CITY COUNCIL REPORT

Meeting Date: January 22, 2013
General Plan Element: ***Public Services & Facilities***
General Plan Goal: ***Ensure renewable, long-term water supplies***

ACTION

Subject statement. Adopt Resolution No. 9297 approving and authorizing the Mayor to execute: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement No. 2008-170-COS-A1 ("Settlement Agreement"), an agreement among the City of Scottsdale, the White Mountain Apache Tribe ("WMAT"), and various federal and state parties; and (2) the Waiver and Release of Claims for Injury to Water Rights by Parties Other Than The WMAT and The United States (Exhibit 12.1 to the Settlement Agreement). This agreement resolves the water rights claims of the WMAT to the Salt River watershed.

BACKGROUND

In 2008, federal, Tribal, state, and local parties negotiated and later signed a final water rights settlement as to the claims of the White Mountain Apache Tribe. The Tribe's Fort Apache Reservation is located on the headwaters of the Salt River and includes more than 40% of the Salt River Project watershed. Much significance is attributed to resolution of the legal and physical access to these water supplies to which the Tribe claims an 1871 priority date.

The parties to the settlement are: the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, and Show Low; the Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District. In 2009, these parties authorized the execution of an agreement that resolves the Tribe's water rights claims and provides the parties much needed certainty as to access to Salt River surface water supplies. Among other things, the settlement also addresses a long-term solution to drinking water shortages on the reservation.

Under the terms of the settlement, the Tribe is allocated an annual depletion water budget of 52,000 acre feet through a combination of 25,000 acre feet of Central Arizona Project (CAP) surface water and 27,000 acre feet of non-CAP surface water. Of significance, the CAP water allocated to the Tribe replaces water that would otherwise have been diverted from the Salt

Action Taken _____

River. Further, the Tribe has agreed to lease most of its allocated CAP water to certain Valley cities, thereby replacing much of the surface water conceded to the Tribe by the communities with Salt River Project lands.

Because Scottsdale's percentages of SRP land is relatively small, the potential impact of the settlement amounts to less than one percent (1%) of Scottsdale's total assured water supply. On the other hand, by participating in the settlement, Scottsdale will benefit from the certainty derived from the quantification of the Tribe's water budget and the Tribe's waiver of any future claims to the watershed.

Indian water settlements must receive Congressional approval. The twenty settling parties approved the original agreement in 2009. Following introduction in the Senate of The White Mountain Apache Water Rights Quantification Act in 2009, President Obama signed the Claims Resolution Act of 2010 (P.L. 111-291; the "Act") on December 8, 2010, wherein Title III authorized, ratified, and confirmed the WMAT water rights settlement.

The parties to the settlement understood that any legislative amendments to the original settlement agreement would require the parties to amend their agreement to be consistent with the Act. This Amended and Restated WMAT Water Rights Quantification Agreement incorporates the final legislative revisions and the final terms and conditions of other settlement exhibits, including WMAT CAP water leases and multiple waivers and releases of Tribal and non-Tribal water rights claims.

ANALYSIS & ASSESSMENT

Without this Agreement, an adjudication of the Tribe's water rights claims would take many years at great expense to the interested parties. Such unresolved claims would also prolong uncertainty as to the availability of Salt River water supplies to Valley cities and the Salt River Project.

The impact of the settlement on Scottsdale's water supply is not significant (less than one half of one percent of the City's demand at final build out). Unlike prior Indian water settlements, Scottsdale does not presently intend to lease any of the Tribe's CAP water. The benefits of participating as a settlement party, however, remain significant. In particular, the settlement provides more certainty to all the parties as to their water rights and avoids possibly years of litigating an adjudication of the many competing claims. The City will also benefit from the waivers and releases the Tribe and the United States will execute as to any past, present, and future claims related to water rights or injury to water rights.

The amended and restated provisions refine certain defined terms, clarify federal and state firming obligations, and revise the terms of various exhibits, including waivers, releases, and

reservations of rights, all so as to conform the Settlement Agreement with the Act as required by 309(d)(1)(A)(i) of Title III.

Significant Issues to be Addressed

Following complete approval and execution of the amended and restated agreement, the parties are required to file and seek approval of a Judgment and Decree in the Gila River and Little Colorado General Stream Adjudication proceedings. The Enforceability Date of the settlement is tied to the Secretary of Interior publishing in the Federal Register a statement of certain findings by April 30, 2021 (Title III, Section 309(d)(1)(A) through (G)). Among these findings, the State of Arizona must have deposited $2 million in a WMAT Water Rights Settlement Subaccount, and a final Record of Decision approving construction must have been issued.

The Settlement Agreement includes a provision whereby the parties will agree to support appropriations authorized in the federal legislation and to support implementation of the settlement and the Act. This support is to be provided in a manner consistent with the City's adopted federal legislative program agenda.

RESOURCE IMPACTS

Approval of the Settlement Agreement imposes no costs on the City. The Settlement Agreement is expected to become enforceable no later than April 30, 2021.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 9297 approving and authorizing the Mayor to execute the Amended and restated White Mountain Apache Water Rights Settlement Agreement and accompanying Waiver and Release of Claims (Exhibit 12.1). Approval will help resolve a longstanding water resource issue and provide more certainty as to access to Salt River supplies.

Description of Option B

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RESPONSIBLE DEPARTMENT(S)

City Attorney's Office

Water Resources Department

STAFF CONTACTS (S)

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Steven Bennett, Deputy City Attorney sbennett@scottsdaleaz.gov
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APPROVED BY

1/3/13

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Date

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Date

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ATTACHMENTS

1. Resolution No. 9297

2. Amended and Restated White Mountain Apache Tribe Water Quantification Agreement No. 2008-170-COS-A1 with Exhibit Nos. 2.2, 2.57, 2.81, 5.7.2, 7.1, 9.4, 10.1.1A, 10.1.1B, 10.1.1C, 10.1.1D, 10.1.1E, 10.1.1F, 10.1.1G, 10.1.1H, 10.1.1.1A, 10.1.1.1B, 10.2.1, 11.2, 11.3.1.1.A, 11.3.1.1.B, 11.3.1.1.C, 11.3.1.2, 11.3.2.3, 11.3.3.2, 11.3.4.2, 11.3.7.2, 12.1, 12.2, 12.3, 12.4, 12.9.6.1, 12.9.6.2, 14.7.2, and 16.8.

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RESOLUTION NO. 9297

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT NO. 2008-170-COS-A1 AND EXHIBIT 12.1, WAIVER AND RELEASE OF CLAIMS FOR INJURY TO WATER RIGHTS BY PARTIES OTHER THAN THE WHITE MOUNTAIN APACHE TRIBE AND THE UNITED STATES

WHEREAS, proceedings to determine the nature and extent of claimants' rights to water are pending in the consolidated civil action in the Superior Court of the State of Arizona and styled *In Re the General Adjudication of all Rights to Use Water in the Gila River System and Source* ("Gila River Adjudication"); and

WHEREAS, the City of Scottsdale ("City") is a claimant of water rights in the Gila River Adjudication wherein the United States has also asserted claims to substantial water rights on behalf of the White Mountain Apache Tribe ("Tribe"); and

WHEREAS, recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long term economic well-being of all parties, the Tribe, the City, and others agreed to settle permanently the Tribe's claims as provided in the White Mountain Apache Tribe Water Rights Quantification Agreement; and

WHEREAS, the parties wish to amend and restate the terms of their original agreement and exhibits so as to conform with the settlement's authorizing legislation, Title III of the Claims Resolution Act of 2010 (P.L. 111-291);

WHEREAS, the best interests of the City will be served by approving and entering into the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement;

NOW, THERFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City Council hereby approves the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement, which, with all exhibits thereto, is Agreement No. 2008-170-COS-A1.

Section 2. The Mayor of the City of Scottsdale is hereby authorized to execute the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.

Section 3. The Mayor is further authorized to execute the Waiver and Release of Claims For Injury to Water Rights by Parties Other Than the White Mountain Apache Tribe and the United States in the form attached as Exhibit 12.1 to the White Mountain Apache Tribe Water Quantification Agreement.

Section 4. The City Attorney is authorized to execute a stipulation and request for entry of judgment and decree in the Gila River Adjudication proceedings. The form of judgment and decree will be substantially in the form attached as Exhibit 12.9.6.1 to the White Mountain Apache Tribe Water Rights Quantification Agreement, with such additions, deletions and modifications as shall be approved by the City Attorney.

Section 5. The City Attorney is hereby authorized to approve, and the Mayor, based on such approval, is hereby authorized to execute such amendments to Agreement No. 2008-170-COS-A1 as are necessary and appropriate in the City Attorney's determination to effectuate the purposes and intent of the Agreement.

Section 6. That the various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Scottsdale Arizona this 22nd day of January, 2013.

ATTEST:

City of Scottsdale, an
Arizona Municipal Corporation

Carolyn Jagger, City Clerk

W.J "Jim" Lane, Mayor

APPROVED AS TO FORM:
Bruce Washburn, City Attorney

By: _____
Steven B. Bennett
Deputy City Attorney

Dated as of November 1, 2012

AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT

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AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT

This Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement, dated as of November 1, 2012, amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), and is entered into among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.

1.0 RECITALS

1.1 Proceedings to determine the nature and extent of the rights to water of the White Mountain Apache Tribe, its Members, the United States, and other claimants are pending in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings.

1.2 Recognizing that final resolution of these pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the White

Mountain Apache Tribe, its neighboring non-Indian communities and other Arizona water users have agreed to permanently quantify the water rights of the White Mountain Apache Tribe, its Members and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this Agreement.

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

NOW, THEREFORE, the Parties agree as follows:

2.0 DEFINITIONS

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

2.1 "Active Conservation Capacity" shall mean that portion of the capacity of a reservoir that may be used to Divert Water or operated to release Water for irrigation, power, M&I, or other Water Diversions.

2.2 "Act" shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as Exhibit 2.2.

2.3 "AFY" shall mean acre-feet per Year.

2.4 "Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to the Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

2.5 "Arizona Water Banking Authority" shall mean the Arizona Water Banking Authority, formed pursuant to A.R.S. §§45-2401 et seq.

2.6 "Arizona Water Company" shall mean the Arizona corporation of that name, its subsidiaries and affiliates.

2.7 "Available CAP Supply" shall mean for any given Year all Fourth Priority Water available for delivery through the CAP System, Water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

2.8 "AWSA" shall mean the Arizona Water Settlements Act, P.L. 108-451, 118 Stat. 3478 (2004).

2.9 "Buckeye Irrigation Company" shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

2.10 "Buckeye Water Conservation and Drainage District" shall mean the entity of that name that is a political subdivision of the State and an irrigation district with the power of drainage organized under the laws of the State.

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

2.12 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

2.13 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

2.14 "CAP Fixed OM&R Charge" shall mean 'Fixed OM&R Charge' as that term is defined in the CAP Repayment Stipulation.

2.15 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

2.16 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

2.17 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

2.18 "CAP Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. CAWCD is the CAP Operating Agency at the time of execution of this Agreement.

2.19 "CAP Pumping Energy Charge" shall mean the 'Pumping Energy Charge' as that term is defined in the CAP Repayment Stipulation.

2.20 "CAP Pumping Energy Costs" shall mean 'Pumping Energy Costs' as that term is defined in the CAP Repayment Stipulation.

2.21 "CAP Repayment Contract" shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

2.22 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

2.23 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

2.24 "CAP Subcontractor" shall mean an individual or entity that has entered into a long term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

2.25 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

2.26 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

2.27 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

2.28 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

2.29 "CSIF" shall mean the "CAP/SRP Interconnection Facility" that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's Water delivery system.

2.30 "Depletion" or "Deplete" shall mean the amount of Water Diverted less return flows to the Salt River or Little Colorado River Watershed from which it was Diverted.

2.31 "Diversion" shall mean the act of Diverting.

2.32 "Divert" or "Diverting" shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

2.33 "Effluent" shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

2.34 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

2.35 "Excess CAP Water" shall mean 'Excess Water' as that term is defined in the CAP Repayment Stipulation.

2.36 "Excess CAP Water Contract" shall mean a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

2.37 "Excess CAP Water Contractor" or "Excess CAP Water Contractors" shall mean one or more persons or entities having an Excess CAP Water Contract.

2.38 "Exhibit" shall mean an exhibit to this Agreement as set forth in Paragraph 3.0.

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

2.40 "Gila River Adjudication Court" shall mean the Superior Court of the State of Arizona in and for the County of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

2.41 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

2.42 "Groundwater" shall mean all Water beneath the surface of the Earth other than Surface Water.

2.43 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among

CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

2.44 "Injury to Water Rights" shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term "Injury to Water Rights" includes a change in the Groundwater table and any effect of such a change. The term "Injury to Water Rights" does not include any injury to water quality.

2.45 "Large Reservoir" shall mean a Water storage reservoir located entirely on the Reservation with an Active Conservation Capacity exceeding 2,000 acre-feet.

2.46 "Lease Agreement" –

2.46.1 "CAWCD Lease Agreement" shall mean the agreement entered into among the WMAT, the Secretary and CAWCD pursuant to Paragraph 10.0, the form of which is attached as Exhibit 10.2.1.

2.46.2 "City Lease Agreement" shall mean one or more of those agreements entered into among the WMAT, the Secretary, and one or more of the Cities pursuant to Paragraph 10.0, the forms of which are attached as Exhibits 10.1.1A through 10.1.1H.

2.47 "Leased Water" shall mean the WMAT CAP Water that is leased to a City pursuant to a City Lease Agreement or CAWCD pursuant to the CAWCD Lease Agreement.

2.48 "Leasing Cities" for purposes of Paragraph 10.0 shall mean the Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, and Tempe.

2.49 "Little Colorado River Adjudication Court" shall mean the Superior Court of the State of Arizona in and for the County of Apache exercising jurisdiction over the Little Colorado River Adjudication Proceedings.

2.50 "Little Colorado River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417*.

2.51 "Little Colorado River Watershed" shall mean all lands located within the Surface Water drainage of the Little Colorado River and its tributaries within the State of Arizona.

2.52 "M&I Use" or "M&I Uses" shall mean the Diversion of Water for domestic, residential, municipal, industrial, and commercial uses, which are served by a municipal water delivery system.

2.53 "Maximum Annual Depletion Amount" shall mean the maximum amount of Water depleted per Year as set forth in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

2.54 "Maximum Annual Diversion Amount" shall mean the maximum amount of Water Diverted per Year as set forth in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

2.55 "Member" or "Members" shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

2.56 "Net SRP Reservoir Storage" shall mean that amount of Water physically stored in SRP Reservoirs on May 1 of each year less water storage credits calculated by SRP for Water stored for the United States on behalf of the San Carlos Apache Tribe and the Bureau of Reclamation, the Salt River Pima-Maricopa Indian Community, the Fort McDowell Mohave-Apache Indian Community, the Gila River Indian Community, RWCD, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, the City of Phoenix, the City of Tempe, the City of Scottsdale, the City of Mesa, the City of Glendale, and the City of Chandler. The storage credits referenced in the preceding sentence shall be those credits provided under the terms and conditions of judgments and agreements with the entities specified above as those judgments and agreements exist on January 1, 2008. The amount of Water physically stored in SRP Reservoirs used to perform the calculations of Net SRP Reservoir Storage pursuant to this Agreement shall not exceed SRP's storage rights, as determined in the Gila River Adjudication, for SRP Reservoirs.

2.57 "Off-Reservation Trust Land" shall mean land: (1) located outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached as Exhibit 2.57.

2.58 "Paragraph" shall mean a numbered paragraph of this Agreement including all Subparagraphs in such Paragraph.

2.59 "Party" shall mean an entity represented by a signatory to this Agreement and "Parties" shall mean more than one of such entities. The State's participation as a Party shall be as described in Subparagraph 16.5. The United States' participation as a Party shall be in the capacity as described in Subparagraph 2.72.

2.60 "Plan 6 Cities" shall mean the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe.

2.61 **"**Roosevelt Water Conservation District" or "RWCD" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.62 "Salt River Reservoir System" shall mean the four reservoirs operated by SRP on the Salt River created by the impoundment of Water behind Stewart Mountain Dam, Mormon Flat Dam, Horse Mesa Dam, and Modified Theodore Roosevelt Dam and any dams that are constructed after December 31, 2008, to the extent that they replace and do not exceed then-existing storage capacity of any of those four dams.

2.63 "Salt River Watershed" shall mean all lands located within the Surface Water drainage of the Salt River and its tributaries.

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

2.65 "SRP" shall mean the Salt River Project Agricultural Improvement and Power

District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial Corporation.

2.66 "SRP Reservoirs" shall mean the Salt River Reservoir System plus the Verde River Reservoir System.

2.67 "SRRD" shall mean the Salt River Reservoir District as defined on December 31, 2007 in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

2.68 "State" shall mean the State of Arizona.

2.69 "Subparagraph" shall mean a numbered subparagraph of this Agreement.

2.70 "Surface Water" shall mean all Water that is appropriable under State law. For purposes of the definition of "Water Right" in Paragraph 12.0, the term "Surface Water" shall also include Colorado River water.

2.71 "Total Water Lease Charge" shall mean that amount described in Subparagraph 10.1.1.2 and as described in Subparagraph 4.3 of the City Lease Agreement.

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

2.73 "Use" shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

2.74 "Verde River Reservoir System" shall mean the two reservoirs operated by SRP on the Verde River created by the impoundment of Water behind Bartlett Dam and Horseshoe Dam, and any dams that are constructed after December 31, 2008, to the extent that they replace and do not exceed then-existing storage capacity of any of those two dams.

2.75 "Water" when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

2.76 "Water Code" shall mean that tribal ordinance to be adopted by the WMAT pursuant to Paragraph 15.0.

2.77 "Water Right" shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State, or other law.

2.78 "White Mountain Apache Tribe" or "WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

2.79 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

2.80 "WMAT CAP Water Delivery Contract" shall mean (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached hereto as Exhibit 7.1; and (B) any amendments to that contract.

2.81 **"**WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81. The depiction of the Reservation on the map attached as Exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

2.82 "WMAT Rural Water System" shall mean the municipal, rural, and industrial Water Diversion, storage, and delivery system described in Section 307 of the Act.

2.83 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

3.0 EXHIBITS

3.1 The following is a list of Exhibits attached to this Agreement, all of which are incorporated herein by reference. All of the Parties have reviewed the Exhibits. Prior to the Enforceability Date, no Party shall object to the terms and conditions of any of the Exhibits in any judicial, administrative or legislative proceedings relating to the approval of this Agreement; provided, however, that each Exhibit shall be binding only on the

specific Parties to such Exhibit unless expressly provided otherwise in Exhibits 12.9.6.1 or 12.9.6.2. Amendments to Exhibits shall be governed by Subparagraph 16.4. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraph 16.4. No Party shall have, by reason of this Agreement, any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit or in Exhibits 12.9.6.1 or 12.9.6.2.

PARAGRAPH NO. – EXHIBIT NO.	**DESCRIPTION**
2.2	White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010)
2.57	Map Showing Off-Reservation Trust Land
2.81	Map Showing the WMAT Reservation
5.7.2	Graph of Maximum Storage in Large Reservoirs
7.1	WMAT CAP Water Delivery Contract
9.4	Standard Form of CAP Subcontract for M&I Use

10.1.1A	Lease Agreement among the WMAT, the Secretary and the City of Avondale
10.1.1B	Lease Agreement among the WMAT, the Secretary and the City of Chandler
10.1.1C	Lease Agreement among the WMAT, the Secretary and the City of Gilbert
10.1.1D	Lease Agreement among the WMAT, the Secretary and the City of Glendale
10.1.1E	Lease Agreement among the WMAT, the Secretary and the City of Mesa
10.1.1F	Lease Agreement among the WMAT, the Secretary and the City of Peoria
10.1.1G	Lease Agreement among the WMAT, the Secretary

	and the City of Phoenix
10.1.1H	Lease Agreement among the WMAT, the Secretary and the City of Tempe
10.1.1.1A	Form of Voluntary Assignment and Assumption of Leased Water
10.1.1.1B	Form of Assignment and Assumption of Leased Water
10.2.1	Lease Agreement among the WMAT, the Secretary and the CAWCD
11.2	Sample Report Required by Subparagraph 11.2
11.3.1.1.A	Inventory of Stockponds
11.3.1.1.B	Inventory of Lakes
11.3.1.1.C	Inventory of Other Impoundments
11.3.1.2	Lakes, Stockponds and Other Impoundments Diversion and Depletion Calculation

11.3.2.3	Irrigation Use Diversion and Depletion Calculation
11.3.3.2	Municipal and Industrial Use Diversion and Depletion Calculation
11.3.4.2	Artificial Snow Making Use Depletion Calculation
11.3.7.2	Mining Use Depletion Calculation
12.1	Waiver and Release of Claims by the Parties Other than the WMAT on Behalf of Itself and its Members and the United States Acting in its Capacity as Trustee for the WMAT and its Members
12.2	Waiver and Release of Claims for Water Rights and Injury to Water Rights by the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members

12.3	Waiver and Release of Claims By the WMAT, on Behalf of Itself and its Members, Against the United States (Except in the Capacity of the United States as Trustee for Other Indian Tribes)
12.4	Waiver and Release of Claims By the United States in All Capacities (Except as Trustee for an Indian Tribe Other than the WMAT) Against the WMAT and its Members
12.9.6.1	Form of Judgment and Decree in the Gila River Adjudication Proceedings
12.9.6.2	Form of Judgment and Decree in the Little Colorado River Adjudication Proceedings
14.7.2	Land classifications subject to RWCD credit of 5.6% of water diverted at Granite Reef Dam

16.8 Water Commissioner's Report of June 3, 1977

4.0 WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS

4.1 The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the following permanent quantified Water Rights to the Use of Water on the Reservation and on Off-Reservation Trust Land:

Source	Maximum Annual Diversion Amount	Maximum Annual Depletion Amount	Reference
4.1.1 Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed	64,000 AFY	21,800 AFY	As set forth in Paragraphs 5.0, 6.0, and 11.0
4.1.2 Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed or the Little Colorado River Watershed	7,000 AFY	4,000 AFY	As set forth in Paragraphs 5.0, 6.0, and 11.0

4.1.3 Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed the first Use of which shall not commence until after the Year 2100.	3,000 AFY	1,200 AFY	As set forth in Subparagraph 5.2 and Paragraph 11.0
4.1.4 White Mountain Apache Tribe Central Arizona Project Water	At least 25,000 AFY	25,000 AFY	As set forth in Paragraphs 7.0 and 11.0
4.1.5 Total	99,000 AFY Subject to Subparagraph 4.1.4	52,000 AFY	

4.2 The Water Rights of the WMAT described in this Paragraph 4.0 shall be held in trust by the United States acting in its capacity as trustee for the WMAT and shall not be subject to forfeiture or abandonment.

4.3 In accordance with the terms of Subparagraphs 5.1, 5.2, and 5.3 and Paragraph 11.0, the WMAT and the United States acting in its capacity as trustee for the WMAT, collectively, shall not Divert, subject to Subparagraph 4.1.4, more than 99,000 AFY from all available sources of Water on the Reservation or on Off-Reservation Trust Land nor cause the Depletion of the amount Diverted from all available sources of Water on the Reservation or on Off-Reservation Trust Land to exceed 52,000 AFY.

4.4 All Water Diverted or Depleted on the Reservation or on Off-Reservation Trust Land by Members or pursuant to any agreement or authorization by the WMAT or the United States acting in its capacity as trustee for the WMAT shall be considered for the purpose of this Agreement to be Diverted or Depleted by the WMAT or the United States acting in its capacity as trustee for the WMAT.

4.5 The Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT as quantified in this Paragraph 4.0 may be used for any Use on the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14, or on Off-Reservation Trust Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph 7.0.

4.6 Surface Water, Groundwater and Effluent purchased or acquired subsequent to the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water Rights specified in this Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3.

4.7 Except for Use of WMAT CAP Water as provided in Paragraph 7.0, no Water available for Use by the WMAT or by the United States acting in its capacity as trustee for the WMAT under this Agreement and the Act may be sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation Trust Land other than pursuant to an exchange.

4.8 All land held by the United States in trust for the WMAT as Off-Reservation Trust Land and all land within the Reservation shall have only those Water Rights specifically quantified in this Paragraph 4.0 for the WMAT and the United States acting in its capacity as trustee for the WMAT.

4.9 Except for CAP Water Diverted from the CAP System, the right of the WMAT and the United States acting in its capacity as trustee for the WMAT to Divert the Water Rights quantified by this Paragraph 4.0 is subject to the physical availability of such Water on the Reservation or on the Off-Reservation Trust Land and is subject to the WMAT's and the United States' acting in its capacity as trustee for the WMAT's priorities for the Diversion of such Water Rights as set forth in Paragraph 5.5 and in the Judgments and Decrees to be entered in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings, copies of which are attached hereto as Exhibits 12.9.6.1 and 12.9.6.2.

4.10 All Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust Land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraph 7.0, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3. Diversions shall be measured or calculated as provided in Paragraph 11.0.

4.11 All Depletions of Water in each Year from Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust Land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3. Depletions shall be measured or calculated as provided in Paragraph 11.0.

4.12 Notwithstanding anything to the contrary in this Agreement, any Diversions of Water by the WMAT or the United States acting in its capacity as trustee for the WMAT on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed that occur when the Salt River Reservoir System is full and the amount of Water in the Salt River Reservoir System is increasing shall not be counted in determining compliance with the Maximum Annual Diversion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2. Likewise, any Depletions of Water Diverted under the circumstances described in the preceding sentence shall not be counted in determining compliance with the Maximum Annual Depletion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2. The Salt River Reservoir System shall be deemed full for purposes of this Subparagraph when the volume of Water stored in the Salt River Reservoir System is equal to the capacity of the Salt River Reservoir System. For purposes of this Subparagraph 4.12, the capacity of the Salt River Reservoir System shall mean the capacity of those reservoirs, including the new conservation space in Modified Theodore Roosevelt Dam, available to store Water

on a continuous basis for irrigation, power, municipal, industrial or other purposes. SRP shall notify the WMAT and the United States acting in its capacity as trustee for the WMAT of an impending spill as soon as practicable and notify them of the date the spill ends.

4.13 In the event the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 are exceeded in any Year by the WMAT or the United States acting in its capacity as trustee for the WMAT, then the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall be reduced by the amount of any such exceedance for such Water source in the following Year.

4.14 Except as provided in Subparagraph 4.6, all Uses of Water on land outside of the Reservation, if and when that land is subsequently and finally determined to be part of the Reservation through resolution of any dispute between the WMAT and the United States over the location of the Reservation boundary, and any fee land within the Reservation placed into trust and made part of the Reservation, shall be subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

5.0 SURFACE WATER

5.1 The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from

all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided that the Maximum Annual Depletion Amount of all such Diversions shall not exceed 25,800 AFY. Up to 7,000 AFY of the 71,000 AFY Maximum Annual Diversion Amount and up to 4,000 AFY of the 25,800 AFY Maximum Annual Depletion Amount specified in the preceding sentence may be Diverted and Depleted from sources of Water within the Little Colorado River Watershed.

5.2 Commencing after the Year 2100, the WMAT and the United States acting in its capacity as trustee for the WMAT also shall have the additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of 3,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided the additional Maximum Annual Depletion Amount of all of such Diversions does not exceed 1,200 AFY.

5.3 In addition to the quantities of Water set forth in Subparagraphs 5.1 and 5.2, the WMAT and the United States acting in its capacity as trustee for the WMAT shall also have the additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of at least 25,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed pursuant to an exchange of WMAT CAP Water in accordance with the terms of Paragraph 7.0, provided the

additional Maximum Annual Depletion Amount of all of such Diversions does not exceed 25,000 AFY.

5.4 The Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts described in Subparagraphs 5.1 and 5.2 shall include in each Year the amounts of Groundwater Diverted and Depleted pursuant to Subparagraph 6.1 in that same Year.

5.5 The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT described in Subparagraphs 4.1.1, 4.1.2, 4.1.3, 5.1, 5.2, and 6.1, for Uses on the Reservation shall be November 9, 1871. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT described in Subparagraphs 4.1.1, 4.1.2, 4.1.3, 5.1, 5.2, and 6.1 for Uses on Off-Reservation Trust Lands shall be November 4, 1985. The priority for the administration of the WMAT CAP Water shall be as specified in Subparagraphs 7.2.1 and 7.2.2. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT for lands finally determined to be part of the Reservation through resolutions of any dispute between the WMAT and the United States over the location of the Reservation boundary shall be November 9, 1871.

5.6 All Diversions and Depletions associated with the operation of the White Mountain Apache Tribe Rural Water System, authorized under Section 307 of the Act, shall be subject to the terms of this Agreement.

5.7 RESERVOIRS OTHER THAN MINER FLAT

5.7.1 The United States acting in its capacity as trustee for the WMAT has asserted claims to Water in the Gila River Adjudication Proceedings from the Salt River Watershed. These claims contemplate construction of reservoirs along the White River, Black River, Carrizo Creek, Bonito Creek and Salt River. Except for the White Mountain Apache Tribe Rural Water System as authorized in Section 307 of the Act, this Agreement does not authorize the construction of any such reservoir. Except as provided in this Subparagraph 5.7.1, prior to the construction of any reservoir having a capacity of greater than 2,000 acre-feet, the WMAT and the Secretary shall execute a separate agreement with SRP regarding the operation of any such new reservoir. No such separate agreement shall be required for Large Reservoirs, Miner Flat Dam and Reservoir, and one Large Reservoir on the White River below Miner Flat Dam with an Active Conservation Capacity not exceeding 10,000 acre-feet.

5.7.2 Except as provided in Subparagraph 5.7.3, if the combined aggregate amount of Water stored in Large Reservoirs on May 1 of each Year is greater than the percentage of Active Conservation Capacity shown by the point of intersect of the line on Exhibit 5.7.2 relative to Net SRP Reservoir Storage on May 1 of each Year, the Water in storage in such Large Reservoirs in excess of the percentage of Active Conservation Capacity at the point of intersect on Exhibit 5.7.2 shall be either:

5.7.2.1 Released by the WMAT or the United States acting in its capacity as trustee for the WMAT from one or more of the Large Reservoirs no later than July 1 of such Year to flow off of the Reservation, or

5.7.2.2 Deducted from any existing long term storage credits the WMAT may possess on May 1 of such Year as the result of the recharge and storage of CAP Water, provided that such credits are transferred to SRP by June 1 of such Year and the WMAT or the United States acting in its capacity as trustee for the WMAT pays for the costs and charges associated with such transfer including the cost of recovery of such stored CAP Water, or

5.7.2.3 Reduced to the requisite percentage of Active Conservation Capacity through a combination of releases pursuant to Subparagraph 5.7.2.1 and deductions of existing long term storage credits pursuant to Subparagraph 5.7.2.2.

5.7.3 One Large Reservoir on the White River with an Active Conservation Capacity not exceeding 10,000 acre-feet and Miner Flat Dam and Reservoir located on the north fork of the White River with a capacity of not more than 9,000 acre-feet shall be exempt from the requirements of Subparagraph 5.7.2.

5.7.4 The WMAT may exchange CAP Water for the purpose of storage in reservoirs located on the Reservation. For purposes of the calculation in Subparagraph 5.7.2, the amount of CAP Water exchanged with SRP or others and stored within Large Reservoirs on the Reservation shall not be included within the combined aggregate amount of Water stored in Large Reservoirs on May 1 of each Year.

Any exchange of WMAT CAP Water shall be in accordance with the terms of Paragraph 7.0.

5.7.5 The evaporation losses associated with the storage of Water by the WMAT or the United States acting in its capacity as trustee for the WMAT in any reservoir, calculated as provided in Subparagraph 11.3.1.2 and Exhibit 11.3.1.2, shall be considered Diversions and Depletions by the WMAT and the United States acting in its capacity as trustee for the WMAT for purposes of this Agreement and shall be deducted from the Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount.

5.7.6 In the event the WMAT or the United States acting in its capacity as trustee for the WMAT fail to release by July 2 the requisite amount of Water as required by Subparagraph 5.7.2, then by June 1 of the following Year the WMAT or the United States on their behalf shall release from storage the amount of Water which otherwise would have been required to be released from storage the prior Year pursuant to Subparagraph 5.7.2, in addition to any Water required to be released for the current Year.

6.0 GROUNDWATER

6.1 The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert Groundwater from any location within the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14, and on Off-Reservation Trust Land, subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph

4.0 and Subparagraphs 5.1 and 5.2. This Agreement does not prevent the WMAT from transporting onto the Reservation, Groundwater obtained from Off-Reservation Trust Land pumping activities.

7.0 CAP WATER

7.1 Pursuant to Section 306 of the Act, and in accordance with Section 104 (d) (1) of the AWSA, the Secretary shall execute the WMAT CAP Water Delivery Contract, a copy of which is attached hereto as Exhibit 7.1.

7.2 Pursuant to Sections 305 and 306 of the Act, the Secretary shall deliver to WMAT, directly or through an exchange with an individual or entity acceptable to the WMAT and the Secretary, upon the terms and conditions set forth in the WMAT CAP Water Delivery Contract, the following described CAP Water, which is also referenced in Subparagraph 4.1.4:

7.2.1 23,782 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, that was retained by the Secretary for reallocation to Arizona Indian tribes pursuant to Section 104 (a) (1) (A) (iii) of the AWSA, and reallocated by the Secretary to the WMAT pursuant to Section 305(b)(1)(A) of the Act.

7.2.2 1,218 AFY of HVID CAP Water reallocated by the Secretary to the WMAT pursuant to Section 305(b)(1)(B) of the Act.

7.3 Pursuant to Section 306(b)(1) of the Act, the WMAT CAP Water Delivery Contract shall be for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, and shall be without limit as to term.

7.4 Pursuant to Section 306(a)(1)(A) of the Act and Paragraph 9.0, the WMAT may, on approval of the Secretary, enter into contracts or options to lease, contracts to exchange, or options to exchange WMAT CAP Water within Maricopa, Pinal, Pima and Yavapai counties, Arizona, providing for the temporary delivery to any individual or entity of any portion of the WMAT CAP Water. The term of a contract or option to lease shall not be longer than one hundred (100) years. A contract or option to exchange shall be for the term provided for in the contract or option. A lease or option to lease providing for the temporary delivery of WMAT CAP Water shall require the lessee to pay to the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the leased water. The WMAT may, with the approval of the Secretary, renegotiate any lease at any time during the term of that lease, subject to the condition that the term of the renegotiated lease shall not exceed one hundred (100) years. No portion of the WMAT's CAP Water may be permanently alienated.

7.5 Exchanges of the WMAT CAP Water for Water from the Salt River Watershed upstream of Modified Roosevelt Dam shall be subject to the terms and conditions of one or more agreements to be negotiated among the WMAT, the United States, SRP, Plan 6 Cities, and any other necessary parties. Upon the WMAT's request, SRP, the Plan 6 Cities, and any other necessary parties will negotiate the terms of an exchange agreement with the WMAT. SRP and the Plan 6 Cities will not unreasonably withhold agreement to

such an exchange. In accordance with Section 306(a)(1)(A) of the Act, any such exchange agreement shall be subject to the approval of the Secretary. SRP shall accept delivery of WMAT CAP Water from WMAT in exchange for Diversions of Water from the Salt River Watershed by WMAT, pursuant to an exchange agreement to be negotiated between WMAT and SRP, unless SRP cannot receive or beneficially use the WMAT CAP Water. SRP and the Plan 6 Cities agree that they will not charge the WMAT for losses associated with foregone hydropower generation on the Salt River for exchanges of CAP Water between the WMAT and SRP for Water Uses on the Reservation by the WMAT.

7.6 No WMAT CAP Water may be leased, exchanged, forborne or otherwise transferred in any way by the WMAT for Use directly or indirectly outside of the State of Arizona.

7.7 Pursuant to Section 306(a)(3)(A) of the Act, the WMAT, and not the United States in any capacity, shall be entitled to all consideration due to the WMAT under any contract or option to lease or exchange WMAT CAP Water entered into by the WMAT. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner: (1) any funds received by the WMAT as consideration under a contract or option to lease or exchange WMAT CAP Water; or (2) the expenditure of those funds.

7.8 Pursuant to Sections 306(a)(4)(A) and (B) of the Act, all WMAT CAP Water shall be delivered through the CAP System; and if the delivery capacity of the CAP System is significantly reduced or anticipated to be significantly reduced for an extended

period of time, the WMAT shall have the same CAP delivery rights as a CAP Contractor or CAP Subcontractor that is allowed to take delivery of Water other than through the CAP System.

7.9 Pursuant to Section 306(a)(5) of the Act, the WMAT may use WMAT CAP Water on or off the Reservation for any purpose but all such Uses shall be considered Diversions and Depletions under Paragraph 4.0 and Subparagraph 5.3 and accounted as provided for in Paragraph 11.0.

7.10 The charges for delivery of WMAT CAP Water pursuant to the WMAT CAP Water Delivery Contract shall be calculated in accordance with the CAP Repayment Stipulation.

7.11 PAYMENT OF CAP WATER DELIVERY CHARGES

7.11.1 Pursuant to Section 305(d) of the Act, for the purpose of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of WMAT CAP Water, whether such Water is delivered for Use by the WMAT or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of WMAT CAP Water entered into by the WMAT, shall be (1) non-reimbursable and (2) excluded from the repayment obligation of the CAWCD.

7.11.2 Pursuant to Sections 305(c) and 306(a)(8) of the Act, no CAP Water service capital charges shall be due or payable for WMAT CAP Water, whether such

Water is delivered for Use by the WMAT or pursuant to a contract or option to lease or exchange WMAT CAP Water entered into by the WMAT.

7.11.3 Pursuant to Section 306(a)(1)(A)(iii) of the Act, any lease or option to lease providing for the temporary delivery to others of any WMAT CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased water. Neither the WMAT nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of WMAT CAP Water leased to others.

7.11.4 The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all WMAT CAP Water. Pursuant to Section 306(a)(6) of the Act, as authorized by 43 U.S.C. §1543(f)(2)(A), as amended, to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water, and to the extent that funds are not available from the Lower Colorado River Basin Development Fund, such charges shall be paid by the WMAT. CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in Subparagraph 7.11.3.

7.11.5 The WMAT shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water, except for WMAT

CAP Water leased to others. Notwithstanding the preceding sentence, other persons or entities with whom the WMAT may exchange WMAT CAP Water may agree with the WMAT to pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water pursuant to such exchange. CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in Subparagraph 7.11.3.

7.12 The CAP Operating Agency shall have no responsibility to deliver any WMAT CAP Water for which CAP Fixed OM&R Charges and CAP Pumping Energy Charges have not been paid in advance. The charges for delivery of WMAT CAP Water shall be calculated in accordance with the CAP Repayment Stipulation.

7.13 The WMAT shall schedule delivery of WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

7.14 The WMAT shall be entitled to enter into contracts for Excess CAP Water as provided in the CAP Repayment Stipulation. The WMAT may use such Excess CAP Water on or off the Reservation for any purpose and such Use does not constitute a Diversion or Depletion for purposes of Paragraph 4.0.

7.15 Nothing in this Agreement limits the right of the WMAT to enter into an agreement with the Arizona Water Banking Authority (or any successor entity) established by section 45-2421 of the Arizona Revised Statutes in accordance with State law.

7.16 DELIVERY OF CAP WATER IN TIMES OF SHORTAGE

7.16.1 CAP NIA PRIORITY WATER. If, in any Year, the Available CAP Supply is insufficient to meet all demands under CAP Contracts or CAP Subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority Water among the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. The Secretary shall determine the quantity of CAP NIA Priority Water used by the Gila River Indian Community and the Tohono O'odham Nation in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, in a manner consistent with the settlement agreements with these tribes.

7.16.2 HVID CAP WATER. HVID CAP Water has the priority of CAP Indian Priority Water. If a time of shortage exists, as described in the WMAT CAP Water Delivery Contract, the amount of HVID CAP Water available to the WMAT in such Year shall be computed in accordance with subsection 5.8 of the WMAT CAP Water Delivery Contract.

7.17 FIRMING OF WMAT CAP WATER

7.17.1 The United States shall firm three thousand seven hundred fifty (3,750) AFY of WMAT CAP NIA Priority Water for the benefit of WMAT for the one hundred (100) Year period beginning on January 1, 2008, with priority equivalent to CAP

M&I Priority Water, as provided in Sections 105(a) and 105(b)(1)(B) of the AWSA and Section 305(b)(1)(A)(i) of the Act, to be delivered in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

7.17.2 The State shall firm three thousand seven hundred fifty (3,750) AFY of WMAT CAP NIA Priority Water for the benefit of WMAT for the one hundred Year period beginning on January 1, 2008, with priority equivalent to CAP M&I Priority Water, as provided in Sections 105(a) and 105(b)(2)(B) of the AWSA and Section 305(b)(1)(A)(ii) of the Act and in accordance with the terms of the Agreement between the Secretary of the Interior and the State of Arizona for the Firming of Central Arizona Project Indian Water, dated November 15, 2007, to be delivered in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

7.17.3 The United States' and the State of Arizona's obligation under Subparagraphs 7.17.1 and 7.17.2, respectively, to provide water to firm certain amounts of WMAT CAP NIA Priority Water to be delivered under this Agreement, under the WMAT CAP Water Delivery Contract, or under any leases or exchanges entered into under this Agreement or the WMAT CAP Water Delivery Contract does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 7.17.3 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional statutory authorization, either agrees to do so in any future agreements.

7.18 Pursuant to Section 306(a)(7) of the Act, the Secretary waives the right of the Secretary to capture all Return Flow from WMAT CAP Water delivered to the WMAT through an exchange with SRP or any other individual or entity acceptable to the WMAT and the Secretary, flowing from the exterior boundaries of the WMAT Reservation. WMAT may recapture and reuse Return Flow within the WMAT Reservation. Return Flow for purposes of this Subparagraph 7.18 shall mean all waste water, seepage, and Groundwater which originates or results from WMAT CAP Water delivered to the WMAT through an exchange with SRP or any other individual or entity acceptable to the WMAT and the Secretary.

8.0 ALLOCATION OF WMAT DEPLETIONS OF WATER FROM THE SALT RIVER WATERSHED

8.1 For each Year following the Year in which the Enforceability Date occurs, fourteen and eighty-one one hundredths (14.81) percent of the actual Annual Depletion Amount from all sources of Water Diverted on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, other than Depletions resulting from the exchange of WMAT CAP Water, calculated as provided in Paragraph 11.0, shall be allocated to RWCD up to a maximum of 4,000 AFY.

8.1.1 RWCD hereby authorizes SRP to transfer to SRP on an annual basis from the credits accruing to RWCD under RWCD's entitlement, as defined in Subparagraph 14.7, the number of credits on an acre-foot-for-acre-foot basis equal to fourteen and eighty-one one hundredths (14.81) percent of the total number of acre-feet of Water Depleted during the prior Year by WMAT Diversions on the

Reservation and on Off-Reservation Trust Land within the Salt River Watershed, other than Depletions resulting from the exchange of WMAT CAP Water.

8.1.2 RWCD credits shall be considered accrued for the purposes of Subparagraph 8.1 at the time the credits are earned by RWCD under Subparagraph 14.7, regardless of when the credits are added to RWCD's water account by SRP. In the event RWCD has insufficient credits in its water account with SRP to fully off-set its share of the WMAT Depletions in any Year, the RWCD credit deficit shall be carried forward by SRP to the next Year in which RWCD has sufficient credits in its water account with SRP to reduce or eliminate the deficit, as applicable.

8.2 RWCD's direction for the transfer of water credits to SRP pursuant to the terms of Subparagraph 8.1 shall be binding upon its successors and assigns. Should any other entity succeed to all of RWCD's entitlement, it shall assume RWCD's rights and obligations to SRP under Subparagraph 8.1.

8.3 Neither the WMAT nor SRP shall be charged any fees by RWCD for the performance of the obligations of Subparagraph 8.1.

9.0 TERMS AND CONDITIONS OF FUTURE WMAT CAP WATER LEASE AGREEMENTS

9.1 The WMAT may enter into leases of WMAT CAP Water as provided in Subparagraph 7.4. Such leases shall conform to the provisions of Paragraph 9.0.

9.2 The lessee shall pay all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges to the CAP Operating Agency for the leased WMAT CAP Water.

9.3 The Secretary or the CAP Operating Agency shall deliver the leased WMAT CAP Water to the lessee as further provided herein. Neither the Secretary nor the CAP Operating Agency shall be obligated to make deliveries to such lessee if, in the judgment of the Secretary or the CAP Operating Agency, such deliveries would limit deliveries of CAP Water to other CAP Contractors, including the WMAT, or CAP Subcontractors to a degree greater than would direct deliveries to the WMAT at the CSIF.

9.4 Subject to the provisions of the lease, the Secretary or the CAP Operating Agency shall deliver WMAT CAP Water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in Article 4.4 of the standard form of CAP Subcontract for M&I Use, a copy of which is attached hereto as Exhibit 9.4.

9.5 In no event shall the Secretary or the CAP Operating Agency be required to deliver to the lessee from the CAP System in any one (1) month a total amount of WMAT CAP Water greater than eleven percent (11.0%) of the lessee's maximum annual entitlement under the lease; provided however, that that Secretary or the CAP Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP Water to other CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors as determined by the Secretary and the CAP Operating Agency if the lessee agrees to accept such increased deliveries.

9.6 WMAT CAP Water to be delivered to the lessee pursuant to the lease shall be delivered at such turnouts on the CAP System as are agreed by the Secretary, the CAP Operating Agency and the lessee.

9.7 Except as provided in Subparagraph 10.1.1.1, the lessee may not transfer, assign or sublease its leased WMAT CAP Water.

9.8 The lease shall impose upon the lessee terms and conditions equivalent to those contained in Subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and Articles 4.6, 4.10 and 6.9 of Exhibit 9.4. Although Exhibit 9.4 is the standard form of CAP Subcontract for M&I Use, nothing in this Agreement is intended to preclude leases of WMAT CAP Water for Irrigation Use.

9.9 The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which the lessee has acquired only a leasehold interest for the term of the lease.

10.0 WMAT CAP WATER LEASE AGREEMENTS

10.1 CITIES' CAP WATER LEASE AGREEMENTS

10.1.1 Beginning thirty (30) days after the Enforceability Date, the WMAT shall lease to any or all of the Cities, and the Cities shall lease from the WMAT for a continuous term of one hundred (100) years: (1) one thousand two hundred eighteen (1,218) acre-feet per year of HVID CAP Water reallocated to the WMAT pursuant to Subparagraph 7.2.2; (2) seven thousand five hundred (7,500)

acre-feet per year of CAP NIA Priority Water reallocated to the WMAT pursuant to Subparagraph 7.2.1 and that has been firmed pursuant to Subparagraph 7.17; and (3) thirteen thousand seven hundred eighty-two (13,782) acre-feet of CAP NIA Priority Water per year that was reallocated to the WMAT pursuant to Subparagraph 7.2.1, and which is not firmed pursuant to Subparagraph 7.17. The terms and conditions of the WMAT leases to the Cities referenced herein shall be in accordance with the City Lease Agreements attached as Exhibits 10.1.1A through 10.1.1H.

10.1.1.1 The Leasing Cities, the City of Scottsdale, and CAWCD may assume a City Lease Agreement in accordance with the terms of the assignment and assumption agreements attached as Exhibits 10.1.1.1A and 10.1.1.1B. The City Lease Agreements shall bind the Cities to those provisions of each City's CAP Subcontract that are enumerated in the City Lease Agreement. The City Lease Agreements shall not obligate either the Cities or the WMAT to pay CAP capital repayment charges or any other charges, payments or fees, except as specifically provided in the City Lease Agreements. The Cities shall pay all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges to the CAP Operating Agency in accordance with the terms of the City Lease Agreements.

10.1.1.2 Each of the Cities that elects to lease WMAT CAP Water in accordance with this Subparagraph 10.1 shall pay its Total Water Lease Charge amount to the WMAT pursuant to the terms and conditions of Paragraph 4.0 of the City Lease Agreements.

10.1.2 The WMAT shall direct the Secretary to deliver the Leased Water in accordance with each City Lease Agreement.

10.1.3 The following shall occur if the WMAT, the State or a City imposes a tax on: (1) a City Lease Agreement or transactions or operations undertaken pursuant to a City Lease Agreement; (2) WMAT CAP Water; (3) the value of the Leased Water; or (4) the transportation of the Leased Water:

10.1.3.1 If the WMAT imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the WMAT to that City not less than thirty (30) days prior to the date that such tax amount is to be paid by that City to the WMAT;

10.1.3.2 If the State imposes such a tax on the WMAT and such tax is lawfully owed by the WMAT, that amount shall be paid by the Cities to the WMAT in proportion to the amount of WMAT CAP Water each City has leased not less than thirty (30) days prior to the date that such tax amount is to be paid by the WMAT to the State; and

10.1.3.3 If a City imposes such a tax on the WMAT and such tax is lawfully owed by the WMAT, that amount shall be paid by that City to the WMAT not less than thirty (30) days prior to the date that such tax amount is to be paid by the WMAT to that City.

10.1.4 The quantity of WMAT CAP Water initially made available for lease to each of the Leasing Cities is as set forth in the City Lease Agreements.

10.1.5 The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which the Cities have acquired only a leasehold interest for the term of the City Lease Agreements.

10.1.6 Subject to Subparagraph 16.4 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibits 10.1.1A through 10.1.1H and Exhibits 10.1.1.1A and 10.1.1.1B, the terms of Exhibits 10.1.1A through 10.1.1H and Exhibits 10.1.1.1A and 10.1.1.1B shall prevail as among the parties to such Exhibits.

10.1.7 Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibits 10.1.1A through 10.1.1H or Exhibits 10.1.1.1A and 10.1.1.1B in any judicial, administrative or legislative proceeding.

10.2 CAWCD'S CAP WATER LEASE AGREEMENT

10.2.1 Beginning thirty (30) days after the Enforceability Date, the WMAT shall lease to the CAWCD, and the CAWCD shall lease from the WMAT for a continuous term of one hundred (100) years two thousand five hundred (2,500) acre-feet of CAP NIA Priority Water per year that was reallocated to the WMAT pursuant to Subparagraph 7.2.1, and which is not firmed pursuant to Subparagraph 7.17. The terms and conditions of the WMAT lease to the CAWCD referenced herein shall be in accordance with the CAWCD Lease Agreement attached as Exhibit 10.2.1.

10.2.2 The WMAT shall direct the Secretary to deliver the Leased Water in accordance with the CAWCD Lease Agreement.

10.2.3 The quantity of WMAT CAP Water initially made available for lease to CAWCD is as set forth in the Lease Agreement.

10.2.4 The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which CAWCD has acquired only a leasehold interest for the term of the CAWCD Lease Agreement.

10.2.5 Subject to Subparagraph 16.4 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 10.2.1, the terms of Exhibit 10.2.1 shall prevail as among the parties to the Exhibit.

10.2.6 Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibit 10.2.1 in any judicial, administrative or legislative proceeding.

11.0 MEASUREMENT AND CALCULATION OF DIVERSIONS AND OF DEPLETIONS OF WATER

11.1 DIVERSIONS

11.1.1 Except as provided in Subparagraph 11.3, the WMAT shall install and maintain devices capable of measuring and recording all Diversions of Water on the Reservation and on Off-Reservation Trust Land, or wherever WMAT CAP Water is used by the WMAT, other than livestock consumption and annual lake, stockpond or other impoundment Water Use. The accuracy of these measuring and recording devices shall be commensurate with measuring and recording devices and procedures used by SRP for similar purposes but the accuracy required shall not be more stringent than industry standards. At least annually for three (3) Years after the installation of the devices required pursuant to this Subparagraph 11.1, the WMAT shall retain a registered professional engineer or similarly qualified person to inspect, and, if necessary, correct the accuracy of the

measuring and recording devices and procedures used by WMAT under this Subparagraph. After the third anniversary of the installation of the devices, inspections shall occur at least every three (3) years. Within thirty (30) days of the inspections, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file in the Gila River Adjudication Proceeding or the Little Colorado River Adjudication Proceedings, as applicable determined by the location of the point of Diversion of Water to be measured by the particular device, a certified copy of the report by the registered professional engineer or similarly qualified person that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards. At any time upon ten (10) days written notice, SRP may require an inspection by a registered professional engineer of any of the measuring devices required by this Subparagraph. If the results of the inspections show that a device's measurement accuracy is within industry standards, then SRP shall pay all costs incurred for the inspection of that device, otherwise WMAT shall bear such costs. If such measuring device is not within the industry standards for measurement accuracy, then the WMAT shall use due diligence, and in no event more than six (6) months to correct the operation of the non-conforming device in order to bring it into compliance with industry standards.

11.1.2 WMAT shall also implement procedures to record and collect data concerning all such Diversions of Water.

11.2 REPORTING

No later than March 1 of the second Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings a report, in the form set forth as Exhibit 11.2 or as may otherwise be required by the Gila River Adjudication Court or the Little Colorado River Adjudication Court, showing: (1) all amounts of Water, by source, Diverted on the Reservation and on Off-Reservation Trust Land under Subparagraphs 5.0 and 6.0 in the Year immediately preceding the Year in which the report is filed; (2) all Depletions of Water, by source, measured or calculated as provided in Subparagraphs 11.3, 11.4 and 11.5; (3) all amounts of WMAT CAP Water delivered to others in exchange for the Diversion of Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources located within the Salt River Watershed; (4) all amounts of WMAT CAP Water recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts of WMAT CAP Water otherwise used by the WMAT. WMAT shall give notice by serving a copy of each such report to each Party as provided in Subparagraph 16.19 and as may otherwise by required by the Gila River Adjudication Court or the Little Colorado River Adjudication Court. The WMAT shall prepare and maintain such records as may be necessary to file and audit such reports. Any Party may petition the Gila River Adjudication Court or the Little Colorado River Adjudication Court to modify the form set forth in Exhibit 11.2 to ensure accurate reporting of the WMAT Water Diversions and Depletions. Any other Party may object to such petition.

11.3 CALCULATION OF DIVERSIONS AND DEPLETIONS

11.3.1 LAKES, STOCKPONDS AND OTHER IMPOUNDMENTS

11.3.1.1 The inventories of all lakes, stockponds and other impoundments of Water on the Reservation and on Off-Reservation Trust Land existing as of the Enforceability Date are attached as Exhibits 11.3.1.1.A, 11.3.1.1.B, and 11.3.1.1.C. The inventories on Exhibits 11.3.1.1.A, 11.3.1.1.B, and 11.3.1.1.C shall be amended, as necessary, (1) to add or modify the description of any lakes, stockponds and other impoundments of Water enlarged or constructed on the Reservation after the Enforceability Date, and (2) to delete or modify the description of any lakes, stockponds and other impoundments of Water no longer physically and permanently capable of partially or completely impounding Water.

11.3.1.2 Diversions and Depletions of Water resulting from the lakes, stockponds and other impoundments of Water on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided in Exhibit 11.3.1.2. Release of Water stored in lakes, stockponds and other impoundments of Water shall be measured at the point of subsequent Diversion as set forth in Subparagraph 11.1, and subsequent Depletions associated with such Diversions shall be computed in accordance with the particular Use as set forth in Subparagraphs 11.3.2 through 11.3.8.

11.3.1.3 Upon reasonable notice to the WMAT, representatives of SRP shall be authorized to visit each lake, stockpond and other impoundment of Water on the

Reservation or Off-Reservation Trust Land for the purposes of verifying the surface area and capacity.

11.3.2 IRRIGATION

11.3.2.1 No later than December 1 of the Year following the Year in which the Enforceability Date occurs, the WMAT or the United States acting in its capacity as trustee for the WMAT shall identify all lands on the Reservation and on Off-Reservation Trust Land and prepare appropriate maps of all of such lands which have been irrigated at any time prior to January 1, 2007. The parcels of irrigated lands and ditches serving those parcels shall be accurately mapped at a scale of 1:12,000. Copies of these maps shall be provided to all Parties.

11.3.2.2 No later than December 1 of each Year following the Year in which the Enforceability Date occurs, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written inventory of all irrigated lands on the Reservation and on Off-Reservation Trust Land irrigated at any time during the Year. The inventory shall include the number of acres irrigated by parcel, the acres of each crop grown on such parcel, the location of each parcel, the point of Diversion of all Water delivered to each parcel, the method of delivery of Water to each parcel, the distance from the point of Diversion to the turnout for the parcel, the method of irrigation of each parcel, the AFY of Water Diverted for each parcel, and the first and last dates of Diversion of Water for each parcel.

11.3.2.3 Depletions of Water resulting from the irrigation of lands on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided by Exhibit 11.3.2.3.

11.3.3 MUNICIPAL AND INDUSTRIAL USES

11.3.3.1 No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for all M&I Uses of Water during the prior Year. The report shall include for each M&I Use the following: the point of Diversion, the place of Use and purpose of Use, the AFY Diverted, the method of Diversion, the amount of Effluent and method of treatment, if any, of such Effluent following its initial Use, and the amount and means of disposal of any Effluent from such treatment or Use.

11.3.3.2 Depletions of Water used for M&I Uses on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided by Exhibit 11.3.3.2.

11.3.4 ARTIFICIAL SNOW MAKING

11.3.4.1 No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the

WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for artificial snow making Uses during the prior Year. Reports shall include the point of Diversion and the AFY Diverted.

11.3.4.2 Depletions of Water used for artificial snow making shall be computed annually as provided by Exhibit 11.3.4.2.

11.3.5 LIVESTOCK CONSUMPTION

11.3.5.1 The Diversions of Water on the Reservation and on Off-Reservation Trust Land for livestock consumption shall be deemed for the purposes of this Agreement, to be equal to the Depletions for such Uses.

11.3.5.2 No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written report estimating all Depletions of Water on the Reservation and on Off-Reservation Trust Land for livestock watering purposes. The report shall include an estimate of the greatest number of livestock on the Reservation and on Off-Reservation Trust Land during the prior Year and the methodology used in calculating the estimated Depletions of Water for this purpose.

11.3.6 FISH HATCHERIES

11.3.6.1 No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for fish hatchery Uses during the prior Year. The report shall include the point of Diversion for each such Use and the AFY Diverted for each hatchery Use.

11.3.6.2 It shall be presumed that there will be no Depletions of Water used for fish hatchery purposes if all Diversions are returned to the source. If all Diversions are not returned to the source, the Depletions of such Uses shall be computed annually as provided in Subparagraph 11.3.3.2.

11.3.7 MINING USES

11.3.7.1 No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust land for all mining Uses of Water during the prior Year. The report shall include the point and method of Diversion, the place of Use, the AFY Diverted, the amount of Effluent and method of

treatment, if any, of such Effluent following its initial Use, and the amount and means of disposal of any Effluent following such treatment or Use.

11.3.7.2 Depletions of Water used for mining purposes on the Reservation and on Off-Reservation Trust land shall be computed annually as provided by Exhibit 11.3.7.2.

11.3.8 WMAT CAP WATER

11.3.8.1 All WMAT CAP Water leased to others in any Year shall be counted as a Diversion and Depletion by WMAT in such Year for the purposes of Paragraph 4.0 and Subparagraph 5.3 without regard to the quantity of water actually delivered under the terms of any such lease agreement.

11.3.8.2 For WMAT CAP Water exchanged to others for Use by the WMAT, the Diversion of Water in any Year shall be the greater of: (1) the quantity of WMAT CAP Water delivered to an exchanging party in exchange for exchange credits to be utilized by the WMAT, or (2) the quantity of exchange credits Diverted for Use by the WMAT.

11.3.8.3 For WMAT CAP Water exchanged to others for Use by the WMAT, the Depletion of Water in any Year shall be calculated as provided in Subparagraphs 11.3.1 through 11.3.7, inclusive, resulting from the Diversion of exchange credits for Use by the WMAT during such Year, plus any additional Depletions specified in the exchange agreement between the WMAT and the exchanging party.

11.3.8.4 All WMAT CAP Water used by the WMAT in any Year shall be counted as a Diversion and Depletion by the WMAT in such Year for the purpose of Paragraph 4.0 and Subparagraph 5.3.

11.4 Any reuse of Effluent or other return flows following the first Use of such Water on the Reservation and on Off-Reservation Trust Land shall be considered another separate Diversion for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3. Depletions from such additional Diversions and Uses shall be computed in accordance with Subparagraph 11.3 and shall be considered separate Depletions for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3.

11.5 Any Diversion of Water, the Use of which does not result in return flow to the Salt River or Little Colorado River Watershed from which it was Diverted shall be considered a Depletion for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

11.6 In the event any Party believes the calculation of Diversions or Depletions as provided in Subparagraph 11.2 or 11.3 is no longer the most accurate measure of such Diversions or Depletions, such Party may request the other Parties to consider amending Subparagraphs 11.2 or 11.3 as applicable, including their Exhibits, to provide a more accurate measure of calculating such Diversions or Depletions. Any such requests shall include the proposed change in methodology for measuring Diversions or Depletions. In the event the Parties cannot agree on any such requested change, the requesting Party may petition the Gila River Adjudication Court and the Little Colorado River

Adjudication Court to review the calculation of Diversions or Depletions as provided in Subparagraphs 11.2 or 11.3 and modify the calculation for future reports to the Courts.

11.7 Notwithstanding any other provisions of this Paragraph 11.0, the Diversion or Depletion of Water shall not be counted more than once for a single Use of Water.

12.0 WAIVER AND RELEASE OF CLAIMS

12.1 WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

12.1.1 Except as provided in Subparagraph 12.5, the Parties, except the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, shall execute a waiver and release of any claims against the WMAT and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, under Federal, State or other law for all:

12.1.1.1 Past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

12.1.1.2 Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation and on Off-Reservation Trust Land in a manner not in violation of this Agreement;

12.1.1.3 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

12.1.1.4 The waiver and release of claims described in Subparagraph 12.1 shall be in the form set forth in Exhibit 12.1 and shall become effective upon the Enforceability Date.

12.2 WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

12.2.1 Except for the specifically retained claims described in Subparagraph 12.6, the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under this Agreement, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;

(b)(i) past and present claims for Injury to Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from Off-Reservation Diversion or Use of Water in a manner that is not in violation of this Agreement or State law; and

(c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

12.2.2 The waiver and release of claims described in Subparagraph 12.2.1 shall be in the form set forth in Exhibit 12.2 and shall become effective upon the Enforceability Date.

12.3 WAIVER AND RELEASE OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES (EXCEPT IN THE CAPACITY OF THE UNITED STATES AS TRUSTEE FOR OTHER INDIAN TRIBES)

12.3.1 Except for the specifically retained claims described in Subparagraph 12.7, the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under this Agreement, shall execute a waiver and release of any claim against the United States, including agencies, officials, or

employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;

(b)(i) past and present claims relating in any manner to damages, losses, or injuries to Water, Water Rights, land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, Diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the Reservation and Off-Reservation Trust Land that first accrued at any time prior to the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from the Off-

Reservation Diversion or Use of Water in a manner that is not in violation of this Agreement or applicable law;

(c) past, present, and future claims arising out of or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act;

(d) past and present claims relating in any manner to pending litigation of claims relating to the Water Rights of the WMAT for the Reservation and Off-Reservation Trust Land;

(e) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the Reservation constructed prior to the Enforceability Date that first accrued at any time prior to the Enforceability Date, which waiver shall only become effective on the full appropriation and payment to the WMAT of $4,950,000 of the amounts made available under Section 312(b)(2)(B) of the Act;

(f) any claims relating to operation, maintenance, and replacement of the WMAT Rural Water System, which waiver shall only become effective on the date on which the funds are made available under Section 312(b)(3)(B) of the Act and deposited in the WMAT Maintenance Fund;

(g) past and present breach of trust and negligence claims for damage to the land and natural resources of the WMAT caused by riparian and other vegetative manipulation by the United States for the purpose of increasing Water runoff from the Reservation that first accrued at any time prior to the Enforceability Date; and

(h) past and present claims for trespass, use, and occupancy of the Reservation in, on, and along the Black River that first accrued at any time prior to the Enforceability Date.

12.3.2 The waiver and release of claims described in Subparagraph 12.3.1 shall be in the form set forth in Exhibit 12.3, and, except where otherwise specifically provided in 12.3.1(e) and 12.3.1(f), shall become effective upon the Enforceability Date.

12.4 WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES IN ALL CAPACITIES (EXCEPT AS TRUSTEE FOR AN INDIAN TRIBE OTHER THAN THE WMAT) AGAINST THE WMAT AND ITS MEMBERS

12.4.1 Except for the specifically retained claims described in Paragraph 12.8, the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under this Agreement, shall execute a waiver and release of any and all claims against the WMAT, its Members, or any agency, official, or employee of the WMAT, under Federal, State or any other law for all:

(a) past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off- Reservation Trust Land arising from time immemorial through the Enforceability Date;

(b) claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land in a manner that is not in violation of this Agreement; and

(c) past, present, and future claims arising out of or related in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

12.4.2 The waiver and release of claims described in Subparagraph 12.4.1 shall be in the form set forth in Exhibit 12.4 and shall become effective upon the Enforceability Date.

12.5 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS OR THE UNITED STATES ACTING AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

12.5.1 Notwithstanding the waiver and release of claims described in Subparagraph 12.1 and Exhibit 12.1, the Parties, other than the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, shall retain any right to:

12.5.1.1 Subject to Subparagraph 16.9, assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State court or Federal court of competent jurisdiction;

12.5.1.2 Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached hereto as Exhibit 12.9.6.1;

12.5.1.3 Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached hereto as Exhibit 12.9.6.2;

12.5.1.4 Assert past, present, and future claims to Surface Water that are not inconsistent with this Agreement;

12.5.1.5 Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;

12.5.1.6 Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein;

12.6 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

12.6.1 Notwithstanding the waiver and release of claims set forth in Subparagraph 12.2, the WMAT, on behalf of itself and its Members, and the United States, acting as trustee for the WMAT and its Members, shall retain any right:

(a) subject to Subparagraph 16.9, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under this Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Little

Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to participate in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings to the extent provided in Subparagraph 14.1;

(f) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Subparagraph 12.2;

(g) to assert any past, present, or future claim for Injury to Water Rights against any other Indian tribe, Indian community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, nation or allottee;

(h) to assert any past, present, or future claim for trespass, use, and occupancy of the Reservation in, on, or along the Black River against Freeport-McMoran Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc., (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities; and

(i) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009 in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the

north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use.

12.7 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES

12.7.1 Notwithstanding the waiver and release of claims set forth in Subparagraph 12.3, the WMAT, on behalf of itself and its Members, shall retain any right:

(a) subject to Subparagraph 16.9, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under this Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to assert past, present or future claims for Injury to Water Rights, or any other claims other than a claim to Water Rights, against any other Indian

tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(f) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009 in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use;

(g) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Subparagraph 12.3;

(h) to seek remedies and assert any other claims not specifically waived in Subparagraph 12.3; and

(i) to assert any claim arising after the Enforceability Date for a future taking by the United States of Reservation land, Off-Reservation Trust Land, or any property rights appurtenant to that land, including any Water Rights set forth in Paragraph 4.0.

12.8 UNITED STATES' RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

12.8.1 Notwithstanding the waiver and release of claims described in Subparagraph 12.4, the United States shall retain any right to assert any claims not specifically waived in Subparagraph 12.4.

12.9 GENERAL

12.9.1 Except as provided in Subparagraphs 4.14, 12.2.1(a)(ii), 12.2.1(b)(ii), 12.3.1(a)(ii) and 12.3.1(b)(ii), nothing in the Act or this Agreement shall affect any rights to Water of the WMAT, its Members, or the United States acting in its capacity as trustee for the WMAT and its Members, for land outside the boundaries of the Reservation or Off-Reservation Trust Land.

12.9.2 Beginning on the Enforceability Date all land held by the United States in trust for the WMAT and its Members shall have no rights to Water other than those specifically quantified for the WMAT and the United States, acting in its capacity as trustee for the WMAT and its Members, for the Reservation and Off-Reservation Trust Land pursuant to Paragraph 4.0. Except as set forth in this Agreement, the benefits realized by the WMAT and its Members under this Agreement and the Act shall be in full satisfaction of all claims of the WMAT, its Members and the United States acting as trustee for benefit of the WMAT and its Members, for Water Rights and Injury to Water Rights, under Federal, State, or other law with respect to the Reservation and Off-Reservation Trust Land. Notwithstanding the preceding sentence, nothing in this Agreement or the Act recognizes or establishes any right of a Member to Water on the Reservation or on Off-Reservation Trust Land.

12.9.3 Any entitlement to Water of the WMAT or its Members or the United States acting in its capacity as trustee for the WMAT and its Members for the Reservation and Off-Reservation Trust Land shall be satisfied out of the Water

resources granted, quantified, confirmed or recognized to or for the WMAT and the United States acting in its capacity as trustee for the WMAT by this Agreement and the Act.

12.9.4 Except as provided in Subparagraph 12.6.1(i) and 12.7.1(f), the WMAT and the United States acting in its capacity as trustee for the WMAT shall not: (1) object to the use of any well located outside the boundaries of the Reservation or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to, dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and Use of Water from any well in the Little Colorado River Adjudication Proceedings, the Gila River Adjudication Proceedings or in any other judicial or administrative proceeding.

12.9.5 Nothing in this Agreement or the Act affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

12.9.6 FORMS OF JUDGMENT

12.9.6.1 The Parties that are parties to the Gila River Adjudication Proceedings shall file and seek approval of a Judgment and Decree in the Gila River Adjudication Proceedings substantially in the form of Exhibit 12.9.6.1.

12.9.6.2 The Parties that are parties to the Little Colorado River Adjudication Proceedings shall file and seek approval of a Judgment and Decree in the Little

Colorado River Adjudication Proceedings substantially in the form of Exhibit 12.9.6.2.

12.9.7 Nothing in this Agreement or the Act expands, diminishes, or impacts any claims the WMAT may assert, or any defense the United States may assert, concerning title to land outside the most current survey, as of December 8, 2010, of the northern boundary of the Reservation.

13.0 FEDERAL APPROPRIATIONS AND LOCAL CONTRIBUTIONS

13.1 The Parties, excluding the United States, agree to use their good faith efforts to support the appropriations authorized in Sections 312(b)(2) and 312(e)(2)(B) of the Act. The Parties, excluding the United States, agree to establish a communication process for notifying the Parties when the WMAT requests legislative support. The Parties, excluding the United States, agree to support implementation of this Agreement and the Act by including WMAT Congressional legislation in the legislative agendas approved by their governing bodies or other means as appropriate.

13.2 A combination of funding will be made available and deposited as provided in the Act.

13.3 The State of Arizona shall provide $2 million for the implementation of this Agreement, which in accordance with Section 310(a)(2) of the Act will be deposited into the WMAT Water Rights Settlement Subaccount established by Section 310(a) of the Act.

13.4 Enforceability of this Agreement is conditioned upon the satisfaction of all of the conditions set forth in Section 309(d)(1) of the Act, including the deposit of the State's contribution of funds as provided in Section 309(d)(1)(D) of the Act and Subparagraph 13.3 and the deposit of Federal funds into the White Mountain Apache Water Rights Settlement Subaccount as provided in Section 312(a) of the Act.

13.5 Neither the Federal funds authorized, appropriated, or transferred in or under the Act, nor any contribution pursuant to this Paragraph, nor any interest or income accruing on the principal of the Federal or contributed funds, shall be distributed to any Member on a per capita basis.

14.0 CONFIRMATION OF RIGHTS

14.1 Status of WMATs' claims:

14.1.1 The WMAT agrees to intervene in the Gila River Adjudication Proceedings for at least the limited purposes of seeking the court's approval of the Judgment and Decree, pursuant to the Arizona Supreme Court's May 16, 1991, Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, substantially in the form of Exhibit 12.9.6.1, and to the court's continuing jurisdiction for enforcement purposes. The WMAT agrees to intervene in the Little Colorado Adjudication Proceedings for at least the limited purposes of seeking the court's approval of the Judgment and Decree, pursuant to the Arizona Supreme Court's September 27, 2000,

Administrative Order, substantially in the form of Exhibit 12.9.6.2, and to the court's continuing jurisdiction for enforcement purposes.

14.1.2 The Parties, including the United States in all its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid, and shall not object to, dispute or challenge in the Gila River Adjudication Proceedings or in the Little Colorado River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the WMAT and the United States acting in its capacity as trustee for the WMAT to the Water Rights or to the Use of Water, quantified in this Agreement and in the Act.

14.1.3 Except as provided in Subparagraphs 12.6.1 and 14.1.4, the WMAT and the United States acting in its capacity as trustee for the WMAT shall neither challenge nor object to claims of other persons for the Use of Water from the Salt River and the Little Colorado River and their tributaries in the Gila River Adjudication Proceedings, the Little Colorado River Adjudication Proceedings or in any other judicial or administrative proceedings.

14.1.4 The WMAT and the United States acting in its capacity as trustee for the WMAT reserve and retain the right to challenge or object to any claim for Use of Water by or on behalf of the following persons or entities:

14.1.4.1 The Gila River Indian Community of the Gila River Indian Reservation, Arizona;

14.1.4.2 The Tonto Apache Tribe of Arizona;

14.1.4.3 The San Carlos Apache Tribe of the San Carlos Reservation, Arizona;

14.1.4.4 The Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona;

14.1.4.5 Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, Phelps Dodge Morenci, Inc., their predecessors and successors, including all subsidiaries and affiliates;

14.1.4.6 Such persons or entities responsible for Injury to Water Rights arising after the Enforceability Date resulting from the drilling of wells or pumping of Water from lands located within national forest lands as of the date of this Agreement in the south half of T. 9 N., R. 24 E.; south half of T. 9 N., R. 25 E., north half of T. 8 N., R. 24 E.; north half of T. 8 N., R. 25 E., in the event title to such lands is no longer retained by the United States or Water from such lands is transported off such lands for M&I Use.

14.2 SRP RIGHTS

14.2.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of SRP and its shareholders to the Waters of the Salt and Verde rivers, which rights

are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

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

Locations No. 2 at Pages 131-133; on March 3, 1900, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 154-157.

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

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

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

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

14.2.1.6 Decision and Decree, and all supplemental Decrees thereto, entered in *Benson v. Allison*, in the Superior Court of Maricopa County, State of Arizona,

No. 7589, November 14, 1917, solely as applied to the Northeast ¼ of Section 25, Township 1 North, Range 1 East, G&SRB&M.

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

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

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

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

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

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

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

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

14.2.2 All of the Parties, including the United States in its capacity as trustee for the WMAT, agree not to object to, dispute or challenge in the Little Colorado River Adjudication Proceedings, or in any other judicial or administrative proceeding, the right of SRP to withdraw up to 21,000 AFY of Underground Water for Use at the Coronado Generating Station, located in Apache County, Arizona.

14.3 BUCKEYE RIGHTS

14.3.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the Buckeye Water Conservation & Drainage District, and the Buckeye Irrigation Company and its shareholders, to the Waters of the Salt, Verde and Gila rivers,

which rights are appurtenant to lands currently provided with Water by the Buckeye Irrigation Company or within Buckeye Water Conservation & Drainage District, and which rights are described, confirmed, or established by virtue of the following documents, decrees and enactments:

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

14.3.1.2 The Articles of Incorporation and Bylaws of the Buckeye Irrigation Company, as amended and in effect as of the Enforceability Date.

14.3.1.3 The decree of November 14, 1917, and all amendments and supplements thereto, entered in *Benson v. Allison, et al.*, No. 7589 in the Superior Court of Maricopa County, Arizona, as applicable to all lands described therein and now provided with Water diverted from the Gila River at the head gate of the Buckeye Canal in Section 28, Twp. 1 N., R. 1 W., G&SRB&M, Maricopa County, Arizona.

14.3.1.4 The order of the Board of Supervisors of Maricopa County, Arizona, dated November 6, 1922, creating the Buckeye Water Conservation & Drainage District and including specified lands within the boundaries thereof, and the provisions of Chapter 19, Title 48, Arizona Revised Statutes, establishing the rights of lands to

Waters available for distribution within such District as in effect at the time of the Enforceability Date.

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

14.4 CITY OF PHOENIX RIGHTS

14.4.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the City of Phoenix in the Waters of the Salt and Verde rivers, which rights are described, stated, confirmed or established in the following documents:

14.4.1.1 Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.

14.4.1.2 Contract No. 1604 between the Salt River Valley Water Users' Association and the City of Phoenix dated November 22, 1946, to the extent that Contract No. 1604 is in accordance with and consistent with Contract No. 1830 described in Subparagraph 14.4.1.1.

14.4.1.3 Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

14.5 PLAN 6 BUREAU OF RECLAMATION STORAGE AND APPROPRIATIVE RIGHTS

14.5.1 MODIFIED ROOSEVELT DAM

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the Waters of the Salt River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. R-2128 issued by the State of Arizona to the U.S. Bureau of Reclamation.

14.5.2 NEW WADDELL DAM

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the Waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-87832 issued by the State of Arizona to the U.S. Bureau of Reclamation.

14.6 PLAN 6 STATE APPROPRIATIVE RIGHTS

14.6.1 MODIFIED ROOSEVELT DAM

All of the Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the cities of Phoenix, Scottsdale, Mesa, Chandler, Glendale and Tempe in the Waters of the Salt River, which rights are described, stated, confirmed or established in the following documents:

14.6.1.1 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96226 issued by the State of Arizona to the City of Tempe;

14.6.1.2 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96227 issued by the State of Arizona to the City of Scottsdale;

14.6.1.3 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96228 issued by the State of Arizona to the City of Phoenix;

14.6.1.4 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96229 issued by the State of Arizona to the City of Mesa;

14.6.1.5 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96230 issued by the State of Arizona to the City of Glendale; and

14.6.1.6 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96231 issued by the State of Arizona to the City of Chandler.

14.6.2 NEW WADDELL DAM

All of the Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge in the Gila River Adjudication Proceedings, or otherwise, the rights of CAWCD in the Waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-89719 issued by the State of Arizona to the CAWCD.

14.7 RWCD RIGHTS

14.7.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm and declare to be valid the rights of RWCD under and as defined in that agreement between the Salt River Valley Water Users' Association and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924, and all amendments and modifications thereto as of the Enforceability Date. All of the Parties, including the United States in all of its capacities except for the United States acting as trustee for Indian tribes other than the WMAT, recognize and confirm the entitlement of RWCD to Surface Water from the Salt and Verde River systems and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and instruments: the agreement between the Salt River Valley Water Users' Association and RWCD dated October 24, 1924, and

approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about September 18, 1940, the judgment dated September 19, 1940, and the order dated September 19, 1940, in *W.C. Lehane v. Salt River Valley Water Users' Association, et al.*, Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

14.7.2 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, recognize and confirm that the measure of RWCD's Surface Water entitlement under the documents and instruments identified in Subparagraph 14.7.1 is five and six-tenths percent (5.6%) of the sum of all Surface Water, except Spill Water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for Use on the lands within the SRRD described in Exhibit 14.7.2, (b) for distribution by Glendale, Mesa, Phoenix, Tempe, and Chandler, or other cities, or towns, or their successors, to the lands within the SRRD listed on Exhibit 14.7.2, and (c) all Surface Water delivered to SRP below Granite Reef Dam for Use on the lands within the SRRD listed on Exhibit 14.7.2 in exchange for Surface Water that otherwise would have been diverted at Granite Reef Dam for delivery to such lands; minus the first 19,427 acre-feet of Surface Water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Subparagraph 14.7.2, all rights and obligations contained in the documents and instruments referred to in Subparagraph 14.7.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this Subparagraph 14.7 shall

not include any yield from additional active conservation capacity (increases in reservoir capacity assigned to regulate reservoir outflow for irrigation, power and municipal and industrial use which result from modifications of Roosevelt Dam) in Plan 6 facilities (Plan 6 for the regulatory storage division of the CAP, which, for purposes of this Subparagraph 14.7.2 is limited to modifications to Roosevelt Dam on the Salt River).

14.7.3 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, acknowledge that RWCD's Water Rights as described in the documents and instruments referred to in Subparagraph 14.7.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to all of RWCD's Water entitlement and system capacity, it shall assume RWCD's rights and obligations to the WMAT and SRP under this Agreement. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

14.7.4 "Spill Water" for purposes of Subparagraph 14.7.2, shall mean flood flow waters from the Salt and Verde Rivers in excess of the storage capacity of SRP reservoirs as such reservoirs existed on February 12, 1988.

15.0 WMAT WATER CODE

15.1 The WMAT shall have the right to allocate Water to all users on the Reservation and on Off-Reservation Trust Lands pursuant to the Water Code and to manage, regulate

and control the Use on the Reservation and on Off-Reservation Trust Land, of all of the Water Rights quantified to the WMAT by this Agreement.

15.2 No later than eighteen (18) months following the Enforceability Date, the WMAT shall have enacted a Water Code governing all of the Water Rights quantified to the WMAT by this Agreement. The Water Code shall include, at a minimum, the following provisions:

15.2.1 Provisions requiring the measurement, calculation and recordation of all Diversions and Depletions of Water on the Reservation and on Off-Reservation Trust Land.

15.2.2 Terms of a water conservation plan, including objectives, conservation measures and an implementation timeline, as provided in Section 305(e)(2)(B) of the Act.

15.2.3 Provisions requiring the approval of the WMAT for the severance and transfer of rights to the Use of Water from historically irrigated lands identified in accordance with Subparagraph 11.3.2.1 to Diversions and Depletions on other non-historically irrigated lands not located on the watershed of the same Water source.

15.2.4 Provisions requiring the authorization of the WMAT for all Diversions of Water on the Reservation and on Off-Reservation Trust Land by any individual or entity other than the WMAT.

16.0 OTHER PROVISIONS

16.1 RECLAMATION REFORM ACT

Pursuant to Section 311(d) of the Act, the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390aa, et seq.) and any other acreage limitation or full cost pricing provision under Federal law shall not apply to any individual, entity or land solely on the basis of: (A) receipt of any benefit under the Act, (B) execution or performance of this Agreement, or (C) the Use, storage, delivery, lease, or exchange of CAP Water.

16.2 NO STANDARD FOR USE FOR QUANTIFICATION OF OTHER INDIAN RIGHTS OR CLAIMS

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

16.3 ENTIRE UNDERSTANDING

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

16.4 MODIFICATIONS TO AGREEMENT AND AMENDMENTS TO EXHIBITS

No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court or the Little Colorado River Adjudication Court, as applicable. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the parties to such Exhibits in accordance

with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Act, or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

16.5 STATE CAPACITY

Execution of this Agreement by the Governor of the State constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 7.17, 12.1, and 16.6. Except as provided in the preceding sentence, it is not intended that this Agreement shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory, rule making, or other proceeding or matter. The State's participation as a Party shall be as described herein and shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

(a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico);

(b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);

(c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);

(d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);

(e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557; and

(f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for miners' hospitals for disabled miners within said State).

16.6 OBLIGATION TO WORK IN GOOD FAITH TO ACHIEVE ENFORCEABILITY OF AGREEMENT

As of December 31, 2008, each Party shall have the obligation to work in good faith to satisfy the conditions set forth in Section 309(d) of the Act. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

16.7 AUTHORITY TO EXECUTE

Each Party represents that the person signing this Agreement on behalf of such Party has the authority to execute it.

16.8 CHANGES IN USES ON SRRD AND RWCD LANDS

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, recognize that Water Uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural Uses to M&I Uses. The Parties including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT agree that such changes in Use are valid, and that Water appurtenant to lands that are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I Uses on such urbanized lands and the Water Rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of Use, these Water Rights are as described in the Kent Decree, the Lehane decision (*W.C. Lehane v. Salt River Valley Water Users' Assoc., et al.*, Cause No. 32021-C) and the

documents referred to therein. No Party, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, shall challenge or otherwise object to these rights on the basis of change of Use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Parties including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT agree that the historical practices of the cities and towns located within the geographic limits of SRRD and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached as Exhibit 16.8. Nothing in this Subparagraph 16.8 shall be construed as authorizing the delivery of Water to any municipality by SRP or RWCD for M&I Uses within the SRRD or RWCD, respectively, in the absence of a written delivery agreement between any such municipality and SRP or RWCD.

16.9 RIGHT TO PETITION ANY COURT OF COMPETENT JURISDICTION

Any Party shall have the right to petition any State court or Federal court of competent jurisdiction for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions, and limitations of this Agreement. Nothing contained herein waives the right of the United States or the WMAT to object to the jurisdiction of the courts of the State to adjudicate any dispute arising under this Agreement or the Act. Furthermore, nothing herein waives the right of any Party to object to the jurisdiction of any Federal court to adjudicate any dispute arising under this Agreement or the Act.

16.10 GOVERNING LAW

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

16.11 SUCCESSORS AND ASSIGNS

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

16.12 ANTI-DEFICIENCY ACT

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under the Act (including any such obligation or activity under this Agreement) if adequate appropriations are not provided by Congress expressly to carry out the purposes of the Act.

16.13 NO BENEFIT TO MEMBERS OF CONGRESS OR RESIDENT COMMISSIONERS

No Member of or delegate to Congress or Resident Commissioner shall be admitted to any share of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

16.14 FEDERAL AUTHORITY

Exhibit 2.2 is the Act that authorizes the Federal action required to carry out this Agreement. If any amendment of the Act is enacted prior to the Enforceability Date that materially and adversely affects a Party's rights or interests under this Agreement without the written consent of that Party, then that Party, upon its written notice to all other

Parties, shall be relieved of its rights, obligations, and entitlements hereunder; provided, however, that such written notice must be given to all Parties no later than the Enforceability Date.

16.15 DUPLICATE ORIGINALS AND COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Agreement also may be executed in duplicate originals, each of which shall constitute an original Agreement.

16.16 NO QUANTIFICATION OR EFFECT ON WATER RIGHTS, CLAIMS OR ENTITLEMENTS TO WATER OF OTHER TRIBES

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

16.17 NO EFFECT ON FUTURE ALLOCATIONS

Water received under a lease or exchange of WMAT CAP Water under the Act shall not affect any future allocation or reallocation of CAP Water by the Secretary.

16.18 CONSTRUCTION AND EFFECT

The Paragraph and Subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement.

16.19 NOTICES AND REPORTS

All notices and reports required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest date of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing. Any notice or report required to be given hereunder, if due on a date certain that falls on a Saturday, Sunday or federally recognized holiday, shall be due the next following business day.

As to the United States of America:

Secretary of the Interior
Department of the Interior
1849 C Street, N.W., Mail Stop 4100-MIB
Washington, D.C. 20240

Regional Director
Bureau of Indian Affairs
Western Regional Office
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89006-1470

As to the State of Arizona:

Office of the Governor
1700 West Washington Street
Phoenix, Arizona 85007

Arizona Department of Water Resources
3550 N. Central Avenue
Phoenix, Arizona 85012
Attn: Director

As to the White Mountain Apache Tribe:

Office of the Tribal Chairman
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

As to the Salt River Project Agricultural Improvement and Power District:

Salt River Project
Agricultural Improvement and Power District
P.O. Box 52025
Phoenix, Arizona 85072-2025
Attn: General Manager

As to the Salt River Valley Water Users' Association:

Salt River Valley Water Users' Association
P.O. Box 52025
Phoenix, Arizona 85072-2025
Attn: General Manager

As to Roosevelt Water Conservation District:

P.O. Box 100
Higley, Arizona 85236
Attn: General Manager

As to the Arizona Water Company:

Arizona Water Company
P.O. Box 29006
Phoenix, Arizona 85038-9006
Attn: President

As to the City of Avondale:

City of Avondale
11465 W. Civic Center Dr.
Avondale, AZ 85323
Attn: Avondale City Manager

As to the City of Chandler:

City of Chandler
Mail Stop 605
P.O. Box 4008
Chandler, Arizona 85244-4008
Attn: City Manager

As to the City of Glendale:

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attn: City Manager

As to the City of Peoria:

City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attn: City Manager

As to the City of Mesa:

City of Mesa
20 E. Main, Suite 750
Mesa, Arizona 85201
Attn: City Manager

As to the City of Phoenix:

City of Phoenix
200 West Washington, Suite 1200
Phoenix, Arizona 85003-1611
Attn: City Manager

As to the City of Show Low:

City of Show Low
550 N. 9th Place
Show Low, Arizona 85901
Attn: City Manager

As to the City of Scottsdale:

City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, Arizona 85251
Attn: City Manager

As to the City of Tempe:

City of Tempe
31 East 5th Street
Tempe, Arizona 85281
Attn: City Manager

As to the Town of Gilbert:

Town of Gilbert
50 E Civic Center Drive
Gilbert, Arizona 85299
Attn: Town Manager

As to the Buckeye Irrigation Company:

Buckeye Irrigation Company
P.O. Box 1726
Buckeye, Arizona 85236
Attn: General Manager

As to the Buckeye Water Conservation and Drainage District:

Buckeye Water Conservation and Drainage District
P.O. Box 1726
Buckeye, Arizona 85236
Attn: General Manager

As to the CAWCD:

Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: General Manager

or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by Subparagraph 16.19.

17.0 EXECUTION BLOCKS

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

THE UNITED STATES OF AMERICA

By:_____

Dated:_____

Secretary of the Interior

Dated as of November 1, 2012

THE STATE OF ARIZONA

By:_____

Dated:_____

Governor

Attest:_____

Secretary of State

Dated as of November 1, 2012

WHITE MOUNTAIN APACHE TRIBE

By:_____

Dated:_____

Chairman

Attest:_____

Approved as to form:

_____

Attorney

Dated as of November 1, 2012

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By:_____

Dated:_____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

_____

Attorney

Dated as of November 1, 2012

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: _____

Dated:_____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

_____

Attorney

Dated as of November 1, 2012

THE ROOSEVELT WATER CONSERVATION DISTRICT

By:_____

Dated: _____

President

Attest:_____

Secretary

Approved as to form:

_____

General Counsel

Dated as of November 1, 2012

ARIZONA WATER COMPANY

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

Dated as of November 1, 2012

CITY OF CHANDLER

By: _____

Dated:_____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF GLENDALE

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF MESA

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF PEORIA

By: _____

Dated:_____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF PHOENIX

By: _____

Dated: _____

City Manager, City of Phoenix

Attest: _____

City Clerk

Approved as to form:

By: _____

City Attorney

Dated as of November 1, 2012

CITY OF SHOW LOW

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF SCOTTSDALE

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF TEMPE

By: _____

Dated:_____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

CITY OF AVONDALE

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

Dated as of November 1, 2012

TOWN OF GILBERT

By: _____

Dated:_____

Town Mayor

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

Dated as of November 1, 2012

BUCKEYE IRRIGATION COMPANY

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

Dated as of November 1, 2012

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

Dated as of November 1, 2012

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

claims, and subsequently as appropriate, perform a performance audit based on a statistical sampling of adjudicated claims.

(B) AUDIT RECIPIENTS.—The audits described in clause (i) shall be provided to Secretary of Agriculture and the Attorney General.

TITLE III—WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION

SEC. 301. SHORT TITLE.

This title may be cited as the "White Mountain Apache Tribe Water Rights Quantification Act of 2010".

SEC. 302. PURPOSES.

The purposes of this title are—

(1) to authorize, ratify, and confirm the Agreement;

(2) to authorize and direct the Secretary to execute the Agreement and take any other action necessary to carry out all obligations of the Secretary under the Agreement in accordance with this title;

(3) to authorize the amounts necessary for the United States to meet the obligations of the United States under the Agreement and this title; and

(4) to permanently resolve certain damage claims and all water rights claims among—

(A) the Tribe and its members;

(B) the United States, acting as trustee for the Tribe and its members;

(C) the parties to the Agreement; and

(D) all other claimants seeking to determine the nature and extent of the water rights of the Tribe, its members, the United States, acting as trustee for the Tribe and its members, and other claimants in—

(i) the consolidated civil action in the Superior Court of the State of Arizona for the County of Maricopa styled In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W–1 (Salt), W–2 (Verde), W–3 (Upper Gila), W–4 (San Pedro); and

(ii) the civil action pending in the Superior Court of the State of Arizona for the County of Apache styled In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source and numbered CIV–6417.

SEC. 303. DEFINITIONS.

In this title:

(1) AGREEMENT.—The term "Agreement" means—

(A) the WMAT Water Rights Quantification Agreement dated January 13, 2009; and

(B) any amendment or exhibit (including exhibit amendments) to that Agreement that are—

(i) made in accordance with this title; or

(ii) otherwise approved by the Secretary.

(2) BUREAU.—The term "Bureau" means the Bureau of Reclamation.

(3) CAP.—The term "CAP" means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(4) CAP CONTRACTOR.—The term "CAP contractor" means an individual or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(5) CAP FIXED OM&R CHARGE.—The term "CAP fixed OM&R charge" has the meaning given the term in the repayment stipulation.

(6) CAP M&I PRIORITY WATER.—The term "CAP M&I priority water" means the CAP water having a municipal and industrial delivery priority under the repayment contract.

(7) CAP SUBCONTRACTOR.—The term "CAP subcontractor" means an individual or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the District for the delivery of water through the CAP system.

(8) CAP SYSTEM.—The term "CAP system" means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) any pumping plant or appurtenant works of a feature described in any of subparagraphs (A) through (D); and

(F) any extension of, addition to, or replacement for a feature described in any of subparagraphs (A) through (E).

(9) CAP WATER.—The term "CAP water" means "Project Water" (as that term is defined in the repayment stipulation).

(10) CONTRACT.—The term "Contract" means—

(A) the proposed contract between the Tribe and the United States attached as exhibit 7.1 to the Agreement and numbered 08–XX–30–W0529; and

(B) any amendments to that contract.

(11) DISTRICT.—The term "District" means the Central Arizona Water Conservation District, a political subdivision of the State that is the contractor under the repayment contract.

(12) ENFORCEABILITY DATE.—The term "enforceability date" means the date described in section 309(d)(1).

(13) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(14) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term "injury to water rights" means an interference with, dimi-

nution of, or deprivation of, a water right under Federal, State, or other law.

(B) INCLUSIONS.—The term "injury to water rights" includes—

(i) a change in the groundwater table; and

(ii) any effect of such a change.

(C) EXCLUSION.—The term "injury to water rights" does not include any injury to water quality.

(15) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term "Lower Colorado River Basin Development Fund" means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(16) OFF-RESERVATION TRUST LAND.—The term "off-reservation trust land" means land—

(A) located outside the exterior boundaries of the reservation that is held in trust by the United States for the benefit of the Tribe as of the enforceability date; and

(B) depicted on the map attached to the Agreement as exhibit 2.57.

(17) OPERATING AGENCY.—The term "Operating Agency" means the 1 or more entities author-

1 ized to assume responsibility for the care, operation,
2 maintenance, and replacement of the CAP system.
3 (18) REPAYMENT CONTRACT.—The term "re-
4 payment contract" means—
5 (A) the contract between the United States
6 and the District for delivery of water and re-
7 payment of the costs of the CAP, numbered
8 14–06–W–245 (Amendment No. 1), and dated
9 December 1, 1988; and
10 (B) any amendment to, or revision of, that
11 contract.
12 (19) REPAYMENT STIPULATION.—The term
13 "repayment stipulation" means the stipulated judg-
14 ment and the stipulation for judgment (including
15 any exhibits to those documents) entered on Novem-
16 ber 21, 2007, in the United States District Court
17 for the District of Arizona in the consolidated civil
18 action styled Central Arizona Water Conservation
19 District v. United States, et al., and numbered CIV
20 95–625–TUC–WDB (EHC) and CIV 95–1720–
21 PHX–EHC.
22 (20) RESERVATION.—
23 (A) IN GENERAL.—The term "reservation"
24 means the land within the exterior boundary of
25 the White Mountain Indian Reservation estab-

lished by the Executive order dated November 9, 1871, as modified by subsequent Executive orders and Acts of Congress—

(i) known on the date of enactment of this Act as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and

(ii) generally depicted on the map attached to the Agreement as exhibit 2.81.

(B) NO EFFECT ON DISPUTE OR AS ADMISSION.—The depiction of the reservation described in subparagraph (A)(ii) shall not—

(i) be used to affect any dispute between the Tribe and the United States concerning the legal boundary of the reservation; or

(ii) constitute an admission by the Tribe with regard to any dispute between the Tribe and the United States concerning the legal boundary of the reservation.

(21) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(22) STATE.—The term "State" means the State of Arizona.

(23) TRIBAL CAP WATER.—The term "tribal CAP water" means the CAP water to which the Tribe is entitled pursuant to the Contract.

(24) TRIBAL WATER RIGHTS.—The term "tribal water rights" means the water rights of the Tribe described in paragraph 4.0 of the Agreement.

(25) TRIBE.—The term "Tribe" means the White Mountain Apache Tribe organized under section 16 of the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 476).

(26) WATER RIGHT.—The term "water right" means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(27) WMAT RURAL WATER SYSTEM.—The term "WMAT rural water system" means the municipal, rural, and industrial water diversion, storage, and delivery system described in section 307.

(28) YEAR.—The term "year" means a calendar year.

SEC. 304. APPROVAL OF AGREEMENT.

(a) APPROVAL.—

(1) IN GENERAL.—Except to the extent that any provision of the Agreement conflicts with a pro-

vision of this title, the Agreement is authorized, ratified, and confirmed.

(2) AMENDMENTS.—Any amendment to the Agreement is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Agreement consistent with this title.

(b) EXECUTION OF AGREEMENT.—

(1) IN GENERAL.—To the extent that the Agreement does not conflict with this title, the Secretary shall promptly—

(A) execute the Agreement, including all exhibits to the Agreement requiring the signature of the Secretary; and

(B) in accordance with the Agreement, execute any amendment to the Agreement, including any amendment to any exhibit to the Agreement requiring the signature of the Secretary, that is not inconsistent with this title; and

(2) DISCRETION OF THE SECRETARY.—The Secretary may execute any other amendment to the Agreement, including any amendment to any exhibit to the Agreement requiring the signature of the Secretary, that is not inconsistent with this title if the amendment does not require congressional approval

pursuant to the Trade and Intercourse Act (25 U.S.C. 177) or other applicable Federal law (including regulations).

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Agreement and carrying out this title, the Secretary shall promptly comply with all applicable requirements 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.);

(C) all other applicable Federal environmental laws; and

(D) all regulations promulgated under the laws described in subparagraphs (A) through (C).

(2) EXECUTION OF AGREEMENT.—

(A) IN GENERAL.—Execution of the Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ENVIRONMENTAL COMPLIANCE.—The Secretary shall carry out all necessary environ-

mental compliance activities required by Federal law in implementing the Agreement.

(3) LEAD AGENCY.—The Bureau shall serve as the lead agency with respect to ensuring environmental compliance associated with the WMAT rural water system.

SEC. 305. WATER RIGHTS.

(a) TREATMENT OF TRIBAL WATER RIGHTS.—The tribal water rights—

(1) shall be held in trust by the United States on behalf of the Tribe; and

(2) shall not be subject to forfeiture or abandonment.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Agreement, the Secretary shall reallocate to the Tribe, and offer to enter into a contract with the Tribe for the delivery in accordance with this section of—

(A) an entitlement to 23,782 acre-feet per year of CAP water that has a non-Indian agricultural delivery priority (as defined in the Contract) in accordance with section 104(a)(1)(A)(iii) of the Arizona Water Settle-

ments Act (Public Law 108–451; 118 Stat. 3488), of which—

(i) 3,750 acre-feet per year shall be firmed by the United States for the benefit of the Tribe for the 100-year period beginning on January 1, 2008, with priority equivalent to CAP M&I priority water, in accordance with section 105(b)(1)(B) of that Act (118 Stat. 3492); and

(ii) 3,750 acre-feet per year shall be firmed by the State for the benefit of the Tribe for the 100-year period beginning on January 1, 2008, with priority equivalent to CAP M&I priority water, in accordance with section 105(b)(2)(B) of that Act (118 Stat. 3492); and

(B) an entitlement to 1,218 acre-feet per year of the water—

(i) acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP subcontract entitlement in accordance with the contract numbered 3–07–30–W0290 among the District, Harquahala Valley Ir-

1 rigation District, and the United States;
2 and
3 (ii) converted to CAP Indian Priority
4 water (as defined in the Contract) pursu-
5 ant to the Fort McDowell Indian Commu-
6 nity Water Rights Settlement Act of 1990
7 (Public Law 101–628; 104 Stat. 4480).
8 (2) AUTHORITY OF TRIBE.—Subject to approval
9 by the Secretary under section 306(a)(1), the Tribe
10 shall have the sole authority to lease, distribute, ex-
11 change, or allocate the tribal CAP water described
12 in paragraph (1).
13 (c) WATER SERVICE CAPITAL CHARGES.—The Tribe
14 shall not be responsible for any water service capital
15 charge for tribal CAP water.
16 (d) ALLOCATION AND REPAYMENT.—For the pur-
17 pose of determining the allocation and repayment of costs
18 of any stage of the CAP constructed after November 21,
19 2007, the costs associated with the delivery of water de-
20 scribed in subsection (b), regardless of whether the water
21 is delivered for use by the Tribe or in accordance with
22 any assignment, exchange, lease, option to lease, or other
23 agreement for the temporary disposition of water entered
24 into by the Tribe, shall be—
25 (1) nonreimbursable; and

(2) excluded from the repayment obligation of the District.

(c) WATER CODE.—Not later than 18 months after the enforceability date, the Tribe shall enact a water code that—

(1) governs the tribal water rights; and

(2) includes, at a minimum—

(A) provisions requiring the measurement, calculation, and recording of all diversions and depletions of water on the reservation and on off-reservation trust land;

(B) terms of a water conservation plan, including objectives, conservation measures, and an implementation timeline;

(C) provisions requiring the approval of the Tribe for the severance and transfer of rights to the use of water from historically irrigated land identified in paragraph 11.3.2.1 of the Agreement to diversions and depletions on other non-historically irrigated land not located on the watershed of the same water source; and

(D) provisions requiring the authorization of the Tribe for all diversions of water on the reservation and on off-reservation trust land by any individual or entity other than the Tribe.

SEC. 306. CONTRACT.

(a) IN GENERAL.—The Secretary shall enter into the Contract, in accordance with the Agreement, to provide, among other things, that—

(1) the Tribe, on approval of the Secretary, may—

(A) enter into contracts or options to lease, contracts to exchange, or options to exchange tribal CAP water in Maricopa, Pinal, Pima, and Yavapai Counties in the State providing for the temporary delivery to any individual or entity of any portion of the tribal CAP water, subject to the condition that—

(i) the term of the contract or option to lease shall not be longer than 100 years;

(ii) the contracts or options to exchange shall be for the term provided in the contract or option; and

(iii) a lease or option to lease providing for the temporary delivery of tribal CAP water shall require the lessee to pay to the Operating Agency all CAP fixed OM&R charges and all CAP pumping energy charges (as defined in the repayment stipulation) associated with the leased water; and

(B) renegotiate any lease at any time during the term of the lease, subject to the condition that the term of the renegotiated lease shall not exceed 100 years;

(2) no portion of the tribal CAP water may be permanently alienated;

(3)(A) the Tribe (and not the United States in any capacity) shall be entitled to all consideration due to the Tribe under any contract or option to lease or exchange tribal CAP water entered into by the Tribe; and

(B) the United States (in any capacity) has no trust or other obligation to monitor, administer, or account for, in any manner—

(i) any funds received by the Tribe as consideration under a contract or option to lease or exchange tribal CAP water; or

(ii) the expenditure of those funds;

(4)(A) all tribal CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same CAP delivery rights as a CAP contractor or CAP subcontractor that is al-

lowed to take delivery of water other than through the CAP system;

(5) the Tribe may use tribal CAP water on or off the reservation for any purpose;

(6) as authorized by subsection (f)(2)(A) of section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the United States shall pay to the Operating Agency the CAP fixed OM&R charges associated with the delivery of tribal CAP water (except in the case of tribal CAP water leased by any individual or entity);

(7) the Secretary shall waive the right of the Secretary to capture all return flow from project exchange water flowing from the exterior boundary of the reservation; and

(8) no CAP water service capital charge shall be due or payable for the tribal CAP water, regardless of whether the water is delivered for use by the Tribe or pursuant to a contract or option to lease or exchange tribal CAP water entered into by the Tribe.

(b) REQUIREMENTS.—The Contract shall be—

(1) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(2) without limit as to term.

(c) RATIFICATION.—

(1) IN GENERAL.—Except to the extent that any provision of the Contract conflicts with a provision of this title, the Contract is authorized, ratified, and confirmed.

(2) AMENDMENTS.—Any amendment to the Contract is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Contract consistent with this title.

(d) EXECUTION OF CONTRACT.—To the extent that the Contract does not conflict with this title, the Secretary shall execute the Contract.

(e) PAYMENT OF CHARGES.—The Tribe, and any recipient of tribal CAP water through a contract or option to lease or exchange, shall not be obligated to pay a water service capital charge or any other charge, payment, or fee for CAP water, except as provided in an applicable lease or exchange agreement.

(f) PROHIBITIONS.—

(1) USE OUTSIDE STATE.—No tribal CAP water may be leased, exchanged, forborne, or other-

wise transferred by the Tribe in any way for use directly or indirectly outside the State.

(2) USE OFF RESERVATION.—Except as authorized by this section and paragraph 4.7 of the Agreement, no tribal water rights under this title may be sold, leased, transferred, or used outside the boundaries of the reservation or off-reservation trust land other than pursuant to an exchange.

(3) AGREEMENTS WITH ARIZONA WATER BANKING AUTHORITY.—Nothing in this title or the Agreement limits the right of the Tribe to enter into an agreement with the Arizona Water Banking Authority (or any successor entity) established by section 45–2421 of the Arizona Revised Statutes in accordance with State law.

(g) LEASES.—

(1) IN GENERAL.—To the extent that the leases of tribal CAP Water by the Tribe to the District and to any of the cities in the State, attached as exhibits to the Agreement, are not in conflict with the provisions of this title—

(A) those leases are authorized, ratified, and confirmed; and

(B) the Secretary shall execute the leases.

(2) AMENDMENTS.—To the extent that amendments are executed to make the leases described in paragraph (1) consistent with this title, those amendments are authorized, ratified, and confirmed.

SEC. 307. AUTHORIZATION OF WMAT RURAL WATER SYSTEM.

(a) IN GENERAL.—Consistent with subsections (a) and (e) of section 312 and subsection (h) of this section, the Secretary, acting through the Bureau, shall plan, design, and construct the WMAT rural water system to divert, store, and distribute water from the North Fork of the White River to the Tribe that shall consist of—

(1) a dam and storage reservoir, pumping plant, and treatment facilities located along the North Fork of the White River near the community of Whiteriver;

(2) a distribution system consisting of pipelines extending from the treatment facilities to existing water distribution systems serving the communities of Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue;

(3) connections to existing distribution facilities for the communities described in paragraph (2), but not including any upgrades of, or improvements to, existing or future public water systems for the com-

1 munities described in paragraph (2) that may be
2 necessary to accommodate increased demand and
3 flow rates (and any associated changes in water
4 quality);
5 (4) connections to additional communities along
6 the pipeline, provided that the additional connections
7 may be added to the distribution system described in
8 paragraph (2) at the expense of the Tribe;
9 (5) appurtenant buildings and access roads;
10 (6) electrical power transmission and distribu-
11 tion facilities necessary for operation of the project;
12 and
13 (7) any other project components that the Sec-
14 retary, in consultation with the Tribe, determines to
15 be necessary.
16 (b) MODIFICATIONS.—The Secretary and the Tribe—
17 (1) may modify the components of the WMAT
18 rural water system described in subsection (a) by
19 mutual agreement; and
20 (2) shall make all modifications required under
21 subsection (c)(2).
22 (c) FINAL PROJECT DESIGN.—
23 (1) IN GENERAL.—The Secretary shall issue a
24 final project design of the WMAT rural water sys-
25 tem, including the dam, pumping plants, pipeline,

and treatment plant, that is generally consistent with the project extension report dated February 2007 after the completion of—

(A) any appropriate environmental compliance activity; and

(B) the review process described in paragraph (2).

(2) REVIEW.—

(A) IN GENERAL.—The Secretary shall review the proposed design of the WMAT rural water system and perform value engineering analyses.

(B) RESULTS.—Taking into consideration the review under subparagraph (A), the Secretary, in consultation with the Tribe, shall require appropriate changes to the design, so that the final design—

(i) meets Bureau of Reclamation design standards;

(ii) to the maximum extent practicable, incorporates any changes that would improve the cost-effectiveness of the delivery of water through the WMAT rural water system; and

(iii) may be constructed for the amounts made available under section 312.

(d) CONVEYANCE OF TITLE.—

(1) IN GENERAL.—Title to the WMAT rural water system shall be held by the United States until title to the WMAT rural water system is conveyed by the Secretary to the Tribe pursuant to paragraph (2).

(2) CONVEYANCE TO TRIBE.—The Secretary shall convey to the Tribe title to the WMAT rural water system not later than 30 days after the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) the operating criteria, standing operating procedures, emergency action plan, and first filling and monitoring criteria of the designers have been established and are in place;

(B) the WMAT rural water system has operated under the standing operating procedures of the designers, with the participation of the Tribe, for a period of 3 years;

(C) the Secretary has provided the Tribe with technical assistance on the manner by which to operate and maintain the WMAT rural water system;

(D) the funds made available under section 312(b)(3)(B) have been deposited in the WMAT Maintenance Fund; and

(E) the WMAT rural water system—

(i) is substantially complete, as determined by the Secretary; and

(ii) satisfies the requirement that—

(I) the infrastructure constructed is capable of storing, diverting, treating, transmitting, and distributing a supply of water as set forth in the final project design described in subsection (c); and

(II) the Secretary has consulted with the Tribe regarding the proposed finding that the WMAT rural water system is substantially complete.

(e) ALIENATION AND TAXATION.—

(1) IN GENERAL.—Conveyance of title to the Tribe pursuant to subsection (d) does not waive or alter any applicable Federal law (including regulations) prohibiting alienation or taxation of the WMAT rural water system or the underlying reservation land.

(2) ALIENATION OF WMAT RURAL WATER SYSTEM.—The WMAT rural water system, including the components of the WMAT rural water system, shall not be alienated, encumbered, or conveyed in any manner by the Tribe, unless a reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

(f) OPERATION AND MAINTENANCE.—

(1) IN GENERAL.—Consistent with subsections (d) and (e) of section 312, the Secretary, acting through the Bureau and in cooperation with the Tribe, shall operate, maintain, and replace the WMAT rural water system until the date on which title to the WMAT rural water system is transferred to the Tribe pursuant to subsection (d)(2).

(2) LIMITATION.—

(A) IN GENERAL.—Beginning on the date on which title to the WMAT rural water system is transferred to the Tribe pursuant to subsection (d)(2), the United States shall have no obligation to pay for the operation, maintenance, or replacement costs of the WMAT rural water system.

(B) LIMITATION ON LIABILITY.—Effective on the date on which the Secretary publishes a

statement of findings in the Federal Register pursuant to subsection (d)(2), the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the land or facilities conveyed, other than damages caused by any intentional act or act of negligence committed by the United States, or by employees or agents of the United States, prior to the date on which the Secretary publishes a statement of findings in the Federal Register pursuant to subsection (d)(2).

(g) RIGHT TO REVIEW.—

(1) IN GENERAL.—The statement of findings published by the Secretary pursuant to subsection (d)(2) shall be considered to be a final agency action subject to judicial review under sections 701 through 706 of title 5, United States Code.

(2) EFFECT OF TITLE.—Nothing in this title gives the Tribe or any other party the right to judicial review of the determination by the Secretary under subsection (d) except under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(h) APPLICABILITY OF ISDEAA.—

(1) AGREEMENT FOR SPECIFIC ACTIVITIES.—On receipt of a request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into 1 or more agreements with the Tribe to carry out the activities authorized by this section.

(2) CONTRACTS.—Any contract entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for the purpose of carrying out any provision of this title shall incorporate such provisions regarding periodic payment of funds, timing for use of funds, transparency, oversight, reporting, and accountability as the Secretary determines to be necessary (at the sole discretion of the Secretary) to ensure appropriate stewardship of Federal funds.

(i) FINAL DESIGNS; PROJECT CONSTRUCTION.—

(1) FINAL DESIGNS.—All designs for the WMAT rural water system shall—

(A) conform to Bureau design standards; and

(B) be subject to review and approval by the Secretary.

(2) PROJECT CONSTRUCTION.—Each project component of the WMAT rural water system shall be constructed pursuant to designs and specifications approved by the Secretary, and all construction work shall be subject to inspection and approval by the Secretary.

(j) CONDITION.—As a condition of construction of the facilities authorized by this section, the Tribe shall provide, at no cost to the Secretary, all land or interests in land that the Secretary identifies as necessary for the construction, operation, and maintenance of those facilities.

SEC. 308. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—Except as set forth in the Agreement, the benefits realized by the Tribe and its members under this title shall be in full satisfaction of all claims of the Tribe, its members, and the United States, acting as trustee for the benefit of the Tribe and its members, for water rights and injury to water rights under Federal, State, or other law with respect to the reservation and off-reservation trust land.

(b) USES OF WATER.—All uses of water on land outside of the reservation, if and when that land is subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe

and the United States over the location of the reservation boundary, and any fee land within the reservation placed into trust and made part of the reservation, shall be subject to the maximum annual diversion amounts and the maximum annual depletion amounts specified in the Agreement.

(c) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a), nothing in this title recognizes or establishes any right of a member of the Tribe to water on the reservation.

SEC. 309. WAIVERS AND RELEASES OF CLAIMS.

(a) IN GENERAL.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—Except for the specifically retained claims described in subsection (b)(1), the Tribe, on behalf of itself and its members, and the United States, acting in its capacity as trustee for the Tribe and its members, as part of the performance of the respective obligations of the United States and the Tribe under the Agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims for injury to water rights for the reservation and off-reservation trust land arising from time immemorial through the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from off-reservation diversion or use of water in a manner that is not in violation of the Agreement or State law; and

(C) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this title.

(2) CLAIMS AGAINST TRIBE.—Except for the specifically retained claims described in subsection (b)(3), the United States, in all capacities (except as trustee for an Indian tribe other than the Tribe), as part of the performance of its obligations under the Agreement, is authorized to execute a waiver and release of any and all claims against the Tribe, its members, or any agency, official, or employee of the Tribe, under Federal, State, or any other law for all—

(A) past and present claims for injury to water rights resulting from the diversion or use of water on the reservation and on off-reservation trust land arising from time immemorial through the enforceability date;

(B) claims for injury to water rights arising after the enforceability date resulting from the diversion or use of water on the reservation and on off-reservation trust land in a manner that is not in violation of the Agreement; and

(C) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this title.

(3) CLAIMS AGAINST UNITED STATES.—Except for the specifically retained claims described in subsection (b)(2), the Tribe, on behalf of itself and its members, as part of the performance of the obligations of the Tribe under the Agreement, is authorized to execute a waiver and release of any claim against the United States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, or develop water, water rights, or water infrastructure) within the reservation and off-reservation trust land that first accrued at any time prior to the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from the off-reservation diversion or use of water in a manner that is not in violation of the Agreement or applicable law;

(C) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or this title;

(D) past and present claims relating in any manner to pending litigation of claims relating to the water rights of the Tribe for the reservation and off-reservation trust land;

(E) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the reservation constructed prior to the enforceability date that first accrued at any time prior to the enforceability date, which waiver shall only become effective on the full appropriation and payment to the Tribe of $4,950,000 of the amounts made available under section 312(b)(2)(B);

(F) any claims relating to operation, maintenance, and replacement of the WMAT rural water system, which waiver shall only become effective on the date on which funds are made available under section 312(b)(3)(B) and deposited in the WMAT Maintenance Fund;

(G) past and present breach of trust and negligence claims for damage to the land and natural resources of the Tribe caused by riparian and other vegetative manipulation by the United States for the purpose of increasing water runoff from the reservation that first accrued at any time prior to the enforceability date; and

(H) past and present claims for trespass, use, and occupancy of the reservation in, on, and along the Black River that first accrued at any time prior to the enforceability date.

(4) EFFECT ON BOUNDARY CLAIMS.—Nothing in this title expands, diminishes, or impacts any claims the Tribe may assert, or any defense the United States may assert, concerning title to land outside the most current survey, as of the date of enactment of this Act, of the northern boundary of the reservation.

(b) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—

(1) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY TRIBE AND UNITED STATES.—

(A) IN GENERAL.—Notwithstanding the waiver and release of claims authorized under

subsection (a)(1), the Tribe, on behalf of itself and its members, and the United States, acting as trustee for the Tribe and its members, shall retain any right—

(i) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and its members under the Agreement or this title in any Federal or State court of competent jurisdiction;

(ii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(iii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(iv) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(v) to participate in the Gila River adjudication proceedings and the Little Colorado River adjudication proceedings to the extent provided in subparagraph 14.1 of the Agreement;

(vi) to assert any claims arising after the enforceability date for injury to water rights not specifically waived under this section;

(vii) to assert any past, present, or future claim for injury to water rights against any other Indian tribe, Indian community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, nation, or allottee;

(viii) to assert any past, present, or future claim for trespass, use, and occupancy of the reservation in, on, or along the Black River against Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all sub-

sidiaries and affiliates of those entities; and

(ix) to assert claims arising after the enforceability date for injury to water rights resulting from the pumping of water from land located within national forest land as of the date of the Agreement in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T. 8 N., R. 25 E., if water from the land is used on the land or is transported off the land for municipal, commercial, or industrial use.

(B) AGREEMENT.—On terms acceptable to the Tribe and the United States, the Tribe and the United States are authorized to enter into an agreement with Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities, to resolve the claims of the Tribe relating to the trespass, use, and occupancy of the reservation in, on, and along the Black River.

(2) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY TRIBE AGAINST UNITED STATES.—Notwithstanding the waiver and release of claims authorized under subsection (a)(3), the Tribe, on behalf of itself and its members, shall retain any right—

(A) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and its members under the Agreement or this title, in any Federal or State court of competent jurisdiction;

(B) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(C) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(D) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United

1 States on behalf of such a tribe, community, or
2 nation;
3 (E) to assert past, present, or future
4 claims for injury to water rights or any other
5 claims other than a claim to water rights,
6 against any other Indian tribe, Indian commu-
7 nity or nation, or dependent Indian community,
8 or the United States on behalf of such a tribe,
9 community, or nation;
10 (F) to assert claims arising after the en-
11 forceability date for injury to water rights re-
12 sulting from the pumping of water from land
13 located within national forest land as of the
14 date of the Agreement in the south ½ of T. 9
15 N., R. 24 E., the south ½ of T. 9 N., R. 25
16 E., the north ½ of T. 8 N., R. 24 E., or the
17 north ½ of T. 8 N., R. 25 E., if water from
18 that land is used on the land or is transported
19 off the land for municipal, commercial, or in-
20 dustrial use;
21 (G) to assert any claims arising after the
22 enforceability date for injury to water rights not
23 specifically waived under this section;

(H) to seek remedies and to assert any other claims not specifically waived under this section; and

(I) to assert any claim arising after the enforceability date for a future taking by the United States of reservation land, off-reservation trust land, or any property rights appurtenant to that land, including any water rights set forth in paragraph 4.0 of the Agreement.

(3) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY UNITED STATES.—Notwithstanding the waiver and release of claims authorized under subsection (a)(2), the United States shall retain any right to assert any claim not specifically waived in that subsection.

(c) EFFECTIVENESS OF WAIVER AND RELEASES.—Except as otherwise specifically provided in subparagraphs (E) and (F) of subsection (a)(3), the waivers and releases under subsection (a) shall become effective on the enforceability date.

(d) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A)(i) to the extent that the Agreement conflicts with this title, the Agreement has been revised through an amendment to eliminate the conflict; and

(ii) the Agreement, as so revised, has been executed by the Secretary, the Tribe, and the Governor of the State;

(B) the Secretary has fulfilled the requirements of sections 305 and 306;

(C) the amount made available under section 312(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(E) the Secretary has issued a record of decision approving the construction of the WMAT rural water system in a configuration substantially similar to that described in section 307;

(F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2

have been approved by the respective trial courts; and

(G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If the Secretary does not publish a statement of findings under paragraph (1) by April 30, 2021—

(A) this title is repealed effective May 1, 2021, and any activity by the Secretary to carry out this title shall cease;

(B) any amounts made available under section 312 shall immediately revert to the general fund of the Treasury;

(C) any other amounts deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount (including any amounts paid by the State in accordance with the Agreement), together with any interest accrued on those amounts, shall immediately be returned to the respective sources of those funds; and

(D) the Tribe and its members, and the United States, acting as trustee for the Tribe and its members, shall retain the right to assert

past, present, and future water rights claims and claims for injury to water rights for the reservation and off-reservation trust land.

(3) NO ADDITIONAL RIGHTS TO WATER.—Beginning on the enforceability date, all land held by the United States in trust for the Tribe and its members shall have no rights to water other than those specifically quantified for the Tribe and the United States, acting as trustee for the Tribe and its members, for the reservation and off-reservation trust land pursuant to paragraph 4.0 of the Agreement.

(e) UNITED STATES ENFORCEMENT AUTHORITY.—Nothing in this title or the Agreement affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(f) NO EFFECT ON WATER RIGHTS.—Except as provided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and (3)(B)(ii) of subsection (a), nothing in this title affects any rights to water of the Tribe, its members, or the United States, acting as trustee for the Tribe and its members, for land outside the boundaries of the reservation or the off-reservation trust land.

(g) ENTITLEMENTS.—Any entitlement to water of the Tribe, its members, or the United States, acting as trustee for the Tribe and its members, relating to the reservation or off-reservation trust land shall be satisfied from the water resources granted, quantified, confirmed, or recognized with respect to the Tribe, its members, and the United States by the Agreement and this title.

(h) OBJECTION PROHIBITED.—Except as provided in paragraphs (1)(A)(ix) and (2)(F) of subsection (b), the Tribe and the United States, acting as trustee for the Tribe shall not—

(1) object to the use of any well located outside the boundaries of the reservation or the off-reservation trust land in existence on the enforceability date; or

(2) object to, dispute, or challenge after the enforceability date the drilling of any well or the withdrawal and use of water from any well in the Little Colorado River adjudication proceedings, the Gila River adjudication proceedings, or any other judicial or administrative proceeding.

SEC. 310. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS SETTLEMENT SUBACCOUNT.

(a) ESTABLISHMENT.—There is established in the Lower Colorado River Basin Development Fund a sub-

account to be known as the "White Mountain Apache Tribe Water Rights Settlement Subaccount", consisting of—

(1) the amounts deposited in the subaccount pursuant to section 312(a); and

(2) such other amounts as are available, including the amounts provided in subparagraph 13.3 of the Agreement.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall use amounts from the White Mountain Apache Tribe Water Rights Settlement Subaccount for the planning, design, and construction of the WMAT rural water system, in accordance with section 307(a).

(2) REQUIREMENTS.—In carrying out the activities described in paragraph (1), the Secretary shall use such sums as are necessary from the White Mountain Apache Tribe Water Rights Settlement Subaccount—

(A) to provide the Bureau with amounts sufficient to carry out oversight of the planning, design, and construction of the WMAT rural water system;

(B) to repay to the Treasury (or the United States) any outstanding balance on the loan authorized by the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110–390; 122 Stat. 4191), after which repayment, the Tribe shall have no further liability for the balance on that loan; and

(C) to carry out all required environmental compliance activities associated with the planning, design, and construction of the WMAT rural water system.

(c) ISDEAA CONTRACT.—

(1) IN GENERAL.—If the Tribe so requests, the planning, design, and construction of the WMAT rural water system shall be carried out pursuant to the terms of an agreement or agreements entered into under section 307(h).

(2) ENFORCEMENT.—The Secretary may pursue any judicial remedies and carry out any administrative actions that are necessary to enforce an agreement described in paragraph (1) to ensure that amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount are used in accordance with this section.

(d) PROHIBITION ON PER CAPITA DISTRIBUTIONS.—No amount of the principal, or the interest or income accruing on the principal, of the White Mountain Apache Tribe Water Rights Settlement Subaccount shall be distributed to any member of the Tribe on a per capita basis.

(e) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount shall not be available for expenditure by the Secretary until the enforceability date.

(2) INVESTMENT.—The Secretary shall invest the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount in accordance with section 403(f)(4) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(4)).

(3) USE OF INTEREST.—The interest accrued on amounts invested under paragraph (2) shall not be available for expenditure or withdrawal until the enforceability date.

SEC. 311. MISCELLANEOUS PROVISIONS.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

(1) IN GENERAL.—In the case of a civil action described in paragraph (2)—

(A) the United States or the Tribe, or both, may be joined in the civil action; and

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of this title or the Agreement.

(2) DESCRIPTION OF CIVIL ACTION.—A civil action referred to in paragraph (1) is a civil action filed—

(A) by any party to the Agreement or signatory to an exhibit to the Agreement in a United States or State court that—

(i) relates solely and directly to the interpretation or enforcement of this title or the Agreement; and

(ii) names as a party the United States or the Tribe; or

(B) by a landowner or water user in the Gila River basin or Little Colorado River basin in the State that—

(i) relates solely and directly to the interpretation or enforcement of section 309 of this title and paragraph 12.0 of the Agreement; and

(ii) names as a party the United States or the Tribe.

(b) EFFECT OF TITLE.—Nothing in this title quantifies or otherwise affects any water right or claim or entitlement to water of any Indian tribe, band, or community other than the Tribe.

(c) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any amount paid to the Tribe by any party to the Agreement other than the United States; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Tribe shall indemnify the United States, and hold the United States harmless, with respect to any claim (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(d) APPLICABILITY OF RECLAMATION REFORM ACT.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full-cost pricing provision under Federal law shall not apply to any individual, entity, or land solely on the basis of—

(1) receipt of any benefit under this title;

(2) the execution or performance of the Agreement; or

(3) the use, storage, delivery, lease, or exchange of CAP water.

(e) SECRETARIAL POWER SITES.—The portions of the following named secretarial power site reserves that are located on the Fort Apache Indian Reservation or the San Carlos Apache Reservation, as applicable, shall be transferred and restored into the name of the Tribe or the San Carlos Apache Tribe, respectively:

(1) Lower Black River (T. 3 N., R. 26 E.; T. 3 N., R. 27 E.).

(2) Black River Pumps (T. 2 N., R. 25 E.; T. 2 N., R. 26 E.; T. 3 N., R. 26 E.).

(3) Carrizo (T. 4 N., R. 20 E.; T. 4 N., R. 21 E.; T. 4½ N., R. 19 E.; T. 4½ N., R. 20 E.; T. 4½ N., R. 21 E.; T. 5 N., R. 19 E.).

(4) Knob (T. 5 N., R. 18 E.; T. 5 N., R. 19 E.).

(5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N., R. 18 E.).

(6) Gleason Flat (T. 4½ N., R. 16 E.; T. 5 N., R. 16 E.).

(f) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of tribal CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(g) AFTER-ACQUIRED TRUST LAND.—

(1) REQUIREMENT OF ACT OF CONGRESS.—

(A) LEGAL TITLE.—Subject to subparagraph (B), after the enforceability date, if the Tribe seeks to have legal title to additional land in the State located outside the exterior boundaries of the reservation taken into trust by the United States for the benefit of the Tribe, the Tribe may do so only pursuant to an Act of Congress specifically authorizing the transfer for the benefit of the Tribe.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) the restoration of land to the reservation subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary, unless required by Federal law; or

(ii) off-reservation trust land acquired prior to January 1, 2008.

(2) WATER RIGHTS.—

(A) IN GENERAL.—After-acquired trust land that is located outside the reservation shall not include federally reserved rights to surface water or groundwater.

(B) RESTORED LAND.—Land that is restored to the reservation as the result of the resolution of any reservation boundary dispute between the Tribe and the United States, or any fee simple land within the reservation that is placed into trust, shall have water rights pursuant to section 308(b).

(3) ACCEPTANCE OF LAND IN TRUST STATUS.—

(A) IN GENERAL.—If the Tribe acquires legal fee title to land that is located within the exterior boundaries of the reservation, the Secretary shall accept the land in trust status for the benefit of the Tribe in accordance with applicable Federal law (including regulations) for such real estate acquisitions.

(B) RESERVATION STATUS.—Land held in trust by the Secretary under subparagraph (A), or restored to the reservation as a result of res-

1 olution of a boundary dispute between the Tribe
2 and the United States, shall be deemed to be
3 part of the reservation.

4 (h) CONFORMING AMENDMENT.—Section 3(b)(2) of
5 the White Mountain Apache Tribe Rural Water System
6 Loan Authorization Act (Public Law 110–390; 122 Stat.
7 4191) is amended by striking "January 1, 2013" and in-
8 serting "May 1, 2021".

9 **SEC. 312. FUNDING.**

10 (a) RURAL WATER SYSTEM.—

11 (1) MANDATORY APPROPRIATIONS.—Subject to
12 paragraph (2), out of any funds in the Treasury not
13 otherwise appropriated, the Secretary of the Treas-
14 ury shall transfer to the Secretary to carry out the
15 planning, engineering, design, environmental compli-
16 ance, and construction of the WMAT rural water
17 system $126,193,000.

18 (2) INCLUSIONS.—The amount made available
19 under paragraph (1) shall include such sums as are
20 necessary, but not to exceed 4 percent of the con-
21 struction contract costs, for the Bureau to carry out
22 oversight of activities for planning, design, environ-
23 mental compliance, and construction of the rural
24 water system.

(b) WMAT SETTLEMENT AND MAINTENANCE FUNDS.—

(1) DEFINITION OF FUNDS.—In this subsection, the term "Funds" means—

(A) the WMAT Settlement Fund established by paragraph (2)(A); and

(B) the WMAT Maintenance Fund established by paragraph (3)(A).

(2) WMAT SETTLEMENT FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "WMAT Settlement Fund", to be administered by the Secretary, consisting of the amounts deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) TRANSFERS TO FUND.—

(i) IN GENERAL.—There are authorized to be appropriated to the Secretary for deposit in the WMAT Settlement Fund—

(I) $78,500,000; and

(II) any additional amounts described in clause (ii), if applicable.

(ii) AUTHORIZATION OF ADDITIONAL AMOUNTS.—In accordance with subsection (e)(4)(B), if the WMAT rural water system is conveyed to the Tribe before the date on which the $35,000,000 described in subsection (e)(2) is completely made available, there is authorized to be appropriated to the Secretary, for deposit in the WMAT Settlement Fund, any remaining amounts that would otherwise have been made available for expenditure from the Cost Overrun Subaccount.

(C) USE OF FUNDS.—

(i) IN GENERAL.—The Tribe shall use amounts in the WMAT Settlement Fund for any of the following purposes:

(I) Fish production, including hatcheries.

(II) Rehabilitation of recreational lakes and existing irrigation systems.

(III) Water-related economic development projects.

(IV) Protection, restoration, and economic development of forest and watershed health.

(ii) EXISTING IRRIGATION SYSTEMS.—Of the amounts deposited in the Fund under subparagraph (B), not less than $4,950,000 shall be used for the rehabilitation of existing irrigation systems.

(3) WMAT MAINTENANCE FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "WMAT Maintenance Fund", to be administered by the Secretary, consisting of the amounts deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) MANDATORY APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $50,000,000 for deposit in the WMAT Maintenance Fund.

(C) USE OF FUNDS.—The Tribe shall use amounts in the WMAT Maintenance Fund only for the operation, maintenance, and replacement costs associated with the delivery of water through the WMAT rural water system.

(4) ADMINISTRATION.—The Secretary shall manage the Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), including by investing amounts in the Funds in accordance with—

(A) the Act of April 1, 1880 (25 U.S.C. 161); and

(B) the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(5) AVAILABILITY OF AMOUNTS FROM FUNDS.—Amounts in the Funds shall be available for expenditure or withdrawal only after the enforceability date and in accordance with subsection (f).

(6) EXPENDITURE AND WITHDRAWAL.—

(A) TRIBAL MANAGEMENT PLAN.—

(i) IN GENERAL.—The Tribe may withdraw all or part of the amounts in the Funds on approval by the Secretary of a tribal management plan, as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(ii) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act

of 1994 (25 U.S.C. 4001 et seq.), a tribal management plan under this subparagraph shall require the Tribe to use any amounts withdrawn from the Funds in accordance with paragraph (2)(C) or (3)(C), as applicable.

(iii) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of a tribal management plan described in clause (i) to ensure that any amounts withdrawn from the Funds under the tribal management plan are used in accordance with this title and the Agreement.

(iv) LIABILITY.—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(B) EXPENDITURE PLAN.—

(i) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Funds that the Tribe does

not withdraw under the tribal management plan.

(ii) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Funds will be used.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan, if the Secretary determines that the plan is reasonable and consistent with this title and the Agreement.

(iv) ANNUAL REPORT.—For each of the Funds, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(C) CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.—No amount in the Funds shall be distributed to any member of the Tribe on a per capita basis.

(e) COST INDEXING.—All amounts made available under subsections (a), (b), and (c) shall be adjusted as necessary to reflect the changes since October 1, 2007, in the construction cost indices applicable to the types of

1 construction involved in the construction of the WMAT
2 rural water supply system, the maintenance of the rural
3 water supply system, and the construction or rehabilita-
4 tion of the other development projects described in sub-
5 section (b)(2)(C).

6 (d) OPERATION, MAINTENANCE, AND REPLACE-
7 MENT.—Out of any funds in the Treasury not otherwise
8 appropriated, the Secretary of the Treasury shall transfer
9 to the Secretary $2,500,000 for the operation, mainte-
10 nance, and replacement costs of the WMAT rural water
11 system, to remain available until the conditions described
12 in section 307(f) have been met.

13 (e) COST OVERRUN SUBACCOUNT.—

14 (1) ESTABLISHMENT.—There is established in
15 the Lower Colorado River Basin Development Fund
16 a subaccount to be known as the "WMAT Cost
17 Overrun Subaccount", to be administered by the
18 Secretary, consisting of the amounts deposited in the
19 subaccount under paragraph (2), together with any
20 interest accrued on those amounts, for use by the
21 Secretary in accordance with paragraph (4).

22 (2) MANDATORY APPROPRIATIONS; AUTHORIZA-
23 TION OF APPROPRIATIONS.—

24 (A) MANDATORY APPROPRIATIONS.—Out
25 of any funds in the Treasury not otherwise ap-

1 propriated, the Secretary of the Treasury shall
2 transfer to the Secretary $24,000,000 for de-
3 posit in the WMAT Cost Overrun Subaccount.
4 (B) AUTHORIZATION OF APPROPRIA-
5 TIONS.—There is authorized to be appropriated
6 for deposit in the WMAT Cost Overrun Sub-
7 account $11,000,000.
8 (3) AVAILABILITY OF FUNDS.—
9 (A) IN GENERAL.—Amounts in the WMAT
10 Cost Overrun Subaccount shall not be available
11 for expenditure by the Secretary until the en-
12 forceability date.
13 (B) INVESTMENT.—The Secretary shall in-
14 vest the amounts in the WMAT Cost Overrun
15 Subaccount in accordance with section
16 403(f)(4) of the Colorado River Basin Project
17 Act (43 U.S.C. 1543(f)(4)).
18 (C) USE OF INTEREST.—The interest ac-
19 crued on the amounts invested under subpara-
20 graph (B) shall not be available for expenditure
21 or withdrawal until the enforceability date.
22 (4) USE OF COST OVERRUN SUBACCOUNT.—
23 (A) INITIAL USE.—The Secretary shall use
24 the amounts in the WMAT Cost Overrun Sub-
25 account to complete the WMAT rural water

system or to carry out activities relating to the operation, maintenance, or replacement of facilities of the WMAT rural water system, as applicable, if the Secretary determines that the amounts made available under subsections (a) and (d) will be insufficient in the period before title to the WMAT rural water system is conveyed to the Tribe—

(i) to complete the WMAT rural water system; or

(ii) to operate and maintain the WMAT rural water system.

(B) TRANSFER OF FUNDS.—All unobligated amounts remaining in the Cost Overrun Subaccount on the date on which title to the WMAT rural water system is conveyed to the Tribe shall be—

(i) returned to the general fund of the Treasury; and

(ii) on an appropriation pursuant to subsection (b)(2)(B)(ii), deposited in the WMAT Settlement Fund and made available to the Tribe for use in accordance with subsection (b)(2)(C).

(f) CONDITIONS.—The amounts made available to the Secretary for deposit in the WMAT Maintenance Fund, together with any interest accrued on those amounts under subsection (b)(3) and any interest accruing on the WMAT Settlement Fund under subsection (b)(2), shall not be available for expenditure or withdrawal until the WMAT rural water system is transferred to the Tribe under section 307(d)(2).

(g) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this title the funds transferred under subsections (a), (b), (d), and (e), without further appropriation, to remain available until expended.

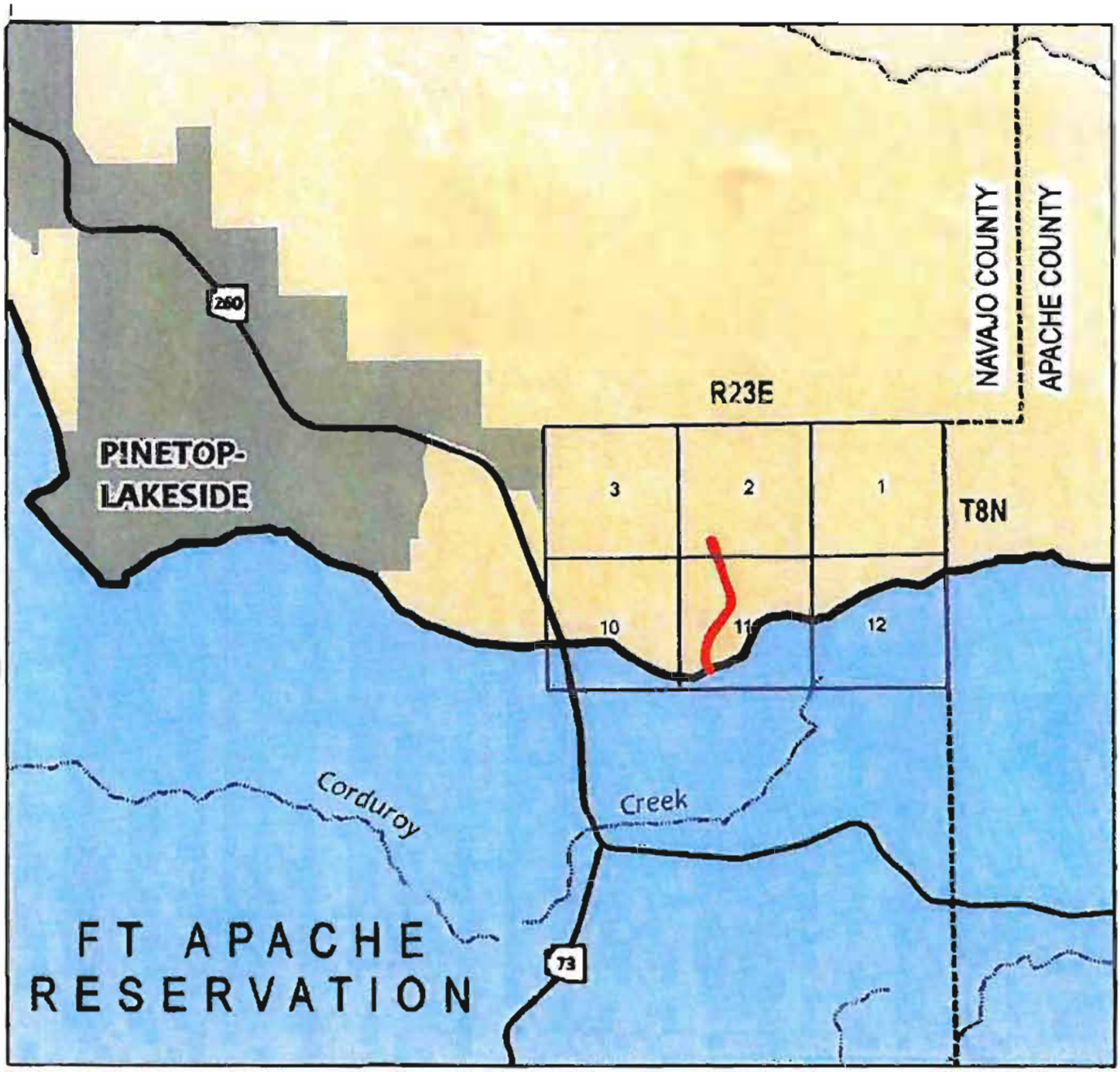
SEC. 313. ANTIDEFICIENCY.

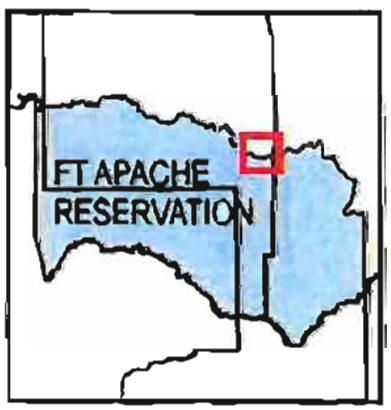
The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under this title (including any such obligation or activity under the Agreement) if adequate appropriations are not provided by Congress expressly to carry out the purposes of this title.

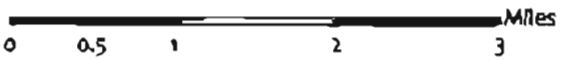
SEC. 314. COMPLIANCE WITH ENVIRONMENTAL LAWS.

In implementing the Agreement and carrying out this title, the Secretary shall promptly comply with all applicable requirements of—

Exhibit 2.57: WMAT Off-Reservation Trust Land



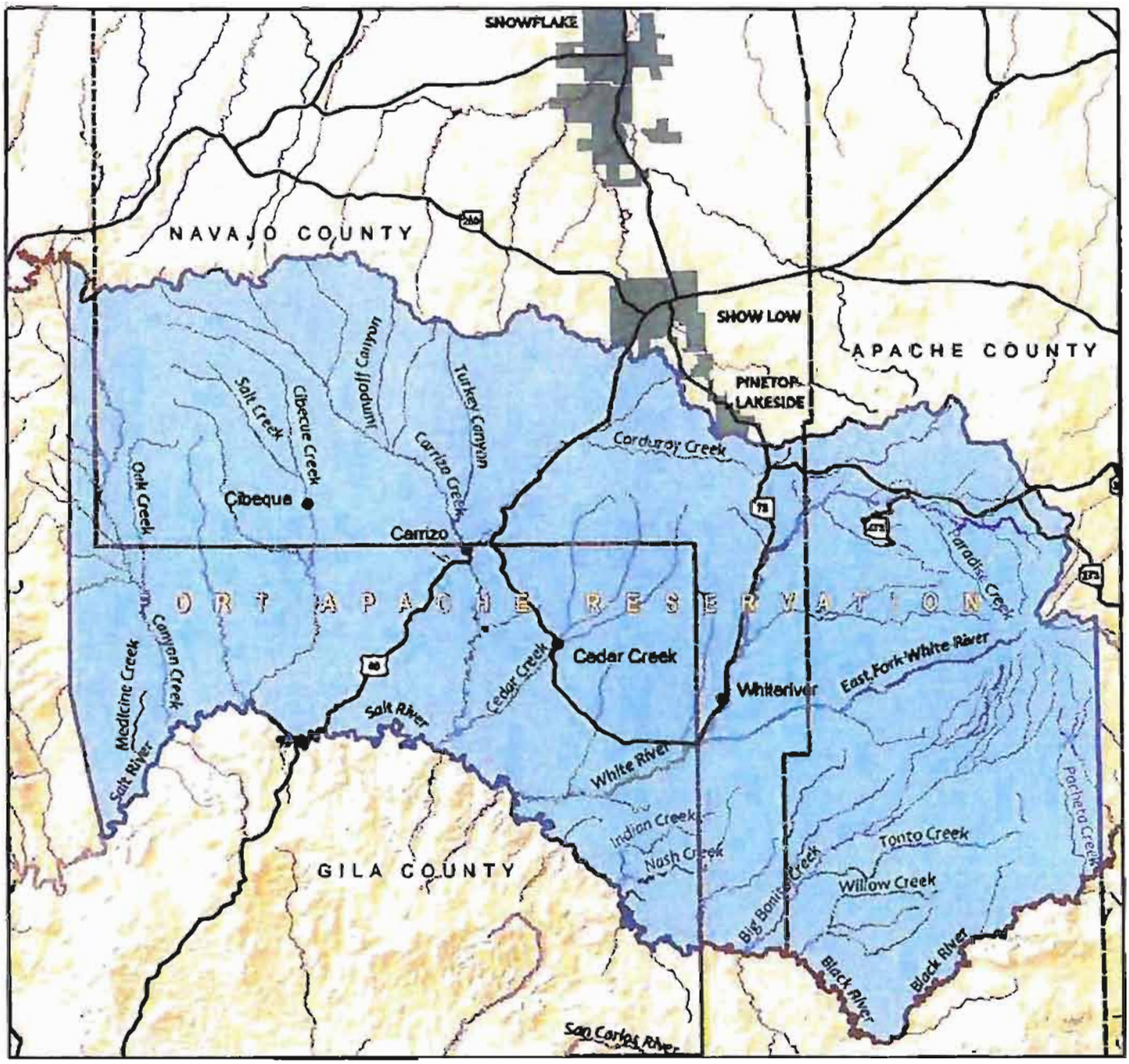




Key

- WMAT Off-Reservation Trust Land
- WMAT Reservation
- City Limits

Exhibit 2.81: WMAT Reservation



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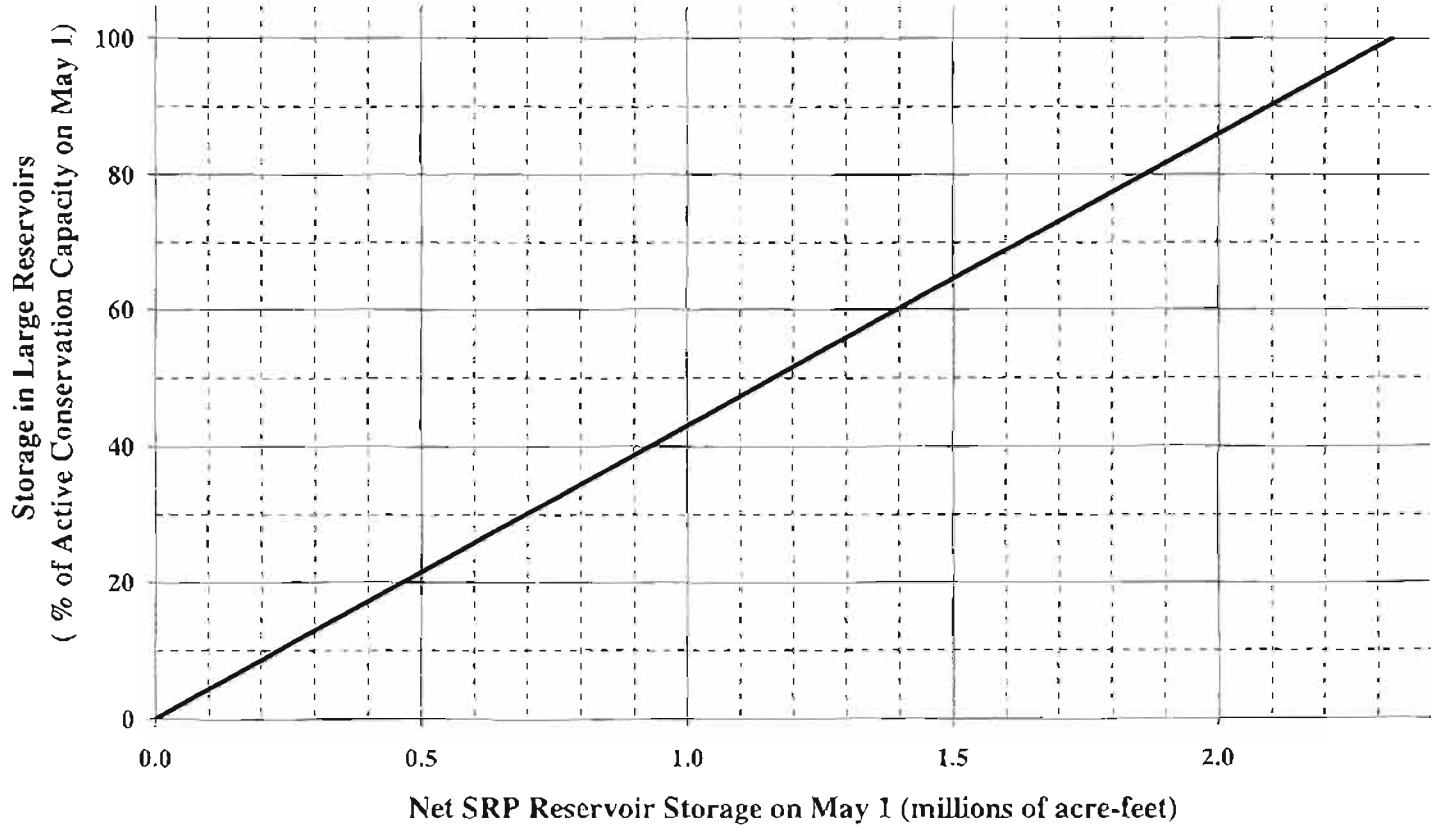
Key

WMAT Reservation

City Limits

Exhibit 5.7.2
Maximum Storage in Large Reservoirs



Contract No. 08-XX-30-W0529

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

CONTRACT WITH THE WHITE MOUNTAIN APACHE TRIBE
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

1 PREAMBLE: This CONTRACT No. 08-XX-30-W0529 (ñContractò) is made and entered into this _____ day of _____, 2012, pursuant to the Act of Congress approved June 17, 1902 (P.L. 57-161; 32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (P.L. 70-642; 45 Stat. 1057), the Reclamation Project Act of August 4, 1939 (P.L. 76-260; 53 Stat. 1187), as amended, the Colorado River Basin Project Act of September 30, 1968 (P.L. 90-537; 82 Stat. 885; 43 U.S.C. § 1501), as amended (ñBasin Project Actò), the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (P.L. 101-628, 104 Stat. 4469, 4480) (ñFort McDowell Actò), the Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293; 96 Stat. 1274), as amended, the Arizona Water Settlements Act enacted December 10, 2004 (P.L. 108-451; 118 Stat. 3478), (ñAWSAò) and the various authorities and responsibilities of the Secretary of the Interior (ñSecretaryò) in relation to Indians and Indian Tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, and the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) (ñWMAT Actò), between the UNITED STATES OF AMERICA (ñUnited Statesò), acting through the Bureau of Reclamation, for and on behalf of the Secretary, and the White Mountain Apache Tribe (ñWMATò), a Tribe of Apache Indians organized under Section 16 of the Act of June 18, 1934, (P.L. 73-383; 48 Stat. 984; 25 U.S.C. 476 *et seq*.) and duly recognized by the Secretary. In this Contract, the United States and WMAT are each individually sometimes hereinafter called ñPartyò and sometimes

collectively called ñPartiesò.

WITNESSETH THAT:

2 EXPLANATORY RECITALS:

2.1 WHEREAS, WMAT, its neighboring non-Indian communities and other Arizona water users have agreed to permanently quantify the Water Rights of WMAT, its Members, and the United States on behalf of WMAT and its Members;

2.2 WHEREAS, the United States, the State of Arizona, WMAT, the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Usersô Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District entered into the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 , hereinafter referred to as the ñQuantification Agreementò, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009, in accordance with Section 309(d)(1)(A)(i) of the WMAT Act;

2.3 WHEREAS, the Quantification Agreement is an agreement by the parties to permanently quantify the Water Rights of WMAT, its Members, and the United States on behalf of WMAT and its Members and to seek funding in accordance with applicable law, for the implementation of the Quantification Agreement;

2.4 WHEREAS, on December 8, 2010, Congress enacted the WMAT Act;

2.5 WHEREAS, the purposes of the WMAT Act are (1) to authorize, ratify, and confirm the Quantification Agreement, (2) to authorize and direct the Secretary to execute the Quantification Agreement and take any other action necessary to carry out all obligations of the Secretary under the Quantification Agreement in accordance with the WMAT Act, (3) to

authorize the amounts necessary for the United States to meet the obligations of the United States under the Quantification Agreement and the WMAT Act, and (4) to permanently resolve certain damage claims and all Water Rights claims among WMAT, its Members, the United States, acting as trustee for WMAT and its Members, the parties to the Quantification Agreement, and all other claimants seeking to determine the nature and extent of the water rights of the WMAT, its Members, the United States, acting as trustee for the WMAT and its Members, and other claimants in the Gila River Adjudication Proceedings and Little Colorado River Adjudication Proceedings, as defined in the Quantification Agreement;

2.6 WHEREAS, prior to the WMAT Act being enacted, Congress enacted AWSA to provide for adjustments to the Central Arizona Project in Arizona, to provide for other Indian water right settlements, and for other purposes;

2.7 WHEREAS, Title I of AWSA is the Central Arizona Project Settlement Act of 2004, which title provides an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, and provides important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State;

2.8 WHEREAS, Title I of AWSA, in Section 104(a)(1)(A)(iii), provides for the reallocation of 67,300 acre-feet per year of Central Arizona Project water to Arizona Indian Tribes, of which, pursuant to Section 305(b)(1)(A) of the WMAT Act, the Secretary is allocating 23,782 acre-feet per year of Central Arizona Project Non-Indian Agricultural Priority Water hereinafter called ñCAP NIA Priority Waterò to WMAT;

2.9 WHEREAS, under the Fort McDowell Act the Secretary acquired the Harquahala Valley Irrigation Districtôs (HVID) CAP NIA Priority Water entitlement that was converted to Central Arizona Project Indian Priority Water to settle water rights claims of Indian tribes having claims to the water in the Salt and Verde River system;

2.10 WHEREAS, pursuant to Section 305(b)(1)(B) of the WMAT Act, the Secretary is allocating 1,218 acre-feet per year of the HVID Central Arizona Project Indian Priority Water entitlement acquired by the Secretary under the Fort McDowell Act to WMAT; and

2.11 WHEREAS, WMAT and the Secretary desire to enter into this Contract to provide for the delivery of Central Arizona Project water to WMAT and to conform to the terms and conditions of the WMAT Act and the Quantification Agreement;

NOW THEREFORE, the Parties agree as follows:

3 CONTRACT PURPOSE: As required in Sections 305(b) and 306(a) of the WMAT Act, the purpose of this Contract is to enter into a water delivery contract for Central Arizona Project water that conforms to the terms and conditions of the WMAT Act and the Quantification Agreement.

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

4.1 Arizona Water Banking Authority shall mean the Arizona Water Banking Authority, formed pursuant to A.R.S. § 45-2401 *et seq*.

4.2 Available CAP Supply shall mean for any given Year all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

4.3 AWSA shall mean the Arizona Water Settlements Act, Public Law 108-451, 118 Stat. 3478, enacted on December 10, 2004.

4.4 Basin Project Act, shall mean the Colorado River Basin Project Act, 82 Stat. 885, enacted on September 30, 1968, as amended (43 U.S.C. §1501 *et seq*.).

4.5 CAP, Project, or Central Arizona Project shall mean the reclamation project

authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §1521 *et seq*.).

4.6 CAP Contract shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

4.7 CAP Contractor shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

4.8 CAP Fixed OM&R Charge shall mean Fixed OM&R Charge as that term is defined in the CAP Repayment Stipulation.

4.9 CAP Indian Priority Water shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

4.10 CAP M&I Priority Water shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

4.11 CAP NIA Priority Water shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

4.12 CAP Operating Agency shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. CAWCD is the CAP Operating Agency at the time of execution of this Contract.

4.13 CAP Pumping Energy Charge shall mean the ñPumping Energy Chargeò as that term is defined in the CAP Repayment Stipulation.

4.14 CAP Repayment Contract shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1) and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

4.15 CAP Repayment Stipulation shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and No. CIV 95-1720-PHX-EHC.

4.16 CAP Subcontract shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States, and CAWCD for the delivery of water through the CAP System.

4.17 CAP Subcontractor shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and CAWCD for the delivery of water through the CAP System.

4.18 CAP System shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

4.19 CAP Water shall mean ñProject Waterò as that term is defined in the CAP Repayment Stipulation.

4.20 CAWCD or Central Arizona Water Conservation District shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

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

4.22 Contracting Officer shall mean the Secretary or his or her authorized designee acting on his or her behalf.

4.23 Delivery Point(s) shall mean the point(s) that are reasonably required, by agreement of the Contracting Officer and WMAT, or selected by the Secretary, to permit WMAT to put the Project Water to its intended use.

4.24 Effluent shall mean water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but water shall not become Effluent solely as a result of having been used for hydropower generation on the WMAT Reservation.

4.25 Enforceability Date shall mean the date described in Section 309(d)(1)of the WMAT Act.

4.26 Excess CAP Water shall mean ñExcess Waterò as that term is defined in the CAP Repayment Stipulation.

4.27 Excess CAP Water Contract shall mean a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

4.28 Excess CAP Water Contractor or Excess CAP Water Contractors shall mean one or more persons or entities having an Excess CAP Water Contract.

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

4.30 Groundwater shall mean all water beneath the surface of the Earth other than Surface Water.

4.31 Hohokam Agreement shall mean the Agreement among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona cities of Chandler, Mesa, Phoenix and Scottsdale dated December 21, 1993.

4.32 HVID CAP Water shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Act.

4.33 Member or Members shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

4.34 Non-Project Water shall mean water acquired by WMAT other than from the Central Arizona Project.

4.35 Off-Reservation Trust Land shall mean land: (1) located outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of WMAT as of the Enforceability Date; and (2) depicted on the map attached as exhibit 2.57 to the Quantification Agreement.

4.36 OM&R shall mean the care, operation, maintenance, and replacement of the CAP System, or any part thereof.

4.37 Plan 6 Cities shall mean the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe.

4.38 Project Water shall mean ñProject Waterò as that term is defined in the Repayment Stipulation.

4.39 Quantification Agreement shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012,

which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009, in accordance with Section 309(d)(1)(A)(i) of the WMAT Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Contract constitutes Exhibit 7.1 to the Quantification Agreement.

4.40 Salt River Watershed shall mean all lands located within the Surface Water drainage of the Salt River and its tributaries.

4.41 Secretary shall mean the Secretary of the United States Department of the Interior.

4.42 SRP shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Usersô Association, an Arizona Territorial Corporation.

4.43 State shall mean the State of Arizona.

4.44 Surface Water shall mean all water that is appropriable under State law. For purposes of the definition of ñWater Rightò in subsection 4.45 herein the terms ñSurface Waterò shall also include Colorado River water.

4.45 Water Right shall mean any right in or to Groundwater, Surface Water, or Effluent under Federal, State or other law.

4.46 White Mountain Apache Tribe, WMAT or Tribe shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the ñIndian Reorganization Actò) (25 U.S.C. § 476).

4.47 WMAT CAP Water shall mean the CAP Water to which the WMAT is entitled pursuant to this Contract.

4.48 WMAT Reservation or Reservation shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated

November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the WMAT Act, as the ñFort Apache Reservationò pursuant to Chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as exhibit 2.81 to the Quantification Agreement. The depiction of the Reservation on the map attached as exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

4.49 Year shall mean a calendar year. When not capitalized the term ñyearò shall have the meaning in the section in which the term is used.

5 DELIVERY OF WATER:

5.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this Contract, during such periods as it operates and maintains the Project, the United States will deliver Project Water to WMAT directly or through an exchange with SRP or any other individual or entity acceptable to WMAT and the Secretary. The United States will use reasonable diligence to make available to WMAT the quantities of water specified in the schedule submitted by WMAT and shall make deliveries of Project Water to WMAT to meet WMATôs water requirements within the constraints of and in accordance with subsection 5.6 herein. During such periods as the OM&R is transferred to the CAP Operating Agency the United States will make deliveries of Project Water to the CAP Operating Agency for subsequent delivery to WMAT directly or through an exchange, as provided herein.

5.2 Term of Contract. This Contract is for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. 617d, and is without limit as to

term.

5.3 Conditions Relating to Delivery. WMAT hereby agrees that the obligation of the United States to deliver water under this Contract is subject to:

5.3.1 The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Basin Project Act, the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of *Arizona v California et al.*, 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now or hereafter modified.

5.3.2 The United States obligation under the Mexican Water Treaty, Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Mexican Water Treaty; and obligations associated with Minutes of the International Boundary and Water Commission adopted pursuant to the Mexican Water Treaty.

5.3.3 The express understanding and agreement by WMAT that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River

Compact and that the United States and WMAT shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to WMAT hereunder.

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

5.3.5 The canals through which Project Water is conveyed after its delivery to WMAT shall be maintained with linings adequate in the Secretaryôs judgment to prevent excessive conveyance losses; provided, however, that WMAT shall be relieved from this obligation if the United States does not make funds for this purpose available to WMAT following a timely request for such funds.

5.4 Exchanges, Leases, and Other Agreements. WMAT may, pursuant to Section 306 (a)(1)(A) of the WMAT Act, on approval of the Secretary, enter into contracts or options to lease, contracts to exchange or options to exchange WMAT CAP Water within Maricopa, Pinal, Pima and Yavapai counties, Arizona, providing for the temporary delivery to any individual or entity

of any portion of the WMAT CAP Water. The term of a contract or option to lease shall not be longer than one hundred (100) years. A contract or option to exchange shall be for the term provided for in the contract or option. A lease or option to lease providing for the temporary delivery of WMAT CAP Water shall require the lessee to pay to the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges (as defined in the CAP Repayment Stipulation) associated with the leased water.

5.4.1 WMAT may, with the approval of the Secretary, renegotiate any lease at any time during the term of that lease, subject to the condition that the term of the renegotiated lease shall not exceed one hundred (100) years.

5.4.2 Exchanges of the WMAT CAP Water for water from the Salt River Watershed upstream of Modified Roosevelt Dam shall be subject to the terms and conditions of one or more agreements to be negotiated among WMAT, the United States, SRP, Plan 6 Cities, and any other necessary parties.

5.4.3 Pursuant to Section 306(a)(3)(A) of the WMAT Act, WMAT, and not the United States in any capacity, shall be entitled to all consideration due to WMAT under any contract or option to lease or exchange WMATôs CAP Water entered into by WMAT. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer, or account for, in any manner: (1) any funds received by WMAT as consideration under any such contracts entered into by WMAT to lease, option to lease, exchange or option to exchange WMAT CAP Water; or (2) the expenditure of those funds. Pursuant to Section 311(c)(2) of the WMAT Act, WMAT shall indemnify the United States, and hold the United States harmless, with respect to any claim, including claims for takings or breach of trust, arising out of the receipt or expenditure of any funds paid to WMAT by any party to the Quantification Agreement other than the United States.

5.4.4 Pursuant to Section 306(a)(5) of the WMAT Act, WMAT may use WMAT CAP Water on or off the Reservation for any purpose but all such Uses shall be considered Diversions and Depletions under Paragraph 4.0 and Subparagraph 5.3 of the Quantification Agreement and accounted for as provided for in Paragraph 11.0 of the Quantification Agreement. No WMAT CAP Water may be leased, exchanged, forborne or otherwise transferred in any way by WMAT for use directly or indirectly outside of the State of Arizona.

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

5.4.6 Pursuant to Section 306(a)(2) of the WMAT Act, no portion of the WMAT CAP Water may be permanently alienated.

5.4.7 The provisions of this Contract shall not be applicable to or affect Non-Project Water or Water Rights now owned or hereafter acquired by WMAT.

5.4.8 Pursuant to Sections 305(b)(2) and 306(a)(1)(A) of the WMAT Act, subject to the approval of the Secretary, WMAT shall have the sole authority to lease, distribute, exchange, or allocate the WMAT CAP Water.

5.4.9 WMAT shall be entitled to enter into contracts for Excess CAP Water, as provided in the CAP Repayment Stipulation. WMAT may use such Excess CAP Water on or off the WMAT Reservation for any purpose.

5.4.10 Pursuant to Section 306(f)(3) of the WMAT Act, nothing in this Contract limits the right of WMAT to enter into an agreement with the Arizona Water Banking Authority

(or any successor entity) established by Section 45-2421 of the Arizona Revised Statutes in accordance with State law.

5.4.11 Pursuant to Section 306(a)(4)(A) and (B) of the WMAT Act, all WMAT CAP Water shall be delivered through the CAP System; and if the delivery capacity of the CAP System is significantly reduced or is anticipated to be significantly reduced for an extended period of time, WMAT shall have the same CAP delivery rights as a CAP Contractor or CAP Subcontractor that is allowed to take delivery of water other than through the CAP System.

5.4.12 The Secretary or the CAP Operating Agency shall deliver WMAT CAP Water in accordance with water delivery schedules provided by WMAT to the Secretary and the CAP Operating Agency pursuant to subsection 5.6 herein, or pursuant to lease or exchange agreements approved by the Secretary.

5.4.13 The Secretary or the CAP Operating Agency shall deliver the leased WMAT CAP Water to the lessee as further provided herein. Neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries to such lessee if, in the judgment of the CAP Operating Agency or the Secretary, such deliveries would limit deliveries of CAP Water to other CAP Contractors, including the WMAT, or CAP Subcontractors to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRPôs water delivery system.

5.4.14 WMAT shall schedule delivery of WMAT CAP Water in accordance with this Contract. If the combined delivery requests for all CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the

CAP Operating Agency may reduce WMATôs delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that WMAT requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, WMATôs requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as WMAT or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor shall be considered similarly located for purposes of this section if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor will affect the quantity of WMATôs CAP Water available for delivery to WMAT.

5.4.15 Any CAP Water received by WMAT in exchange for Effluent shall not be deducted from WMATôs contractual entitlement under this Contract.

5.5 Delivery Entitlements and Obligations.

5.5.1 Pursuant to Section 305(b)(1) of the WMAT Act, the Secretary shall deliver annually to WMAT directly or through an exchange with SRP or any other individual or entity acceptable to WMAT and the Secretary, from the CAP System, a total of 25,000 acre-feet of water for any purpose, consisting of:

5.5.1.1 23,782 acre-feet of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, that was retained by the Secretary for reallocation to Arizona Indian tribes pursuant to Subsection 104 (a)(1)(A)(iii) of AWSA, and further reallocated

by the Secretary to WMAT pursuant to Section 305(b)(1)(A) of the WMAT Act; and

5.5.1.2 1,218 acre-feet of HVID CAP Water reallocated by the Secretary to WMAT pursuant to Section 305(b)(1)(B) of the WMAT Act.

5.6 Procedure For Ordering Water.

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

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

5.6.1.2 Upon receipt of the schedule, the Contracting Officer shall review it and, after consultation with the CAP Operating Agency and WMAT, shall make only such modifications in it as are necessary to ensure that the amounts, times and rates of delivery to WMAT will be consistent with the provisions of subsection 5.3 herein. On or before December 1 of each Year, the Contracting Officer shall determine and furnish to WMAT the water delivery schedule for the next succeeding Year which shall show the amounts of water to be delivered to WMAT during each month of that Year.

5.6.2 A water delivery schedule may be amended by the Contracting Officer upon the WMATôs written request. Proposed amendments shall be submitted by WMAT to the Contracting Officer within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

5.6.3 WMAT shall hold the United States, its officers, agents, and employees,

harmless on account of damage or claim of damage of any nature arising out of or connected with the actions of the United States regarding water delivery schedules furnished to WMAT.

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

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

5.7.1 The WMAT CAP Water to be delivered pursuant to this Contract shall be delivered (i) at the turnout(s) from the CAP System in accordance with the terms of exchange or lease agreements approved by the Secretary, and (ii) at such other points as may otherwise be agreed to by the Contracting Officer subject to the terms of the Quantification Agreement and the WMAT Act.

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

5.7.3 Neither the United States nor the CAP Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Delivery Point(s) as specified herein. WMAT shall indemnify and hold harmless the United States and the CAP Operating Agency on account of damage or claim of damage of any nature whatsoever

for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with WMATôs control, carriage, handling, use, disposal, or distribution of such water beyond said Delivery Point(s).

5.8 Priority.

5.8.1 In time of shortage the Available CAP Supply shall be distributed as described in this section 5.8.

5.8.2 On or before June 1 of each Year, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor. For purposes of administering this Contract, a time of shortage shall be a Year when:

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

5.8.2.2 On or after January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; (iii) up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and (iv) up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from

CAP NIA Priority Water under the San Tan Irrigation Districtôs CAP Subcontract.

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

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

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

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

Where

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

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsections 5.8.2.1 and 5.8.2.2 herein, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 5.8.2.1 herein were nine hundred eighty-one thousand nine hundred two (981,902) acre-feet (343,079 + 638,823 + 0), then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 5.8.2.2 herein were one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for

delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

5.8.4 In time of shortage unscheduled CAP Water shall be redistributed in the following manner:

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

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

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

5.8.4.4 Nothing in this subsection 5.8 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP Water in amounts greater than such CAP Contractorôs entitlement.

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

5.8.5.1 In consideration of the agreement by the Community and the Tohono Oôodham Nation to incur additional shortages beyond those that each would have incurred under

the approach described in Exhibit A to each of their respective CAP Water delivery contracts, the Secretary shall first make available to the Community and the Tohono Oôodham Nation any water made available for delivery as CAP Indian Priority Water under subsection 5.8.4.2 herein, to the extent necessary in any Year, to offset the additional shortages borne by the Community and the Tohono Oôodham Nation. After the additional shortages borne by the Community and the Tohono Oôodham Nation have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water, including the Community and the Tohono Oôodham Nation, in proportion to their contractual entitlements to CAP Indian Priority Water.

5.8.5.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in subsections 5.8.2.1 or 5.8.2.2 herein, as applicable, then, to the extent that sufficient quantities of CAP Water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with subsection 5.8.4.2 herein, are not available to meet orders for CAP Indian Priority Water, the Community and the Tohono Oôodham Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under their respective CAP Water delivery contracts.

5.8.5.3 If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono Oôodham Nation, and the San Carlos Apache Tribe. During a time of shortage described in this subsection 5.8.5.3, the CAP Indian Priority Water available to the tribes referenced in this

subsection 5.8.5.3 shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

5.8.5.4 If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to subsection 5.8.3.1 herein shall be distributed to WMAT by the Secretary based on the ratio of the amount of water delivered pursuant to this Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. The Secretary shall determine the quantity of CAP Indian Priority Water delivered to the Gila River Indian Community and the Tohono Oôodham Nation in the latest non-shortage Year, in a manner consistent with the water settlement agreements with these Tribes.

5.8.5.5 In the event that there is any dispute regarding the amount of CAP water available to WMAT during a time of shortage, or dispute regarding the operation of this subsection 5.8, the Secretary shall make a final determination after consulting with WMAT, which decision shall be subject to such challenge or appeal processes as are available or applicable.

5.8.5.6 If the Available CAP Supply is insufficient to meet all demands under CAP Contracts or CAP Subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. The Secretary shall determine the quantity of CAP NIA Priority Water used by the Gila River Indian Community and the Tohono Oôodham Nation in the last Year in which the

Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, in a manner consistent with the water settlement agreements with these Tribes.

5.8.5.7 The shortage sharing criteria in subsection 5.8 shall not apply to Colorado River water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530, or Colorado River water acquired from the Wellton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Public Law 100-512, both of which have a higher priority than Fourth Priority Water.

5.9 Secretarial Waiver of Control of Return Flow. Pursuant to Section 306(a)(7) of the WMAT Act, the Secretary waives the right of the Secretary to capture all Return Flow from WMAT CAP Water delivered to WMAT through an exchange with SRP or any other individual or entity acceptable to WMAT and the Secretary, flowing from the exterior boundary of the WMAT Reservation. WMAT may recapture and reuse Return Flow within the WMAT Reservation. Return Flow for purposes of this subsection 5.9 shall mean all waste water, seepage, and Groundwater which originates or results from WMAT CAP Water delivered to WMAT through an exchange with SRP or any other individual or entity acceptable to WMAT and the Secretary.

5.10 Exchange Water. Where the Secretary determines that WMAT is able to receive Project Water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from the confluence of the Salt and Verde Rivers and Buttes Dam site, if such dam is then existent, the Secretary may require and WMAT agrees to accept said Project Water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

6 OTHER WATER: Nothing in this Contract shall prevent WMAT from agreeing with a water user to receive water from a source off of the WMAT Reservation or off of the Off-Reservation Trust Lands where the water user does not condition delivery upon substitution for Project Water.

7 PAYMENTS:

7.1 Pursuant to Section 305(d)of the WMAT Act, for the purpose of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of WMAT CAP Water, whether such water is delivered for use by WMAT or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of WMAT CAP Water entered into by WMAT shall be (1) nonreimbursable, and (2) excluded from the repayment obligation of CAWCD.

7.2 Pursuant to Sections 305(c) and 306(a)(8) of the WMAT Act, no CAP Water service capital charges shall be due or payable for WMAT CAP Water, whether such water is delivered for use by WMAT or pursuant to a contract or option to lease or exchange WMAT CAP Water entered into by WMAT.

7.3 Pursuant to Section 306 (a)(1)(A)(iii) of the WMAT Act, any lease or option to lease providing for the temporary delivery to others of any WMAT CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased water. Neither WMAT nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of WMAT CAP Water leased to others.

7.4 The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all WMAT CAP Water. Pursuant to Section 306 (a)(6) of the WMAT Act, as authorized by 43 U.S.C. § 1543(f)(2)(A), as amended, and to the extent that funds are

available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water, and to the extent that funds are not available from the Lower Colorado River Basin Development Fund such charges shall be paid by the WMAT. CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in subsection 7.3 herein.

7.5 WMAT shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water, except for WMAT CAP Water leased to others. Notwithstanding the preceding sentence, other persons or entities with whom WMAT may exchange WMAT CAP Water may agree with WMAT to pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water pursuant to such exchange. CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in subsection 7.3 herein.

7.6 In those instances in which the monies are not available to the Secretary from the Lower Colorado River Basin Development Fund as set forth in subsection 7.4 herein, and WMAT is responsible for making payments, the following shall apply:

7.6.1 The CAP Operating Agency shall have no responsibility to deliver any WMAT CAP Water for which the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge have not been paid in advance.

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

7.6.3 The Contracting Officer may direct that payments be received in other than the

equal monthly installments described in subsection 7.6.2 herein.

7.6.4 Unless otherwise agreed, differences between estimated and actual CAP Fixed OM&R Charge and the estimated and actual CAP Pumping Energy Charge shall be determined by the Contracting Officer and shall be adjusted in the next succeeding annual CAP Fixed OM&R Charge; provided, however, that if in the opinion of the Contracting Officer the amount of funds advanced by WMAT is likely to be insufficient to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge during the Year, the Contracting Officer may increase the annual estimate of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of WMAT CAP Water by written notice thereof to WMAT, and WMAT shall forthwith increase its remaining monthly payments in such Year by the amount necessary to cover the insufficiency; provided, further, that unless otherwise agreed, if in the opinion of the Contracting Officer the amount of funds advanced by WMAT is likely to be greater than what is required to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of WMAT CAP Water during the Year, the Contracting Officer shall reduce the remaining monthly payments on a pro rata basis to adjust the total payment for the Year to the revised estimate. WMAT agrees to make all advances or payments required under this section.

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

7.6.6 In the event WMAT fails or refuses to accept delivery at the Delivery Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Contract, or in the event WMAT fails in any Year to submit a schedule for delivery as provided in subsection 5.6 herein, said failure or refusal shall not relieve WMAT of its obligation

to make the payment required in this subsection 7.6.6. WMAT agrees to make payment therefore in the same manner as if said water had been delivered to and accepted by it in accordance with this Contract except as provided in subsection 7.6.7 herein.

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

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

7.6.9 In the event that a discontinuance or temporary reduction in deliveries of CAP Water results in the delivery to WMAT of an amount less than what has been paid for in advance by WMAT, WMAT shall be given credit toward future payments due.

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

period.

7.6.11 WMAT shall be subject to interest, administrative, and penalty charges on delinquent CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of WMAT CAP Water.

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

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

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

7.6.15 WMAT shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

7.6.17 The obligation of WMAT to pay the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of WMAT CAP Water to the Contracting

Officer, or the CAP Operating Agency as provided in this Contract, is a general obligation of WMAT notwithstanding the manner in which the obligation may be distributed among WMATôs water users and notwithstanding the default of individual water users in their obligations to WMAT.

8 ENVIRONMENTAL COMPLIANCE: Notwithstanding any other provision of this Contract, and in accordance with Section 304(c) of the WMAT Act, the Secretary will not deliver Project Water to WMAT until the Secretary has complied with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.),* and all other applicable environmental laws and regulations.

9 GENERAL PROVISIONS:

9.1 Water and Air Pollution Control. WMAT, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulation*s* of WMAT and the United States, and shall obtain all required permits or licenses from the appropriate authorities of WMAT and the United States.

9.2 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. Neither the United States nor the CAP Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

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

9.4 Books, Records, and Reports. WMAT shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract

as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

9.5 Notices. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of WMAT, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to WMAT, Office of the Tribal Chairman, P.O. Box 1150, Whiteriver, Arizona 85941, or if delivered by commercial carrier to the Office of the Tribal Chairman, 201 East Walnut Street, Whiteriver, Arizona 85941. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

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

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

9.8 Officials Not to Benefit. No member of or delegate to Congress or official of WMAT shall benefit from this Contract other than as a water user or landowner in the same

manner as other water users or landowners.

9.9 Indian Employment - Equal Employment Opportunity.

9.9.1 In accordance with the provisions of Title 42 U.S.C. 2000e-2 (i), WMAT shall give preference in employment to Indians living on or near the WMAT Reservation. The Bureau of Indian Affairs Office of Employment Assistance shall be notified of employment opportunities forty-eight (48) hours before any positions are advertised to the general public.

9.9.2 Except as provided above, during the performance of this Contract, WMAT agrees as follows:

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

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

9.9.2.3 WMAT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of WMAT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

9.9.2.4 WMAT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

9.9.2.5 WMAT will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

9.9.2.7 WMAT will include the provisions of subsections 9.9.2.1 through 9.9.2.7 herein in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. WMAT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event WMAT becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction, WMAT may request the United States to enter into such litigation to protect the interests of the United States.

9.10 Compliance with Civil Rights Laws and Regulations.

9.10.1 WMAT shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq*.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the Department of the Interior and/or Bureau of Reclamation.

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

9.10.3 WMAT makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to WMAT by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. WMAT recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this section, and that the United States reserves the right to seek judicial enforcement thereof.

9.11 Rules, Regulations, and Determinations.

9.11.1 The Contracting Officer shall have the right to make, after an opportunity has been offered to WMAT for consultation, rules and regulations consistent with the provisions of

the Contract and the laws of the United States and to add to or to modify such rules and regulations as the Contracting Officer may deem proper and necessary to carry out this Contract, and to supply necessary details of its administration which are not covered by express provisions of this Contract. WMAT shall observe such rules and regulations.

9.11.2 Where the terms of this Contract provide action to be based upon the opinion or determination of either party to this Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that WMAT questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with WMAT.

10 EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of subsections 9.9 and 9.10 apply except where they conflict with sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964 (73 Stat. 253-257), which pertain to Indian tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws, or if they are contrary to Federal court decisions or Federal statutory exemptions which exclude applicability thereof to federally recognized Indian tribes, Indians or Indian reservations.

11 RECLAMATION REFORM ACT: In accordance with Section 311(d) of the WMAT Act, the Reclamation Reform Act of 1982 (43 U.S.C. §390aa, *et seq*.) and any other acreage limitation or full cost pricing provision under Federal law shall not apply to any person, entity or land solely on the basis of (1) receipt of any benefits under the WMAT Act, (2) execution or performance of the Quantification Agreement, or (3) the use, storage, delivery, lease or exchange of CAP Water.

12 CONTRACT AND WMAT ACT: In the event that differences between the language of

this Contract and the WMAT Act result in conflict, ambiguity or confusion or the provisions are inconsistent, the language of the WMAT Act shall govern.

13 ENFORCEABILITY DATE. This Contract shall become effective on the Enforceability Date.

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

THE UNITED STATES OF AMERICA

Approved as to Legal Sufficiency:

By:_____ By:_____
Field Solicitor

Attest: **WHITE MOUNTAIN APACHE TRIBE**

By:_____ By:_____

EXHIBIT 9.4

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

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

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 200___, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the_____ hereinafter referred to as the "Subcontractor," with its principal place of business in_____, Arizona;

WITNESSETH, THAT:

2. **EXPLANATORY RECITALS:**

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

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

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

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

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

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

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

3. **DEFINITIONS**:

Definitions included in the Repayment Contract are applicable to this subcontract; provided, however, that the terms "Agricultural Water" or "Irrigation Water" shall mean water used for the purposes defined in the Repayment Contract on tracts of land operated in units of more than 5 acres. The first letters of terms so defined are capitalized herein. As heretofore indicated, a copy of the Repayment Contract is attached as Exhibit "A." In addition, the following definitions shall apply to this subcontract:

(a) "Available CAP Supply" shall mean for any given Year all Fourth Priority Water available for delivery through the Central Arizona Project, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

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

4. DELIVERY OF WATER:

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

4.2 Term of Subcontract. This subcontract shall become effective upon the later of: (i) the date on which it is confirmed as provided for in Article 6.12; (ii) the date on which the Secretary of the Interior publishes in the Federal Register the statement of findings described in section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and (iii) the date on which the Subcontractor has paid or provided for payment of past M&I water service capital charges as required by the Contractor. This subcontract shall be for permanent service as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the terms of this subcontract for a period of 100 years beginning January 1 of the Year following that in which the subcontract becomes effective; provided, that this subcontract may be renewed upon written request by the Subcontractor upon terms and conditions of renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract; and provided, further, that such terms and conditions shall be consistent with Article 9.9 of the Repayment Contract.

* * * *

* * * *

4.3 Conditions Relating to Delivery and Use. Delivery and use of water under this subcontract is conditioned on the following, and the Subcontractor hereby agrees that:

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

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

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

(d) The Subcontractor shall not sell, lease, exchange, forbear or otherwise transfer Project Water; provided, however, that this does not prohibit exchanges of Project Water within the State of Arizona covered by separate agreements; and provided, further, that this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that this does not prohibit the resale or exchange of Project Water within the State of Arizona pursuant to Subarticle 4.3(e).

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

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

(iii) In the event the Subcontractor or the Contracting Officer and the Contractor are unable to sell any portion of the Subcontractor's Project

Water scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contractor.

(f) Notwithstanding any other provision of this subcontract, Project Water shall not be delivered to the Subcontractor unless and until the Subcontractor has obtained final environmental clearance from the United States for the system or systems through which Project Water is to be conveyed after delivery to the Subcontractor at the Subcontractor's Project turnout(s). Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Project Water is conveyed, stored, or treated after delivery to the Subcontractor at the Subcontractor's Project turnout(s). In each instance, final environmental clearance will be based upon a review by the United States of the Subcontractor's plans for taking and using Project Water and will be given or withheld by the United States in accordance with the Final Environmental Impact Statement -- Water Allocations and Water Service Contracting (FES 82-7, filed March 19, 1982) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional action(s) required on behalf of the Subcontractor in order to obtain final environmental clearance from the United States will be identified to the Subcontractor by the United States, and no Project Water shall be delivered to the Subcontractor unless and until the Subcontractor has completed all such action(s) to the satisfaction of the United States.

4.4 Procedure for Ordering Water.

(a) At least 15 months prior to the date the Secretary expects to issue the Notice of Completion of the Water Supply System, or as soon thereafter as is practicable, the Contracting Officer shall announce by written notice to the Contractor the amount of Project Water available for delivery during the Year in which said Notice of Completion is issued (initial Year of water delivery) and during the following Year. Within

30 days of receiving such notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor. The Subcontractor shall, within a reasonable period of time as determined by the Contractor, submit a written schedule to the Contractor and the Contracting Officer showing the quantity of water desired by the Subcontractor during each month of said initial Year and the following Year. The Contractor shall notify the Subcontractor by written notice of the Contractor's action on the requested schedule within 2 months of the date of receipt of such request.

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

(i) On or before June 1 of each Year beginning with the Year following the initial Year of water delivery pursuant to this subcontract, the Contracting Officer shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Contractor. In arriving at this determination, the Contracting Officer, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River water over the term of this subcontract. Within 30 days of receiving said notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor.

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

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

(iv) On or before November 15 of each Year beginning with the Year following said initial Year of water delivery, the Contractor shall determine and furnish to the Subcontractor and the Contracting Officer the water delivery schedule for the following Year which shall show the amount of water to be delivered to the Subcontractor during each month of that Year, contingent upon the Subcontractor remaining eligible to receive water under all terms contained herein.

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

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

(e) In no event shall the Contracting Officer or the Contractor be required to deliver to the Subcontractor from the Water Supply System in any one month

a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's maximum entitlement; provided, however, that the Contracting Officer may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to other subcontractors as determined by the Contracting Officer and the Contractor and if the Subcontractor agrees to accept such increased deliveries.

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

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

(b) Unless the United States and the Subcontractor agree by contract to the contrary, the Subcontractor shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Subcontractor's service area. The Subcontractor shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Subcontractor within the Water Supply System right-of-way 6 months before starting said construction. The facilities may be installed, operated, and maintained on the Water Supply System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Subcontractor or the Contractor, the accuracy of such measurements shall be

investigated by the Contracting Officer or the Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually determined to have occurred therein shall be adjusted; provided, that in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

4.6 Temporary Reductions. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may, after consultation with the Contractor, temporarily discontinue or reduce the quantity of water to be furnished to the Subcontractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Subcontractor, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Subcontractor and shall give the Subcontractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such

discontinuance or temporary reduction results in deliveries to the Subcontractor of less water than what has been paid for in advance, the Subcontractor shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the Subcontractor's next payment of water service charges or the Subcontractor may be given credit toward the next payment of water charges if the Subcontractor should so desire.

4.7 Priority in Case of Shortage. On or before June 1 of each Year, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the Contractor.

(a) Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in subparagraphs (i) through (iii) below:

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

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

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

(b) On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in subparagraphs (i) through (iv) below:

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

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

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

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

(c) Initial distribution of water in time of shortage.

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

(ii) If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for

delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

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

where

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

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraphs 4.7(a) or (b), whichever is applicable; and

W = the Available CAP Supply

Example A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 4.7(a) is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

Example B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 4.7(b) is one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

(d) In time of shortage unscheduled CAP Water shall be redistributed as follows:

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

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

CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

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

(f) Nothing in this paragraph 4.7 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

4.8 Secretarial Control of Return Flow.

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

* * * *

* * * *

(i) The name and address of the prospective buyer.

(ii) The location and proposed use of the Return Flow.

(iii) The price to be charged for the Return Flow.

(b) The price charged for the Return Flow may cover the cost incurred by the Subcontractor for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is greater than the costs incurred by the Subcontractor, as described above, the excess amount shall be forthwith returned by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States. Costs required to make Return Flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof that may be retained by the Subcontractor shall be subject to the advance approval of the Contractor and the Contracting Officer.

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

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

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

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

4.11 Exchange Water.

(a) Where the Contracting Officer determines the Subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River, the Contracting Officer may require that the Subcontractor accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a sub-contractor on the Project aqueduct shall not be required to enter into exchanges in which existing supplies of water from surface sources are diverted for use by other subcontractors downstream on the Project aqueduct.

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

4.12 Entitlement to Project M&I Water.

(a) The Subcontractor is entitled to take a maximum of ____ acre-feet of Project Water for M&I uses including but not limited to underground storage.

(b) If at any time during the term of this subcontract there is available for allocation additional M&I Project Water, or Agricultural Water converted to M&I use, it shall be delivered to the Subcontractor at the same water service charge per acre-foot and with the same priority as other M&I Water, upon execution or amendment of an appropriate subcontract among the United States, the Contractor, and the Subcontractor and payment of an amount equal to the acre-foot charges previously paid by other subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water conversions, the payment shall be reduced by all previous payments of agricultural capital charges for each acre-foot of water converted. The interest due shall be calculated for the period between issuance of the Notice of Completion of the Water Supply System and execution or amendment of the subcontract using the weighted interest rate received by the Contractor on all investments during that period.

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

5. PAYMENTS:

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

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

5.2 M&I Water Service Charges.

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

(b) The M&I Water service capital charge may be adjusted periodically by the Contractor as a result of repayment determinations provided for in the Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot shall not be greater than the amount required to amortize Project capital costs allocated

to the M&I function and determined by the Contracting Officer to be a part of the Contractor's Repayment Obligation. Such amortization shall include interest at 3.342 percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year; provided, however, that the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by the Contractor in written notices to the Subcontractor.

(c) Payment of all M&I Water service capital and corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

(d) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the

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

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

5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or refuses in any Year to accept delivery of the quantity of water available for delivery to

and required to be accepted by it pursuant to this subcontract, or in the event the Subcontractor in any Year fails to submit a schedule for delivery as provided in Article 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to make the payments required in this subcontract.

5.5 Charge for Late Payments. The Subcontractor shall pay a late payment charge on installments or charges that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

6. GENERAL PROVISIONS:

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

terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent exchanges with Indian entities that have received an allocation of Project Water and receive all benefits from the exchange.

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

6.4 Water Conservation Program.

(a) While the contents and standards of a given water conservation program are primarily matters of State and local determination, there is a strong Federal interest in developing an effective water conservation program because of this subcontract. The Subcontractor shall develop and implement an effective water conservation program for all uses of water that is provided from or conveyed through Federally constructed or Federally financed facilities. That water conservation program

shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(b) A water conservation program, acceptable to the Contractor and the Contracting Officer, shall be in existence prior to one or all of the following: (1) service of Federally stored/conveyed water; (2) transfer of operation and maintenance of the Project facilities to the Contractor or Operating Agency; or (3) transfer of the Project to an operation and maintenance status. The distribution and use of Federally stored/conveyed water and/or the operation of Project facilities transferred to the Contractor shall be consistent with the adopted water conservation program. Following execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor shall resubmit the water conservation plan to the Contractor and the Contracting Officer for review and approval. After review of the results of the previous 5 years and after consultation with the Contractor, the Subcontractor, and the Arizona Department of Water Resources or its successor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.

6.5 Rules, Regulations, and Determinations.

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor and Subcontractor for consultation, rules and regulations consistent with the provisions of this subcontract, the laws of the United States and the State of Arizona, to add to or to modify them as may be deemed proper and necessary to carry out this subcontract, and to supply necessary details of its administration which are not covered by express provisions of this subcontract. The Contractor and Subcontractor shall observe such rules and regulations.

(b) Where the terms of this subcontract provide for action to be based upon the opinion or determination of any party to this subcontract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor or Subcontractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor or Subcontractor and shall be conclusive upon the parties.

6.6 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this subcontract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this subcontract if made with a corporation or company for its general benefit.

(b) No official of the Subcontractor shall receive any benefit that may arise by reason of this subcontract other than as a water user within the Project and in the same manner as other water users within the Project.

6.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this subcontract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this subcontract or any part or interest therein shall be valid until approved by the Contracting Officer.

6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate court of the United States or the State of Arizona which would otherwise be

available to such parties even though provisions herein may declare that determinations or decisions of the Secretary or other persons are conclusive or (b) as depriving any party of any defense thereto which would otherwise be available.

6.9 Books, Records, and Reports. The Subcontractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this subcontract.

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

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

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

(f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this subcontract or with any of such rules, regulations, or

orders, this subcontract may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

6.11 Title VI, Civil Rights Act of 1964.

(a) The Subcontractor agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be

excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subcontractor receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

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

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Subcontractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Subcontractor recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Subcontractor, its successors, transferees, and assignees.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this subcontract No._____ the day and year first above-written.

Legal Review and Approval

By:_____
Field Solicitor
Phoenix, Arizona

THE UNITED STATES OF AMERICA

By:_____
Regional Director
Lower Colorado Region
Bureau of Reclamation

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest:_____
Secretary

By: _____
President

_____

Attest:_____

By: _____

Title:_____

Title:_____

EXHIBIT 10.1.1.1A

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor.

Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs,

attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 20___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1.1B

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing “self execution”, and the Assignee’s payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 20___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1A

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF AVONDALE, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Avondale, Arizona (hereinafter "Avondale").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Avondale are entering into this Lease Agreement by which the WMAT will lease to Avondale a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.19 "Avondale" shall mean the City of Avondale, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Avondale pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1A to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache

Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Avondale (1) Thirty-Four (34) acre-feet per year of its HVID CAP Water and (2) Two Hundred Eight (208) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Six Hundred Forty (640) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Avondale shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Avondale agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Avondale for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Avondale's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Avondale shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Avondale under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent

Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Two Hundred Forty-Two (242) acre-feet ("AF") to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Avondale under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Six Hundred Forty (640) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Avondale may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Avondale may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as

follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Avondale would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 =

$15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Avondale may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Avondale shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Avondale's CAP M&I Water Service Subcontract No. 07-XX-30-W0511, as amended, ("Avondale's CAP M&I Water Service Subcontract") except that Avondale's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Avondale is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Avondale. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Avondale's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Avondale shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Avondale through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Avondale would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Avondale in accordance with water delivery schedules provided by Avondale to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Avondale's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Avondale's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Avondale under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Avondale's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a

greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Avondale agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Avondale under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Avondale under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with

Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Avondale may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Avondale's water service area when Avondale's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Avondale shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Avondale's CAP M&I Water Service Subcontract, deliveries of Leased Water to Avondale and its use by Avondale shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Avondale's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Avondale's CAP M&I Water Service Subcontract shall apply to Avondale and to Avondale's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Avondale expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Avondale waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Avondale pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Avondale, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Avondale so that Avondale's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Avondale's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Avondale's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Avondale hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Avondale may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Avondale, if Avondale is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Avondale shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Avondale's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective

only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Avondale shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Avondale's ability to recover actual future costs, if any, incurred by Avondale for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Avondale to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Avondale's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Avondale as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Avondale and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Avondale officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Avondale, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Avondale, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Avondale fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Avondale's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Avondale shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued

at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Avondale shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Avondale has not cured the default within thirty (30) days following the Notice of Default, Avondale, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Avondale shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Avondale that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Avondale.

(C) Third Grace Period. If the Other Cities do not cure Avondale's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount

within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Avondale to the extent of its contribution, and Avondale and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Avondale shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Avondale. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Avondale in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Avondale fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Avondale's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT

shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Avondale, or Avondale and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Avondale has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Avondale to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Avondale will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Avondale's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Avondale may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Avondale must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Avondale has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Avondale may withdraw its notice. Avondale shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Avondale terminates this Lease Agreement, all sums paid by Avondale to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Avondale.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Avondale may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Avondale must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Avondale has paid

the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Avondale may withdraw its notification. Avondale shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Avondale surrenders its interest in all or any portion of the Leased Water, all sums paid by Avondale to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Avondale. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Avondale, payment shall be in proportion to the amount of water retained by Avondale, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Avondale shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Avondale may renegotiate this Lease Agreement at any time during its term, as

provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Avondale's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Avondale and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Avondale at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Avondale rejects this Lease Agreement pursuant to this Subparagraph 8.5, Avondale shall have no obligations under this Lease Agreement and Avondale's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Avondale notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Avondale's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Avondale with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Avondale that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Avondale's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Avondale. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void,

the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease

Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party

hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF AVONDALE

By: _____
Mayor, City of Avondale

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1B

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF CHANDLER, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Chandler, Arizona (hereinafter "Chandler").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Chandler are entering into this Lease Agreement by which the WMAT will lease to Chandler a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 "Chandler" shall mean the City of Chandler, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Chandler pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Gilbert, Glendale, Mesa, Phoenix, Peoria, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1B to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Chandler (1) One Hundred Seventy-Six (176) acre-feet per year of its HVID CAP Water and (2) One Thousand Eighty-Five (1,085) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Three Thousand Three Hundred Thirty-Six (3,336) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Chandler shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Chandler agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Chandler for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Chandler's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Chandler shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Chandler under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by One Thousand Two Hundred Sixty-One (1,261)

acre-feet ("AF") to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Chandler under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Three Thousand Three Hundred Thirty-Six (3,336) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date 240.69

CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Chandler may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Chandler may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently

issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Chandler would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth

and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Chandler may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Chandler shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Chandler's CAP M&I Water Service Subcontract No. 07-XX-30-W0476, as amended, ("Chandler's CAP M&I Water Service Subcontract") except that Chandler's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Chandler is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Chandler. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Chandler's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Chandler shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Chandler through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Chandler would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Chandler in accordance with water delivery schedules provided by Chandler to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Chandler's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Chandler's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Chandler under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Chandler's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a

greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Chandler agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Chandler under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Chandler under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with

Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Chandler may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Chandler's water service area when Chandler's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Chandler shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Chandler's CAP M&I Water Service Subcontract, deliveries of Leased Water to Chandler and its use by Chandler shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Chandler's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Chandler's CAP M&I Water Service Subcontract shall apply to Chandler and to Chandler's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Chandler expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Chandler waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Chandler pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Chandler, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Chandler so that Chandler's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Chandler's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Chandler's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Chandler hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Chandler may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Chandler, if Chandler is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Chandler shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Chandler's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective

only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Chandler shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Chandler's ability to recover actual future costs, if any, incurred by Chandler for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Chandler to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Chandler's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Chandler as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Chandler and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Chandler officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Chandler, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Chandler, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Chandler fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Chandler's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Chandler shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued

at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Chandler shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Chandler has not cured the default within thirty (30) days following the Notice of Default, Chandler, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Chandler shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Chandler that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Chandler.

(C) Third Grace Period. If the Other Cities do not cure Chandler's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount

within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Chandler to the extent of its contribution, and Chandler and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Chandler shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Chandler. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Chandler in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Chandler fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Chandler's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT

shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Chandler, or Chandler and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Chandler has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Chandler to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Chandler will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Chandler's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Chandler may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Chandler must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Chandler has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Chandler may withdraw its notice. Chandler shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Chandler terminates this Lease Agreement, all sums paid by Chandler to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Chandler.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Chandler may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Chandler must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Chandler has paid

the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Chandler may withdraw its notification. Chandler shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Chandler surrenders its interest in all or any portion of the Leased Water, all sums paid by Chandler to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Chandler. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Chandler, payment shall be in proportion to the amount of water retained by Chandler, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Chandler shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Chandler may renegotiate this Lease Agreement at any time during its term, as

provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Chandler's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Chandler and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Chandler at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Chandler rejects this Lease Agreement pursuant to this Subparagraph 8.5, Chandler shall have no obligations under this Lease Agreement and Chandler's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Chandler notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Chandler's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Chandler with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Chandler that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Chandler's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Chandler. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water

entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or

application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or

enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF CHANDLER

By: _____
Mayor, City of Chandler

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1C

LEASE AGREEMENT FOR CAP WATER AMONG THE TOWN OF GILBERT, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the Town of Gilbert, Arizona (hereinafter "Gilbert").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Gilbert are entering into this Lease Agreement by which the WMAT will lease to Gilbert a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority Water

with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.19 "Gilbert" shall mean the Town of Gilbert, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Gilbert pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1C to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Gilbert (1) One Hundred Sixty-Two (162) acre-feet per year of its HVID CAP Water and (2) Nine Hundred Ninety-Eight (998) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Three Thousand Sixty-Six (3,066) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Gilbert shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Gilbert agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Gilbert for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Gilbert's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Gilbert shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Gilbert under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by One Thousand One Hundred Sixty (1,160) acre-

feet ("AF") to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Gilbert under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Three Thousand Sixty-Six (3,066) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date 240.69

CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Gilbert may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Gilbert may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently

issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Gilbert would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth

and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Gilbert may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Gilbert shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Gilbert's CAP M&I Water Service Subcontract No. 07-XX-30-W0497, as amended, ("Gilbert's CAP M&I Water Service Subcontract") except that Gilbert's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Gilbert is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Gilbert. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Gilbert's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Gilbert shall be obligated to pay water service capital charges or any other

charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Gilbert through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Gilbert would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Gilbert in accordance with water delivery schedules provided by Gilbert to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Gilbert's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Gilbert's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Gilbert under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Gilbert's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating

Agency if Gilbert agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Gilbert under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Gilbert under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID

CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Gilbert may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP

Service Area, except for use within Gilbert's water service area when Gilbert's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Gilbert shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Gilbert's CAP M&I Water Service Subcontract, deliveries of Leased Water to Gilbert and its use by Gilbert shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Gilbert's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Gilbert's CAP M&I Water Service Subcontract shall apply to Gilbert and to Gilbert's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Gilbert expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

Gilbert waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Gilbert pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Gilbert, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Gilbert so that Gilbert's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Gilbert's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Gilbert's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Gilbert hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Gilbert may not transfer, assign, sublease or otherwise designate or

authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Gilbert, if Gilbert is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Gilbert shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Gilbert's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Gilbert shall not assign all or any part of its

interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Gilbert's ability to recover actual future costs, if any, incurred by Gilbert for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Gilbert to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Gilbert's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Gilbert as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Gilbert and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Gilbert officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due

from Gilbert, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Gilbert, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Gilbert fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Gilbert's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Gilbert shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Gilbert shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Gilbert has not cured the default within thirty (30) days following the Notice of Default, Gilbert, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Gilbert shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Gilbert that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Gilbert.

(C) Third Grace Period. If the Other Cities do not cure Gilbert's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Gilbert to the extent of its contribution, and Gilbert and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Gilbert shall be responsible for any proportionate

remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Gilbert. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Gilbert in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Gilbert fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Gilbert's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Gilbert, or Gilbert and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Gilbert has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Gilbert to

sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Gilbert will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Gilbert's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Gilbert may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Gilbert must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Gilbert has paid the WMAT at least one-fourth of the

Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Gilbert may withdraw its notice. Gilbert shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Gilbert terminates this Lease Agreement, all sums paid by Gilbert to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Gilbert.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Gilbert may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Gilbert must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Gilbert has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Gilbert may withdraw its notification. Gilbert shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Gilbert surrenders its interest in all or any portion of the Leased Water, all sums paid by Gilbert to the WMAT for such water prior to the date of surrender shall remain the

property of the WMAT and shall be non-refundable to Gilbert. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Gilbert, payment shall be in proportion to the amount of water retained by Gilbert, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Gilbert shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Gilbert may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Gilbert's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Gilbert and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Gilbert at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Gilbert rejects this Lease Agreement pursuant to this Subparagraph 8.5, Gilbert shall have no obligations under this Lease Agreement and Gilbert's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Gilbert notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Gilbert’s entitlement to Leased Water under this Lease

Agreement is determined to be invalid by a final judgment entered over the opposition of Gilbert with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Gilbert that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Gilbert's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Gilbert. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and

Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____

Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____

Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated: _____

By: _____

Regional Director
Western Region
Bureau of Indian Affairs

Dated: _____

FOR THE TOWN OF GILBERT

By: _____

Mayor, Town of Gilbert

Dated: _____

Attest: _____

Town Clerk

Approved as to form:

By: _____

Town Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1D

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF GLENDALE, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Glendale, Arizona (hereinafter "Glendale").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Glendale are entering into this Lease Agreement by which the WMAT will lease to Glendale a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.19 "Glendale" shall mean the City of Glendale, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Glendale pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1D to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Glendale (1) Ninety-One (91) acre-feet per year of its HVID CAP Water and (2) Five Hundred Fifty Eight (558) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) One Thousand Seven Hundred Fourteen (1,714) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Glendale shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Glendale agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Glendale for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Glendale's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Glendale shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Glendale under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Six Hundred Forty-Nine (649) acre-feet ("AF")

to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Glendale under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by One Thousand Seven Hundred Fourteen (1,714) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69

Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Glendale may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Glendale may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date.

Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Glendale would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus

interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Glendale may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Glendale shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Glendale's CAP M&I Water Service Subcontract No. 07-XX-30-W0493, as amended, ("Glendale's CAP M&I Water Service Subcontract") except that Glendale's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Glendale is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Glendale. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Glendale's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Glendale shall be obligated to pay water service capital charges or any other

charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Glendale through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Glendale would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Glendale in accordance with water delivery schedules provided by Glendale to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Glendale's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Glendale's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Glendale under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Glendale's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the

United States and the Operating Agency if Glendale agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract , Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Glendale under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Glendale under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID

CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Glendale may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP

Service Area, except for use within Glendale's water service area when Glendale's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Glendale shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Glendale's CAP M&I Water Service Subcontract, deliveries of Leased Water to Glendale and its use by Glendale shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Glendale's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Glendale's CAP M&I Water Service Subcontract shall apply to Glendale and to Glendale's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Glendale expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no

obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Glendale waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Glendale pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Glendale, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Glendale so that Glendale's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Glendale's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Glendale's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Glendale hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Glendale may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Glendale, if Glendale is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Glendale shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Glendale's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and

Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Glendale shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Glendale's ability to recover actual future costs, if any, incurred by Glendale for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Glendale to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Glendale's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Glendale as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Glendale and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the

default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Glendale officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Glendale, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Glendale, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Glendale fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Glendale's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Glendale shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Glendale shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the

default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Glendale has not cured the default within thirty (30) days following the Notice of Default, Glendale, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Glendale shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Glendale that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Glendale.

(C) Third Grace Period. If the Other Cities do not cure Glendale's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Glendale to the extent of its contribution, and Glendale and each curing entity shall execute an Assignment and Assumption

Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Glendale shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Glendale. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Glendale in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Glendale fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Glendale's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Glendale, or Glendale and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing

entities have signed all necessary Assignment and Assumption Agreements, but Glendale has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Glendale to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Glendale will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Glendale's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Glendale may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to

the date that it intends the Lease Agreement to be terminated, provided, however, Glendale must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Glendale has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Glendale may withdraw its notice. Glendale shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Glendale terminates this Lease Agreement, all sums paid by Glendale to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Glendale.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Glendale may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Glendale must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Glendale has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Glendale may withdraw its notification. Glendale shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water

that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Glendale surrenders its interest in all or any portion of the Leased Water, all sums paid by Glendale to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Glendale. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Glendale, payment shall be in proportion to the amount of water retained by Glendale, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Glendale shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Glendale may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Glendale's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Glendale and discuss

the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Glendale at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Glendale rejects this Lease Agreement pursuant to this Subparagraph 8.5, Glendale shall have no obligations under this Lease Agreement and Glendale's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Glendale notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Glendale's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Glendale with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Glendale that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Glendale's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Glendale. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease

Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and

expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF GLENDALE

By: _____
Mayor, City of Glendale

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1E

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF MESA, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Mesa, Arizona (hereinafter "Mesa").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Mesa are entering into this Lease Agreement by which the WMAT will lease to Mesa a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 "Mesa" shall mean the City of Mesa, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Mesa pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Peoria, Phoenix, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1E to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Mesa (1) One Hundred Twenty-One (121) acre-feet per year of its HVID CAP Water and (2) Seven Hundred Forty-Five (745) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Two Thousand Two Hundred Ninety-One (2,291) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Mesa shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Mesa agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Mesa for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Mesa's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Mesa shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Mesa under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Eight Hundred Sixty-Six (866) acre-feet ("AF")

to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Mesa under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Two Thousand Two Hundred Ninety-One (2,291) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69

Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Mesa may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Mesa may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date.

Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Mesa would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus

interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Mesa may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Mesa shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Mesa's CAP M&I Water Service Subcontract No. 07-XX-30-W0501, as amended, ("Mesa's CAP M&I Water Service Subcontract") except that Mesa's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Mesa is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Mesa. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Mesa's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Mesa shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4,

and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Mesa through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Mesa would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Mesa in accordance with water delivery schedules provided by Mesa to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Mesa's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Mesa's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Mesa under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Mesa's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Mesa agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Mesa under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Mesa under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be

shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Mesa may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Mesa's water service area when Mesa's water service area

extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Mesa shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Mesa's CAP M&I Water Service Subcontract, deliveries of Leased Water to Mesa and its use by Mesa shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Mesa's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Mesa's CAP M&I Water Service Subcontract shall apply to Mesa and to Mesa's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Mesa expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Mesa waives its right to make a claim against the United States, the Operating Agency, the WMAT,

other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Mesa pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Mesa, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Mesa so that Mesa's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Mesa's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Mesa's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Mesa hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Mesa may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of

the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Mesa, if Mesa is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Mesa shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Mesa's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Mesa shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease

Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Mesa's ability to recover actual future costs, if any, incurred by Mesa for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Mesa to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Mesa's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Mesa as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Mesa and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Mesa officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Mesa, which amount shall be the sum of all payments due the WMAT that should have been

paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Mesa, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Mesa fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Mesa's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Mesa shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Mesa shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Mesa has not cured the default within thirty (30) days following the Notice of Default, Mesa, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Mesa shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Mesa that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Mesa.

(C) Third Grace Period. If the Other Cities do not cure Mesa's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Mesa to the extent of its contribution, and Mesa and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Mesa shall be responsible for any proportionate

remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Mesa. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Mesa in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Mesa fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Mesa's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Mesa, or Mesa and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Mesa has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Mesa to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected

pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Mesa will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Mesa's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Mesa may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Mesa must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Mesa has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement.

Such notice is irrevocable except upon the WMAT's agreement that Mesa may withdraw its notice. Mesa shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Mesa terminates this Lease Agreement, all sums paid by Mesa to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Mesa.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Mesa may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Mesa must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Mesa has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Mesa may withdraw its notification. Mesa shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Mesa surrenders its interest in all or any portion of the Leased Water, all sums paid by Mesa to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Mesa. All portions of the Lease

Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Mesa, payment shall be in proportion to the amount of water retained by Mesa, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Mesa shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Mesa may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Mesa's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Mesa and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the

execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Mesa at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Mesa rejects this Lease Agreement pursuant to this Subparagraph 8.5, Mesa shall have no obligations under this Lease Agreement and Mesa's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Mesa notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Mesa's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Mesa with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Mesa that

portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Mesa's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Mesa. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall

not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF MESA

By: _____
Mayor, City of Mesa

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1F

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF PEORIA, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Peoria, Arizona (hereinafter "Peoria").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Peoria are entering into this Lease Agreement by which the WMAT will lease to Peoria a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 "Peoria" shall mean the City of Peoria, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Peoria pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Phoenix, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1F to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Peoria (1) Forty-Nine (49) acre-feet per year of its HVID CAP Water and (2) Three Hundred Five (305) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Nine Hundred Thirty-Five (935) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Peoria shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Peoria agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole discretion and with the approval of the Secretary, the WMAT may enter into a separate lease

agreement with Peoria for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Peoria's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Peoria shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Peoria under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Three Hundred Fifty-Four (354) acre-feet ("AF") to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Peoria under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Nine Hundred Thirty-Five (935) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14

Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Peoria may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Peoria may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Peoria would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the

amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Peoria may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Peoria shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Peoria's CAP M&I Water Service Subcontract No. 07-XX-30-W0081, as amended, ("Peoria's CAP M&I Water Service Subcontract") except that Peoria's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Peoria is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Peoria. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Peoria's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Peoria shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Peoria through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Peoria would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Peoria in accordance with water delivery schedules provided by Peoria to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Peoria's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Peoria's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Peoria under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Peoria's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Peoria agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract , Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Peoria under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Peoria under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from

the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Peoria may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP

Service Area, except for use within Peoria's water service area when Peoria's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Peoria shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Peoria's CAP M&I Water Service Subcontract, deliveries of Leased Water to Peoria and its use by Peoria shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Peoria's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Peoria's CAP M&I Water Service Subcontract shall apply to Peoria and to Peoria's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Peoria expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

Peoria waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Peoria pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Peoria, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Peoria so that Peoria's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Peoria's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Peoria's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Peoria hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Peoria may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Peoria, if Peoria is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Peoria shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Peoria's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification

Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Peoria shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Peoria's ability to recover actual future costs, if any, incurred by Peoria for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Peoria to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Peoria's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Peoria as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Peoria and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the

default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Peoria officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Peoria, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Peoria, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Peoria fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Peoria's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Peoria shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Peoria shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the

default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Peoria has not cured the default within thirty (30) days following the Notice of Default, Peoria, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Peoria shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Peoria that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Peoria.

(C) Third Grace Period. If the Other Cities do not cure Peoria's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Peoria to the extent of its contribution, and Peoria and each curing entity shall execute an Assignment and Assumption

Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Peoria shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Peoria. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Peoria in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Peoria fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Peoria's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Peoria, or Peoria and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Peoria has either failed or refused to

sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Peoria to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Peoria will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Peoria's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Peoria may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Peoria must

receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Peoria has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Peoria may withdraw its notice. Peoria shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Peoria terminates this Lease Agreement, all sums paid by Peoria to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Peoria.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Peoria may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Peoria must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Peoria has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Peoria may withdraw its notification. Peoria shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is

intended to pay. If Peoria surrenders its interest in all or any portion of the Leased Water, all sums paid by Peoria to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Peoria. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Peoria, payment shall be in proportion to the amount of water retained by Peoria, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Peoria shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Peoria may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Peoria's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Peoria and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable

ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Peoria at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Peoria rejects this Lease Agreement pursuant to this Subparagraph 8.5, Peoria shall have no obligations under this Lease Agreement and Peoria's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Peoria notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Peoria's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Peoria with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Peoria that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Peoria's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Peoria. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease

Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and

expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF PEORIA

By: _____
Mayor, City of Peoria

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1G

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF PHOENIX, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Phoenix, Arizona (hereinafter "Phoenix").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Phoenix are entering into this Lease Agreement by which the WMAT will lease to Phoenix a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 "Phoenix" shall mean the City of Phoenix, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Phoenix pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Scottsdale and Tempe.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1G to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Phoenix (1) Four Hundred Ninety (490) acre-feet per year of its HVID CAP Water and (2) Three Thousand Fifteen (3,015) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Zero (0) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Phoenix shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Phoenix agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole discretion and with the approval of the Secretary, the WMAT may enter into a separate lease

agreement with Phoenix for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Phoenix's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Phoenix shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Phoenix under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Three Thousand Five Hundred Five (3,505) acre-feet ("AF") to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease

Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Phoenix under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Zero (0) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14

Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Phoenix may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Phoenix may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Phoenix would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the

amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Phoenix may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Phoenix shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Phoenix's CAP M&I Water Service Subcontract No. 07-XX-30-W0507, as amended, ("Phoenix's CAP M&I Water Service Subcontract") except that Phoenix's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Phoenix is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Phoenix. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Phoenix's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Phoenix shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Phoenix through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Phoenix would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Phoenix in accordance with water delivery schedules provided by Phoenix to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Phoenix's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Phoenix's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Phoenix under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Phoenix's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Phoenix agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Phoenix under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Phoenix under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from

the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Phoenix may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Phoenix's water service area when Phoenix's water service area

extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Phoenix shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Phoenix's CAP M&I Water Service Subcontract, deliveries of Leased Water to Phoenix and its use by Phoenix shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Phoenix's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Phoenix's CAP M&I Water Service Subcontract shall apply to Phoenix and to Phoenix's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Phoenix expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Phoenix waives its right to make a claim against the United States, the Operating Agency, the

WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Phoenix pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Phoenix, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Phoenix so that Phoenix's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Phoenix's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Phoenix's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Phoenix hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Phoenix may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of

the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Phoenix, if Phoenix is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Phoenix shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Phoenix's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Phoenix shall not assign all or any part of its

interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Phoenix's ability to recover actual future costs, if any, incurred by Phoenix for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Phoenix to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Phoenix's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Phoenix as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Phoenix and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Phoenix officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due

from Phoenix, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Phoenix, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Phoenix fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Phoenix's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Phoenix shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Phoenix shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Phoenix has not cured the default within thirty (30) days following the Notice of Default, Phoenix, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Phoenix shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Phoenix that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Phoenix.

(C) Third Grace Period. If the Other Cities do not cure Phoenix's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Phoenix to the extent of its contribution, and Phoenix and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Phoenix shall be responsible for any proportionate

remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Phoenix. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Phoenix in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Phoenix fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Phoenix's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Phoenix, or Phoenix and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Phoenix has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Phoenix to

sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Phoenix will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Phoenix's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Phoenix may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Phoenix must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Phoenix has paid the WMAT at least one-fourth of the

Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Phoenix may withdraw its notice. Phoenix shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Phoenix terminates this Lease Agreement, all sums paid by Phoenix to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Phoenix.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Phoenix may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Phoenix must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Phoenix has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Phoenix may withdraw its notification. Phoenix shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Phoenix surrenders its interest in all or any portion of the Leased Water, all sums paid by Phoenix to the WMAT for such water prior to the date of surrender shall remain

the property of the WMAT and shall be non-refundable to Phoenix. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Phoenix, payment shall be in proportion to the amount of water retained by Phoenix, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Phoenix shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Phoenix may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Phoenix's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Phoenix and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Phoenix at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Phoenix rejects this Lease Agreement pursuant to this Subparagraph 8.5, Phoenix shall have no obligations under this Lease Agreement and Phoenix's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Phoenix notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Phoenix's entitlement to Leased Water under this Lease

Agreement is determined to be invalid by a final judgment entered over the opposition of Phoenix with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Phoenix that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Phoenix's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Phoenix. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and

Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF PHOENIX

By: _____
City Manager

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.1.1H

LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF TEMPE, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this _____ day of _____, 201_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Tempe, Arizona (hereinafter "Tempe").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Tempe are entering into this Lease Agreement by which the WMAT will lease to Tempe a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

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

3.2 "CAP Contract" shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 "CAP Contractor" shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 "CAP Indian Priority Water" shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 "CAP M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 "CAP NIA M&I Equivalent Priority Water" shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 "CAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 "CAP NIA Priority Water Lease Charge" shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 "CAP Repayment Contract" shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.12 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 "CAP Subcontract" shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 "CAP Subcontractor" shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 "CAP System" shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

3.17 "CAWCD" or "Central Arizona Water Conservation District" shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 "Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 "Tempe" shall mean the City of Tempe, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

3.22 "Gila River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.23 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge" shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 "HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate" is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 "Leased Water" shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Tempe pursuant to this Lease Agreement.

3.27 "OM&R" shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 "Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 "Other Cities" shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, and Scottsdale.

3.30 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities.

3.31 "Quantification Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1H to the Quantification Agreement.

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

3.33 "Subparagraph" shall mean a numbered subparagraph of this Lease Agreement.

3.34 "Total Water Lease Charge" shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

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

3.36 "White Mountain Apache Tribe" or "the WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

3.37 "WMAT CAP Water" shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 "WMAT CAP Water Delivery Contract" shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated _____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Tempe (1) Ninety-Five (95) acre-feet per year of its HVID CAP Water and (2) Five Hundred Eighty-Six (586) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) One Thousand Eight Hundred (1,800) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Tempe shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Tempe agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Tempe for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Tempe's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Tempe shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Tempe under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars ($2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by Six Hundred Eighty-One (681) acre-feet ("AF")

to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Tempe under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by One Thousand Eight Hundred (1,800) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is $2,550.00; and the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69

Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x $2,550.00)	$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge ($2,907.00 x 1,000 AF)	$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074.00)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00
Total Water Lease Charge ($2,907,000.00 + $2,364,360.00) =	$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Tempe may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Tempe may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date.

Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

> Assume, solely for purposes of this example, that the Total Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Tempe would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus

interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Tempe may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Tempe shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Tempe's CAP M&I Water Service Subcontract No. 07-XX-30-W0506, as amended, ("Tempe's CAP M&I Water Service Subcontract") except that Tempe's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Tempe is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Tempe. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Tempe's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Tempe shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4,

and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Tempe through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Tempe would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Tempe in accordance with water delivery schedules provided by Tempe to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Tempe's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Tempe's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Tempe under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Tempe's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Tempe agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Tempe under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Tempe under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from

the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Tempe may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Tempe's water service area when Tempe's water service area

extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Tempe shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Tempe's CAP M&I Water Service Subcontract, deliveries of Leased Water to Tempe and its use by Tempe shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Tempe's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Tempe's CAP M&I Water Service Subcontract shall apply to Tempe and to Tempe's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Tempe expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Tempe waives its right to make a claim against the United States, the Operating Agency, the

WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Tempe pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Tempe, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Tempe so that Tempe's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Tempe's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Tempe's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Tempe hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Tempe may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of

the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Tempe, if Tempe is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Tempe shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Tempe's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Tempe shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease

Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Tempe's ability to recover actual future costs, if any, incurred by Tempe for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Tempe to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Tempe's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Tempe as defined in Subparagraph 6.1 above, the WMAT shall provide written notice ("Notice of Default") to Tempe and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Tempe officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Tempe, which amount shall be the sum of all payments due the WMAT that should have been

paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put Tempe, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Tempe fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Tempe's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), Tempe shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, Tempe shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Tempe has not cured the default within thirty (30) days following the Notice of Default, Tempe, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Tempe shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Tempe that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Tempe.

(C) Third Grace Period. If the Other Cities do not cure Tempe's default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount within fifteen (15) days after the end of the Second Grace Period ("Third Grace Period").

Each curing entity shall succeed to the interest and obligation of Tempe to the extent of its contribution, and Tempe and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Tempe shall be responsible for any proportionate

remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Tempe. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Tempe in equal shares ("Equal Share Amount"); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity's Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Tempe fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Tempe's right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Tempe, or Tempe and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Tempe has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Tempe to

sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Tempe will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Tempe's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Tempe may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Tempe must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Tempe has paid the WMAT at least one-fourth of the

Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Tempe may withdraw its notice. Tempe shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Tempe terminates this Lease Agreement, all sums paid by Tempe to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Tempe.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Tempe may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Tempe must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Tempe has paid the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Tempe may withdraw its notification. Tempe shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Tempe surrenders its interest in all or any portion of the Leased Water, all sums paid by Tempe to the WMAT for such water prior to the date of surrender shall remain the

property of the WMAT and shall be non-refundable to Tempe. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Tempe, payment shall be in proportion to the amount of water retained by Tempe, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Tempe shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Tempe may renegotiate this Lease Agreement at any time during its term, as provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Tempe's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Tempe and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Tempe at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Tempe rejects this Lease Agreement pursuant to this Subparagraph 8.5, Tempe shall have no obligations under this Lease Agreement and Tempe's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Tempe notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Tempe's entitlement to Leased Water under this Lease

Agreement is determined to be invalid by a final judgment entered over the opposition of Tempe with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Tempe that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Tempe's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Tempe. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 89006-1470

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 East Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan,
Udall and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and

Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

[SIGNATURE PAGES FOLLOW]

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____
Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:_____

By: _____
Regional Director
Western Region
Bureau of Indian Affairs

Dated:_____

FOR THE CITY OF TEMPE

By: _____
Mayor, City of Tempe

Dated: _____

Attest: _____
City Clerk

Approved as to form:

By: _____
City Attorney

Exhibit 4.12 of the _____ Lease Agreement
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ ("Assignor"), hereby transfers, assigns and conveys to the _____("Assignee") ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the "WMAT") and the United States ("Lease Agreement"). This ___ percent (__ %) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor’s burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____
Its _____

Dated: _____

Attest:_____
Its _____

Approved as to form:_____
Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on _____ __, 2___.

EXHIBIT 10.2.1

LEASE AGREEMENT FOR CAP WATER AMONG THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water (ñLease Agreementò), made this _____ day of _____, 201_, is among the United States of America (hereinafter ñUnited Statesò), the White Mountain Apache Tribe (hereinafter ñWMATò) and the Central Arizona Water Conservation District (hereinafter ñCAWCDò) a multi-county water conservation district organized under the laws of Arizona.

2. RECITALS

2.1 The Parties to this Lease Agreement are also Parties to the Quantification Agreement as defined under Subparagraph 3.23 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and CAWCD are entering into this Lease Agreement by which the WMAT will lease to CAWCD a portion of the WMATôs CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes

the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

3.1 ñCAPò or ñCentral Arizona Projectò shall mean the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C.§§ 1521 et seq.).

3.2 ñCAP Contractò shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 ñCAP Contractorò shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 ñCAP NIA Priority Water" shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.5 "CAP NIA Priority Water Lease Chargeò shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1 of this Lease Agreement.

3.6 "CAP NIA Priority Water Lease Rate" is defined in Subparagraph 4.3.1 of this Lease Agreement.

3.7 ñCAP Repayment Contractò shall mean: (1) the contract between the United

States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.8 ñCAP Repayment Stipulationò shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.9 ñCAP Service Areaò or ñDistrictò shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.10 ñCAP Subcontractò shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.11 ñCAP Subcontractorò shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.12 ñCAP Systemò shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden- Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and

(F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.13 ñCAP Waterò shall mean óProject Waterô as that term is defined in the CAP Repayment Stipulation.

3.14 ñCAWCDò or ñCentral Arizona Water Conservation Districtò shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.15 ñCitiesò shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

3.16 ñCPI-Uò shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.17 ñEnforceability Dateò shall mean the date described in Section 309(d)(1) of the Act.

3.18 ñGila River Adjudication Proceedingsò shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

3.19 ñLeased Waterò shall mean that portion of the WMAT CAP Water that is leased by the WMAT to CAWCD pursuant to this Lease Agreement.

3.20 ñOM&Rò shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.21 ñOperating Agencyò shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.22 ñPartyò shall mean an entity represented by a signatory to this Lease Agreement. ñPartiesò shall mean more than one of these entities.

3.23 ñQuantification Agreementò shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.2.1 to the Quantification Agreement.

3.24 ñSecretaryò shall mean the Secretary of the United States Department of the Interior.

3.25 ñSubparagraphò shall mean a numbered subparagraph of this Lease Agreement.

3.26 ñUnited Statesò or ñUnited States of Americaò in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term ñUnited Statesò or ñUnited States of Americaò is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

3.27 ñWhite Mountain Apache Tribeò or ñthe WMATò shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the ñIndian Reorganization Actò) (25 U.S.C. § 476).

3.28 ñWMAT CAP Waterò shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.29 ñWMAT CAP Water Delivery Contractò shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated_____, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.30 ñWMAT Reservationò or ñReservationò shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the dated of enactment of the Act, as the ñFort Apache Reservationò pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.31 ñYearò shall mean a calendar year. When not capitalized, the term ñyearò shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 <u>LEASE OF WATER</u>

4.1 Subject of Lease. The WMAT hereby leases to CAWCD Two Thousand Five Hundred (2,500) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. CAWCD shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless CAWCD agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMATôs sole discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with CAWCD for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Consideration During Initial Term of Lease Agreement.

4.3.1 CAP NIA Priority Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, CAWCD shall pay to the WMAT a one-time CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereinafter "ratio"), then multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars ($2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the

CAP NIA Priority Water Lease Rate, as determined above, by Two Thousand Five Hundred (2,500) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.1 An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (2) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (3) the CPI-U index for October 1, 2008 is 211.69; and (4) the CAP NIA Priority Water base payment is $2,074.00.

Calculation (all numbers rounded to the nearest hundredth):

Most recently published CPI-U available prior to Enforceability Date	240.69
CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14
Base payment for CAP NIA Priority Water (non-firmed)	$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x $2,074)	$2,364.36
CAP NIA Priority Water Lease Charge ($2,364.36 x 1,000 AF)	$2,364,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 CAWCD may, at its election, pay the CAP NIA Priority Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, CAWCD may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the CAP NIA Priority Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the CAP NIA Priority Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made, is as follows:

> Assume, solely for purposes of this example, that the CAP NIA Priority Water Lease Charge is $1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: CAWCD would make an initial payment of $500,000. The first annual installment would be in the principal amount of [$1,000,000 x 1/8 = $125,000] plus interest on the unpaid balance of [$1,000,000 - $500,000 = $500,000] in the amount of [$500,000 x .06 = $30,000], for a total payment of [$125,000 + $30,000 = $155,000]. The second annual installment would be in

the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $625,000 = $375,000] in the amount of [$375,000 x .06 = $22,500], for a total payment of [$125,000 + $22,500 = $147,500]. The third annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $750,000 = $250,000] in the amount of [$250,000 x .06 = $15,000], for a total payment of [$125,000 + $15,000 = $140,000]. The fourth and final annual installment would be in the principal amount of $125,000 plus interest on the unpaid balance of [$1,000,000 - $875,000 = $125,000] in the amount of [$125,000 x .06 = $7,500], for a total payment of [$125,000 + 7,500 = $132,500].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1, without any prepayment penalty, CAWCD may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. CAWCD shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water as mandated by Section 306(a)(1)(A)(iii) of the Act and upon the same terms and conditions as are set forth in paragraph 6.2 of the Supplement Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Central Arizona Project Water, Contract No. 14-06-W-245, Amendment No. 1, Supplement No. 1 (ñCAWCDôs Supplemental Contractò) except that CAWCDôs obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that CAWCD is entitled to receive

water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by CAWCD. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306(a)(8) and 306(e) of the Act, neither the WMAT nor CAWCD shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMATôs Leased Water to CAWCD through the CAP System as further provided herein and subject to the requirements of Subparagraphs 9.3 and 10.2.2 of the Quantification Agreement. The United States or the Operating Agency shall deliver the Leased Water to CAWCD in accordance with water delivery schedules provided by CAWCD to the United States and the Operating Agency (if other than CAWCD), and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. In the event that CAWCD is no longer the Operating Agency or in the event this Lease is assigned to another entity, the water ordering procedures contained in article 4.4 of Exhibit 9.4 to the Quantification Agreement, shall apply to CAWCDôs ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency (if other than CAWCD) be required to deliver to CAWCD under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of CAWCDôs annual maximum entitlement under this Lease Agreement; provided, however, that the United

States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if CAWCD agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraph 7.16.1 of the Quantification Agreement the amount of Leased Water shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from the WMAT that is not firmed under Subparagraph 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%.

4.7 Use of Leased Water Outside Reservation. CAWCD may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of,

or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Gilbert's water service area when Gilbert's water service area extends beyond the CAP service area.

4.8 Conditions Relating to Delivery and Use. CAWCD shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement to fulfill its Central Arizona Groundwater Replenishment District groundwater replenishment responsibilities under Arizona state law, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of CAWCDôs Supplemental Contract, deliveries of Leased Water to CAWCD and its use by CAWCD shall be subject to the terms and conditions of CAWCDôs Supplemental Contract.

4.9 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. CAWCD waives its right to make a claim against the United States, the Operating Agency (if other than CAWCD), the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to CAWCD pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other

points that may be agreed upon between CAWCD and the United States, and if other than CAWCD, the Operating Agency.

4.11 WMATôs Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by CAWCD so that CAWCDôs rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair CAWCDôs rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair CAWCDôs rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of CAWCD hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. CAWCD may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to CAWCD, if

CAWCD is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Cities, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, CAWCD shall offer such interest to all the Cities in equal shares. In the event that any of the Cities elects not to take its share of CAWCDôs assignment, the water shall then be offered to all of the remaining Cities in equal shares until the full amount of the water is so assigned. Such assignment shall be effective only upon the execution, by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as exhibit 4.12 (exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. CAWCD shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the CAP NIA Priority Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect CAWCDôs ability to recover actual future costs, if any, incurred by CAWCD for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water

shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by CAWCD to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of CAWCDôs obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by CAWCD as defined in Subparagraph 6.1 above, the WMAT shall provide written notice (ñNotice of Defaultò) to CAWCD and contemporaneously, shall send copies of such notice to the Cities, specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the CAWCD officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from CAWCD, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid (ñDefault Amountò). The purpose of this Subparagraph is to put CAWCD and the Cities on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If CAWCD fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Cities cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT

terminates this Lease Agreement for non-payment of the CAP NIA Priority Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(C), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for CAWCDôs Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default (ñFirst Grace Periodò), CAWCD shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due (ñDue Dateò). During the first fifteen (15) days following the Notice of Default, CAWCD shall provide written notice to the Cities declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that CAWCD has not cured the default within thirty (30) days following the Notice of Default, CAWCD, any of the Cities, and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period (ñSecond Grace Periodò), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Cities that desires to succeed to the interest of CAWCD shall, within sixty (60) days of the Notice of Default, give notice to the Cities and

CAWCD that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of CAWCD. Each curing entity shall succeed to the interest and obligation of CAWCD to the extent of its contribution, and CAWCD and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. CAWCD shall be responsible for any proportionate remainder of any Default amount not cured by the Cities pursuant to this Subparagraph. A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by CAWCD. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of CAWCD in equal shares (ñEqual Share Amountò); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entityôs Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If CAWCD fails to cure its default within the time-period set forth in Subparagraph 6.4(B) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Second Grace Period, CAWCDôs right to Leased Water that has not been assigned pursuant to this Subparagraph shall be forfeited back to the WMAT and the WMAT shall be

entitled to the remedy described in Subparagraph 6.4(C) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If CAWCD, or CAWCD and any combination of the Cities, have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but CAWCD has either failed or refused to sign such agreement(s) before the end of the Second Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for CAWCD to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(C) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A) and (B) hereof, CAWCD will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the CAP NIA Priority Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the CAP NIA Priority Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of CAWCDôs obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water to the Cities identified in and in accordance with Subparagraph 4.12, CAWCD may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, CAWCD must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless CAWCD has paid the WMAT at least one-fourth of the CAP NIA Priority Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMATôs agreement that CAWCD may withdraw its notice. CAWCD shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If CAWCD terminates this Lease Agreement, all sums paid by CAWCD to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to CAWCD.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water to the Cities identified in and in accordance with Subparagraph 4.12, CAWCD may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, CAWCD must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless CAWCD has paid the WMAT at least one-fourth of the CAP NIA

Priority Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMATôs agreement that CAWCD may withdraw its notification. CAWCD shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If CAWCD surrenders its interest in all or any portion of the Leased Water, all sums paid by CAWCD to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to CAWCD. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by CAWCD, payment shall be in proportion to the amount of water retained by CAWCD, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, CAWCD shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and CAWCD may renegotiate this Lease Agreement at any time during its term, as

provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 [Intentionally not used]

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the enforceability Date, CAWCD at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event CAWCD rejects this Lease Agreement pursuant to this Subparagraph 8.5, CAWCD shall have no obligations under this Lease Agreement and CAWCDôs entitlement shall be offered to the Cities as provided in Subparagraph 4.12(B) in equal shares until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and CAWCD notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, CAWCDôs entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of CAWCD with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to CAWCD that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, CAWCDôs entitlement shall be offered to the Cities as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Cities accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to CAWCD. If the assignment to the Cities and payment to the WMAT for the assigned entitlement to Lease Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Lease Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement..

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease

Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:
The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, Arizona 85004

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman
White Mountain Apache Tribe
P.O. Box 1150
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:
Office of the Tribal Chairman
201 E. Walnut Street
Whiteriver, Arizona 85941

Office of the Tribal Attorney
White Mountain Apache Tribe
P.O. Box 2110
Whiteriver, Arizona 85941

(c) As to CAWCD:

General Manager
Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024-3801

(c) As to the Cities:

Avondale City Manager
11465 W. Civic Center Dr.
Avondale, AZ 85323

Avondale City Attorney
Gust Rosenfeld P.L.C.
Attention: Andrew McGuire
1 E. Washington, Suite 1600
Phoenix, AZ 85004-2553

Chandler City Manager
P.0. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Gilbert Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

Gilbert Town Attorney
Curtis, Goodwin, Sullivan, Udall
and Schwab P.L.C.
501 East Thomas Road
Phoenix, AZ 85012

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney

P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 North Drinkwater Blvd.
Scottsdale, Arizona 85251

Tempe City Manager
31 East 5th Street
Tempe, Arizona 85281

Tempe City Attorney
21 E. 6th St., Suite 201
Tempe, Arizona 85281

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and

Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Cities, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Attorneysô Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneysô fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any CAWCD obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(C) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

FOR THE WHITE MOUNTAIN APACHE TRIBE

By: _____

Chairman

Attest_____

Dated:_____

Approved as to form:

By: _____

FOR THE UNITED STATES OF AMERICA

By: _____

Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated:

By: _____

Regional Director
Western Region
Bureau of Indian Affairs

Dated:

FOR THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
President

Dated: _____

Attest: _____
Secretary

Dated:_____

Exhibit 4.12 of the _____ Lease Agreement
(form of which is Exhibit 10.1.1.1A of the Quantification Agreement)

VOLUNTARY ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ (ñAssignorò), hereby transfers, assigns and conveys to the _____(ñAssigneeò) ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the ñWMATò) and the United States (ñLease Agreementò). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement</u>.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignorôs burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By_____

Its_____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

_____ (Assignee)

By _____

Its_____

Dated: _____

Attest:_____

Its_____

Approved as to form:_____

Its_____

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the

United States and the Operating Agency on _____ __, 2___.

Exhibit 6.4 of the _____Lease Agreement
(form of which is Exhibit 10.1.1.1B of the Quantification Agreement)

ASSIGNMENT AND ASSUMPTION OF LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned _____ (ñAssignorò), hereby transfers, assigns and conveys to the _____(ñAssigneeò) ____ percent (__%) of the following:

> Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the White Mountain Apache Tribe (the ñWMATò) and the United States (ñLease Agreementò). This ___ percent (__%) equals ___ acre-feet of Leased Water.

1. <u>Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement</u>. This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. <u>Assumption of Rights and Obligations Under Lease Agreement</u>. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and

obligations arise from and after the date hereof, except that Assignee agrees to pay and be responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignorôs burdens and obligations as provided for

herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing ñself executionò, and the Assigneeôs payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 2___.

_____ (Assignor)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its _____

_____ (Assignee)

By _____

Its _____

Dated: _____

Attest:_____

Its _____

Approved as to form:_____

Its _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating

Agency on _____ __, 2___.

Exhibit 11.2
Sample Annual Report

(Identical report to be filed in the Little Colorado River Adjudication)

Robert C. Brauchli
Attorney at Law
P.O. Box 64607
Tucson, Arizona 85728-4607
Tel: (520) 299-8300
Fax: (520) 299-8302
Email: rcbrauchli@rbrauchlilaw.com
Attorney for the White Mountain Apache Tribe

[OR
Attorney for the United States on behalf of the WMAT]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	)	W-1 (Salt) W-2 (Verde) W-3 (Upper Gila) W-4 (San Pedro) Consolidated **ANNUAL REPORT FILED BY THE WHITE MOUNTAIN APACHE TRIBE** (Honorable _____, Presiding) Date: _____

Descriptive Summary: The White Mountain Apache Tribe files an annual report pursuant to the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement, dated as of November 1, 2012, for calendar year ____.

Statement of Claimant Numbers: 39-16945, 39-16946, 39-16947, and 39-16948 (White Mountain Apache Tribe); 39-64259 (United States on behalf of the Tribe, as amended).

Number of Pages of Document: ____.

Date of Filing of Document: _____.

The White Mountain Apache Tribe (WMAT) files the attached annual report of water use for calendar year ____ in accordance with the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated _____, 2012.

Respectfully submitted,

_____

Robert C. Brauchli
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[OR _____
Attorney for the United States
on behalf of the WMAT]

SERVICE

ORIGINAL AND ONE COPY of the foregoing mailed this ___ day of _____, to:

Clerk of the Superior Court of Maricopa County
Attn: Water Case
601 W. Jackson Street
Phoenix, AZ 85003

COPY of the foregoing mailed this ____ day of _____, to:

Honorable _____
Judge of the Superior Court
101 W. Jefferson, 5th Floor
Phoenix, AZ 85003

Special Master George A. Schade, Jr.
Arizona General Stream Adjudication
Arizona State Court Bldg.
1501 West Washington Street, Suite 228
Phoenix, AZ 85007

AND COPY of the foregoing mailed this ____ day of _____, to all persons appearing on the Court Approved Mailing List.

_____ [OR _____
Robert C. Brauchli Attorney for the United States on behalf of the WMAT]

Annual Water Use Report
Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement

Calendar Year ____

Prepared By: _____
[Name]
[Contact Information]

Summary of Water Uses

The following table summarizes the total annual diversions and depletions by the White Mountain Apache Tribe as provided in Subparagraphs 4.0, 5.0, and 6.0 of the Agreement. Annual diversions and depletions by each type of use are provided on the following pages. All values are reported in acre-feet (AF).

Subparagraph – Source	**Annual Diversion Amount**	**Annual Depletion Amount**
4.1.1 – Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed	_____ AF	_____ AF
4.1.2 – Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed or the Little Colorado River Watershed	Salt River Watershed _____ AF Little Colorado River Watershed _____ AF	Salt River Watershed _____ AF Little Colorado River Watershed _____ AF
4.1.3 – Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed the first use of which shall not commence until after the Year 2100.	0 AF	0 AF
4.1.4 – White Mountain Apache Tribe Central Arizona Project Water	_____ AF	_____ AF
4.1.5 – Total	_____ AF	_____ AF

Lakes, Stockponds and Other Impoundment Uses

Salt River Diversions and Depletions

Lakes _____ AF
Stockponds _____ AF
Wastewater Lagoons _____ AF

Total Diversions = Depletions _____ AF

Irrigation Uses

Historical Irrigation Diversions and Depletions

Location	Acres	Diversion	Depletion
Canyon, Cibeque, and Carrizo Creeks; North and East Forks of the White River	_____	_____ AF	_____ AF
White River	_____	_____ AF	_____ AF
Bonito Creek and Black River	_____	_____ AF	_____ AF
Total	_____	_____ AF	_____ AF

Future Irrigation Diversions and Depletions

Location	Acres	Diversion	Depletion
_____	_____	_____ AF	_____ AF
_____	_____	_____ AF	_____ AF
Total	_____	_____ AF	_____ AF

Total Salt River Irrigation Diversions _____ AF

Total Salt River Irrigation Depletions _____ AF

Municipal and Industrial Uses

Salt River Watershed

Total Municipal and Industrial Diversions _____ AF

Total Municipal and Industrial Depletions _____ AF

Little Colorado River Watershed

Total Municipal and Industrial Diversions _____ AF

Total Municipal and Industrial Depletions _____ AF

Artificial Snow Making Uses

Total Salt River Artificial Snow Making Diversions _____ AF

Total Salt River Artificial Snow Making Depletions _____ AF

Livestock Consumption Uses

Total Salt River Diversions = Depletions _____ AF

Fish Hatchery Uses

Total Salt River Diversions _____ AF

Mining Uses

Total Salt River Mining Diversions _____ AF

Total Salt River Mining Depletions _____ AF

WMAT CAP Water Uses

Quantity of CAP Water delivered to others in exchange for Salt River Diversions and Depletions on the Reservation or on Off-Reservation Trust Land	_____ AF
Quantity of CAP Exchange Water Diverted On-Reservation (if greater than amount of CAP Water delivered)	_____ AF
Quantity of CAP Exchange Water Depleted On-Reservation plus any additional Depletions specified in the exchange agreement	_____ AF
Quantity of CAP Water recharged	_____ AF
Quantity of CAP Water leased	_____ AF
Total CAP Water used	_____ AF

EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

STOCK POND EVAPORATION AND DEPLETION
FORT APACHE INDIAN RESERVATION

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
3 Way Tank	1.32	5,768	1,758	50.48	21.87	28.61	5.49	34.10	3.76
4 Diamond Tank	1.10	5,587	1,703	51.44	21.52	29.92	5.49	35.41	3.26
A-80 Tank	1.30	5,640	1,719	51.16	21.62	29.54	5.49	35.03	3.80
A-81Tank	0.14	6,240	1,902	47.93	22.80	25.13	5.49	30.62	0.37
Acorn Tank	0.78	5,630	1,716	51.21	21.60	29.61	5.49	35.11	2.29
Agency Tank	0.68	5,259	1,603	53.15	20.88	32.27	5.50	37.77	2.15
Airport Tank 1	0.23	5,269	1,606	53.10	20.90	32.20	5.50	37.70	0.72
Airport Tank 2	1.28	5,971	1,820	49.39	22.27	27.12	5.49	32.61	3.48
Airport Tank 3	3.57	5,115	1,559	53.89	20.59	33.29	5.50	38.79	11.53
Alligator Tank	0.61	5,633	1,717	51.20	21.61	29.59	5.49	35.08	1.80
Amos Lake	1.40	7,103	2,165	43.06	24.49	18.57	5.48	24.05	2.81
Amos Tank	0.47	5,299	1,615	52.94	20.95	31.99	5.50	37.49	1.45
Antelope Tank	3.38	5,883	1,793	49.87	22.10	27.77	5.49	33.26	9.37
AP215 Tank	0.47	8,117	2,474	37.01	26.48	10.53	5.47	16.00	0.62
Apache Pond 1	0.16	5,446	1,660	52.18	21.24	30.94	5.50	36.43	0.48
Apache Pond 2	1.07	5,413	1,650	52.35	21.18	31.17	5.50	36.67	3.28
Apache Spring Tank	0.16	9,049	2,758	31.12	28.30	2.82	5.46	8.28	0.11
Apache Tear Tank	0.09	7,858	2,395	38.59	25.97	12.62	5.47	18.09	0.14
Aspen Line Tank	0.09	8,389	2,557	35.32	27.01	8.31	5.47	13.77	0.11
Badger Lake	3.14	7,247	2,209	42.22	24.77	17.45	5.48	22.92	6.01
Baha Tank	0.63	5,709	1,740	50.80	21.76	29.04	5.49	34.53	1.82
Basin Tank	0.78	5,535	1,687	51.71	21.42	30.30	5.50	35.79	2.32
Battleground Tank 2	0.42	7,300	2,225	41.91	24.88	17.04	5.48	22.51	0.78
Battleground Tank B	0.22	7,326	2,233	41.76	24.93	16.83	5.48	22.31	0.41
Bear Butte Tank	1.13	5,482	1,671	51.99	21.31	30.68	5.50	36.17	3.39
Bear Canyon Tank	1.07	5,617	1,712	51.28	21.58	29.71	5.49	35.20	3.15
Bear Canyon Tank 1	0.11	5,210	1,588	53.40	20.78	32.62	5.50	38.12	0.36
Bear Grass Tank	1.06	5,144	1,568	53.74	20.65	33.08	5.50	38.58	3.41
Bear Tank 1	0.05	6,814	2,077	44.72	23.92	20.79	5.48	26.28	0.11
Bear Tank 2	0.29	5,715	1,742	50.76	21.77	28.99	5.49	34.49	0.84
Bench Mark Tank	0.09	7,274	2,217	42.07	24.83	17.24	5.48	22.72	0.18
Bench Tank	0.32	5,646	1,721	51.13	21.64	29.49	5.49	34.99	0.94
Bert Killian Tank	0.38	7,365	2,245	41.53	25.01	16.52	5.48	22.00	0.70
Bicentennial Tank	0.53	5,722	1,744	50.73	21.78	28.94	5.49	34.44	1.52
Big Canyon Tank 1	0.25	5,469	1,667	52.06	21.29	30.77	5.50	36.27	0.75
Big Canyon Tank 2	0.16	5,351	1,631	52.67	21.06	31.62	5.50	37.11	0.49
Big Meadows Tank 1	5.78	9,131	2,783	30.59	28.47	2.13	5.46	7.59	3.65
Big Meadows Tank 2	0.98	9,147	2,788	30.49	28.50	1.99	5.46	7.45	0.61
Big Pine Tank	1.71	6,201	1,890	48.14	22.72	25.42	5.49	30.91	4.40
Bill Schroeder Tank	0.33	5,420	1,652	52.31	21.19	31.12	5.50	36.62	1.01
Billy June Tank	0.15	6,414	1,955	46.97	23.14	23.83	5.49	29.31	0.37
Black Canyon Tank	0.63	6,335	1,931	47.40	22.99	24.42	5.49	29.91	1.56
Black Grama Tank	0.33	5,312	1,619	52.88	20.98	31.90	5.50	37.39	1.03
Black Mesa Tank 3	0.24	5,246	1,599	53.21	20.85	32.36	5.50	37.86	0.75
Black River Tank 1	0.99	6,106	1,861	48.66	22.54	26.13	5.49	31.62	2.61
Black River Tank 2	1.36	6,083	1,854	48.79	22.49	26.30	5.49	31.79	3.59
Black Tail Tank	0.43	4,154	1,266	58.62	18.71	39.91	5.51	45.42	1.64
Blue Fox Tank	0.45	5,594	1,705	51.40	21.53	29.87	5.49	35.37	1.31
Blue House Tank	0.51	5,505	1,678	51.87	21.36	30.51	5.50	36.01	1.53
Blue Lake	0.89	7,234	2,205	42.30	24.75	17.55	5.48	23.03	1.71
Bluff Cienega Tank	0.89	8,136	2,480	36.88	26.52	10.37	5.47	15.84	1.18
Bob Spit Tank	0.25	5,410	1,649	52.37	21.17	31.19	5.50	36.69	0.77
Bobcat Tank	0.32	5,531	1,686	51.73	21.41	30.32	5.50	35.82	0.96
Bonehead Catchment	0.33	5,007	1,526	54.44	20.38	34.05	5.50	39.56	1.09
Bonehead Tank	0.21	5,358	1,633	52.64	21.07	31.57	5.50	37.07	0.66
Bonito Trail Tank	0.40	8,140	2,481	36.86	26.52	10.34	5.47	15.81	0.53
Bootleg Lake	9.44	6,886	2,099	44.31	24.07	20.24	5.48	25.72	20.24
Borrow Pit Tank 1	0.13	5,755	1,754	50.55	21.85	28.71	5.49	34.20	0.36
Borrow Pit Tank 2	0.31	5,650	1,722	51.11	21.64	29.47	5.49	34.96	0.90
Boundary Butte Tank	0.74	8,753	2,668	33.02	27.73	5.30	5.46	10.76	0.67
Boundary Tank 1	0.12	7,982	2,433	37.83	26.21	11.62	5.47	17.09	0.17
Boundary Tank 2	0.16	5,948	1,813	49.52	22.23	27.29	5.49	32.78	0.44

Confidential -- Subject to Rule 408

EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Bourke Tank	1.51	5,449	1,661	52.16	21.25	30.91	5.50	36.41	4.57
Box Tank	0.33	4,810	1,466	55.42	20.00	35.43	5.50	40.93	1.13
Brown Butte Tank	0.25	8,753	2,668	33.02	27.73	5.30	5.46	10.76	0.22
Brown Cabin Tank 2	0.41	5,705	1,739	50.81	21.75	29.06	5.49	34.56	1.17
Brush Pile Tank	0.09	7,441	2,268	41.08	25.15	15.93	5.48	21.41	0.16
Brushy Canyon Tank 1	0.12	4,823	1,470	55.36	20.02	35.34	5.50	40.84	0.41
Brushy Canyon Tank 2	0.06	4,846	1,477	55.24	20.07	35.18	5.50	40.68	0.21
Brushy Tank 1	0.53	5,289	1,612	52.99	20.93	32.06	5.50	37.56	1.65
Brushy Tank 2	0.52	6,814	2,077	44.72	23.92	20.79	5.48	26.28	1.15
Buck Horn Tank	0.21	6,217	1,895	48.05	22.75	25.30	5.49	30.79	0.54
Buckskin Tank	0.50	5,801	1,768	50.31	21.94	28.37	5.49	33.86	1.41
Bull Creek Tank	0.48	6,460	1,969	46.71	23.23	23.48	5.49	28.97	1.15
Bull Pasture Tank	0.61	5,036	1,535	54.29	20.44	33.85	5.50	39.35	1.99
Bull Pasture Tank 1	0.48	6,161	1,878	48.36	22.64	25.71	5.49	31.20	1.26
Bull Pasure Tank 2	0.58	5,446	1,660	52.18	21.24	30.94	5.50	36.43	1.76
Bull Tank 1	0.37	5,259	1,603	53.15	20.88	32.27	5.50	37.77	1.17
Bull Tank 2	0.23	4,957	1,511	54.68	20.28	34.40	5.50	39.90	0.76
Bull Tank 3	0.18	6,289	1,917	47.66	22.90	24.76	5.49	30.25	0.45
Bull Tank 4	2.43	6,368	1,941	47.22	23.05	24.17	5.49	29.66	6.00
Bunny Tank	0.49	4,793	1,461	55.51	19.96	35.54	5.50	41.05	1.66
Burnt Corral Tank	1.27	6,621	2,018	45.81	23.55	22.27	5.48	27.75	2.94
Butte Tank	0.46	5,036	1,535	54.29	20.44	33.85	5.50	39.35	1.52
Butterball Tank	1.28	5,289	1,612	52.99	20.93	32.06	5.50	37.56	4.01
C3 Tank	0.30	8,799	2,682	32.73	27.82	4.91	5.46	10.38	0.26
Cabin Spring Tank	0.05	7,080	2,158	43.19	24.45	18.75	5.48	24.23	0.10
Caddo Point Tank	0.19	5,433	1,656	52.25	21.22	31.03	5.50	36.53	0.58
Calf Creek Tank	0.89	5,322	1,622	52.83	21.00	31.83	5.50	37.32	2.77
Calf Pasture Tank 1	0.11	5,804	1,769	50.29	21.94	28.35	5.49	33.84	0.31
Calf Pasture Tank 2	0.31	5,636	1,718	51.18	21.62	29.56	5.49	35.06	0.90
Canyon Butte Tank	0.93	5,830	1,777	50.15	22.00	28.16	5.49	33.65	2.62
Canyon Day Tank	2.02	5,118	1,560	53.87	20.60	33.27	5.50	38.77	6.54
Canyon Tank	0.55	5,814	1,772	50.24	21.96	28.28	5.49	33.77	1.54
Carlos Moody Tank	0.74	6,109	1,862	48.65	22.54	26.10	5.49	31.59	1.96
Carrizo Tank	0.54	5,256	1,602	53.16	20.87	32.29	5.50	37.79	1.71
Catfish Tank	6.64	6,204	1,891	48.13	22.73	25.40	5.49	30.89	17.10
Cattail Rush Tank	0.11	6,798	2,072	44.81	23.89	20.92	5.48	26.40	0.25
Cattle Drive Tank	0.10	7,582	2,311	40.24	25.43	14.81	5.48	20.29	0.16
CC Flat Tank	0.09	8,770	2,673	32.92	27.76	5.16	5.46	10.62	0.08
Cedar Canyon Tank	0.53	5,735	1,748	50.66	21.81	28.85	5.49	34.34	1.53
Cedar Drift Fence Tank	0.39	5,371	1,637	52.57	21.09	31.48	5.50	36.97	1.22
Cedar Gap Tank	1.43	5,344	1,629	52.71	21.04	31.66	5.50	37.16	4.44
Cedar Mesa Tank 1	1.32	5,387	1,642	52.49	21.13	31.36	5.50	36.85	4.06
Cedar Mesa Tank 2	0.76	5,466	1,666	52.08	21.28	30.79	5.50	36.29	2.30
Cement Trough Canyon Tank	0.91	5,518	1,682	51.80	21.38	30.42	5.50	35.91	2.73
Cemetery Tank	0.32	5,049	1,539	54.22	20.46	33.76	5.50	39.26	1.04
Cerro Gorrdo Tank	0.46	5,525	1,684	51.77	21.40	30.37	5.50	35.86	1.37
CH Tank	0.67	5,213	1,589	53.38	20.79	32.60	5.50	38.10	2.14
Chalk Tank	0.09	4,649	1,417	56.22	19.68	36.54	5.50	42.05	0.31
Charco Tank 1	1.45	5,981	1,823	49.34	22.29	27.05	5.49	32.54	3.93
Charco Tank 2	0.46	6,161	1,878	48.36	22.64	25.71	5.49	31.20	1.21
Checker Tank	0.48	5,341	1,628	52.72	21.04	31.69	5.50	37.18	1.48
Chediski #20 Tank	0.28	6,296	1,919	47.62	22.91	24.71	5.49	30.20	0.70
Chino Tank 1	7.37	6,161	1,878	48.36	22.64	25.71	5.49	31.20	19.17
Chino Tank 2	0.42	6,850	2,088	44.51	24.00	20.52	5.48	26.00	0.91
Chipmunk Tank	0.39	4,911	1,497	54.92	20.19	34.72	5.50	40.22	1.31
Chuck Box Tank	0.54	7,316	2,230	41.82	24.91	16.91	5.48	22.39	1.02
Church Tank	0.71	5,400	1,646	52.42	21.15	31.26	5.50	36.76	2.16
Cibecue Canyon Tank	0.58	4,911	1,497	54.92	20.19	34.72	5.50	40.22	1.96
Cibecue Peak Tank	0.15	5,906	1,800	49.75	22.14	27.60	5.49	33.09	0.41
Cibecue Rim Tank	0.39	5,279	1,609	53.05	20.91	32.13	5.50	37.63	1.24
Cinder Pit Tank	0.30	8,793	2,680	32.77	27.80	4.97	5.46	10.43	0.26
Cinder Tank	0.30	8,766	2,672	32.94	27.75	5.19	5.46	10.65	0.26
Cliff Dwelling Tank	1.47	4,902	1,494	54.96	20.18	34.79	5.50	40.29	4.94
Cliff Tank	0.60	6,099	1,859	48.70	22.52	26.18	5.49	31.67	1.57
Cliffrose Tank 1	0.36	6,424	1,958	46.91	23.16	23.75	5.49	29.24	0.87

Confidential -- Subject to Rule 408

EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Cliffrose Tank 2	0.65	5,279	1,609	53.05	20.91	32.13	5.50	37.63	2.03
Clover Flat Tank 1	0.97	5,374	1,638	52.55	21.10	31.45	5.50	36.95	2.98
Clover Flat Tank 2	0.74	5,443	1,659	52.19	21.24	30.96	5.50	36.45	2.26
Clover Tank	0.56	5,108	1,557	53.92	20.58	33.34	5.50	38.84	1.82
Cold Spring Pit	0.08	8,287	2,526	35.95	26.81	9.14	5.47	14.61	0.09
Cone Butte Tank	0.32	5,259	1,603	53.15	20.88	32.27	5.50	37.77	0.99
Cooley Lake	12.26	7,087	2,160	43.15	24.46	18.70	5.48	24.18	24.70
Corn Creek Tank	1.82	6,079	1,853	48.81	22.48	26.32	5.49	31.81	4.83
Corner Tank	0.27	5,220	1,591	53.35	20.80	32.55	5.50	38.05	0.84
Corner Willow Creek Trank	3.98	6,158	1,877	48.38	22.64	25.74	5.49	31.23	10.36
Corral Tank	0.38	3,386	1,032	62.17	17.20	44.97	5.52	50.49	1.62
Cottontail Tank	0.40	5,604	1,708	51.35	21.55	29.80	5.49	35.30	1.17
Cottonwood Spring Tank	0.10	6,178	1,883	48.27	22.68	25.59	5.49	31.08	0.26
Cottonwood Tank	1.25	6,001	1,829	49.23	22.33	26.90	5.49	32.39	3.38
County Line Tank	0.47	6,483	1,976	46.58	23.28	23.31	5.49	28.80	1.13
Cover Lake	2.42	7,687	2,343	39.62	25.64	13.98	5.47	19.46	3.92
Cow Butte Tank	0.20	5,387	1,642	52.49	21.13	31.36	5.50	36.85	0.62
Cow Elk Tank	0.10	7,759	2,365	39.18	25.78	13.41	5.47	18.88	0.15
Cowboy Tank	0.37	5,036	1,535	54.29	20.44	33.85	5.50	39.35	1.22
Coyote Butte Tank	0.31	5,400	1,646	52.42	21.15	31.26	5.50	36.76	0.95
Coyote Tank	0.33	6,070	1,850	48.86	22.46	26.40	5.49	31.89	0.87
Cross Trail Tank	0.89	3,816	1,163	60.21	18.05	42.17	5.51	47.68	3.55
Crow Tank	0.54	5,446	1,660	52.18	21.24	30.94	5.50	36.43	1.65
Cup Tank	0.26	5,479	1,670	52.01	21.31	30.70	5.50	36.20	0.77
Cypress Pasture Tank	0.36	3,980	1,213	59.45	18.37	41.08	5.51	46.59	1.41
D-5 Tank	0.72	5,574	1,699	51.51	21.49	30.01	5.50	35.51	2.13
Dead Cow Tank	0.39	5,341	1,628	52.72	21.04	31.69	5.50	37.18	1.20
Deer Creek Tank	0.91	5,732	1,747	50.68	21.80	28.87	5.49	34.37	2.59
Deer Spring Tank	0.36	7,051	2,149	43.36	24.39	18.98	5.48	24.46	0.74
Deer Tank	0.10	6,539	1,993	46.27	23.38	22.89	5.49	28.37	0.23
Diamond Tank	0.77	5,883	1,793	49.87	22.10	27.77	5.49	33.26	2.12
Dicklee Lake	0.10	6,280	1,914	47.71	22.88	24.84	5.49	30.32	0.24
Diversion Tank	0.69	8,281	2,524	35.99	26.80	9.19	5.47	14.66	0.84
Divide Tank	0.20	6,578	2,005	46.05	23.46	22.59	5.49	28.08	0.47
Dixon Tank	3.18	5,489	1,673	51.96	21.33	30.63	5.50	36.12	9.57
Doe Rock Tank	0.20	6,975	2,126	43.80	24.24	19.56	5.48	25.04	0.41
Doe Tank	0.34	4,695	1,431	56.00	19.77	36.23	5.50	41.73	1.17
Donkey Lake	0.29	7,126	2,172	42.93	24.54	18.39	5.48	23.87	0.58
Double Mountain Tank	0.49	5,138	1,566	53.77	20.64	33.13	5.50	38.63	1.57
Double Tank	5.69	5,669	1,728	51.01	21.68	29.33	5.49	34.82	16.51
Dove Tank	0.31	5,902	1,799	49.76	22.14	27.63	5.49	33.12	0.86
Drift Fence Tank	0.24	5,449	1,661	52.16	21.25	30.91	5.50	36.41	0.71
Dry Lake	0.09	6,798	2,072	44.81	23.89	20.92	5.48	26.40	0.21
Dry Lake Tank 01019	0.33	5,758	1,755	50.54	21.85	28.68	5.49	34.18	0.93
Dry Tank	0.23	3,461	1,055	61.83	17.35	44.48	5.52	50.00	0.98
Dry Tank 05036	0.10	5,430	1,655	52.26	21.21	31.05	5.50	36.55	0.31
Dry Tank 08011	0.61	4,793	1,461	55.51	19.96	35.54	5.50	41.05	2.10
Dry Valley Tank	1.43	6,371	1,942	47.20	23.06	24.15	5.49	29.64	3.53
Duck Lake	1.40	7,073	2,156	43.23	24.43	18.80	5.48	24.28	2.82
Duck Tank	4.31	6,129	1,868	48.54	22.58	25.96	5.49	31.45	11.29
Duck Walk Tank	0.43	5,653	1,723	51.09	21.65	29.44	5.49	34.94	1.26
Dynamite Tank	0.72	6,512	1,985	46.42	23.33	23.09	5.49	28.57	1.72
E B Tank	3.06	4,656	1,419	56.19	19.69	36.50	5.50	42.00	10.71
Earl Park Tank	0.85	8,448	2,575	34.95	27.13	7.82	5.47	13.29	0.95
East Bonito Prairie Tank	22.42	5,863	1,787	49.98	22.06	27.92	5.49	33.41	62.42
East Burn Tank	0.16	6,857	2,090	44.47	24.01	20.47	5.48	25.95	0.34
East Medicine Tank	0.78	4,088	1,246	58.94	18.58	40.36	5.51	45.86	2.99
East Tank	0.08	6,808	2,075	44.76	23.91	20.84	5.48	26.33	0.18
Ed Walker Tank	0.40	9,278	2,828	29.63	28.75	0.87	5.46	6.33	0.21
Elk Bed Tank	0.23	7,795	2,376	38.96	25.85	13.12	5.47	18.59	0.35
Elk Pit Tank	0.09	7,851	2,393	38.63	25.96	12.67	5.47	18.14	0.14
Elk Spring Cienega Tank	0.09	8,638	2,633	33.75	27.50	6.25	5.46	11.71	0.09
Ellison Creek Tank	0.83	5,167	1,575	53.62	20.70	32.92	5.50	38.42	2.66
Endfield Tank	0.35	5,020	1,530	54.37	20.41	33.96	5.50	39.46	1.16
Feedbox Cienega Tank	0.11	8,898	2,712	32.10	28.01	4.09	5.46	9.55	0.08

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EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Firebox Tank 1	0.51	6,024	1,836	49.11	22.37	26.73	5.49	32.23	1.38
Firebox Tank 2	0.93	6,188	1,886	48.22	22.70	25.52	5.49	31.01	2.40
First Hollow Tank	0.40	6,591	2,009	45.98	23.49	22.49	5.49	27.98	0.93
Fish Tank	0.26	5,945	1,812	49.53	22.22	27.31	5.49	32.81	0.72
Flying V Canyon Tank 2	0.22	5,371	1,637	52.57	21.09	31.48	5.50	36.97	0.67
Flying V Pasture Tank 1	0.30	5,482	1,671	51.99	21.31	30.68	5.50	36.17	0.90
Flying V Tank 1	0.13	5,049	1,539	54.22	20.46	33.76	5.50	39.26	0.43
Forestdale Canyon Tank	4.98	6,424	1,958	46.91	23.16	23.75	5.49	29.24	12.14
Forestdale Tank	0.55	6,224	1,897	48.02	22.77	25.25	5.49	30.74	1.41
Fox Canyon Tank 1	0.39	5,925	1,806	49.64	22.18	27.46	5.49	32.95	1.08
Fox Canyon Tank 2	0.21	6,017	1,834	49.14	22.36	26.78	5.49	32.27	0.56
Fox Canyon Tank 3	0.58	4,938	1,505	54.78	20.25	34.54	5.50	40.04	1.94
Freds Lake	0.23	7,149	2,179	42.79	24.58	18.21	5.48	23.69	0.45
Frog Pond Tank	0.32	4,875	1,486	55.10	20.12	34.97	5.50	40.47	1.07
Ft. Apache Tank 2	0.20	4,964	1,513	54.65	20.30	34.35	5.50	39.85	0.67
G Wash Tank	1.88	5,161	1,573	53.65	20.68	32.97	5.50	38.47	6.02
G-5 Farm Tank	0.61	6,266	1,910	47.78	22.85	24.93	5.49	30.42	1.54
G-5 Tank	0.53	6,253	1,906	47.86	22.82	25.03	5.49	30.52	1.36
Gentry Tank	0.28	5,935	1,809	49.59	22.20	27.39	5.49	32.88	0.77
Gentry Trail Tank	0.91	5,128	1,563	53.82	20.62	33.20	5.50	38.70	2.93
Georges Butte Tank	0.33	5,614	1,711	51.30	21.57	29.73	5.49	35.22	0.96
Ghost Tank	0.68	5,604	1,708	51.35	21.55	29.80	5.49	35.30	2.01
Gila Tank	0.12	5,138	1,566	53.77	20.64	33.13	5.50	38.63	0.40
Gobbler Tank	0.30	6,470	1,972	46.66	23.25	23.41	5.49	28.89	0.73
Gooseberry Dam	1.89	7,343	2,238	41.66	24.96	16.70	5.48	22.18	3.50
Gopher Tank	0.66	5,046	1,538	54.24	20.46	33.78	5.50	39.28	2.15
Grasshopper Tank 2	0.68	5,840	1,780	50.10	22.01	28.08	5.49	33.58	1.90
Grassy Flat Tank	2.83	5,784	1,763	50.40	21.91	28.49	5.49	33.98	8.02
Grease Buck Tank	0.42	5,223	1,592	53.33	20.81	32.53	5.50	38.03	1.34
Green Spot Tank	0.10	8,018	2,444	37.61	26.29	11.32	5.47	16.80	0.14
Green Tank	0.91	9,114	2,778	30.70	28.43	2.27	5.46	7.73	0.58
Gully Tank	1.27	5,095	1,553	53.99	20.55	33.43	5.50	38.93	4.13
Halfway Tank	12.99	5,682	1,732	50.94	21.71	29.23	5.49	34.72	37.60
Harvey Tank	0.09	5,823	1,775	50.19	21.98	28.20	5.49	33.70	0.26
Haystack Cienega Tank	0.24	7,569	2,307	40.32	25.40	14.92	5.48	20.39	0.40
Haystack Seep Tank	0.11	7,582	2,311	40.24	25.43	14.81	5.48	20.29	0.18
Haystack Tank	0.30	7,612	2,320	40.07	25.49	14.58	5.47	20.06	0.51
Heavy Burn Tank	0.07	6,818	2,078	44.70	23.93	20.77	5.48	26.25	0.16
Heifer Tank 1	0.12	5,423	1,653	52.30	21.20	31.10	5.50	36.60	0.38
Heifer Tank 2	0.91	6,184	1,885	48.23	22.69	25.54	5.49	31.03	2.36
Hells Hole Tank	2.05	6,053	1,845	48.95	22.43	26.52	5.49	32.01	5.46
Hidden Lake	0.30	7,221	2,201	42.37	24.72	17.65	5.48	23.13	0.57
Highway 60 Tank	0.49	5,886	1,794	49.85	22.10	27.75	5.49	33.24	1.36
Highway Drift Fence Tank	0.62	5,738	1,749	50.64	21.82	28.83	5.49	34.32	1.78
Hill Tank	0.50	4,941	1,506	54.77	20.25	34.51	5.50	40.02	1.68
Hobble Tank 1	0.21	5,308	1,618	52.89	20.97	31.92	5.50	37.42	0.64
Hobble Tank 2	0.58	5,167	1,575	53.62	20.70	32.92	5.50	38.42	1.86
Hog Spring Tank	0.54	6,549	1,996	46.22	23.40	22.81	5.49	28.30	1.28
Holding Pen Tank	1.53	4,944	1,507	54.75	20.26	34.49	5.50	39.99	5.09
Hole Canyon Tank	0.34	5,236	1,596	53.26	20.83	32.43	5.50	37.93	1.07
Hoot Owl Tank	2.30	5,869	1,789	49.94	22.07	27.87	5.49	33.36	6.38
Hop Canyon Tank	2.62	6,552	1,997	46.20	23.41	22.79	5.49	28.28	6.18
Horn Tank	1.07	7,349	2,240	41.62	24.97	16.65	5.48	22.13	1.97
Horse Camp Tank	0.46	4,823	1,470	55.36	20.02	35.34	5.50	40.84	1.57
Horse Camp Trail Tank	0.26	4,872	1,485	55.11	20.12	35.00	5.50	40.50	0.87
Horse Canyon Tank	1.50	4,911	1,497	54.92	20.19	34.72	5.50	40.22	5.03
Horse Mesa Tank	0.78	5,151	1,570	53.70	20.66	33.04	5.50	38.54	2.50
Horse Pasture Tank	0.39	5,630	1,716	51.21	21.60	29.61	5.49	35.11	1.15
Horse Ranch Tank	0.81	6,004	1,830	49.22	22.34	26.88	5.49	32.37	2.17
Horse Tank 1	0.67	5,604	1,708	51.35	21.55	29.80	5.49	35.30	1.96
Horse Tank 2	0.49	4,711	1,436	55.91	19.80	36.11	5.50	41.62	1.68
I-19 Tank	0.37	5,371	1,637	52.57	21.09	31.48	5.50	36.97	1.13
Ice Cream Cone Tank	0.70	5,479	1,670	52.01	21.31	30.70	5.50	36.20	2.12
ID Ranch Tank	3.75	6,037	1,840	49.04	22.40	26.64	5.49	32.13	10.04
ID Tank 2	3.11	5,984	1,824	49.32	22.30	27.02	5.49	32.52	8.44

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EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Indian Creek	0.93	5,653	1,723	51.09	21.65	29.44	5.49	34.94	2.69
Indian Flatt Tank	1.16	5,974	1,821	49.38	22.28	27.10	5.49	32.59	3.15
Jackrabbit Tank	0.21	5,246	1,599	53.21	20.85	32.36	5.50	37.86	0.67
Jaguar Tank	0.41	5,285	1,611	53.01	20.93	32.08	5.50	37.58	1.28
Javelina Tank	0.50	4,997	1,523	54.49	20.36	34.12	5.50	39.62	1.66
John Deer Tank	0.15	5,344	1,629	52.71	21.04	31.66	5.50	37.16	0.48
John Hall Cabin Tank	0.79	6,611	2,015	45.87	23.53	22.34	5.48	27.83	1.83
John Hall Tank	0.17	6,496	1,980	46.51	23.30	23.21	5.49	28.70	0.41
John Moore Tank 1	0.30	5,945	1,812	49.53	22.22	27.31	5.49	32.81	0.82
John Moore Tank 2	0.36	5,151	1,570	53.70	20.66	33.04	5.50	38.54	1.15
John Moore Tank 3	0.25	4,875	1,486	55.10	20.12	34.97	5.50	40.47	0.85
Johnnie Tank	0.44	6,286	1,916	47.68	22.89	24.79	5.49	30.27	1.11
Johnson Corral Tank	1.69	6,184	1,885	48.23	22.69	25.54	5.49	31.03	4.36
Jumpoff Tank	0.40	6,900	2,103	44.23	24.09	20.14	5.48	25.62	0.85
Junction Tank 1	0.35	5,039	1,536	54.27	20.45	33.82	5.50	39.32	1.15
Junction Tank 2	0.33	8,589	2,618	34.06	27.40	6.66	5.47	12.12	0.33
Junction Tank 3	0.72	5,673	1,729	50.99	21.69	29.30	5.49	34.80	2.09
Juniper Tank 1	0.48	6,421	1,957	46.93	23.15	23.78	5.49	29.27	1.17
Juniper Tank 2	0.59	5,272	1,607	53.08	20.90	32.18	5.50	37.68	1.84
Kelly Butte Tank	0.21	4,964	1,513	54.65	20.30	34.35	5.50	39.85	0.69
Kelly Draw Tank	1.17	5,732	1,747	50.68	21.80	28.87	5.49	34.37	3.35
Keystone Tank	0.42	5,167	1,575	53.62	20.70	32.92	5.50	38.42	1.36
Kinishba Tank	1.09	5,591	1,704	51.42	21.53	29.90	5.49	35.39	3.20
KL Junction Tank	4.27	6,224	1,897	48.02	22.77	25.25	5.49	30.74	10.95
L Tank	0.95	5,581	1,701	51.47	21.51	29.97	5.49	35.46	2.80
Lake 04047	0.13	7,234	2,205	42.30	24.75	17.55	5.48	23.03	0.26
Largo Tank 1	7.76	7,185	2,190	42.58	24.65	17.93	5.48	23.41	15.14
Largo Tank 2	0.53	7,260	2,213	42.14	24.80	17.34	5.48	22.82	1.02
Lightning Park Tank	0.11	8,022	2,445	37.59	26.29	11.30	5.47	16.77	0.15
Lightning Tank	0.64	5,272	1,607	53.08	20.90	32.18	5.50	37.68	2.02
Limestone Ridge Tank 1	0.25	6,217	1,895	48.05	22.75	25.30	5.49	30.79	0.63
Limestone Ridge Tank2	0.46	6,230	1,899	47.98	22.78	25.20	5.49	30.69	1.17
Limestone Tank	0.35	5,407	1,648	52.38	21.17	31.22	5.50	36.71	1.06
Little Round Top Tank	0.52	6,188	1,886	48.22	22.70	25.52	5.49	31.01	1.34
Little Tank	0.43	4,052	1,235	59.11	18.51	40.60	5.51	46.11	1.66
Live Oak Tank	0.91	5,121	1,561	53.85	20.61	33.25	5.50	38.75	2.95
Log Corral Tank	2.17	5,472	1,668	52.04	21.29	30.75	5.50	36.24	6.55
Log Pond	36.76	7,270	2,216	42.09	24.82	17.27	5.48	22.74	69.68
Log Road Tank	0.32	6,716	2,047	45.28	23.73	21.54	5.48	27.03	0.72
Log Tank	0.28	6,145	1,873	48.45	22.61	25.84	5.49	31.33	0.74
Lone Pine Tank	1.24	5,128	1,563	53.82	20.62	33.20	5.50	38.70	4.01
Lone Pine Tank 1	3.95	7,556	2,303	40.40	25.38	15.02	5.48	20.50	6.75
Lone Pine Tank 2	6.55	7,461	2,274	40.97	25.19	15.77	5.48	21.25	11.60
Lone Pine Tank 3	9.87	6,056	1,846	48.93	22.44	26.49	5.49	31.98	26.32
Lone Pine Tank 4	3.89	7,513	2,290	40.65	25.29	15.36	5.48	20.84	6.76
Lone Tank	0.55	5,030	1,533	54.32	20.43	33.89	5.50	39.39	1.82
Lonely Mountain Tank	0.39	-		75.37	10.57	64.81	5.55	70.36	2.27
Lonely Mountain Tank	1.02	5,153	1,571	53.69	20.67	33.03	5.50	38.53	3.28
Long Meadow Tank	0.23	7,910	2,411	38.27	26.07	12.20	5.47	17.67	0.33
Lost Knife Tank	0.11	5,525	1,684	51.77	21.40	30.37	5.50	35.86	0.33
Lost Lake	1.00	6,473	1,973	46.64	23.26	23.38	5.49	28.87	2.40
Lost Tank	0.21	6,224	1,897	48.02	22.77	25.25	5.49	30.74	0.55
Louse Flat Tank	0.52	5,135	1,565	53.79	20.63	33.15	5.50	38.65	1.67
Louse Lake	1.56	7,080	2,158	43.19	24.45	18.75	5.48	24.23	3.16
Louse Tank 1	0.16	4,882	1,488	55.06	20.14	34.93	5.50	40.43	0.54
Lower Camp Tank	0.45	5,630	1,716	51.21	21.60	29.61	5.49	35.11	1.33
Lower Canyon Tank	0.84	5,554	1,693	51.61	21.46	30.16	5.50	35.65	2.50
Lower CC Flat Tank	0.09	8,737	2,663	33.13	27.69	5.43	5.46	10.90	0.09
Lower Cotton Tank	2.65	6,115	1,864	48.61	22.55	26.06	5.49	31.55	6.96
Lower Firebox Tank	0.34	6,001	1,829	49.23	22.33	26.90	5.49	32.39	0.91
Lower Hole Canyon Tank	2.15	5,098	1,554	53.97	20.56	33.41	5.50	38.91	6.99
Lower Hoot Owl Tank	1.75	5,840	1,780	50.10	22.01	28.08	5.49	33.58	4.89
Lower Horse Mesa Tank 2	0.15	4,862	1,482	55.16	20.10	35.06	5.50	40.57	0.51
Lower Limestone Tank	0.41	5,272	1,607	53.08	20.90	32.18	5.50	37.68	1.28
Lower Martinez Tank	0.10	6,171	1,881	48.31	22.66	25.64	5.49	31.13	0.26

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EXISTING STOCK PONDS

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Lower Mattress Tank	0.09	8,553	2,607	34.29	27.33	6.96	5.47	12.42	0.10
Lower Mud Tank	0.09	5,115	1,559	53.89	20.59	33.29	5.50	38.79	0.30
Lower Pasture Tank	9.93	6,119	1,865	48.59	22.56	26.03	5.49	31.52	26.09
Lower Reservation Flat Tank	0.14	7,871	2,399	38.51	26.00	12.51	5.47	17.99	0.21
Lower Stago Canyon Tank	0.53	5,502	1,677	51.89	21.35	30.53	5.50	36.03	1.60
Lower Stake Tank	0.21	5,358	1,633	52.64	21.07	31.57	5.50	37.07	0.63
Lower Willow Tank	0.48	5,282	1,610	53.03	20.92	32.11	5.50	37.60	1.52
Lowerkeys	0.96	4,892	1,491	55.01	20.16	34.86	5.50	40.36	3.24
Main Canyon Tank	0.79	5,197	1,584	53.47	20.75	32.71	5.50	38.21	2.50
Malapal Tank	1.11	5,955	1,815	49.48	22.24	27.24	5.49	32.73	3.03
Mare Pasture Tank	1.59	6,024	1,836	49.11	22.37	26.73	5.49	32.23	4.27
Mashed House Tank	0.39	9,298	2,834	29.50	28.79	0.71	5.46	6.16	0.20
Mattress Cienega Tank	0.15	8,661	2,640	33.61	27.55	6.06	5.46	11.52	0.14
Maverick Lake	1.03	7,890	2,405	38.39	26.03	12.35	5.47	17.83	1.53
McDonald Tank	0.97	7,579	2,310	40.26	25.42	14.84	5.48	20.32	1.64
McNary Tank	6.75	7,320	2,231	41.80	24.92	16.88	5.48	22.36	12.57
Medicine Butte Tank 1	0.39	4,167	1,270	58.56	18.73	39.83	5.51	45.34	1.49
Medicine Butte Tank 2	0.60	3,930	1,198	59.68	18.27	41.41	5.51	46.92	2.33
Mescal Tank	0.25	-		75.37	10.57	64.81	5.55	70.36	1.47
Mescal Tank	0.42	5,582	1,702	51.46	21.51	29.96	5.49	35.45	1.23
Mesquite Tank	0.32	5,764	1,757	50.50	21.87	28.63	5.49	34.13	0.90
Middle Burn Tank	0.09	8,094	2,467	37.15	26.43	10.71	5.47	16.18	0.13
Middle Cotton Tank	0.23	6,286	1,916	47.68	22.89	24.79	5.49	30.27	0.59
Middle Seven Mile Tank	0.10	5,456	1,663	52.13	21.26	30.86	5.50	36.36	0.30
Milk Ranch Tank	0.80	6,739	2,054	45.15	23.78	21.37	5.48	26.85	1.80
Mine Tank	0.17	4,800	1,463	55.47	19.98	35.50	5.50	41.00	0.57
Mine Tank 2	0.15	5,200	1,585	53.45	20.76	32.69	5.50	38.19	0.49
Minor Flat Tank 1	0.84	6,047	1,843	48.98	22.42	26.57	5.49	32.06	2.25
Miricle Tank	0.22	9,035	2,754	31.21	28.28	2.93	5.46	8.39	0.15
Moore Mountain Tank	1.73	5,371	1,637	52.57	21.09	31.48	5.50	36.97	5.35
Mud Cat Tank	0.92	5,318	1,621	52.84	20.99	31.85	5.50	37.35	2.87
Mud Spring Tank	1.03	5,594	1,705	51.40	21.53	29.87	5.49	35.37	3.04
Mud Tank 1	1.65	5,922	1,805	49.66	22.18	27.48	5.49	32.97	4.55
Mud Tank 2	0.68	6,936	2,114	44.02	24.16	19.86	5.48	25.34	1.44
Mud Tank 3	0.94	6,329	1,929	47.44	22.97	24.47	5.49	29.96	2.34
Mud Tank 4	0.67	5,541	1,689	51.68	21.43	30.25	5.50	35.75	1.99
Mule Tank 5	0.68	5,817	1,773	50.22	21.97	28.25	5.49	33.74	1.92
Mustang Ridge Tank	0.37	5,108	1,557	53.92	20.58	33.34	5.50	38.84	1.20
Mustang Spring Tank	1.10	5,577	1,700	51.49	21.50	29.99	5.50	35.49	3.26
N Tank	1.25	6,460	1,969	46.71	23.23	23.48	5.49	28.97	3.01
Navaho Pit Tank	6.54	6,142	1,872	48.47	22.61	25.86	5.49	31.35	17.10
Navajo Bill Tank	0.94	4,764	1,452	55.65	19.91	35.75	5.50	41.25	3.25
Navajo Spring	0.10	5,115	1,559	53.89	20.59	33.29	5.50	38.79	0.33
Navajo Tank 1	0.19	5,446	1,660	52.18	21.24	30.94	5.50	36.43	0.58
Navajo Tank 2	0.32	5,282	1,610	53.03	20.92	32.11	5.50	37.60	1.01
New Cedar Drift Fence Tank	0.34	5,295	1,614	52.96	20.95	32.01	5.50	37.51	1.07
New Moore Mountian	0.56	5,374	1,638	52.55	21.10	31.45	5.50	36.95	1.73
New Tank 1	0.19	7,155	2,181	42.76	24.59	18.16	5.48	23.64	0.38
No Name Tank	0.60	8,484	2,586	34.72	27.20	7.52	5.47	12.99	0.65
North Bonito Prairie Tank	4.66	6,001	1,829	49.23	22.33	26.90	5.49	32.39	12.57
North Boundary	0.19	6,896	2,102	44.25	24.09	20.16	5.48	25.65	0.41
North Gopher Tank	0.15	4,993	1,522	54.50	20.36	34.15	5.50	39.65	0.49
Nyce Lake	0.65	7,359	2,243	41.57	24.99	16.57	5.48	22.05	1.19
Oak Flat Tank	1.38	5,010	1,527	54.42	20.39	34.03	5.50	39.53	4.56
Oak Spring Tank	1.61	5,856	1,785	50.01	22.05	27.96	5.49	33.46	4.48
Oak Tank	2.76	6,365	1,940	47.24	23.04	24.20	5.49	29.68	6.83
Old Camp Tank	0.70	6,102	1,860	48.68	22.53	26.15	5.49	31.64	1.85
Old Mare Pasture Tank	1.50	5,955	1,815	49.48	22.24	27.24	5.49	32.73	4.10
Old Road Tank	0.09	5,194	1,583	53.48	20.75	32.74	5.50	38.23	0.29
Olson Tank	0.92	4,718	1,438	55.88	19.81	36.07	5.50	41.57	3.20
One Mile Tanks	0.53	5,994	1,827	49.27	22.32	26.95	5.49	32.44	1.43
P S Spring Tank	0.47	7,497	2,285	40.75	25.26	15.49	5.48	20.97	0.82
Palomino Tank	0.53	5,755	1,754	50.55	21.85	28.71	5.49	34.20	1.51
Parker Tank 2	0.22	5,302	1,616	52.93	20.96	31.97	5.50	37.46	0.69
Pasture Tank	0.33	9,104	2,775	30.76	28.41	2.35	5.46	7.81	0.21

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EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Pasture Tank 1	1.25	5,745	1,751	50.61	21.83	28.78	5.49	34.27	3.56
Pasture Tank 3	0.52	5,135	1,565	53.79	20.63	33.15	5.50	38.65	1.69
Pasture Tank 4	0.25	5,079	1,548	54.07	20.52	33.55	5.50	39.05	0.81
Peach Tank	0.59	5,164	1,574	53.63	20.69	32.95	5.50	38.44	1.88
Peach Tree Tank	0.85	5,433	1,656	52.25	21.22	31.03	5.50	36.53	2.58
Peninsula Tank	0.32	5,876	1,791	49.90	22.09	27.82	5.49	33.31	0.90
Penrod Flat Tank	0.09	7,966	2,428	37.93	26.18	11.75	5.47	17.22	0.14
Penrod Tank	0.18	7,749	2,362	39.24	25.76	13.48	5.47	18.96	0.29
Pepper Lake	0.46	7,021	2,140	43.53	24.33	19.20	5.48	24.68	0.95
Petrified Tank	0.79	6,476	1,974	46.62	23.26	23.36	5.49	28.85	1.91
Piggie Tank	0.31	5,197	1,584	53.47	20.75	32.71	5.50	38.21	0.97
Pine Basin Tank	0.31	7,454	2,272	41.00	25.18	15.83	5.48	21.30	0.55
Pine Flat Tank	6.61	5,482	1,671	51.99	21.31	30.68	5.50	36.17	19.94
Pine Tank	0.30	5,974	1,821	49.38	22.28	27.10	5.49	32.59	0.81
Pinetop Mountain Tank	1.20	7,077	2,157	43.21	24.44	18.77	5.48	24.25	2.42
Pinto Tank	0.19	7,031	2,143	43.48	24.35	19.13	5.48	24.61	0.39
Pinyon Tank	0.56	5,151	1,570	53.70	20.66	33.04	5.50	38.54	1.80
Pit Hole Tank	0.96	5,909	1,801	49.73	22.15	27.58	5.49	33.07	2.63
Pit Tank 1	0.20	7,208	2,197	42.45	24.70	17.75	5.48	23.23	0.39
Pit Tank 2	0.27	7,257	2,212	42.16	24.79	17.37	5.48	22.85	0.51
Pit Tank 3	0.55	5,289	1,612	52.99	20.93	32.06	5.50	37.56	1.71
Pit Tank 4	0.57	6,135	1,870	48.50	22.59	25.91	5.49	31.40	1.49
Plow Tank	0.49	5,285	1,611	53.01	20.93	32.08	5.50	37.58	1.55
Pocket Tank	0.59	5,732	1,747	50.68	21.80	28.87	5.49	34.37	1.69
Poker Mountain Tank 1	0.97	6,207	1,892	48.11	22.73	25.37	5.49	30.86	2.50
Poker Mountain Tank 2	0.83	6,293	1,918	47.64	22.90	24.74	5.49	30.23	2.09
Ponderosa Tank	0.71	5,591	1,704	51.42	21.53	29.90	5.49	35.39	2.08
Post Office Tank	0.64	5,965	1,818	49.43	22.26	27.17	5.49	32.66	1.74
Pothole Tank 02086	0.09	6,506	1,983	46.46	23.32	23.14	5.49	28.62	0.22
Powder Tank	0.16	7,001	2,134	43.65	24.29	19.36	5.48	24.84	0.32
Prarie Pit Tank	1.63	5,863	1,787	49.98	22.06	27.92	5.49	33.41	4.54
Priebe Creek Tank	1.17	5,804	1,769	50.29	21.94	28.35	5.49	33.84	3.31
Pronghorn Pit Tank	0.09	8,025	2,446	37.57	26.30	11.27	5.47	16.74	0.13
Pryce Lake	0.29	7,051	2,149	43.36	24.39	18.98	5.48	24.46	0.59
Pumpkin Lake	1.16	7,021	2,140	43.53	24.33	19.20	5.48	24.68	2.39
Pussy Tank	0.92	6,106	1,861	48.66	22.54	26.13	5.49	31.62	2.42
Quail Tank	0.15	4,601	1,403	56.46	19.59	36.87	5.50	42.37	0.52
Quail Tank	0.57	-		75.37	10.57	64.81	5.55	70.36	3.35
Railroad Track Spring Tank	0.12	7,907	2,410	38.29	26.07	12.22	5.47	17.70	0.17
Rattle Snake Tank	0.11	7,014	2,138	43.57	24.32	19.25	5.48	24.74	0.23
Red 77 Tank	0.09	8,622	2,628	33.85	27.47	6.39	5.46	11.85	0.09
Red Canyon Tank 1	0.60	5,377	1,639	52.54	21.11	31.43	5.50	36.93	1.84
Red Canyon Tank 2	0.38	5,138	1,566	53.77	20.64	33.13	5.50	38.63	1.22
Red Hill Tank	0.37	5,112	1,558	53.90	20.59	33.32	5.50	38.82	1.21
Red Knoll Tank	0.90	5,157	1,572	53.67	20.68	32.99	5.50	38.49	2.89
Red Ledge Mesa Tank	0.47	5,525	1,684	51.77	21.40	30.37	5.50	35.86	1.39
Red Tank 1	0.71	5,079	1,548	54.07	20.52	33.55	5.50	39.05	2.31
Red Tank 2	0.79	5,049	1,539	54.22	20.46	33.76	5.50	39.26	2.58
Red Tank 3	0.24	5,318	1,621	52.84	20.99	31.85	5.50	37.35	0.75
Ridge Tank 1	0.81	5,144	1,568	53.74	20.65	33.08	5.50	38.58	2.60
Ridge Tank 3	0.56	4,980	1,518	54.57	20.33	34.24	5.50	39.74	1.86
Rim Pit Tank	0.39	4,885	1,489	55.05	20.14	34.90	5.50	40.41	1.32
Rim Tank	0.73	5,312	1,619	52.88	20.98	31.90	5.50	37.39	2.27
Rip Rap Tank	0.41	6,283	1,915	47.69	22.88	24.81	5.49	30.30	1.03
Road Tank	0.37	5,420	1,652	52.31	21.19	31.12	5.50	36.62	1.13
Rock Canyon Tank	0.33	4,232	1,290	58.25	18.86	39.38	5.51	44.89	1.22
Rock House Butte Tank	0.39	5,305	1,617	52.91	20.97	31.94	5.50	37.44	1.20
Rock House Tank	0.39	5,030	1,533	54.32	20.43	33.89	5.50	39.39	1.30
Rocky Basin Tank 1	3.57	5,784	1,763	50.40	21.91	28.49	5.49	33.98	10.11
Rocky Basin Tank 2	2.04	5,679	1,731	50.95	21.70	29.25	5.49	34.75	5.89
Rocky Tank	0.48	5,679	1,731	50.95	21.70	29.25	5.49	34.75	1.40
Rons Tank	0.22	7,441	2,268	41.08	25.15	15.93	5.48	21.41	0.39
Root Plow Tank	1.36	6,165	1,879	48.34	22.65	25.69	5.49	31.18	3.53
Ruins Tank	0.49	5,472	1,668	52.04	21.29	30.75	5.50	36.24	1.49
Ruins Tank 1	1.07	5,351	1,631	52.67	21.06	31.62	5.50	37.11	3.31

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EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Ruins Tank 2	0.90	5,394	1,644	52.45	21.14	31.31	5.50	36.81	2.76
Saddle Tank	0.33	5,512	1,680	51.84	21.37	30.46	5.50	35.96	0.98
Salt Creek Tank	0.12	5,663	1,726	51.04	21.67	29.37	5.49	34.87	0.35
Salt House Tank	3.56	7,621	2,323	40.01	25.51	14.50	5.47	19.98	5.93
Salt River Rim Tank	0.10	4,793	1,461	55.51	19.96	35.54	5.50	41.05	0.35
Salt Tank	0.09	6,683	2,037	45.46	23.67	21.79	5.48	27.28	0.20
Salt Trap Tank	1.03	5,705	1,739	50.81	21.75	29.06	5.49	34.56	2.97
Sam Canyon Tank	0.68	5,801	1,768	50.31	21.94	28.37	5.49	33.86	1.92
Sam Green Tank	0.77	5,344	1,629	52.71	21.04	31.66	5.50	37.16	2.38
San Juan Flat	0.85	8,760	2,670	32.98	27.74	5.24	5.46	10.70	0.76
San Juan Lake	0.63	8,730	2,661	33.17	27.68	5.49	5.46	10.95	0.58
San Juan Tank	0.92	8,701	2,652	33.36	27.62	5.73	5.46	11.20	0.86
Sand Tank 1	0.34	6,506	1,983	46.46	23.32	23.14	5.49	28.62	0.82
Sand Tank 2	1.36	8,491	2,588	34.68	27.21	7.47	5.47	12.94	1.47
Sand Tank 3	0.72	8,599	2,621	34.00	27.42	6.58	5.47	12.04	0.72
Sandstone Tank	0.11	6,709	2,045	45.31	23.72	21.59	5.48	27.08	0.25
Sawtooth Tank 1	0.57	5,351	1,631	52.67	21.06	31.62	5.50	37.11	1.75
Sawtooth Tank 2	0.52	5,476	1,669	52.02	21.30	30.72	5.50	36.22	1.56
Second Hollow Tank	0.30	6,801	2,073	44.79	23.90	20.89	5.48	26.38	0.65
Seven Mile Tank 1	4.70	5,289	1,612	52.99	20.93	32.06	5.50	37.56	14.73
Seven Mile Tank 2	1.09	6,217	1,895	48.05	22.75	25.30	5.49	30.79	2.80
Seven Mile Trap Tank	0.46	5,502	1,677	51.89	21.35	30.53	5.50	36.03	1.40
Seven Up Tank	1.31	6,033	1,839	49.06	22.39	26.66	5.49	32.15	3.50
Shale Tank	0.31	5,997	1,828	49.25	22.32	26.93	5.49	32.42	0.83
Sheep Spring Tank	1.07	9,167	2,794	30.36	28.54	1.82	5.46	7.28	0.65
Sheep Tank	0.15	5,810	1,771	50.26	21.96	28.30	5.49	33.79	0.42
Shipyard Tank	0.29	9,081	2,768	30.91	28.37	2.54	5.46	8.00	0.20
Side Oat Tank	0.72	4,951	1,509	54.72	20.27	34.45	5.50	39.95	2.41
Silted Tank	1.10	5,965	1,818	49.43	22.26	27.17	5.49	32.66	3.00
Skeleton Tank	0.26	5,276	1,608	53.06	20.91	32.15	5.50	37.65	0.80
Skiddy Tank	0.35	6,532	1,991	46.31	23.37	22.94	5.49	28.42	0.83
Skunk Tank	0.07	6,640	2,024	45.70	23.58	22.12	5.48	27.60	0.16
Smoke Shop Tank	0.10	7,201	2,195	42.49	24.68	17.80	5.48	23.28	0.19
Snow Tank	2.53	6,988	2,130	43.72	24.27	19.46	5.48	24.94	5.27
Soldier Butte Tank	0.46	8,973	2,735	31.61	28.16	3.46	5.46	8.92	0.34
Sombrero Butte Tank	0.24	4,826	1,471	55.34	20.03	35.32	5.50	40.82	0.80
Sombrero Tank 2	0.13	5,075	1,547	54.09	20.52	33.57	5.50	39.07	0.43
South Bear Tank	0.48	5,207	1,587	53.42	20.77	32.64	5.50	38.14	1.52
South Tank	0.11	6,870	2,094	44.40	24.03	20.37	5.48	25.85	0.23
Spoon Tank	0.50	4,636	1,413	56.29	19.65	36.63	5.50	42.14	1.74
Spotted Mountain Tank	0.44	5,840	1,780	50.10	22.01	28.08	5.49	33.58	1.24
Spring Tank	0.29	5,823	1,775	50.19	21.98	28.20	5.49	33.70	0.81
Square Tank	0.67	5,666	1,727	51.02	21.67	29.35	5.49	34.84	1.94
Squirrel Tank	2.10	5,810	1,771	50.26	21.96	28.30	5.49	33.79	5.91
Stake Tank	0.70	5,387	1,642	52.49	21.13	31.36	5.50	36.85	2.16
Standing Rock Tank	0.55	5,285	1,611	53.01	20.93	32.08	5.50	37.58	1.71
Stanley Trap Tank	0.24	5,518	1,682	51.80	21.38	30.42	5.50	35.91	0.73
Steer Tank	0.24	8,868	2,703	32.29	27.95	4.34	5.46	9.80	0.20
Stinking Spring Tank	1.03	5,295	1,614	52.96	20.95	32.01	5.50	37.51	3.22
Stock Tank	0.24	5,236	1,596	53.26	20.83	32.43	5.50	37.93	0.76
Sugarloaf Tank	2.23	5,089	1,551	54.02	20.54	33.48	5.50	38.98	7.24
Sunset Pass Tank	0.50	6,362	1,939	47.26	23.04	24.22	5.49	29.71	1.23
Sweater Creek Tank	0.12	6,726	2,050	45.22	23.75	21.47	5.48	26.95	0.27
Sweater Tank	3.34	6,007	1,831	49.20	22.34	26.86	5.49	32.35	9.01
Tank 01012	0.82	5,771	1,759	50.47	21.88	28.59	5.49	34.08	2.32
Tank 01056	0.93	6,037	1,840	49.04	22.40	26.64	5.49	32.13	2.49
Tank 01059	0.40	5,043	1,537	54.25	20.45	33.80	5.50	39.30	1.32
Tank 02004	0.27	5,463	1,665	52.09	21.27	30.82	5.50	36.31	0.81
Tank 02019	0.28	6,480	1,975	46.60	23.27	23.33	5.49	28.82	0.66
Tank 02020	0.19	6,503	1,982	46.48	23.31	23.16	5.49	28.65	0.46
Tank 02078	0.19	7,730	2,356	39.36	25.72	13.64	5.47	19.11	0.30
Tank 02107	0.16	7,306	2,227	41.87	24.89	16.98	5.48	22.46	0.31
Tank 02110	0.09	7,657	2,334	39.79	25.58	14.22	5.47	19.69	0.15
Tank 02115	0.29	5,650	1,722	51.11	21.64	29.47	5.49	34.96	0.84
Tank 02935	2.36	5,397	1,645	52.43	21.15	31.29	5.50	36.78	7.23

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EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Tank 03077	0.08	6,713	2,046	45.29	23.73	21.57	5.48	27.05	0.19
Tank 03080	0.25	5,075	1,547	54.09	20.52	33.57	5.50	39.07	0.82
Tank 03090	0.29	5,354	1,632	52.66	21.06	31.59	5.50	37.09	0.90
Tank 03106	0.09	8,301	2,530	35.87	26.84	9.03	5.47	14.50	0.11
Tank 03118	0.14	8,330	2,539	35.69	26.90	8.79	5.47	14.26	0.16
Tank 04006	1.22	4,967	1,514	54.63	20.30	34.33	5.50	39.83	4.04
Tank 04017	1.18	5,525	1,684	51.77	21.40	30.37	5.50	35.86	3.53
Tank 04062	0.33	5,394	1,644	52.45	21.14	31.31	5.50	36.81	1.00
Tank 04063	0.45	5,328	1,624	52.79	21.01	31.78	5.50	37.28	1.39
Tank 04064	0.98	5,299	1,615	52.94	20.95	31.99	5.50	37.49	3.07
Tank 04065	0.39	5,568	1,697	51.54	21.48	30.06	5.50	35.56	1.14
Tank 04068	0.20	5,023	1,531	54.35	20.41	33.94	5.50	39.44	0.67
Tank 04072	0.10	5,338	1,627	52.74	21.03	31.71	5.50	37.21	0.30
Tank 04073	0.19	5,180	1,579	53.55	20.72	32.83	5.50	38.33	0.62
Tank 04075	0.15	7,100	2,164	43.08	24.48	18.59	5.48	24.07	0.29
Tank 05011	0.40	3,937	1,200	59.65	18.28	41.36	5.51	46.87	1.56
Tank 05012	0.79	4,495	1,370	56.98	19.38	37.60	5.51	43.11	2.83
Tank 05045	0.66	6,017	1,834	49.14	22.36	26.78	5.49	32.27	1.78
Tank 05047	0.20	5,735	1,748	50.66	21.81	28.85	5.49	34.34	0.56
Tank 05062	0.65	5,801	1,768	50.31	21.94	28.37	5.49	33.86	1.83
Tank 05063	0.10	5,627	1,715	51.23	21.60	29.63	5.49	35.13	0.30
Tank 06037	0.60	8,133	2,479	36.91	26.51	10.39	5.47	15.86	0.80
Tank 06041	0.41	7,398	2,255	41.33	25.07	16.26	5.48	21.74	0.74
Tank 06045	0.34	7,805	2,379	38.91	25.87	13.04	5.47	18.51	0.53
Tank 06048	0.39	8,117	2,474	37.01	26.48	10.53	5.47	16.00	0.52
Tank 06052	0.10	7,365	2,245	41.53	25.01	16.52	5.48	22.00	0.18
Tank 07001	0.45	5,866	1,788	49.96	22.07	27.89	5.49	33.38	1.26
Tank 07002	0.72	6,903	2,104	44.21	24.10	20.11	5.48	25.60	1.53
Tank 07015	0.38	7,713	2,351	39.46	25.69	13.77	5.47	19.25	0.61
Tank 07034	0.42	8,074	2,461	37.27	26.39	10.87	5.47	16.34	0.57
Tank 07038	0.14	6,742	2,055	45.13	23.78	21.34	5.48	26.83	0.31
Tank 07057	0.32	7,152	2,180	42.77	24.59	18.19	5.48	23.67	0.63
Tank 08006	0.28	4,797	1,462	55.49	19.97	35.52	5.50	41.02	0.96
Tank 08007	0.15	4,770	1,454	55.62	19.92	35.70	5.50	41.21	0.52
Tank 08009	0.51	5,207	1,587	53.42	20.77	32.64	5.50	38.14	1.64
Tank 08021	0.72	5,787	1,764	50.38	21.91	28.47	5.49	33.96	2.03
Tank 08025	0.33	5,650	1,722	51.11	21.64	29.47	5.49	34.96	0.96
Tank 08033	0.09	4,977	1,517	54.59	20.32	34.26	5.50	39.76	0.30
Tank 08034	0.07	4,938	1,505	54.78	20.25	34.54	5.50	40.04	0.24
Tank 08042	0.14	6,119	1,865	48.59	22.56	26.03	5.49	31.52	0.38
Tank 08046	0.21	7,372	2,247	41.49	25.02	16.47	5.48	21.95	0.38
Tank 08047	0.42	7,339	2,237	41.68	24.95	16.73	5.48	22.21	0.78
Tank 08048	0.84	7,018	2,139	43.55	24.32	19.23	5.48	24.71	1.73
Tank 08049	0.33	7,297	2,224	41.93	24.87	17.06	5.48	22.54	0.62
Tank 08050	0.23	4,659	1,420	56.17	19.70	36.47	5.50	41.98	0.80
Tank 08051	0.32	7,323	2,232	41.78	24.92	16.86	5.48	22.33	0.59
Tank 08052	0.89	6,270	1,911	47.77	22.86	24.91	5.49	30.40	2.26
Tank 09003	0.52	8,638	2,633	33.75	27.50	6.25	5.46	11.71	0.50
Tank 09011	0.20	9,121	2,780	30.66	28.45	2.21	5.46	7.67	0.13
Tank 09012	0.49	9,108	2,776	30.74	28.42	2.32	5.46	7.78	0.32
Tank 09013	0.16	9,147	2,788	30.49	28.50	1.99	5.46	7.45	0.10
Tank 09017	0.32	9,124	2,781	30.63	28.45	2.18	5.46	7.64	0.20
Tank 09018	0.91	9,121	2,780	30.66	28.45	2.21	5.46	7.67	0.58
Tank 09019	0.13	9,140	2,786	30.53	28.48	2.04	5.46	7.50	0.08
Tank 09020	0.11	9,121	2,780	30.66	28.45	2.21	5.46	7.67	0.07
Tank 09024	0.09	8,550	2,606	34.31	27.33	6.98	5.47	12.45	0.10
Tank 09025	0.13	8,701	2,652	33.36	27.62	5.73	5.46	11.20	0.12
Tank 09026	0.22	9,081	2,768	30.91	28.37	2.54	5.46	8.00	0.15
Tank 09031	0.59	9,354	2,851	29.13	28.90	0.23	5.46	5.69	0.28
Tank 09032	0.18	9,383	2,860	28.94	28.96	(0.02)	5.46	5.43	0.08
Tank 10005	2.56	6,473	1,973	46.64	23.26	23.38	5.49	28.87	6.15
Tank 10006	0.53	7,290	2,222	41.97	24.86	17.11	5.48	22.59	1.00
Tank 10008	0.65	5,876	1,791	49.90	22.09	27.82	5.49	33.31	1.81
Tank 10017	0.51	6,729	2,051	45.20	23.76	21.44	5.48	26.93	1.15
Tank 10022	0.38	7,799	2,377	38.95	25.85	13.09	5.47	18.56	0.58

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EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
Tank 10024	0.16	6,883	2,098	44.32	24.06	20.26	5.48	25.75	0.35
Tank 10044	1.60	6,066	1,849	48.88	22.46	26.42	5.49	31.91	4.25
Tank 10045	0.92	6,601	2,012	45.92	23.51	22.42	5.48	27.90	2.13
Tank 10047	0.18	7,618	2,322	40.03	25.50	14.53	5.47	20.00	0.29
Tank 10050	0.26	7,802	2,378	38.93	25.86	13.06	5.47	18.54	0.41
Tank 10911	0.99	5,213	1,589	53.38	20.79	32.60	5.50	38.10	3.14
Tank 11001	6.96	8,944	2,726	31.80	28.10	3.70	5.46	9.17	5.31
Tank 13003	0.36	7,297	2,224	41.93	24.87	17.06	5.48	22.54	0.67
Tank 13004	49.95	7,264	2,214	42.12	24.81	17.32	5.48	22.80	94.89
Tank 13007	1.58	5,092	1,552	54.00	20.55	33.45	5.50	38.95	5.15
Tank 13008	0.42	5,131	1,564	53.80	20.63	33.18	5.50	38.68	1.35
Tin House Tank	1.33	5,358	1,633	52.64	21.07	31.57	5.50	37.07	4.10
Tin Shack 1	2.22	5,646	1,721	51.13	21.64	29.49	5.49	34.99	6.48
Tin Shack Tank	2.88	6,083	1,854	48.79	22.49	26.30	5.49	31.79	7.63
Tonto Rim Tank	1.72	6,112	1,863	48.63	22.55	26.08	5.49	31.57	4.52
Tonto Trap Tank	0.21	6,785	2,068	44.89	23.87	21.02	5.48	26.50	0.46
Trail Tank	0.23	6,795	2,071	44.83	23.89	20.94	5.48	26.43	0.51
Trail Tank 1	0.12	5,246	1,599	53.21	20.85	32.36	5.50	37.86	0.39
Trail Tank 2	0.58	5,472	1,668	52.04	21.29	30.75	5.50	36.24	1.76
Trap Tank 01004	3.39	5,968	1,819	49.41	22.27	27.15	5.49	32.64	9.23
Trap Tank 01005	0.67	5,978	1,822	49.36	22.28	27.07	5.49	32.56	1.83
Trap Tank 01006	0.27	6,027	1,837	49.09	22.38	26.71	5.49	32.20	0.74
Tree Nest Tank	0.12	7,756	2,364	39.20	25.77	13.43	5.47	18.91	0.18
Tree Plot Tank	0.05	7,051	2,149	43.36	24.39	18.98	5.48	24.46	0.10
Trout Pool Tank	1.36	8,678	2,645	33.50	27.58	5.92	5.46	11.39	1.29
Turkey Ridge Tank	1.85	5,774	1,760	50.45	21.89	28.56	5.49	34.06	5.26
Turkey Roost Tank	0.33	5,479	1,670	52.01	21.31	30.70	5.50	36.20	0.99
Turkey Spring Tank	0.31	6,772	2,064	44.96	23.84	21.12	5.48	26.60	0.68
Turkey Track Flat Tank	1.47	5,702	1,738	50.83	21.74	29.09	5.49	34.58	4.23
Twin Lakes	0.63	7,310	2,228	41.85	24.90	16.96	5.48	22.44	1.18
Two Bit Tank	0.29	5,230	1,594	53.30	20.82	32.48	5.50	37.98	0.93
Two Mile Spring Tank	0.31	7,487	2,282	40.81	25.24	15.57	5.48	21.04	0.54
U Tank	0.30	5,686	1,733	50.92	21.71	29.21	5.49	34.70	0.85
Upper Bear Butte Tank	0.37	5,636	1,718	51.18	21.62	29.56	5.49	35.06	1.09
Upper Calf Creek Tank	0.18	5,640	1,719	51.16	21.62	29.54	5.49	35.03	0.54
Upper Corn Creek Tank	20.60	6,283	1,915	47.69	22.88	24.81	5.49	30.30	52.02
Upper Cottonwood Tank 1	0.10	6,368	1,941	47.22	23.05	24.17	5.49	29.66	0.24
Upper Cottonwood Tank 2	0.31	6,476	1,974	46.62	23.26	23.36	5.49	28.85	0.75
Upper Hole Tank	0.54	5,988	1,825	49.30	22.30	27.00	5.49	32.49	1.47
Upper Lake Tank	0.10	6,893	2,101	44.27	24.08	20.19	5.48	25.67	0.22
Upper Martinez Tank	0.62	6,220	1,896	48.04	22.76	25.28	5.49	30.76	1.60
Upper Mud Tank	0.94	5,938	1,810	49.57	22.21	27.36	5.49	32.85	2.57
Upper Neagle Tank	0.11	8,274	2,522	36.03	26.79	9.25	5.47	14.71	0.13
Upper Sam Canyon Tank	0.78	5,873	1,790	49.92	22.08	27.84	5.49	33.34	2.16
Upper Seven Mile Tank	1.33	5,571	1,698	51.53	21.49	30.04	5.50	35.53	3.93
Upper Sweater Tank	0.53	6,175	1,882	48.29	22.67	25.62	5.49	31.11	1.39
Upper Willow Tank	0.99	5,394	1,644	52.45	21.14	31.31	5.50	36.81	3.05
V-2 Tank	1.12	5,948	1,813	49.52	22.23	27.29	5.49	32.78	3.05
Valley View Tank	0.32	5,479	1,670	52.01	21.31	30.70	5.50	36.20	0.97
Velasques Butte 2	1.47	5,741	1,750	50.62	21.82	28.80	5.49	34.30	4.20
Velasquez Tank 1	2.34	5,968	1,819	49.41	22.27	27.15	5.49	32.64	6.38
Velasquez Tank 2	0.31	6,266	1,910	47.78	22.85	24.93	5.49	30.42	0.79
Vernon Road Tank	0.09	7,382	2,250	41.43	25.04	16.39	5.48	21.87	0.17
Wagon Road Tank	0.17	4,692	1,430	56.01	19.76	36.25	5.50	41.75	0.61
Wagon Wheel Lake	1.58	7,093	2,162	43.12	24.47	18.65	5.48	24.13	3.18
Walker Tank	0.22	5,545	1,690	51.66	21.44	30.23	5.50	35.72	0.66
Walnut Tank	0.41	6,558	1,999	46.16	23.42	22.74	5.49	28.23	0.97
Wart Tank	1.63	5,919	1,804	49.68	22.17	27.51	5.49	33.00	4.47
Water Repair Fill Tank	0.19	8,780	2,676	32.85	27.78	5.08	5.46	10.54	0.17
Water Tank	0.21	7,280	2,219	42.03	24.84	17.19	5.48	22.67	0.39
Weaning Pen Tank	21.46	5,761	1,756	50.52	21.86	28.66	5.49	34.15	61.09
Well Canyon Tank 1	0.14	5,696	1,736	50.87	21.73	29.14	5.49	34.63	0.39
Well Canyon Tank 2	0.49	5,745	1,751	50.61	21.83	28.78	5.49	34.27	1.40
Well Canyon Tank 3	0.45	5,673	1,729	50.99	21.69	29.30	5.49	34.80	1.29
Well Canyon Tank 4	0.18	5,066	1,544	54.14	20.50	33.64	5.50	39.14	0.60

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EXHIBIT 11.3.1.1 A
EXISTING STOCK PONDS

Name	Acres	Elevation ft	Elevation m	Gross Lake Evaporation (in)	Annual Precipitation (in)	Net Lake Evaporation (in)	Pre-Lake Runoff (in)	Annual Depletion (in)	Annual Depletion (af/yr)
West Blue Lake	0.68	7,382	2,250	41.43	25.04	16.39	5.48	21.87	1.23
West Burn Tank	0.16	6,827	2,081	44.64	23.95	20.69	5.48	26.18	0.36
West Forestdale Tank	0.63	6,329	1,929	47.44	22.97	24.47	5.49	29.96	1.58
West Indian Pine Tank	0.98	7,162	2,183	42.72	24.61	18.11	5.48	23.59	1.92
West Seven Mile Tank	0.81	5,636	1,718	51.18	21.62	29.56	5.49	35.06	2.38
West Tank	0.60	6,138	1,871	48.49	22.60	25.89	5.49	31.37	1.56
West Tin House Tank	0.59	5,538	1,688	51.70	21.42	30.27	5.50	35.77	1.77
Whirley Basin Tank 1	0.91	6,650	2,027	45.65	23.60	22.04	5.48	27.53	2.09
Whirley Basin Tank 2	0.81	6,362	1,939	47.26	23.04	24.22	5.49	29.71	2.00
White Cliff Tank	0.21	5,518	1,682	51.80	21.38	30.42	5.50	35.91	0.64
White Spot Tank	0.46	5,768	1,758	50.48	21.87	28.61	5.49	34.10	1.30
Whitetail Lake	0.17	6,690	2,039	45.42	23.68	21.74	5.48	27.23	0.38
Whitetail Tank 1	0.71	6,033	1,839	49.06	22.39	26.66	5.49	32.15	1.91
Whitetail Tank 2	1.09	3,953	1,205	59.57	18.32	41.25	5.51	46.76	4.24
Wild Horse Tank 1	1.04	7,323	2,232	41.78	24.92	16.86	5.48	22.33	1.93
Wild Horse Tank 2	0.26	7,316	2,230	41.82	24.91	16.91	5.48	22.39	0.49
Wild Horse Tank 3	0.89	5,285	1,611	53.01	20.93	32.08	5.50	37.58	2.78
Wild Steer Tank	2.94	5,407	1,648	52.38	21.17	31.22	5.50	36.71	9.00
Willis Tank	0.50	6,591	2,009	45.98	23.49	22.49	5.49	27.98	1.17
Willow Tank	3.51	6,047	1,843	48.98	22.42	26.57	5.49	32.06	9.38
Willow Trap Tank	0.68	6,388	1,947	47.11	23.09	24.03	5.49	29.51	1.67
Windy Pass Tank	0.36	5,568	1,697	51.54	21.48	30.06	5.50	35.56	1.07
Woolsey Lake	38.53	7,100	2,164	43.08	24.48	18.59	5.48	24.07	77.29
Y-31 Tank	0.56	6,099	1,859	48.70	22.52	26.18	5.49	31.67	1.48
Yellowstone Tank	0.63	6,309	1,923	47.55	22.93	24.61	5.49	30.10	1.58
Total	760.19								1,885.62
Average		6,154	1,884	48.14	22.63	25.51	5.49	31.00	

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EXHIBIT 11.3.1.1.B
EXISTING RECREATION LAKES

ANNUAL LAKE EVAPORATION COMPUTATIONS
FORT APACHE INDIAN RESERVATION
(FEBRUARY 1, 2008)

Existing Lake	Maximum Surface Acres	Elev. (ft)	Annual Gross Lake Evaporation, in. Original	Revised	Change	Annual Prec. (in.)	Net Lake Evap. (in.)	Pre-Lake Runoff (in.)	Lake Depletion (in.)	(af/yr)
Drift Fence	17.58	8,970	35.33	31.63	-3.70	28.15	3.48	5.46	8.94	13.10
Georges Basin	71.28	5,556	49.52	51.60	2.08	21.46	30.15	5.50	35.64	211.70
Hurricane	19.56	8,942	35.36	31.81	-3.55	28.10	3.72	5.46	9.18	14.96
Nash Creek	59.40	5,792	48.13	50.35	2.23	21.92	28.43	5.49	33.93	167.94
Pacheta	62.20	8,073	36.32	37.27	0.96	26.39	10.88	5.47	16.35	84.77
Reservation	303.76	9,037	35.30	31.20	-4.10	28.28	2.92	5.46	8.38	212.08
Tonto	85.02	7,698	37.34	39.55	2.21	25.66	13.89	5.47	19.37	137.22
Subtotal	618.80									841.77
Black River										
A-1	24.29	8,845	35.47	32.44	-3.04	27.91	4.53	5.46	9.99	20.21
Bog Tank	15.15	8,182	36.20	36.60	0.40	26.61	10.00	5.47	15.47	19.52
Christmas Tree	49.26	8,220	36.16	36.37	0.21	26.68	9.69	5.47	15.16	62.22
Cyclone	37.47	8,147	36.24	36.82	0.58	26.54	10.28	5.47	15.75	49.19
Earl Park	51.63	8,247	36.13	36.20	0.07	26.73	9.47	5.47	14.94	64.26
Hawley Lake	268.06	8,175	36.21	36.65	0.44	26.59	10.06	5.47	15.52	346.79
Horseshoe Cienega	118.17	8,167	36.22	36.70	0.48	26.58	10.12	5.47	15.59	153.53
Shush-Be-Tou	16.71	7,808	37.00	38.89	1.89	25.87	13.02	5.47	18.49	25.74
Shush-Be-Zahze	18.83	7,898	36.72	38.34	1.63	26.05	12.29	5.47	17.77	27.88
Sunrise	809.12	9,134	35.30	30.57	-4.73	28.47	2.10	5.46	7.56	509.58
Subtotal	1,408.69									1,278.94
White River										
Total	2,027.5	--	--	--	--	--	--	--		2,120.7
Average	119.26	8,052	37.58	37.24	-0.35	26.35	10.88	5.47		124.75

EXHIBIT 11.3.1.1 C

EXISTING OTHER IMPOUNDMENTS
DIVERSION AND DEPLETION CALCULATIONS
FORT APACHE INDIAN RESERVATION

		Acres		Elevation		Gross Lake Evaporation	Annual Precipitation	Net Lake Evaporation	Pre-Lake Runoff	Annual Depletion	
Name	Cell	Inactive	Active	ft	m	(in)	(in)	(in)	(in)	(in)	(af/yr)
Canyon Day (Greater Whiteriver)											
	689		18.88	4,960	1,512	54.67	20.29	34.38	5.50	39.88	62.75
	690		16.69	4,960	1,512	54.67	20.29	34.38	5.50	39.88	55.46
	691		5.44	4,960	1,512	54.67	20.29	34.38	5.50	39.88	18.09
	692		5.62	4,960	1,512	54.67	20.29	34.38	5.50	39.88	18.69
	693		5.60	4,960	1,512	54.67	20.29	34.38	5.50	39.88	18.63
	694		4.91	4,960	1,512	54.67	20.29	34.38	5.50	39.88	16.31
	695		5.33	4,960	1,512	54.67	20.29	34.38	5.50	39.88	17.70
	696		5.63	4,960	1,512	54.67	20.29	34.38	5.50	39.88	18.71
	Subtotal	0.00	68.10			437.37	162.32	275.05	44.01	319.06	226.33
Cedar Creek	701		4.06	4,888	1,490	55.03	20.15	34.88	5.50	40.38	13.65
Cibecue											
	702	4.76		4,840	1,475	55.27	20.05	35.22	5.50	40.72	-
	703	2.65		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	704	2.60		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	705	2.68		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	706	3.01		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	707		2.63	4,980	1,518	54.57	20.33	34.24	5.50	39.74	8.70
	708	2.89		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	709	2.67		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	710	2.83		4,980	1,518	54.57	20.33	34.24	5.50	39.74	-
	711		1.60	4,840	1,475	55.27	20.05	35.22	5.50	40.72	5.42
	Subtotal	16.67	4.22			437.26	162.36	274.91	44.01	318.92	14.12
Carrizo		0.00	0.38	4,845	1,477	55.25	20.06	35.18	5.50	40.69	1.28
Hon Dah											
	715		1.68	7,152	2,180	42.77	24.59	18.19	5.48	23.67	3.31
	716		1.50	7,152	2,180	42.77	24.59	18.19	5.48	23.67	2.95
	717		1.61	7,152	2,180	42.77	24.59	18.19	5.48	23.67	3.17
	718		0.29	7,152	2,180	42.77	24.59	18.19	5.48	23.67	0.58
	719		0.47	7,152	2,180	42.77	24.59	18.19	5.48	23.67	0.92
	Subtotal	0.00	5.55			213.87	122.94	90.94	27.40	118.33	10.94
McNary	712		1.66	7,218	2,200	42.39	24.72	17.68	5.48	23.16	3.21
	713		2.10	7,218	2,200	42.39	24.72	17.68	5.48	23.16	4.05
	714		2.13	7,218	2,200	42.39	24.72	17.68	5.48	23.16	4.11
	Subtotal		5.89			127.18	74.15	53.03	16.44	69.47	11.37
McNary Wetland											
	723		2.31	7,218	2,200	42.39	24.72	17.68	5.48	23.16	4.46
	724		17.12	7,218	2,200	42.39	24.72	17.68	5.48	23.16	33.04
	725		7.01	7,218	2,200	42.39	24.72	17.68	5.48	23.16	13.53
		0.00	26.44			127.18	74.15	53.03	16.44	69.47	51.02
Settling Ponds (Canyon Day Irrigation Project)											
	697		0.67	4,800	2,200	55.47	19.98	35.50	5.50	41.00	2.29
	698		2.31	4,800	2,200	55.47	19.98	35.50	5.50	41.00	7.88
	699		0.40	4,800	2,200	55.47	19.98	35.50	5.50	41.00	1.38
	700		0.36	4,800	2,200	55.47	19.98	35.50	5.50	41.00	1.25
		0.00	3.75			221.89	79.90	141.99	22.01	164.00	12.80
TOTAL		16.67	118.38			1,675.03	716.02	959.01	181.30	1,140.31	341.51

Confidential -- Subject to Rule 408

Exhibit 11.3.1.2

Diversion and Depletion Calculations
Lakes, Stockponds, and Other Impoundments

For purposes of Subparagraph 11.3.1.2 of the Agreement, annual Diversions and Depletions of Water for lakes, stockponds and other impoundments on the Reservation and on Off-Reservation Trust Land shall be computed as provided below. In this Exhibit 11.3.1.2, the term "Lakes" shall mean lakes, stockponds, wastewater lagoons or other impoundments.

Initial Fill of Lakes

The initial fill of Lakes constructed on the Reservation subsequent to the date of the Agreement shall be considered both a Diversion and Depletion of Water. The Diversion and Depletion will be computed as the maximum incremental capacity of the Lake filled for the first time at any point during the Year.

On-going Lake Diversions and Depletions

Except as provided under Initial Fill of Lakes above, annual Lake Diversions shall be deemed to be equal to the Lake Depletions as calculated below.

The annual Lake Depletion shall be computed for each Lake using the following equation:

Lake Depletion = Maximum Surface Acres * {[(Gross Lake Evaporation – Precipitation) + Before Lake Runoff)] / 12}

For purposes of the applying the equation, the following definitions of each component shall be used.

Maximum Surface Acres for each Lake shall be as listed in Exhibits 11.3.1.1.A, 11.3.1.1.B and 11.3.1.1.C as may be amended to account for maximum surface acres at new Lakes or changes at existing Lakes.

Average annual **Before Lake Runoff** on the Reservation shall be 5.47 inches, which is based on data from stream gages located on and near the Reservation, adjusted to a common period of record from April 1, 1955 through September 30, 2001.

Average annual **Precipitation** in inches shall be calculated using the relationship between **Precipitation** and elevation on the Reservation, which is based on data from precipitation gages located on and near the Reservation, adjusted to a common period of

record from 1948 through 2006. The equation is: **Precipitation** = (0.002 * elevation) + 10.566.

Average annual **Gross Lake Evaporation** in inches shall be calculated using the relationship between **Gross Lake Evaporation** and elevation on the Reservation, which is based on data from pan evaporation stations located on and near the Reservation, adjusted to a common period of record from 1949 through 1997, and further adjusted by a factor of 0.7 to convert pan evaporation to Lake evaporation. The equation is: **Gross Lake Evaporation** = $(-0.000000175 * \text{elevation}^2) - (0.003304442 * \text{elevation}) + 75.371843167$.

Exhibit 11.3.2.3

Diversion and Depletion Calculations
Irrigation Use

For purposes of Subparagraph 11.3.2.3 of the Agreement, annual Diversions and Depletions of Water for irrigation use on the Reservation and on Off-Reservation Trust Land shall be computed as provided below.

Historical Irrigation Uses

For irrigated lands served by irrigation systems developed before the Enforceability Date of the Agreement, annual Diversions and Depletions shall be computed by multiplying the number of acres irrigated in each location listed in the table below by the corresponding Diversion and Depletion amounts for that location.

Location	Diversion (Acre-feet/Acre)	Depletion (Acre-feet/Acre)
Canyon, Cibeque, and Carrizo Creeks; North and East Forks of the White River	2.75	1.51
White River	3.33	2.53
Bonito Creek and Black River	2.50	1.38

Future Irrigation Uses

For irrigated lands served by irrigation systems developed or rehabilitated after the Enforceability Date of the Agreement, annual Diversions shall be measured, and this Exhibit 11.3.2.3 shall be amended to incorporate the computations for annual Depletions for each new irrigation system. The most accurate scientific method using available data will be used for the computations of Depletions.

Exhibit 11.3.3.2

Diversion and Depletion Calculations
Municipal and Industrial (M&I) Uses

For purposes of Subparagraph 11.3.3.2 of the Agreement, annual Depletions of Water for M&I Uses on the Reservation and on Off-Reservation Trust Land shall be computed as provided below.

Historical M&I Uses

For M&I Uses served by Water diversion and distribution systems developed before the Enforceability Date of the Agreement, annual Depletions shall be based on the measured Diversions of Water minus measured return flows to Groundwater or Surface Water. Until devices to measure Diversions have been installed, Diversions for M&I Uses shall be calculated based on electrical meter readings from the pumps. Until devices to measure return flows have been installed, the following computations will be used –. inflows to wastewater lagoons or constructed wetlands minus evaporation from lagoons as presented in Exhibit 11.3.1.1.C or estimated evapotranspiration from constructed wetlands.

Future M&I Uses

For M&I Uses served by Water diversion and distribution systems developed or rehabilitated after the Enforceability Date of the Agreement, annual Depletions shall be based on the measured Diversions of Water minus measured return flows to Groundwater or Surface Water.

Exhibit 11.3.4.2

Depletion Calculations
Artificial Snow Making

For purposes of Subparagraph 11.3.4.2 of the Agreement, annual Depletions of Water for artificial snow making on the Reservation and on Off-Reservation Trust Land shall be computed as provided below.

Historical Artificial Snow Making

For artificial snow making served by Water diversion and distribution systems developed before the Enforceability Date of the Agreement, annual Depletions shall be based on 20 percent of the measured Diversions of Water.

Future Artificial Snow Making

For artificial snow making served by Water diversion and distribution systems developed after the Enforceability Date of the Agreement, annual Depletions shall be based on 20 percent of the measured Diversions of Water.

Exhibit 11.3.7.2

Depletion Calculations
Mineral Development

For purposes of Subparagraph 11.3.7.2 of the Agreement, annual Depletions of Water for mineral development on the Reservation and on Off-Reservation Trust Land shall be computed as provided below.

Mineral development Depletions shall be computed as measured Diversions minus measured return flows to Groundwater or Surface Water.

EXHIBIT 12.1

WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of _____, is entered into by the Parties to the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 (ñAgreementò), other than the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members.

1.0 DEFINITIONS.

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed on Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

2.0 WAIVER AND RELEASE OF CLAIMS.

Except as provided in Paragraph 3.0 hereof, the Parties, except the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, as part of their obligations under the Agreement, hereby waive and release any claims that such Parties may have against the WMAT and its Members and the United States acting in its capacity as trustee for the WMAT and its Members under Federal, State or other law for all:

(a) Past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

(b) Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation and on Off-Reservation Trust Land in a manner not in violation of the Agreement;

(c) Past, present and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.

3.1 Notwithstanding the waivers of claims and releases described in Paragraph 2.0, the Parties, other than the WMAT on behalf of itself and its Members and United States acting in its capacity as trustee for the WMAT and its Members, shall retain any right to:

(a) Subject to Subparagraph 16.9 of the Agreement, assert claims for injuries to, and seek enforcement of, their rights under the Agreement or the Act in any State court or Federal court of competent jurisdiction;

(b) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1 to the Agreement;

(c) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2 to the Agreement;

(d) Assert past, present, and future claims to Surface Water that are not inconsistent with the Agreement;

(e) Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;

(f) Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein.

3.2 This Waiver and Release of Claims shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

(a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico);

(b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);

(c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);

(d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);

(e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557; and

(f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for minersô hospitals for disabled miners within said State).

4.0 WAIVER EFFECTIVE UPON ENFORCEABILITY DATE.

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

5.0 COUNTERPARTS AND DUPLICATE ORIGINALS.

This Waiver and Release of Claims may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Waiver and Release of Claims also may be executed in duplicate originals, each of which shall constitute an original Waiver and Release of Claims.

ATTACHMENT 1
DEFINITIONS

1.1 ñActò shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as Exhibit 2.2 to the Agreement.

1.2 ñAgreementò shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 ñArizona Water Companyò shall mean the Arizona corporation of that name, its subsidiaries and affiliates.

1.4 ñBuckeye Irrigation Companyò shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

1.5 ñBuckeye Water Conservation and Drainage Districtò shall mean the entity of that name that is a political subdivision of the State and an irrigation district with power of drainage organized under the laws of the State.

1.6 ñCAP Repayment Contractò shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

1.7 ñCAP Repayment Stipulationò shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.8 ñCAP Waterò shall mean óProject Waterô as that term is defined in the CAP Repayment Stipulation.

1.9 ñCAWCDò or ñCentral Arizona Water Conservation Districtò shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

1.10 ñEffluentò shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

1.11 ñEnforceability Dateò shall mean the date described in Section 309(d)(1) of the Act.

1.12 ñGila River Adjudication Proceedingsò shall mean that action pending in the Superior Court of the Sate of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

1.13 ñGroundwaterò shall mean all Water beneath the surface of the Earth other than Surface Water.

1.14 ñInjury to Water Rightsò shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term ñInjury to Water Rightsò includes a change in the Groundwater table and any effect of such a change. The term ñInjury to Water Rightsò does not include any injury to water quality.

1.15 ñLittle Colorado River Adjudication Proceedingsò shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re: the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417*.

1.16 ñOff-Reservation Trust Landò shall mean land (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as Exhibit 2.57.

1.17 ñPartyò shall mean an entity represented by a signatory to the Agreement and ñPartiesò shall mean more than one of such entities. The Stateôs participation as a Party shall be as described in Subparagraph 16.5 of the Agreement. The United Statesô participation as a Party shall be in the capacity as described in Subparagraph 2.72 of the Agreement.

1.18 ñRoosevelt Water Conservation Districtò or ñRWCDò shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

1.19 ñSecretaryò shall mean the Secretary of the United States Department of the Interior.

1.20 ñSRPò shall mean the Salt River Project Agricultural Improvement and Power

District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial Corporation.

1.21 ñStateò shall mean the State of Arizona.

1.22 ñSurface Waterò shall mean all Water that is appropriable under State law. For purposes of the definition of ñWater Right,ò the term ñSurface Waterò shall also include Colorado River water.

1.23 ñUnited Statesò or ñUnited States of Americaò in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term ñUnited Statesò or ñUnited States of Americaò is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

1.24 ñUseò shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.25 ñWaterò when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.26 ñWater Rightò shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.27 ñWhite Mountain Apache Tribeò or ñWMATò shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the ñIndian Reorganization Actò) (25 U.S.C. § 476).

1.28 ñWMAT Reservationò or ñReservationò shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871 as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the ñFort Apache Reservationò pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as Exhibit 2.81. The depiction of the Reservation on the map attached as Exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundaries of the Reservation.

THE STATE OF ARIZONA

By:_____

Dated:_____

Governor

Attest:_____

Secretary of State

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By:_____

Dated:_____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

_____

Attorney

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: _____

Dated:_____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

_____

Attorney

THE ROOSEVELT WATER CONSERVATION DISTRICT

By:_____

Dated: _____

President

Attest:_____

Secretary

Approved as to form:

_____

General Counsel

ARIZONA WATER COMPANY

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

CITY OF AVONDALE

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF CHANDLER

By: _____

Dated:_____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF GLENDALE

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF MESA

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF PEORIA

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF PHOENIX

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF SHOW LOW

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF SCOTTSDALE

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF TEMPE

By: _____

Dated:_____

Mayor

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

TOWN OF GILBERT

By: _____

Dated:_____

Town Manager

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

BUCKEYE IRRIGATION COMPANY

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

EXHIBIT 12.2

WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE WMAT, ON BEHALF OF ITSELF AND ITS MEMBERS, AND THE UNITED STATES, ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of _____, is entered into by the WMAT , on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), and in accordance with the commitments under Subparagraph 12.2 of said Agreement and pursuant to the authorization granted in Section 309(a)(1) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under the Agreement, hereby waive and release any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;

(b)(i) past and present claims for Injury to Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from Off-Reservation Diversion or Use of Water in a manner that is not in violation of the Agreement or State law; and

(c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the WMAT, on behalf of itself and its Members, and the United States, acting as trustee for the WMAT and its Members, shall retain any right:

(a) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under the Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.1 to the Agreement;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.2 to the Agreement;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to participate in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings to the extent provided in subparagraph 14.1 of the Agreement;

(f) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Paragraph 2.0;

(g) to assert any past, present, or future claim for Injury to Water Rights against any other Indian tribe, Indian community or nation, dependent Indian

community, allottee, or the United States on behalf of such a tribe, community, nation or allottee;

(h) to assert any past, present, or future claim for trespass, use, and occupancy of the Reservation in, on, or along the Black River against Freeport-McMoran Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc., (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities; and

(i) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009, in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use.

4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

5.0 COUNTERPARTS AND DUPLICATE ORIGINALS

This Waiver and Release of Claims may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Waiver and Release of Claims also may be executed in duplicate originals, each of which shall constitute an original Waiver and Release of Claims.

ATTACHMENT 1
DEFINITIONS

1.1 "Act" shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 "Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

1.5 "Diversion" shall mean the act of Diverting.

1.6 "Divert" or "Diverting" shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 "Effluent" shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

1.8 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

1.9 "Gila River Adjudication Proceedings' shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa

styled *In re the General Adjudication of All Rights to Use Water In the Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).*

1.10 "Groundwater" shall mean all Water beneath the surface of the Earth other than Surface Water.

1.11 "Injury to Water Rights" shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term "Injury to Water Rights" includes a change in the Groundwater table and any effect of such a change. The term "Injury to Water Rights" does not include any injury to water quality.

1.12 "Little Colorado River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re: the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417.*

1.13 "Member" or "Members" shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

1.14 "Off-Reservation Trust Land" shall mean land: (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as exhibit 2.57.

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

1.16 "State" shall mean the State of Arizona.

1.17 "Surface Water" shall mean all Water that is appropriable under State law. For purposes of the definition of "Water Right," the term "Surface Water" shall also include Colorado River water.

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

1.19 “Use” shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.20 “Water” when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.21 “Water Right” shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.22 “White Mountain Apache Tribe” or “WMAT” shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) ((25 U.S.C. § 476).

1.23 “WMAT Reservation” or “Reservation” shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

THE UNITED STATES OF AMERICA

By:_____

Dated:_____

Secretary of the Interior

WHITE MOUNTAIN APACHE TRIBE

By:_____

Dated:_____

Chairman

Attest:_____

Approved as to Form:

_____

General Counsel

EXHIBIT 12.3

WAIVER AND RELEASE OF CLAIMS BY THE WMAT, ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES (EXCEPT IN THE CAPACITY OF THE UNITED STATES AS TRUSTEE FOR OTHER INDIAN TRIBES)

This Waiver and Release of Claims dated as of _____, is entered into by the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), and in accordance with the commitments under Subparagraph 12.3 of said Agreement and pursuant to the authorization granted in Section 309(a)(3) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under the Agreement, hereby waives and releases any claim against the United States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;

(b)(i) past and present claims relating in any manner to damages, losses, or injuries to Water, Water Rights, land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to

interference with, Diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the Reservation and Off-Reservation Trust Land that first accrued at any time prior to the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from the Off-Reservation Diversion or Use of Water in a manner that is not in violation of the Agreement or applicable law;

(c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act;

(d) past and present claims relating in any manner to pending litigation of claims relating to the Water Rights of the WMAT for the Reservation and Off-Reservation Trust Land;

(e) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the Reservation constructed prior to the Enforceability Date that first accrued at any time prior to the Enforceability Date, which waiver shall only become effective on the full appropriation and payment to the WMAT of $4,950,000 of the amounts made available under Section 312(b)(2)(B) of the Act;

(f) any claims relating to operation, maintenance, and replacement of the WMAT Rural Water System, which waiver shall only become effective on the date on which the funds are made available under Section 312(b)(3)(B) of the Act and deposited in the WMAT Maintenance Fund;

(g) past and present breach of trust and negligence claims for damage to the land and natural resources of the WMAT caused by riparian and other vegetative manipulation by the United States for the purpose of increasing Water runoff from the Reservation that first accrued at any time prior to the Enforceability Date; and

(h) past and present claims for trespass, use, and occupancy of the Reservation in, on, and along the Black River that first accrued at any time prior to the Enforceability Date.

3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the WMAT, on behalf of itself and its Members, shall retain any right:

(a) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under the Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.1 to the Agreement;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.2 to the Agreement;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to assert past, present or future claims for Injury to Water Rights, or any other claims other than a claim to Water Rights, against any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(f) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009, in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use;

(g) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Paragraph 2.0;

(h) to seek remedies and assert other claims not specifically waived in Paragraph 2.0; and

(i) to assert any claim arising after the Enforceability Date for a future taking by the United States of Reservation land, Off-Reservation Trust Land, or any property rights appurtenant to that land, including any Water Rights set forth in paragraph 4.0 of the Agreement.

4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.

Except as otherwise specifically provided in Subparagraphs 2.0(e) and (f), this Waiver and Release of Claims shall become effective upon the Enforceability Date.

ATTACHMENT 1
DEFINITIONS

1.1 "Act" shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 "Agreement" shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

1.5 "Diversion" shall mean the act of Diverting.

1.6 "Divert" or "Diverting" shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 Effluent" shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

1.8 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

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

1.10 "Groundwater" shall mean all Water beneath the surface of the Earth other than Surface Water.

1.11 "Injury to Water Rights" shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term "Injury to Water Rights" includes a change in the Groundwater table and any effect of such a change. The term "Injury to Water Rights" does not include any injury to water quality.

1.12 "Little Colorado River Adjudication Proceedings" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re: the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417.*

1.13 "Member" or "Members" shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

1.14 "Off-Reservation Trust Land" shall mean land: (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as exhibit 2.57.

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

1.16 "State" shall mean the State of Arizona.

1.17 "Surface Water" shall mean all Water that is appropriable under State law. For purposes of the definition of "Water Right," the term "Surface Water" shall also include Colorado River water.

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

1.19 “Use” shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.20 “Water” when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.21 “Water Right” shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.22 “White Mountain Apache Tribe” or “WMAT” shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. § 476).

1.23 “WMAT Reservation” or “Reservation” shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

WHITE MOUNTAIN APACHE TRIBE

By:_____

Dated:_____

Chairman

Attest:_____

Approved as to Form:

_____

General Counsel

EXHIBIT 12.4

WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES IN ALL CAPACITIES (EXCEPT AS TRUSTEE FOR AN INDIAN TRIBE OTHER THAN THE WMAT) AGAINST THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of _____, is entered into by the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 (ñAgreementò), and in accordance with the commitments under Subparagraph 12.4 of said Agreement and pursuant to the authorization granted in Section 309(a)(2) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under the Agreement, hereby waives and releases any and all claims against the WMAT, its Members, or any agency, official, or employee of the WMAT, under Federal, State or any other law for all:

(a) past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off- Reservation Trust Land arising from time immemorial through the Enforceability Date;

(b) claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land in a manner that is not in violation of the Agreement; and

(c) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

3.1 Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the United States shall retain any right to assert any claims not specifically waived in Paragraph 2.0.

4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

ATTACHMENT 1
DEFINITIONS

1.1 ñActò shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 ñAgreementò shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 ñCAP Repayment Stipulationò shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 ñCAP Waterò shall mean óProject Waterô as that term is defined in the CAP Repayment Stipulation.

1.5 ñDiversionò shall mean the act of Diverting.

1.6 ñDivertò or ñDivertingò shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 Effluentò shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

1.8 ñEnforceability Dateò shall mean the date described in Section 309(d)(1) of the Act.

1.9 ñGroundwaterò shall mean all Water beneath the surface of the Earth other than Surface Water.

1.10 ñInjury to Water Rightsò shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term ñInjury to Water Rightsò includes a change in the Groundwater table and any effect of such a change. The term ñInjury to Water Rightsò does not include any injury to water quality.

1.11 ñMemberò or ñMembersò shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

1.12 ñOff-Reservation Trust Landò shall mean land: (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as exhibit 2.57.

1.13 ñSecretaryò shall mean the Secretary of the United States Department of the Interior.

1.14 ñStateò shall mean the State of Arizona.

1.15 ñSurface Waterò shall mean all Water that is appropriable under State law. For purposes of the definition of ñWater Right,ò the term ñSurface Waterò shall also include Colorado River water.

1.16 ñUnited Statesò or ñUnited States of Americaò in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term ñUnited Statesò or ñUnited States of Americaò is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

1.17 ñUseò shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.8 ñWaterò when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.19 ñWater Rightò shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.20 ñWhite Mountain Apache Tribeò or ñWMATò shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934,

48 Stat. 984 (commonly known as the ñIndian Reorganization Actò) (25 U.S.C. § 476).

1.21 ñWMAT Reservationò or ñReservationò shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the ñFort Apache Reservationò pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

THE UNITED STATES OF AMERICA

By:_____

Dated:_____

Secretary of the Interior

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

1. The United States acting in its capacity as trustee for the White Mountain Apache Tribe ("WMAT") has asserted claims to Water in the Gila River Adjudication Proceedings, Claim Numbers 39-12168 and 39-64259, as amended. The WMAT, on behalf of itself and its Members, has asserted claims to Water in the Gila River Adjudication Proceedings, Statement of Claimant Numbers 39-16945, 39-16946, 39-16947, and 39-16948. The Court has considered the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), including all exhibits thereto, which permanently resolves the Water Rights claims of the WMAT and of the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, to the Gila River System and Source for land within the exterior boundaries of the Reservation and Off-Reservation Trust Land. [1]

2. Upon publication in the Federal Register by the United States Secretary of the Interior of a notice of completion of all actions necessary to make the settlement effective, as required by section 309(d)(1) of the White Mountain Apache Tribe Water Rights

[1] The capitalized terms used in this Judgment and Decree shall be as defined in the Agreement, a copy of which is attached as Exhibit A to the Stipulation and Request for Entry of Judgment and Decree.

Quantification Act of 2010, Public Law 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), this Judgment and Decree shall become enforceable[2].

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

3. The Agreement meets all of the requirements of Paragraph D.6 of the Arizona Supreme Court's May 16, 1991, Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes (the "Supreme Court's Order"). On that basis, and as required by Paragraph D.6 of the Supreme Court's Order, the Agreement, including all of the exhibits thereto, is hereby approved.

4. The Water Rights described in Section 5 of this Judgment and Decree are held in trust by the United States acting on behalf of the WMAT as provided in Section 305(a)(1) of the Act and shall not be subject to forfeiture or abandonment as provided in Section 305(a)(2) of the Act.

5. As provided in Paragraphs 4.0 and 5.0 of the Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT shall have:

A. The permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided that the Maximum Annual Depletion Amount of all such Diversions shall not exceed 25,800 AFY;

B. Commencing after the Year 2100, the additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of 3,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided the additional Maximum Annual Depletion Amount of all of such Diversions does not exceed 1,200 AFY;

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[2] A separate Judgment and Decree approving and implementing the Agreement in relation to the Little Colorado River System and Source will issue in that Adjudication.

C. As provided in Paragraphs 4.0 and 6.0 and Subparagraph 5.4 of the Agreement, the permanent right to Divert Groundwater from any location within the Reservation and on Off-Reservation Trust Land, subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Sections 5A and 5B hereof;

D. The additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of at least 25,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed pursuant to an exchange of WMAT CAP Water in accordance with the terms of Paragraph 7.0 of the Agreement, provided the additional Maximum Annual Depletion Amount of all of such Diversions from any exchange does not exceed 25,000 AFY.

6. For purposes of calculating Diversions and Depletions as provided in the Agreement:

A. All Water Diverted or Depleted on the Reservation or on Off-Reservation Trust Land by Members or pursuant to any agreement or authorization by the WMAT or the United States acting in its capacity as trustee for the WMAT shall be considered to be Diverted or Depleted by the WMAT or the United States acting in its capacity as trustee for the WMAT.

B. All Diversions of Water in each Year within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of

the Agreement. Diversions shall be measured or calculated as provided in Paragraph 11.0 of the Agreement.

C. All Depletions of Water in each Year from Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the Agreement. Depletions shall be measured or calculated as provided in Paragraph 11.0 of the Agreement.

D. Notwithstanding anything to the contrary in the Agreement or this Judgment and Decree, any Diversions of Water by the WMAT or the United States acting in its capacity as trustee for the WMAT on the Reservation and on Off-Reservation Trust land within the Salt River Watershed that occur when the Salt River Reservoir System is full and the amount of Water in the Salt River Reservoir System is increasing shall not be counted in determining compliance with the Maximum Annual Diversion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2 of the Agreement. Likewise, any Depletions of Water Diverted under the circumstances described in the preceding sentence shall not be counted in determining compliance with the Maximum Annual Depletion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2 of the Agreement. The Salt River Reservoir System shall be deemed full for purposes of this Subparagraph when the volume of Water stored in the Salt River Reservoir System is equal to the capacity of the Salt River Reservoir System. For purposes of this Subparagraph, the capacity of the Salt River Reservoir System shall mean the capacity of those reservoirs, including the new conservation space in Modified Theodore

Roosevelt Dam, available to store Water on a continuous basis for irrigation, power, municipal, industrial or other purposes. SRP shall notify the WMAT and the United States acting in its capacity as trustee for the WMAT of an impending spill as soon as practicable and notify them of the date the spill ends.

E. In the event the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the Agreement are exceeded in any Year by the WMAT or the United States acting in its capacity as trustee for the WMAT, then the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall be reduced by the amount of any such exceedance for such Water source in the following Year.

F. Except as provided in Subparagraph 4.6 of the Agreement, all Uses of Water on land outside of the Reservation, if and when that land is subsequently and finally determined to be part of the Reservation through resolution of any dispute between the WMAT and the United States over the location of the Reservation boundary, and any fee land within the Reservation placed into trust and made part of the Reservation, shall be subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3 of the Agreement.

G. All Diversions and Depletions associated with the operation of the White Mountain Apache Tribe Rural water system, authorized under Section 307 of the Act, shall be subject to the terms of the Agreement.

7. The United States, acting in its capacity as trustee for the WMAT, and the WMAT have asserted claims to Water in the Gila River Adjudication Proceedings from the Salt River Watershed, Claim Number 39-12168 and Number 39-64259, as amended. These claims contemplate construction of reservoirs along the White River, Black River, Carrizo Creek, Bonito Creek and Salt River. Except for the White Mountain Apache Tribe Rural Water System as authorized in Section 307 of the Act, the Agreement does not authorize the

construction of any such reservoir. Except as provided in this Section 7, prior to the construction of any reservoir having a capacity of greater than 2,000 acre-feet, the WMAT and the Secretary shall execute a separate agreement with SRP regarding the operation of any such new reservoir. No such separate agreement shall be required for Large Reservoirs, Miner Flat Dam and Reservoir, and one Large Reservoir on the White River below Miner Flat Dam with an Active Conservation Capacity not exceeding 10,000 acre-feet.

8. Except as provided in this Section 8, if the combined aggregate amount of Water stored in Large Reservoirs, as defined in Subparagraph 2.45 of the Agreement, on May 1 of each Year is greater than the percentage of Active Conservation Capacity shown by the point of intersect of the line on exhibit 5.7.2 to the Agreement relative to Net SRP Reservoir Storage on May 1 of each Year, the Water in storage in such Large Reservoirs in excess of the percentage of Active Conservation Capacity at the point of intersect on exhibit 5.7.2 to the Agreement shall be either:

A. Released by the WMAT or the United States acting in its capacity as trustee for the WMAT from one or more of the Large Reservoirs no later than July 1 of such Year to flow off of the Reservation, or

B. Deducted from any existing long term storage credits the WMAT may possess on May 1 of such Year as the result of the recharge and storage of CAP Water, provided that such credits are transferred to SRP by June 1 of such Year and the WMAT or the United States acting in its capacity as trustee for the WMAT pays for the costs and charges associated with such transfer including the cost of recovery of such stored CAP Water, or

C. Reduced to the requisite percentage of Active Conservation Capacity through a combination of releases pursuant to Section 8A herein and deductions of existing long term storage credits pursuant to Section 8B herein.

The requirements of this Section 8 do not apply to Miner Flat Dam and Reservoir located on the north fork of the White River with a capacity of not more than 9,000 acre-feet, or one

Large Reservoir on the White River with an Active Conservation Capacity not exceeding 10,000 acre-feet. The WMAT may exchange CAP Water for the purpose of storage in reservoirs located on the Reservation. For purposes of the calculation in this Section 8, the amount of CAP Water exchanged with SRP or others and stored within Large Reservoirs on the Reservation shall not be included within the combined aggregate amount of Water stored in Large Reservoirs on May 1 of each Year. Any exchange of WMAT CAP Water shall be in accordance with the terms of Paragraph 7.0 of the Agreement.

9. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT from the Salt River and its tributaries described in Sections 4, 5A, 5B and 5C hereof for Uses on the Reservation shall be November 9, 1871. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT from the Salt River and its tributaries described in Sections 4, 5A, 5B and 5C hereof for Uses on off-Reservation Trust Lands shall be November 4, 1985. Except as provided in Section 21 hereof, the Water Rights adjudged and decreed to the WMAT by Sections 4, 5A, 5B, 5C and this Section 9 of this Judgment and Decree, shall be binding on all parties to the Gila River Adjudication.

10. The Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT as quantified in Paragraph 4.0 of the Agreement may be used for any Use on the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14 of the Agreement, or on Off-Reservation Trust Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph 7.0 of the Agreement.

11. Surface Water, Groundwater and Effluent purchased or acquired subsequent to the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water Rights specified in Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3 of the Agreement.

12. All land held by the United States in trust for the WMAT as Off-Reservation Trust Land and all land within the Reservation shall have only those Water Rights specifically quantified in Paragraph 4.0 of the Agreement for the WMAT and the United States acting in its capacity as trustee for the WMAT.

13. For each Year following the Year in which the Enforceability Date occurs, fourteen and eighty-one one hundredths (14.81) percent of the actual Annual Depletion Amount from all sources of Water Diverted on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, other than Depletions resulting from the exchange of WMAT CAP Water, calculated as provided in Paragraph 11.0 of the Agreement, shall be deducted by SRP from the Water credits of RWCD as provided in Paragraph 8.0 of the Agreement. Subject to Subparagraph 8.1.2 of the Agreement, the deductions from RWCD Water credits shall not exceed 4,000 AFY.

14. Reporting.

A. Within thirty (30) days of the inspections of measuring and recording devices required by Subparagraph 11.1.1 of the Agreement, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with this Court or with the Court in the Little Colorado River Adjudication Proceedings, as applicable determined by the location of the point of Diversion of Water to be measured by the particular device, a certified copy of the report by the registered professional engineer or similarly qualified person that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards.

B. No later than March 1 of the second Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with this Court a report, in the form attached as exhibit 11.2 to the Agreement or as modified by this Court, showing: (1) all amounts of Water, by source, Diverted on the Reservation and

on Off-Reservation Trust Land under Paragraphs 5.0 and 6.0 of the Agreement in the Year immediately preceding the Year in which the report is filed; (2) all Depletions of Water, by source, measured or calculated as provided in Subparagraphs 11.3, 11.4 and 11.5 of the Agreement; (3) all amounts of WMAT CAP Water delivered to others in exchange for the Diversion of Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources located within the Salt River Watershed; (4) all amounts of WMAT CAP Water recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts of WMAT CAP Water otherwise used by the WMAT..

C. Any Party may petition this Court to modify the form set forth in exhibit 11.2 to the Agreement to ensure accurate reporting of the WMAT Water Diversions and Depletions. Any other Party may object to such petition.

15. Except as set forth in the Agreement and the Act, the benefits realized by the WMAT and its Members under the Agreement and the Act shall be in full satisfaction of all claims of the WMAT and its Members, and the United States acting as trustee for the benefit of the WMAT and its Members, for Water Rights and Injury to Water Rights under Federal, State, or other law with respect to the Reservation and Off-Reservation Trust Land.

16. Except as provided in Subparagraphs 12.6.1(i) and 12.7.1(f) of the Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT shall not: (1) object to the usage of any well located outside the boundaries of the Reservation or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to, dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and Use of Water from any well in the Gila River Adjudication Proceedings or in any other judicial or administrative proceedings.

17. Nothing in this Judgment and Decree, the Agreement or the Act has the effect of recognizing or establishing any right of a Member to Water on the Reservation or on Off-Reservation Trust Land. Any entitlement to Water for Use on lands within the exterior boundaries of the Reservation and Off-Reservation Trust Land shall be satisfied out of the

Water resources described in Section 5 of this Judgment and Decree, except as provided in Section 11 hereof..

18. Except for Use of WMAT CAP Water as provided in Paragraph 7.0 of the Agreement, no Water available for Use by the WMAT or by the United States acting in its capacity as trustee for the WMAT under the Agreement and the Act may be sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation Trust Land other than pursuant to an exchange.

19. In exchange for the benefits realized under the Agreement and as authorized by the Act, the Parties have executed Waivers and Releases of Claims, attached as exhibits 12.1, 12.2, 12.3, and 12.4 to the Agreement. These Waivers and Releases of Claims are attached hereto as Exhibits B, C, D, and E and are by this reference incorporated herein. For purposes of this Section 19, the United States shall be acting in the capacities as specifically set forth in each of the waivers referenced herein.

20. The claims of the WMAT and its Members, and the United States acting in its capacity as trustee for the WMAT and its Members, to Water from the Gila River System and Source are fully, finally and permanently adjudicated by this Judgment and Decree.

21. Nothing in this Judgment and Decree or the Agreement shall be construed to quantify or otherwise affect the Water Rights or entitlements to Water of any Arizona Indian tribe, band or community, or the United States on their behalf, other than the WMAT and the United States acting in its capacity as trustee for the WMAT and its Members.

22. Nothing in the Agreement shall affect the right of any Party, other than the WMAT and the United States, acting in its capacity as trustee for the WMAT and its Members, to assert any priority date or quantity of Water for Water Rights claimed by such Party in the Gila River Adjudication or other court of competent jurisdiction.

23. The Court's adjudication of Water Rights to the WMAT, and the United States acting in its capacity as trustee for the WMAT, pursuant to this Judgment and Decree is limited to Water Rights to the Gila River System and Source.

24. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree and the Agreement, including the entry of injunctions, restraining orders or other remedies under law or equity.

DATED this ___ day of _____, ____.

_____
_____.
Judge of the Superior Court

A copy of this Judgment and Decree is sent to all
Persons on the Court approved mailing list for
Contested Case No. W_____ dated _____, _____.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE	No. 6417 **WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION SETTLEMENT JUDGMENT AND DECREE**

1. The United States acting in its capacity as trustee for the White Mountain Apache Tribe ("WMAT") has asserted claims to Water in the Little Colorado River Adjudication Proceedings, Claim Number 39-91441, as amended. The WMAT, on behalf of itself and its Members, has asserted claims to Water in the Little Colorado River Adjudication Proceedings, Claim Numbers 39-95155 and 39-95156. The Court has considered the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), including all exhibits thereto, which permanently resolves the Water Rights claims of the White Mountain Apache Tribe and its Members, and of the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, to the Little Colorado River System and Source for land within the exterior boundaries of the Reservation and Off-Reservation Trust Land.[1]

2. Upon publication in the Federal Register by the United States Secretary of the Interior of a notice of completion of all actions necessary to make the settlement effective, as required by Section 309(d)(1) of the White Mountain Apache Tribe Water Rights

[1] The capitalized terms used in this Judgment and Decree shall be as defined in the Agreement, a copy of which is attached as Exhibit A to the Stipulation and Request for Entry of Judgment and Decree.

Quantification Act of 2010, Public Law 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), this Judgment and Decree shall become enforceable.[2]

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

3. The Agreement meets all of the requirements of Paragraph D.6 of the Arizona Supreme Court's September 27, 2000, Administrative Order (the "Supreme Court's Order"). On that basis, and as required by Paragraph D.6 of the Supreme Court's Order, the Agreement, including all of the exhibits thereto, is hereby approved.

4. The Water Rights described in Section 5 of this Judgment and Decree shall be held in trust by the United States on behalf of the WMAT as provided in Section 305(a)(1) of the Act and shall not be subject to forfeiture or abandonment pursuant to Section 305(a)(2) of the Act.

5. Pursuant to paragraphs 4.0 and 5.0 of the Agreement and to the White Mountain Apache Tribe Water Rights Settlement Judgment and Decree entered by the Court in the Gila River Adjudication on _____, 201_, the WMAT and the United States acting in its capacity as trustee for the WMAT have the permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided that the Maximum Annual Depletion Amount of all such Diversions shall not exceed 25,800 AFY. Paragraphs 4.0 and 5.0 of the Agreement further provide, and this Court hereby decrees, that up to 7,000 AFY of the 71,000 AFY Maximum Annual Diversion Amount and up to 4,000 AFY of the 25,800 AFY Maximum Annual Depletion Amount specified in the preceding sentence may be Diverted and Depleted from sources of Water within the Little Colorado River Watershed.

6. As a component of the Water Right provided in Section 5 hereof and as provided in Paragraphs 4.0 and 6.0 and Subparagraph 5.4 of the Agreement, the WMAT and

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[2] A separate Judgment and Decree approving and implementing the Agreement in relation to the Gila River System and Source will issue in that Adjudication.

the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert Groundwater from any location within the Reservation and on Off-Reservation Trust Land, subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Section 5 hereof.

7. For purposes of calculating Diversions and Depletions as provided in the Agreement:

A. All Water Diverted or Depleted on the Reservation or on Off-Reservation Trust Land by Members or pursuant to any agreement or authorization by the WMAT or the United States acting in its capacity as trustee for the WMAT shall be considered to be Diverted or Depleted by the WMAT or the United States acting in its capacity as trustee for the WMAT.

B. All Diversions of Water in each Year within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the Agreement. Diversions shall be measured or calculated as provided in Paragraph 11.0 of the Agreement.

C. All Depletions of Water in each Year from Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of the Agreement, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and

Subparagraphs 5.1, 5.2 and 5.3 of the Agreement. Depletions shall be measured or calculated as provided in Paragraph 11.0 of the Agreement.

D. Except as provided in Subparagraph 4.6 of the Agreement, all Uses of Water on land outside of the Reservation, if and when that land is subsequently and finally determined to be part of the Reservation through resolution of any dispute between the WMAT and the United States over the location of the Reservation boundary, and any fee land within the Reservation placed into trust and made part of the Reservation, shall be subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3 of the Agreement.

E. In the event the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 of the Agreement are exceeded in any Year by the WMAT or the United States acting in its capacity as trustee for the WMAT, then the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall be reduced by the amount of any such exceedance for such Water source in the following Year.

8. The priority date for the administration of the Water Rights of the WMAT and the United States on behalf of the WMAT from the Little Colorado River and its tributaries for Uses on the Reservation shall be November 9, 1871. The priority date for the administration of the Water Rights of the WMAT and the United States on behalf of the WMAT for Uses on Off-Reservation Trust Lands from the Little Colorado River and its tributaries shall be November 4, 1985. Except as provided in Section 19 hereof, the Water Rights adjudged and decreed to the WMAT by Sections 4, 5, 6 and this Section 8 of this Judgment and Decree, shall be binding on all parties to the Little Colorado River Adjudication.

9. The Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT as quantified in Paragraph 4.0 of the Agreement may be used for any

Use on the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14 of the Agreement, or on Off-Reservation Trust Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph 7.0 of the Agreement.

10. Surface Water, Groundwater and Effluent purchased or acquired subsequent to the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water Rights specified in Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3 of the Agreement.

11. All land held by the United States in trust for the WMAT as Off-Reservation Trust Land and all land within the Reservation shall have only those Water Rights specifically quantified in th Paragraph 4.0 of the Agreement for the WMAT and the United States acting in its capacity as trustee for the WMAT.

12. Reporting.

A. Within thirty (30) days of the inspections of measuring and recording devices required by Subparagraph 11.1.1 of the Agreement, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with this Court or with the Court in the Gila River Adjudication Proceedings, as applicable determined by the location of the point of Diversion of Water to be measured by the particular device, a certified copy of the report by the registered professional engineer or similarly qualified person that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards.

B. No later than March 1 of the second Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file with this Court a report, in the form attached as exhibit 11.2 to the Agreement or as modified by this Court, showing: (1) all amounts of Water, by source, Diverted on the Reservation

and on Off-Reservation Trust Land under Paragraphs 5.0 and 6.0 of the Agreement in the Year immediately preceding the Year in which the report is filed; (2) all Depletions of Water, by source, measured or calculated as provided in Subparagraphs 11.3, 11.4 and 11.5 of the Agreement; (3) all amounts of WMAT CAP Water delivered to others in exchange for the Diversion of Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources located within the Salt River Watershed; (4) all amounts of WMAT CAP Water recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts of WMAT CAP Water otherwise used by the WMAT.

C. Any Party may petition this Court to modify the form set forth in exhibit 11.2 to the Agreement to ensure accurate reporting of the WMAT Water Diversions and Depletions. Any other Party may object to such petition.

13. Except as set forth in the Agreement and the Act, the benefits realized by the WMAT and it Members under the Agreement and the Act shall be in full satisfaction of all claims of the WMAT and its Members, and the United States acting as trustee for the benefit of the WMAT and its Members, for Water Rights and Injury to Water Rights under Federal, State, or other law with respect to the Reservation and Off-Reservation Trust Land.

14. Except as provided in Subparagraphs 12.6.1(i) and 12.7.1(f) of the Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT shall not: (1) object to the usage of any well located outside the boundaries of the Reservation or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to, dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and Use of Water from any well in the Little Colorado River Adjudication Proceedings or in any other judicial or administrative proceedings.

15. Nothing in this Judgment and Decree, the Agreement or the Act has the effect of recognizing or establishing any right of a Member to Water on the Reservation or on Off-Reservation Trust Land. Any entitlement to Water for Use on lands within the exterior

boundaries of the Reservation and Off-Reservation Trust Land shall be satisfied out of the Water resources described in Section 5 of this Judgment and Decree, except as provided in Section 10 hereof.

16. Except for Use of WMAT CAP Water as provided in Paragraph 7.0 of the Agreement, no Water available for Use by the WMAT or by the United States acting in its capacity as trustee for the WMAT under the Agreement and the Act may be sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation Trust Land other than pursuant to an exchange.

17. In exchange for the benefits realized under the Agreement and as authorized by the Act, the Parties have executed Waivers and Releases of Claims, attached as exhibits 12.1, 12.2, 12.3, and 12.4 to the Agreement. These Waivers and Releases of Claims are attached hereto as Exhibits B, C, D, and E and are by this reference incorporated herein. For purposes of this Section 17, the United States shall be acting in the capacities as specifically set forth in each of the waivers referenced herein.

18. The claims of the WMAT and its Members, and the United States in its capacity as trustee for the WMAT and its Members, to Water from the Little Colorado River System and Source are fully, finally and permanently adjudicated by this Judgment and Decree.

19. Nothing in this Judgment and Decree or the Agreement shall be construed to quantify or otherwise affect the Water Rights or entitlements to Water of any Arizona Indian tribe, band or community, or the United States on their behalf, other than the WMAT and the United States acting in its capacity as trustee for the WMAT and its Members.

20. Nothing in the Agreement shall affect the right of any Party, other than the WMAT and the United States, acting in its capacity as trustee for the WMAT and its Members, to assert any priority date or quantity of Water for Water Rights claimed by such Party in the Little Colorado River Adjudication or other court of competent jurisdiction.

21. The Court's adjudication of Water Rights to the WMAT, and the United States acting in its capacity as trustee for the WMAT, pursuant to this Judgment and Decree is limited to Water Rights to the Little Colorado River System and Source.

22. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree and the Agreement, including the entry of injunctions, restraining orders or other remedies under law or equity.

DATED this ___ day of _____, ____.

_____
_____.
Judge of the Superior Court

A copy of this Judgment and Decree is sent to all Persons on the Court approved mailing list dated _____, _____.

EXHIBIT 14.7.2

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

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

EXHIBIT 16.8

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

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

I

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

II

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

III

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

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

IV

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

V

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

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

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

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

VI

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

Respectfully submitted this 3rd day of June, 1977.

A. L. Monette

A. L. Monette
Water Commissioner