shall retain the right to assert, as provided in paragraph 11.4 of the Settlement Agreement, the following claims:

- A. Claims for breach or enforcement of the terms of the Settlement Agreement or of rights recognized in the Settlement Agreement, or in the Act, including claims for future injuries to such rights;
- B. Except as provided in paragraph 1.C, claims for water rights, including injuries to those water rights, for lands acquired after the Enforcement Date, subject to the terms of the Settlement Agreement, including but not limited to subparagraph 4.2.D and paragraph 5.6 of the Settlement Agreement;
- C. Claims for groundwater rights and injuries to surface water, groundwater and water quality, as provided in Article 5 of the Settlement Agreement; or
- D. Claims for future injuries to water quality, as described below:
 - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in paragraph 1.E;
 - (2) Except as provided in subparagraphs 1.E(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against any person or entity that is responsible for initially disposing of or initially releasing a Hazardous Substance (as Hazardous Substance is defined in the Settlement Agreement) or oil, even if the migration of that Hazardous Substance or oil to lands owned by or for the Zuni Tribe is caused by that person's or entity's lawful

diversion of surface water or lawful withdrawal of underground water;

- (3) Notwithstanding paragraph 1.E, claims accruing at least 30 years after the Enforcement Date under CERCLA (as CERCLA is defined in the Settlement Agreement) for injuries to water quality caused by release of a Hazardous Substance;
- (4) Notwithstanding paragraph 1.E, claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act (as that Act is defined in the Settlement Agreement) for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures and the discharge of oil associated with routine start up and operation of well pumps; or
- (5) Notwithstanding paragraph 1.E, claims accruing at least 30 years after the Enforcement Date under Subtitle I of RCRA (as RCRA is defined in the Settlement Agreement) for injuries to water quality caused by the discharge of petroleum from underground storage tanks.

3. Nothing in this Waiver and Release of Claims affects the water right claims or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band or community, other than Zuni Tribe. Furthermore, nothing in this Settlement Agreement waives the ability of any such federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water right claims or entitlements to the extent permitted by law. The Zuni Tribe and the United States retain all claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

4. Nothing in this Waiver and Release of Claims affects any right of the United States or of the State of Arizona to take any actions, including enforcement actions, under any statutes, regulations, or any other applicable laws relating to water quality or the environment, even where such actions incidentally benefit the Zuni Tribe. For purposes of this paragraph, the United States means any federal department, agency or component thereof, acting in its sovereign capacities, except when acting solely on behalf of the Zuni Tribe.

5. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know, that it has been damaged, unless another statutory standard applies.

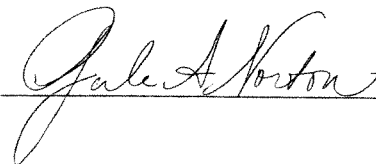
6. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe or the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

7. Tribal Member Entitlements. Any entitlement to water (including groundwater, surface water and effluent) of any individual member of the Zuni Tribe for Zuni Lands shall be satisfied out of the water resources provided to the Zuni Tribe in the Settlement Agreement.

8. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS ____ DAY OF _____, 200__.

THE UNITED STATES OF AMERICA

By: 

THE ZUNI INDIAN TRIBE

By: 

ATTACHMENT NO. 5

EXHIBIT 11.3 (revised)
ZUNI TRIBE WAIVER AND RELEASE OF CLAIMS
AGAINST THE UNITED STATES

1. Except as provided in paragraphs 2 and 3, the Zuni Indian Tribe on behalf of itself and its members (collectively "Zuni Tribe") in consideration of the benefits realized under the Zuni Indian Tribe Water Rights Settlement Agreement in the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), and in accordance with the commitments under paragraph 11.3 of the Settlement Agreement, and pursuant to the authorization granted in section 7 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 ("the Act"), hereby waives and releases claims against the United States, including any agencies, officials, or employees thereof, for:

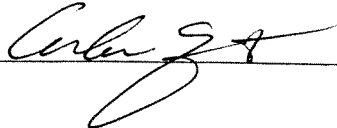
- A. All past, present and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands (as those Lands are defined in the Settlement Agreement), from time immemorial through the Enforcement Date (as the Enforcement Date is defined in the Settlement Agreement) and any time thereafter;
- B. All past and present claims for injuries to water rights (including injuries to water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands, from time immemorial through the Enforcement Date;
- C. All past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin (as that basin is defined in the Settlement Agreement), based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;
- D. All past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the LCR basin in Arizona from time immemorial through the Enforcement Date; and
- E. All claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of this Settlement Agreement or the Act.

2. Notwithstanding the execution by the Tribe of this Waiver and Release of Claims, the Zuni Tribe shall retain the right to assert, as provided in subparagraph 11.4.A and paragraph 11.6 of the Settlement Agreement, the following claims:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement, or in the Act, including claims for future injuries to such rights;
 - B. Except as provided in subparagraph 1.C, claims for water rights, including injuries to those water rights, for lands acquired by or on behalf of the Zuni Tribe after the Enforcement Date, subject to the terms of the Settlement Agreement, including but not limited to subparagraph 4.2.D and paragraph 5.6 of the Settlement Agreement; and
 - C. Claims for groundwater rights and injuries to surface water, groundwater and water quality as provided in Article 5 of the Settlement Agreement.
3. Nothing in this Waiver and Release of Claims affects the Zuni Tribe's ability to make any claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.
4. For purposes of this Waiver and Release of Claims, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.
5. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe from participating with other entities in further activities to augment the water supply available to the LCR basin.
6. The benefits realized by the Tribe and its members under the Settlement Agreement, including retention of any claims and rights, shall constitute full and complete satisfaction of all members' claims for:
- A. Water rights under federal, state, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the Enforcement Date and any time thereafter; and
 - B. Injuries to water rights under federal, state and other laws (including claims for injuries to water rights in groundwater, surface water, and effluent, claims for damages for deprivation of water rights, and claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date.
7. This Waiver and Release of Claims becomes effective and enforceable on the Enforcement Date.

DATED THIS 8th DAY OF July, 2004.

THE ZUNI INDIAN TRIBE

By: 

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF APACHE**

3
4 IN RE THE GENERAL ADJUDICATION
5 OF ALL RIGHTS TO USE WATER IN
6 THE LITTLE COLORADO RIVER
7 SYSTEM AND SOURCE

CONTESTED CASE NO.

**ZUNI INDIAN TRIBE WATER RIGHTS
SETTLEMENT JUDGMENT AND
DECREE**

9
10 1. The Court has considered the Zuni Indian Tribe Water Rights Settlement Agreement in
11 the Little Colorado River Basin, dated _____, 2002 ("Settlement Agreement"),
12 permanently resolving certain water rights claims of the Zuni Indian Tribe on behalf of itself and its
13 members (hereinafter referred to as the "Tribe") and of the United States on behalf of the Tribe and
14 its members that are subject to the Court's jurisdiction in this case, a copy of which Settlement
15 Agreement is attached as Exhibit 1 to the Stipulation and Request for Entry of Judgment and Decree.

16 2. The Court finds that the conditions precedent to the enforcement of the Settlement
17 Agreement, set forth in subparagraphs 3.1.A – 3.1.J of the Settlement Agreement, have been satisfied.

18 3. The Court further finds that, as of the Effective Date of the Settlement Agreement,
19 there is no surface water available for new appropriations in the Norviel Decree Area.

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

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

23 5. The Settlement Agreement is hereby approved.

24 6. Pursuant to the terms of subparagraph 4.6.B of the Settlement Agreement and the
25 abstract attached to the Settlement Agreement as Exhibit 4.6.B, the Tribe and the United States have
26 the permanent right to the on-Reservation use of a total of 5,500 AFA of surface water from the Little
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1 Colorado River. The priority date associated with the right of the Tribe and the United States acting
2 on behalf of the Tribe to this surface water is August 28, 1984.

3 7. All severances and transfers of surface water rights to the Zuni Heaven Reservation
4 that have been conditionally approved, as shown on the attached conditional orders, in accordance
5 with subparagraph 4.6.D(4) of the Settlement Agreement, are hereby approved. The Zuni Tribe shall
6 apply to sever and transfer any additional surface water rights pursuant to subparagraph 4.6.D(5) of
7 the Settlement Agreement.

8 8. Except as described in paragraph 5.3 of the Settlement Agreement, relating to the Zuni
9 Tribe's use of 1,500 AFA of underground water, the Settlement Agreement does not create any vested
10 right to groundwater under state law, or any priority to the use of groundwater that would be superior
11 to any other right or use of groundwater under state law, whether through the Settlement Agreement,
12 by incorporation of any abstract, agreement or stipulation prepared under the Settlement Agreement,
13 or through Congressional legislation approving, confirming or ratifying the Settlement Agreement or
14 any abstract, agreement or stipulation prepared under the Settlement Agreement. Notwithstanding the
15 preceding sentence, the rights of parties to the agreements referred to in paragraph 5.8 of the
16 Settlement Agreement, as among themselves, shall be as stated in those agreements.

17 9. In accordance with the terms of Article 8 of the Settlement Agreement and section 8(b)
18 of the Act, water rights made available under the Settlement Agreement and used on the Zuni Heaven
19 Reservation shall not be subject to forfeiture or abandonment. State law does not apply to water uses
20 on the Reservation. Furthermore, the State of Arizona may not regulate or tax this water or uses of
21 this water, but this Court or the Norviel Decree Court may assess administrative fees for delivery of
22 this water. Subject to paragraph 7.7 of the Settlement Agreement, the Zuni Indian Tribe and the
23 United States shall use water made available to them under the Settlement Agreement on the Zuni
24 Heaven Reservation for any use they deem appropriate. The Zuni Tribe and the United States shall
25 not, however, sell, lease, transfer, or transport water made available to it for use on the Zuni Heaven
26 Reservation to any other place; provided, however, that water may be severed and transferred from
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1 the Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance with
2 state law. Once transferred to any lands held in fee, that water shall be subject to state law.

3 10. Surface water rights in the Eastern LCR basin shall be determined in accordance with
4 Article 4 of the Settlement Agreement.

5 11. No new applications to appropriate surface water in the Norviel Decree Area shall be
6 filed for uses commenced after the Effective Date of the Settlement Agreement, unless those new
7 surface water uses are located in closed basins.

8 12. No new reservoirs or dams shall be constructed on the LCR between Lyman Dam and
9 the western boundary of the Zuni Heaven Reservation without the written consent of the Tribe unless

10 A. the new dam or reservoir is used for *de minimis* uses (as defined by the
11 Settlement Agreement), effluent impoundments, tailwater ponds, or impoundments of
12 underground water;

13 B. the reservoir is wholly contained within a closed basin;

14 C. the reservoir has no permanent water storage and is operated solely for flood
15 control purposes; or

16 D. the water stored in the new reservoir results from a change of use, change in
17 point of diversion, or severance and transfer; provided, however, that the Zuni Tribe retains
18 any state-law objections to severance and transfers.

19 13. Zion Dam, formerly known as Udall Reservoir, may be repaired or rebuilt only with
20 the written consent of the Tribe.

21 14. All parties to the Little Colorado River Adjudication and all water users in the Little
22 Colorado River Basin may enforce the provisions of Article 4, Article 5 and Article 11 of the
23 Settlement Agreement, according to the terms of those Articles.

24 15. In exchange for the benefits realized under the Settlement Agreement and as
25 authorized by the Act, the Parties have executed Waivers and Releases of Claims for water rights and
26 injuries to water rights, which are attached as Exhibits 1, 2, and 3, which are by this reference
27 incorporated into this Judgment and Decree.

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16. Nothing in this Judgment and Decree or the Settlement Agreement quantifies or otherwise affects the water rights or entitlements to water of any Indian tribe, band or community, or the United States on behalf of any Indian tribe, band or community, other than the Zuni Indian Tribe and the United States acting on behalf of the Zuni Tribe.

17. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree and the Settlement Agreement, including, but not limited to, the entry of injunctions, restraining orders or other remedies under law or equity.

DATED this ____ day of _____, 2002.

Judge of the Superior Court