Final Execution Version
October 21, 2005

AMENDED AND RESTATED

GILA RIVER INDIAN COMMUNITY

WATER RIGHTS SETTLEMENT AGREEMENT

Final Execution Version
October 21, 2005

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AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, dated as of _____ is entered into among the United States of America; the State of Arizona; the Gila River Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale, and Tempe; the Arizona towns of Florence, Mammoth, Kearny, Duncan and Gilbert; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and Drainage District; Franklin Irrigation District; Gila Valley Irrigation District, the San Carlos Irrigation and Drainage District; the Hohokam Irrigation and Drainage District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; Phelps Dodge Corporation; and the Arizona Game and Fish Commission.

1.0 RECITALS

1.1 Proceedings to determine the nature and extent of the rights to water of the Gila River Indian Community, Members, Allottees, the United States, and other claimants are pending in the Gila River Adjudication Proceedings, and enforcement actions regarding the interpretation and enforcement of the Globe Equity Decree are pending before the Globe Equity Enforcement Court.

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

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

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 "Act" shall mean the Arizona Water Settlements Act, Public Law 108-451.

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

2.3 "Agreement" shall mean this amended and restated agreement and the Exhibits attached hereto.

2.4 "Allottee" shall mean a person who holds a beneficial real property interest in an Indian allotment that is: (A) located within the Reservation; and (B) held in trust by the United States.

2.5 "AMA" shall mean an active management area as defined in the Groundwater Code.

2.6 "Annual Index" for purposes of Paragraph 13.0 shall mean the index calculated by dividing the U. S. Department of Commerce's final estimate of the chain-type annual weights price index for the gross domestic product, or any similar index used in substitution for this index, for the most recently completed third quarter of a given Year by the value of that same quantity for the third quarter for the Year immediately prior thereto.

2.7 "Annual Storage and Recovery Water" for purposes of Subparagraphs 2.17 and 2.18 shall mean water recovered by the storer and used on an annual basis in accordance with section 45-851.01, Arizona Revised Statutes, as amended.

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

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

2.10 "Arizona Game and Fish Commission" shall mean the entity established pursuant to Chapter 2 of Title 17 of the Arizona Revised Statutes, or its successor agency or entity.

2.11 "Arizona State Land Department" shall mean the entity established pursuant to Chapter 1 of Title 37 of the Arizona Revised Statutes, or its successor agency or entity.

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

2.12A "ASARCO CAP Water" shall mean the 17,000 AFY of CAP M&I Priority Water Asarco may relinquish in favor of the Community pursuant to a relinquishment agreement currently being negotiated among the Community, the United States and Asarco.

2.13 "Asarco Incorporated", "ASARCO" or "Asarco" shall mean the New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

2.14 [Intentionally not used].

2.15 [Intentionally not used].

2.16 "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.

2.17 "Average Annual Municipal and Industrial Water Pumped Per Acre" for purposes of Paragraph 5.0 shall mean, in each Year after the Enforceability Date, (1) for each of the Eastern Protection Zones the aggregate amount of all Water Pumped for Municipal Use and all Water Pumped for Industrial Use in that zone during that Year, other than Annual Storage and Recovery Water, divided by the number of Municipal Acres and Industrial Acres on which the Water was used in the Eastern Protection Zones in that Year, and (2) for the Western M&I Protection Zone

the aggregate amount of all Water Pumped for Municipal Use and all Water Pumped for Industrial Use in that zone during that Year, other than Annual Storage and Recovery Water, divided by the number of Municipal Acres and Industrial Acres on which the Water was used in the Western Protection Zones in that Year. The Average Annual Municipal and Industrial Water Pumped Per Acre shall be calculated separately for each Protection Zone.

2.18 "Average Annual Municipal Water Pumped Per Acre" for purposes of Paragraph 5.0 shall mean, in each Year after the Enforceability Date, the amount of all Water, other than Annual Storage and Recovery Water, Pumped in the Western Municipal Protection Zone for Municipal Use, divided by the number of Municipal Acres on which the Water was used in the Western Protection Zones in that Year.

2.19 "Benson-Allison Decree" shall mean that decree entered in the Superior Court of Maricopa County, State of Arizona on November 14, 1917, styled *Nels Benson v. John Allison and Four Hundred Fifty-four Others*, No. 7589, and all amendments and supplements thereto.

2.19A "BHP" shall mean the corporation of that name, its subsidiaries, successors and assigns.

2.19B "BHP Wells" shall mean those wells owned or operated by BHP as shown in Exhibit 2.19B.

2.19C "Blue Ridge Account" shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.13.2 for the benefit of the Community to account for the Community's annual entitlement of Blue Ridge Stored Water.

2.19D "Blue Ridge Stored Water" shall mean that amount of water credited to the Community by SRP from Blue Ridge Reservoir pursuant to Subparagraph 12.13.

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

2.21 "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 power of drainage organized under the laws of the State.

2.22 "Build-Out Period" shall mean the period beginning on the Enforceability Date and ending on the earlier of: (1) January 1, 2025, or (2) December 31 of the Year in which Congress has appropriated or the Secretary has otherwise identified, set aside and made available for use by the Community, all amounts to be provided to the Community pursuant to the Community Repayment Contract.

2.23 "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.*).

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

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

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

2.27 "CAP Indian Priority Water" shall mean that water having an Indian delivery priority as described in Subparagraph 8.16.

2.28 "CAP Repayment Contract" shall mean the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona

Project. The term "CAP Repayment Contract" includes all amendments to and revisions of that contract. This is the same contract referred to in the Act as Contract No. 14-0906-09W-09245, Amendment No. 1.

2.29 "CAP M&I Priority Water" shall mean that water having a municipal and industrial delivery priority as described in Subparagraph 8.16.

2.30 "CAP NIA Priority Water" shall mean that water having a non-Indian agricultural delivery priority as described in Subparagraph 8.16.

2.31 "CAP Operating Agency" shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of December 31, 2002, CAWCD was the CAP Operating Agency.

2.32 "CAP Operating Agency Annual Schedule" for purposes of Paragraphs 13.0 and 14.0 shall mean the annual schedule prepared by the CAP Operating Agency showing monthly deliveries of the Community's CAP Water to SRP either for exchange with the Community pursuant to Paragraph 13.0 or for direct delivery to the Community pursuant to Paragraph 14.0.

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

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

2.35 "CAP Repayment Stipulation" shall mean the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the Order dated April 28, 2003, entered therein, and any amendment or revision thereof. This is the same case referred to in the Act as No. CIV 95-09625-09TUC-09WDB (EHC), No. CIV 95-091720-PHX-EHC (Consolidated Action).

2.36 "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.

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

2.38 "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) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are described in (A) through (D); and (F) any extensions of, additions to, or replacements for the features described in (A) through (E).

2.39 "Carryover Account" shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.3.1 for the benefit of the Community to account for any credits accrued in the Current Account in a given year but not used by the Community prior to May 1 of the following year.

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

2.41 "Central Arizona Irrigation and Drainage District" or "CAIDD" 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.

2.42 "Central Protection Zone" shall have the meaning set forth in the legal description in Exhibit 5.3.

2.43 "CERCLA" for purposes of Paragraph 25.0 shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 1994 (42 U.S.C. §§ 9601-9675) 94 Stat. 2767, as amended.

2.44 "CFS" shall mean cubic feet per second.

2.45 "Chandler Contributed Reclaimed Water" shall mean Reclaimed Water made available to the Community by the City of Chandler as a contribution to the Community's Settlement Water Budget pursuant to Subparagraph 18.1.3.

2.46 "Chandler Exchange Reclaimed Water" shall mean Reclaimed Water made available to the Community by the City of Chandler pursuant to Subparagraph 18.1.2 in exchange for Community CAP Exchange Water.

2.47 [Intentionally not used].

2.48 "Chandler Reclaimed Water" shall mean Chandler Exchange Reclaimed Water and Chandler Contributed Reclaimed Water.

2.49 "Cities" shall mean the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale, Arizona.

2.49A "City" shall mean, except when used as part of a proper name, one of the Cities.

2.50 "Community CAP Exchange Water" shall mean that portion of the Community's CAP Indian Priority Water provided to the City of Chandler or the City of Mesa in exchange for Chandler Exchange Reclaimed Water or Mesa Reclaimed Water pursuant to Subparagraphs 18.1.1 and 18.1.2, and Exhibit 18.1.

2.51 "Community's CAP Indian Priority Water" shall mean that portion of the Community's CAP Water that is CAP Indian Priority Water.

2.52 "Community CAP Water" or "Community's CAP Water" shall mean water to which the Community is entitled pursuant to the Community Water Delivery Contract.

2.53 "Community Water Delivery Contract" shall mean: (A) Contract No. 3-07-30-W0284 between the Community and the United States dated October 22, 1992; and (B) the term Community Water Delivery Contract includes any amendments to the contract described in (A), a copy of which is attached as Exhibit 8.2. This is the same contract referred to in the Act as Contract No. 3-0907-0930-09W0284.

2.54 "Community Repayment Contract" shall mean Contract No. 6-07-03-W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation. The term "Community Repayment Contract" includes any amendments to such contract. This is the same contract referred to in the Act as Contract No. 6-0907-0903-09W0345. A copy of the Community Repayment Contract and its Amendment No. 1 is attached as Exhibit 8.1.

2.55 "Community/Phelps Dodge Agreement" shall mean that contract between the Community and Phelps Dodge, as amended and restated, a copy of which is attached as Exhibit 10.1.

2.56 "Community/SRP Exchange Water" shall mean that Community CAP Water exchanged by the Community with SRP for SRP Stored Water Credits in accordance with Paragraph 13.0.

2.57 [Intentionally not used].

2.58 "CSIF" shall mean the "CAP/SRP Interconnection Facility" that connects the Hayden-Rhodes aqueduct of the CAP System to SRP's water delivery system.

2.59 "Current Account" shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.3.1 for the benefit of the Community to account for the Community's annual entitlement of SRP Stored Water.

2.60 "Direct Delivery Account" shall mean the water account established and maintained by SRP for the benefit of the Community pursuant to Paragraph 14.0.

2.61 "Diversion" shall mean the act of Diverting. For purposes of Paragraph 12.0 only, "Diversion" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain, and Maricopa Drain; provided, however, that Diversion shall not include the rerouting of water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch, or other structure that serves the same purpose as such drain, ditch, or other structure served before realignment.

2.62 "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, pipe line, pit, collection or infiltration gallery, conduit, well, pump, turnout, or other mechanical device or any other human act. For purposes of Paragraph 12.0 only, "Divert" or "Diverting" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain and Maricopa Drain; provided, however, that Diversion shall not include the rerouting of water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch, or

other structure that serves the same purpose as such drain, ditch or other structure served before realignment.

2.63 "Domestic Purposes" shall mean uses related to the supply, service and activities of an individual household or private residence, including the application of Water to less than two (2) acres of land appurtenant to such household or residence to produce plants or parts of plants for sale or human consumption or for use as feed for livestock, range livestock or poultry.

2.64 "Drain Ditches" shall mean those drainage ditches or structures located in whole or in part on the Reservation north of the Gila River and includes only those set forth in Subparagraph 16.1.

2.64A "Duncan Agreement" shall mean that agreement among the Community, SCIDD, the United States and the Town of Duncan attached as Exhibit 26.3.

2.65 "Eastern Protection Zone" shall mean either the Eastern Protection Zone North or the Eastern Protection Zone South.

2.66 "Eastern Protection Zones" shall mean both the Eastern Protection Zone North and the Eastern Protection Zone South, as set forth in the legal description in Exhibit 5.3.

2.67 "Eastern Protection Zone North" shall have the meaning set forth in the legal description in Exhibit 5.3.

2.68 "Eastern Protection Zone South" shall have the meaning set forth in the legal description in Exhibit 5.3.

2.69 [Intentionally not used].

2.70 "Effluent" shall mean water that has been used for domestic, municipal, or industrial purposes and that is available for reuse for any purpose, but water shall not become Effluent solely as a result of having been used for hydropower generation off-Reservation.

2.70A "Eligible Safe Harbor Acres" shall mean all acres that were irrigated with Water Diverted from within an Impact Zone during any of the Years in the period 1995 to 2001, inclusive, and such other acres located in the San Pedro Ag and New Large Industrial Use Impact Zone that: (i) were irrigated during any of the Years in the period 1993-2001, inclusive, and (ii) are brought into production no later than December 31, 2003, by the owner of such acres as of June 30, 2002; provided that for purposes of this Subparagraph the term 'owner of such acres' shall include any heir to such owner.

2.71 "Enforceability Date" shall mean the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c) of the Act.

2.72 "Exceedance Year" for purposes of Paragraph 5.0 shall mean a Year in which the State is required to Replenish pursuant to any one of Subparagraphs 5.3.3.1.1 through 5.3.3.1.7.

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

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

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

2.76 "Excess Pumping" for purposes of Subparagraphs 5.3.3.1.7, 5.3.4.5, 5.3.10 and 5.3.12 shall mean any Pumping by AWC greater than one thousand two hundred seventy-five (1,275) AFY from the Wells and all other wells located within the Eastern Protection Zone South, collectively, for transport outside the Eastern Protection Zones.

2.77 "Exchange Reclaimed Water" shall have the meaning set forth in paragraph 3 of the agreement attached as Exhibit 18.1.

2.77A "Exhibit" shall mean an exhibit to this Agreement as set forth in Paragraph 3.0, other than exhibit 26.6 (the Form of Paloma Agreement), which is attached to this Agreement for informational purposes only and shall not be deemed or construed as an "Exhibit" to this Agreement for any purpose whatsoever.

2.78 "Fee Land" shall mean land, other than Off-Reservation Trust Land, owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

2.79 "Firm Capacity" shall mean the capacity in the SRP water delivery system that is not interruptible by SRP as set forth in Paragraph 15.0.

2.79A "Form of Paloma Agreement" shall mean the form of agreement among the Community, the United States, and one or more of the Gillespie Diverters, a copy of which is attached to this Agreement for informational purposes only as exhibit 26.6.

2.80 "Fourth Priority Water" shall mean Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State

entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands 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 Central Arizona Project, including use of Colorado River water on Indian lands.

2.81 "Franklin Irrigation District" shall mean the entity of that name that is a political subdivision of the State and organized under the laws of the State.

2.81A "Funded Party" for purposes of Paragraph 29.0 shall mean the Community, SCIDD, SRP, the City of Safford, or the Gila Valley Irrigation District. "Funded Parties" shall mean every Funded Party.

2.82 "Gila Drain" shall mean the drain designated and provided for in that agreement between the United States of America and Salt River Valley Water Users' Association for Construction of Drain Ditch across the Gila River Indian Reservation dated June 21, 1923, a copy of which is attached as Exhibit 2.82.

2.83 "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.

2.84 "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).* This is the same case referred to in the Act as *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-091 (Salt), W-092 (Verde), W-093 (Upper Gila), W-094 (San Pedro) (Consolidated).*

2.84A "Gila River Impact Zone" shall mean the lands identified as such on the maps set forth in Exhibit 2.84A.

2.85 "Gila River Indian Community" or "Community" shall mean the government composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under section 16 of the Act of June 18, 1934 (25 U.S.C. § 476).

2.86 "Gila River Indian Reservation" or "Reservation" shall mean land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, Chapter LXVI), and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19,

1915. The term "Gila River Indian Reservation" or "Reservation" includes those lands located in Sections 16 and 36, Township 4 South, Range 4 East, Gila and Salt River Base and Meridian.

2.87 "Gila Valley Irrigation District" shall mean the entity of that name that is a political subdivision of the State and organized under the laws of the State.

2.87A "Gillespie Diverters" shall mean those signatories of the Paloma Agreement other than the Community, SCIDD and the United States. The Gillespie Diverters are not Parties to this Agreement and are not bound by any of the terms and conditions hereof.

2.87B "GIS" shall mean a digital electronic geographic information system that is used to incorporate electronic mapping images and associated interactive data and textual information.

2.88 "Globe Equity Decree" shall mean the decree dated June 29, 1935, entered in *United States of America v. Gila Valley Irrigation District et al*., Globe Equity No. 59, by the United States District Court for the District of Arizona. The term "Globe Equity Decree" includes all court orders and decisions supplemental to that decree.

2.89 "Globe Equity Decree Water" shall mean the Community's entitlement to water under the Globe Equity Decree as set forth in Paragraph 6.0 of this Agreement, which entitlement is

subject to the right to an allocation of Water for allotted lands within the Reservation for irrigation purposes pursuant to the Water Code.

2.90 "Globe Equity Enforcement Court" shall mean the United States District Court for the District of Arizona exercising continuing jurisdiction over the Globe Equity Decree.

2.91 "GPM" shall mean gallons per minute.

2.92 "Groundwater" shall mean all water beneath the surface of the Earth other than Recharged Water or Surface Water. Solely for purposes of Paragraph 25.0, the term "Groundwater" shall include Recharged Water.

2.93 "Groundwater Code" shall mean Chapter 2 of Title 45, Arizona Revised Statutes, as amended.

2.94 "Groundwater Savings" shall mean the use of Imported Water in a Groundwater Savings Facility in a Protection Zone.

2.95 "Groundwater Savings Facility" shall mean a facility as described in section 45-802.01(8), Arizona Revised Statutes, as amended.

2.96 "Haggard Decree" shall mean the decree dated June 11, 1903, entered in *United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa Indians similarly situated v. Haggard, et al.*, Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa. The term "Haggard Decree" includes all court orders and decisions supplemental to that decree.

2.97 "Haggard Decree Water" shall mean the Community's entitlement to water under the Haggard Decree as set forth in Paragraph 7.0 hereof, which entitlement is subject to the right to an allocation of water for allotted lands within the Reservation for irrigation purposes pursuant to the Water Code.

2.98 "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.

2.99 "Hohokam Irrigation and Drainage District" or "Hohokam" 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.

2.100 "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.

2.100A "Impact Zone" or "Impact Zones" shall mean the Gila River Impact Zone, the San Pedro Ag and New Large Industrial Use Impact Zone, or the San Pedro M&I and Domestic Purposes Impact Zone, or any combination thereof, as the context requires.

2.101 "Imported Water" for purposes of Paragraph 5.0 and Subparagraph 2.94 shall mean all Water transported into a Protection Zone for a Municipal Use, Industrial Use or an Irrigation Use in that Protection Zone.

2.102 "Industrial Acre" for purposes of Subparagraph 2.17 shall mean the acre or acres in an Eastern Protection Zone or Western M&I Protection Zone on which Industrial Use of Water has commenced after December 31, 2002, and for which the Water use is being reported to ADWR.

2.103 "Industrial Use" for purposes of Subparagraphs 2.17, 2.101, 2.102, 2.118.2 and Paragraph 5.0 shall mean a Non-Irrigation Use commenced after December 31, 2002, that is not supplied by

a Municipal Provider, including "animal industry use" and "expanded animal industry use", as the quoted terms are defined in the Groundwater Code. Industrial Use shall include any use within a Protection Zone in excess of the quantity allowed by any:

2.103.1 Type one non-irrigation grandfathered right issued by ADWR that is in force on December 31, 2002;

2.103.2 Type two non-irrigation grandfathered right issued by ADWR that is in force on December 31, 2002; or,

2.103.3 General Industrial Use permit issued by ADWR that is in force on December 31, 2002.

2.104 "Injury to Water Quality" shall mean any contamination, diminution or deprivation of Water quality under Federal, State or other law.

2.105 "Injury to Water Rights" shall mean an interference with, diminution of, or deprivation of Water Rights under Federal, State or other law. The term "Injury to Water Rights" includes a change in the Underground Water table and any effect of such a change. The term "Injury to Water Rights" does not include Subsidence Damage or Injury to Water Quality.

2.106 "Irrigation Grandfathered Right" shall have the meaning set forth in the Groundwater Code.

2.107 "Irrigation Use" shall mean the use of Water on two (2) or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock or poultry.

2.107A "Kearny Agreement" shall mean that agreement among the Community, SCIDD, the United States and the Town of Kearny attached as Exhibit 26.4.

2.108 "Lease Agreement" or "Lease Agreements" shall mean one or more of those agreements entered into among the Community, the Secretary, and one or more of the Cities pursuant to Paragraph 17.0, the forms of which are attached as Exhibits 17.1A through 17.1D.

2.109 "Leased Water" shall mean that portion of the Community's CAP Indian Priority Water that is leased to a City pursuant to a Lease Agreement.

2.110 "Long-Term Storage Credits" for purposes of Paragraph 5.0 shall have the meaning set forth in section 45-802.01(11), Arizona Revised Statutes, as amended.

2.110A "Lower Colorado River Basin Development Fund" or "LCRBDF" shall mean the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), as amended by section 107 of the Act.

2.110B "Mammoth Agreement" shall mean that agreement among the Community, SCIDD, the United States and the Town of Mammoth attached as Exhibit 26.5.

2.111 "Maricopa Contract" shall mean that Contract For Pumping Water For Maricopa Indians on Gila River Indian Reservation dated May 5, 1936, between the United States of America and the Salt River Valley Water Users' Association, as amended on June 12, 1968, and which is amended and restated as Exhibit 7.2.

2.112 "Maricopa Drain" shall mean the water conveyance facilities described in the Maricopa Contract.

2.113 "Maricopa-Stanfield Irrigation & Drainage District" or "MSIDD" 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.

2.114 "Maximum Capacity" shall mean the maximum capacity in the SRP water delivery system that SRP shall provide to the Community pursuant to Paragraph 15.0.

2.115 "Member" or "Members" shall mean any person or persons duly enrolled as members of the Gila River Indian Community.

2.116 "Mesa Reclaimed Water" shall mean Reclaimed Water made available to the Community by the City of Mesa in exchange for Community CAP Exchange Water pursuant to Subparagraph 18.1.1.

2.116A "Miscellaneous Flow Lands" shall mean those lands, if any, that are not part of the Project, that have water rights that are recognized in the Globe Equity Decree to some portion of the Natural Flow, and whose water is diverted at the Ashurst-Hayden Diversion Dam or any successor diversion point that may be permitted pursuant to the Globe Equity Decree.

2.117 "MSIDD/BOR Agreement" shall mean the agreement between MSIDD and the Bureau of Reclamation dated June 28, 1996, a copy of which is attached hereto as Exhibit 5.4.1.1.

2.118 "Municipal Acre" for purposes of Subparagraphs 2.17, 2.18 and 2.120 shall mean:

2.118.1 The acre or acres in a subdivided parcel of land within an Eastern Protection Zone or the Western Municipal Protection Zone on which Water use has

commenced after December 31, 2002, and for which the Water use is being reported to the ADWR, and

2.118.2 The acre or acres in an unsubdivided parcel of land within an Eastern Protection Zone or within the Western M&I Protection Zone on which Water Pumped from within the Protection Zone is supplied by a Municipal Provider for an Industrial Use or a Municipal Use.

2.119 "Municipal Provider" for purposes of Subparagraphs 2.103, 2.118.2 and 2.120 shall mean a "municipal provider" or "municipal water provider" as those terms are defined in the Groundwater Code.

2.120 "Municipal Use" for purposes of Paragraph 5.0 and Subparagraphs 2.17, 2.18, 2.101, and 2.118.2 shall mean a Non-Irrigation Use commenced after December 31, 2002, and supplied by a Municipal Provider on Municipal Acres.

2.121 "M&I Use" or "M&I Uses" shall mean the use of Water for municipal, industrial, commercial, residential or any other purposes that are not Irrigation Uses.

2.122 "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 of the San Carlos Reservation and the Bureau of Reclamation, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, 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: (1) the terms and conditions of this Agreement and (2) judgments and agreements with the entities specified above as they exist on December 31, 2002. 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 Proceedings, for SRP storage facilities existing as of December 31, 2002.

2.123 "New Ag Use" for purposes of Exhibit 26.8.1 shall mean an Irrigation Use of Water Diverted from within an Impact Zone which use did not exist in at least one of the four (4) Years 1998 to 2001 inclusive.

2.123A "New Domestic Use" for purposes of Subparagraph 26.8.2 shall mean a use of Water for Domestic Purposes Diverted from within an Impact Zone which use did not exist as of December 31, 2002.

2.123B "New Large Industrial Use" for purposes of Subparagraphs 2.123C and 26.8.2 shall mean a use of Water for commercial power generation, mining and associated processes, or any other Industrial Use that uses in excess of two hundred fifty (250) AFY of Water Diverted from within an Impact Zone which use did not exist as of December 31, 2002.

2.123C "New Large Industrial Use Cap" for purposes of Subparagraph 26.8.2.6.1 shall mean the maximum of two hundred fifty (250) AFY for any eligible Non-GE 59 Water User or a total of one thousand (1,000) AFY for any number of Non-GE 59 Water Users Diverting Water for New Large Industrial Uses from within an Impact Zone after December 31, 2002.

2.124 "New Use" for purposes of Paragraph 5.0 shall mean any Non-Irrigation Use not existing in at least one of the four (4) Years 1998 to 2001 inclusive.

2.124A "NM Consumptive Use and Forbearance Agreement" shall mean the agreement entitled "New Mexico Consumptive Use and Forbearance Agreement:" that is (A) entered into by and among the Gila River Indian Community, San Carlos Irrigation and Drainage District, the United States, Franklin Irrigation District, Gila Valley Irrigation District, and other signatories to the UVD Agreement, (B) approved by the State of New Mexico, and (C) authorized, ratified, and approved by section 212(b) of the Act. The term "New Mexico Consumptive Use and Forbearance Agreement" includes (i) all exhibits to that agreement (including the New Mexico

Risk Allocation agreement, which is also an exhibit to the UVD Agreement); and (ii) any amendment to that agreement made or added pursuant to that agreement.

2.124B "Non-GE 59 Water Users" shall mean: (1) the Arizona State Land Department, to the extent that it Diverts Water from within the Gila River Watershed above Ashurst-Hayden Diversion Dam the Diversion of which is not specifically authorized by the Globe Equity Decree; (2) all persons, entities, corporations or municipal corporations under Federal, State or other law in the Gila River Watershed above Ashurst-Hayden Diversion Dam who now or in the future Divert Water from within the Gila River Watershed above Ashurst-Hayden Diversion Dam, which Diversion is not specifically authorized by the Globe Equity Decree; (3) any successor in interest to any persons, entities, corporations or municipal corporations under Federal, State or other law that otherwise meet the definition of Non-GE 59 Water User set forth in Subparagraphs 2.124B(1) or (2) above.

Notwithstanding anything to the contrary in the first paragraph of this definition, the term "Non-GE 59 Water User" shall not include: (i) persons, entities, corporations or municipal corporations under Federal, State or other law located in the Gila River watershed above Ashurst-Hayden Diversion Dam who now or in the future Divert Water from within the Gila River Impact Zone for Irrigation Use with respect to such Diversion; (ii) persons, entities, corporations or municipal corporations under Federal, State or other law located in the Gila River watershed above Ashurst-Hayden Diversion Dam who now or in the future Divert Water from outside an Impact Zone with respect to such Diversion; (iii) Asarco; (iv) the San Carlos Apache Tribe, its

members, allottees, or the United States on behalf of each; and (v) any Party whose use of Water is governed by an Exhibit to this Agreement. Whether and the extent to which pumping from a well located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting Water from within such Impact Zone shall be determined in accordance with the cone of depression test standard that is to determined by the Gila River Adjudication Court.

The term "Non-GE 59 Water Users" is solely for: (1) determining eligibility for the safe harbors described in Subparagraph 26.8.2, including as such safe harbors may apply in Subparagraph 26.2; (2) determining the scope of the Community's and United States' retention of rights under Subparagraphs 25.12 and 25.24; and (3) no other purpose.

2.125 "Non-Irrigation Use" shall mean a use of Underground Water other than an Irrigation Use.

2.126 "Off-Reservation Trust Land" shall mean land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the Enforceability Date.

2.127 "Operation, Maintenance and Replacement" or "OM&R" shall mean, solely for purposes of Paragraph 27.0, all activities required for the efficient delivery of Water and drainage of lands,

including, but not limited to, the care, operation, maintenance, repair and replacement of canals, laterals, drains, pumps, wells and appurtenances.

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

2.129 "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 30.4. The United States participation as a Party shall be in the capacity as described in Subparagraph 2.174.

2.130 "Phelps Dodge Corporation" or "Phelps Dodge" shall mean the New York corporation of that name, Phelps Dodge's subsidiaries (including without limitation Phelps Dodge Morenci, Inc., a Delaware corporation of that name) and Phelps Dodge's successors and assigns.

2.130A "Phreatophyte" shall mean a deep-rooted plant that grows in locations in which the root system reaches the water table, or the capillary zone immediately above the water table, deriving a perennial and secure supply of water from such source.

2.131 "Protection Zone" or "Protection Zones" shall mean one or more of the protection zones described in Exhibit 5.3.

2.132 "Pump", "Pumped" or "Pumping" shall mean the withdrawal of Underground Water from a well.

2.133 [Intentionally not used].

2.134 "Recharge", "Recharged" or "Recharging" shall mean the storage of Water in a Groundwater Savings Facility or an Underground Storage Facility pursuant to a Water Storage Permit.

2.135 "Recharged Water" shall mean Water that has been Recharged.

2.136 "Reclaimed Water" shall mean Effluent that: (1) meets the A+ Reclaimed Water Quality Standards as set forth in Exhibit 18.1, or (2) is Diverted by the Community as provided in Exhibit 18.1.

2.137 "Reclaimed Water Exchange Premium" shall mean the difference, in acre-feet, between the amount of Community CAP Exchange Water delivered to Chandler and Mesa and the amount of Exchange Reclaimed Water made available to the Community by Chandler and Mesa in exchange for such Community CAP Exchange Water pursuant to Subparagraphs 18.1.1 and 18.1.2 and in accordance with Exhibit 18.1.

2.138 "Replenishment", "Replenish" or "Replenishing" shall mean the replacement or preservation of Underground Water by a method provided for in Subparagraph 5.3.3.2.

2.139 "Report" for purposes of Subparagraph 5.3.12 shall have the meaning set forth therein.

2.140 "Roosevelt Irrigation District" 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.

2.141 "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 law of the State.

2.142 "RWCD Agreement" shall mean the agreement among RWCD, the Community and the United States, dated May 10, 1999, and Amendment No.1 thereto, copies of which are attached as Exhibit 9.1.

2.143 "RWCD CAP Water" shall mean that CAP NIA Priority Water currently held by the Secretary for the benefit of the Community pursuant to an agreement among the Secretary, the Community and RWCD pursuant to which RWCD relinquished its entitlement to CAP NIA Priority Water under that subcontract among the United States, CAWCD, and RWCD dated

November 18, 1991, Contract No. 2-07-30-W0268, including any entitlement to CAP NIA Priority Water reallocated to RWCD under the Final Reallocation Decision published in the Federal Register, Volume 47, No. 24, on February 25, 1992, at page 4470 *et seq*. The Parties agree that the amount of RWCD CAP Water is eighteen thousand six hundred (18,600) AFY of CAP NIA Priority Water.

2.144 "RWCD Surface Water" shall mean RWCD's contribution of up to four thousand five hundred (4,500) AFY of Surface Water that RCWD is required to deliver to the Community pursuant to section 5.0 of the RWCD Agreement and that is listed in Subparagraph 4.1 of this Agreement.

2.144A "Safford Agreement" shall mean that agreement among the Community, SCIDD, the United States and the City of Safford attached as Exhibit 26.1.

2.145 "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 Theodore Roosevelt Dam and any dams that are constructed after December 31, 2002, to the extent that they replace then-existing storage capacity of any of those four dams.

2.146 "San Carlos Irrigation and Drainage District" or "SCIDD" shall mean the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

2.146A "San Manuel CC&N" shall mean that service area shown on the map in Exhibit 2.146A.

2.146B "San Pedro Ag and New Large Industrial Use Impact Zone" shall mean the lands identified as such on the maps set forth in Exhibit 2.146B contiguous to the San Pedro River from its confluence with the Gila River to the border with the Republic of Mexico and contiguous to Aravaipa Creek from its confluence with the San Pedro River to its source.

2.146C "San Pedro M&I and Domestic Purposes Impact Zone" shall mean the lands identified as such on the maps set forth in Exhibit 2.146C contiguous to the San Pedro River from its confluence with the Gila River to the Cochise County line and contiguous to Aravaipa Creek from its confluence with the San Pedro River to its source.

2.147 "San Tan Irrigation District" 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.

2.148 "SCIIP" or "SCIP" shall mean the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475). The term "SCIIP" or "SCIP" includes any modifications to such

irrigation project authorized by any amendments or supplements to the act described in the preceding sentence.

2.149 [Intentionally not used].

2.150 [Intentionally not used].

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

2.152 "Settlement Water Budget" shall mean six hundred fifty-three thousand five hundred (653,500) AFY of water from the sources described in Subparagraph 4.1.

2.153 "Southside Replenishment Program" shall mean the program established in accordance with Subparagraph 5.3 to protect the Reservation from off-Reservation Pumping.

2.154 "Southside Replenishment Bank" shall mean the bank of water for Replenishment to be established by the State pursuant to Subparagraph 5.3.

2.155 "Southside Replenishment Bank IGA" shall mean the On-Reservation Southside Replenishment Bank Intergovernmental Agreement between the Community and the State described in Subparagraph 5.3.4.

2.156 "Special Hot Lands" shall have the same meaning set forth in Exhibit 26.2.

2.157 "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.

2.158 [Intentionally not used].

2.159 "SRP Exchange Water Account" shall mean the exchange water account created by SRP for the benefit of the Community pursuant to Subparagraph 13.2.

2.160 "SRP Exchange Water Credits" shall mean the exchange water credits provided by SRP to the Community pursuant to Paragraph 13.0.

2.161 "SRP Reservoirs" shall mean the six reservoirs operated by SRP on the Salt and Verde rivers created by the impoundment of water behind Stewart Mountain Dam, Mormon Flat Dam, Horse Mesa Dam, Theodore Roosevelt Dam, Horseshoe Dam, and Bartlett Dam, and any dams that are constructed after December 31, 2002, to the extent that they replace then-existing storage capacity of any of those six dams.

2.162 "SRP Stored Water" shall mean that amount of water credited to the Community by SRP from SRP Reservoirs pursuant to Paragraphs 7.0 and 12.0.

2.163 "SRP Reservoir Space" shall mean the capacity of the Salt River Reservoir System available to SRP to store water on a continuous basis for irrigation, power, municipal, industrial or other purposes, as periodically determined by sediment surveys. The amount of SRP Reservoir Space shall not exceed SRP's storage rights for these reservoirs as determined in the Gila River Adjudication Proceedings.

2.164 "SRRD" shall mean the Salt River Reservoir District as defined, on December 31, 2002, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

2.165 "State" shall mean the State of Arizona. The State's participation as a Party shall be as described in Subparagraph 30.4 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).

2.166 [Intentionally not used].

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

2.168 "Subsidence Damage" shall mean any injury to land, Water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth any length or depth, which settling or cracking is caused by the Pumping of Underground Water.

2.169 "Successor in Interest to an Allottee" shall mean any person or entity that succeeds or has succeeded an Allottee to an interest in an allotment that is not held in trust.

2.170 "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.

2.171 "TON CAP Water Delivery Contract" shall mean the contract for delivery of Central Arizona Project water entered into by the United States and the Tohono O'odham Nation on December 11, 1980, as amended.

2.172 "Underground Storage Facility" shall mean a facility as described in section 45-802.01(20), Arizona Revised Statutes, as amended.

2.173 "Underground Water" shall mean any water beneath the surface of the Earth regardless of its legal characterization as appropriable or non-appropriable under any applicable law.

2.174 "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.

2.175 "Upper Gila River Watershed Maintenance Program" shall mean the program to be established by State law pursuant to the provisions of Exhibit 26.8.1.

2.176 "Use" for purposes of Paragraph 25.0 shall mean any beneficial use including instream flows, Recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

2.176A "UVD Agreement" shall mean the Agreement Among the Gila River Indian Community, the United States of America, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge and Certain Other Parties Located in the Upper Valley of the Gila River, a copy of which is attached as Exhibit 26.2.

2.176B "UVD Agreement Beneficiary" shall mean the State or any agency or political subdivision of the State, or any other person, entity, corporation or municipal corporation that is a UV Signatory or UV Non-signatory, as those terms are defined in the UVD Agreement, but only as to the extent of their respective capacity as a holder of UV Decreed Water Rights, as that term is defined in the UVD Agreement.

2.176C "UVD Parties" shall mean all signatories of the UVD Agreement other than the Community, SCIDD and the United States.

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

2.178 "Water Code" shall mean that ordinance to be adopted by the Community pursuant to Paragraph 23.0.

2.179 [Intentionally not used].

2.180 "Water Lease Charge" shall mean that amount described in Subparagraph 17.1.2 and as described in subparagraph 4.3 of the Lease Agreements.

2.181 "Water OM&R Fund" shall mean the Gila River Indian Community Water OM&R Trust Fund established by section 208 of the Act.

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

2.182A "Water Rights Appurtenant to NM 381 Acres" shall mean those Water Rights (A) appurtenant to the three hundred eighty point eighty-one (380.81) acres described in the decree in *Arizona v. California*, 376 U.S. 340, 349 (1964); and (B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

2.182B "Water Rights for NM Domestic Purposes" shall mean those Water Rights for domestic purposes of not more than two hundred sixty-five (265) acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in *Arizona v. California*, 376 U.S. 340, 350 (1964).

2.183 "Water Storage Permit" shall mean a permit issued by the State pursuant to section 45-831.01, Arizona Revised Statutes, as amended.

2.184 "Wells" for purposes of Subparagraphs 2.76 and 5.3.10 shall mean Coolidge Well #9 and Coolidge Well #10, collectively.

2.185 "Western M&I Protection Zone" shall have the meaning set forth in the legal description in Exhibit 5.3.

2.186 "Western Municipal Protection Zone" shall have the meaning set forth in the legal description in Exhibit 5.3.

2.187 "Western Protection Zone" shall mean either the Western M&I Protection Zone or the Western Municipal Protection Zone.

2.188 "Western Protection Zones" shall mean both the Western M&I Protection Zone and the Western Municipal Protection Zone, as set forth in the legal description in Exhibit 5.3.

2.188A "Winkelman CC&N" shall mean that service area shown on the map in Exhibit 2.188A.

2.189 "WQARF" for purposes of Paragraph 25.0 shall mean the Arizona Water Quality Assurance Revolving Fund, established pursuant to sections 49-281, *et seq.*, Arizona Revised Statutes, as amended.

2.190 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning set forth 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 the Parties have reviewed the Exhibits. Prior to the Enforceability Date, no Party shall object to or contest the terms and conditions 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 Exhibit 25.18A or Exhibit 25.18B. Except as provided in Subparagraph 4.6, amendments to Exhibits shall be governed by Subparagraph 30.3. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraphs 4.6 and 30.3. 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 25.18A or 25.18B. A definition in an Exhibit shall be confined to the Exhibit in which it appears unless such definition is specifically incorporated by reference in this Agreement or in another Exhibit.

Paragraph No./ Exhibit No.	**Description**
2.19B	Map showing BHP Wells
2.35	CAP Repayment Stipulation
2.82	Agreement between the United States of America and Salt River Valley Water Users' Association for Construction of Drain Ditch across the Gila River Indian Reservation, dated June 21, 1923

2.84A-1 to 7	Maps of Gila River Impact Zone
2.146A	Map of San Manuel CC&N
2.146B-1 to 2	Maps of San Pedro Ag and New Large Industrial Use Impact Zone
2.146C	Maps of San Pedro M&I and Domestic Purposes Impact Zone
2.188A	Map of Winkelman CC&N
4.6A-B	Sample Reports Required by Subparagraph 4.6
5.3	Legal Descriptions of Protection Zones
5.4.1.1	MSIDD/BOR Agreement
7.2	Maricopa Contract
8.1	Community Repayment Contract
8.2	Community Water Delivery Contract
8.16.4.1	Secretary's Approach for Determining the Amount of Water Available to the Community During a Time of Shortage Under the Community's 1992 CAP Water Delivery Contract Prior to Amendment
8.16.4.2	Exhibit 5.3.4.1 to the TON Settlement Agreement
9.1	RWCD Agreement
10.1	Community/Phelps Dodge Agreement
12.1	Graph of Community's Entitlement to SRP Stored Water
12.13	Graph of Community's Entitlement to Blue Ridge Stored Water
12.13.4	Description of Blue Ridge fixed and variable operation, maintenance and replacement cost
17.1A	Lease Agreement among the Community, the United States and the City of Goodyear

17.1B	Lease Agreement among the Community, the United States and the City of Peoria
17.1C	Lease Agreement among the Community, the United States and the City of Phoenix
17.1D	Lease Agreement among the Community, the United States and the City Scottsdale
17.1.1A	Form of Voluntary Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
17.1.1B	Form of Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
18.1	Reclaimed Water Exchange Agreement among the Cities of Mesa and Chandler, the Community and the United States
19.1	Buckeye Irrigation Company Agreement
20.1	Agreement among the Community, SCIDD and the United States
22.1	Toka Sticks trust land description
25.1.1	Waivers of claims for Injury to Water Rights by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the Community and Members (but not Members in their capacity as Allottees) and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees)
25.1.2	Waivers of claims for Injury to Water Rights by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States as trustee for the Allottees
25.1.3	Waiver of claims for Injury to Water Quality arising from time immemorial through December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the Community and Members (but not Members in their capacity as Allottees)

25.1.4	Waiver of claims for Injury to Water Quality arising from time immemorial through December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States acting in its capacity as trustee for the Community, Members or Allottees
25.1.5	Waiver of common law claims for Injury to Water Quality arising after December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States in its own right and the United States acting in its capacity as trustee for the Community, Members or Allottees
25.2	Waiver of claims for Water Rights and Injury to Water Rights by the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) and United States on behalf of the Community and its Members (but not Members in their capacity as Allottees).
25.3	Waiver of claims for Water Rights and Injury to Water Rights by the United States as trustee for Allottees
25.4	Waiver of claims by the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) for Injury to Water Quality
25.4.1.1	List of Remediations Exempted from the Community's Waiver for Injury to Water Quality
25.5	Waiver of past and present claims for Injury to Water Quality by the United States as trustee for the Community, Members and Allottees
25.6	Waiver of future claims for Injury to Water Quality by the United States in its own right and as trustee for the Community, Members and Allottees
25.7	Waiver of claims by the Community on behalf of itself and Members (but not Members in their capacity as Allottees) against Salt River Project
25.8	Waiver of claims by the United States acting as trustee for the Community, Members, and Allottees against Salt River Project
25.9	Form of waiver of claims for Subsidence by the Community, Allottees, and the United States on behalf of the Community and Allottees

25.10	Waiver of claims by the United States against the Community
25.11	Waiver of claims by the Community against the United States
25.12.1.9A	Current Tenants of Lone Butte Industrial Park
25.12.1.9B	Former Tenants of Lone Butte Industrial Park
25.12.1.9C	Contracts Between Community and Third Parties
25.12.1.9D	Business Licenses Issued by the Community to Third Parties
25.17.1A-B	Forms of Dismissal in *Gila River Indian Community vs. Gila Valley Irrigation District, et al.*
25.17.2	Form of Dismissal in *United States vs. Roosevelt Water Conservation District, et al.*
25.17.3A-B	Forms of Dismissal in *Gila River Indian Community vs. American Smelting and Refining Company, et al*.
25.17.4	Form of Dismissal of Interlocutory Appeals Filed in Gila River Adjudication Proceedings
25.18.A	Stipulation and Form of Judgment and Decree in the Gila River Adjudication Proceedings
25.18.B	Stipulation and Form of Judgment and Decree regarding the Globe Equity Decree
26.1	Safford Agreement
26.2	UVD Agreement
26.3	Duncan Agreement
26.4	Kearny Agreement
26.5	Mammoth Agreement
26.6	Form of Paloma Agreement

26.8.1	Minimum Requirements of State Legislation for Upper Gila River Watershed Maintenance Program
28.4.1	Claims of the Arizona Game and Fish Commission
28.8.2	Land classifications subject to RWCD credit of 5.6% of water diverted at Granite Reef Dam
29.1.1	Expected Schedule of Funding of Programs and Benefits from LCRBDF
29.1.2	Expected Schedule of Funding for Funded Parties from LCRBDF
30.8	Water Commissioner's Report of June 3, 1977
30.16A	Amendment to CAP Subcontracts other than for Hohokam water
30.16B1	Amendment No. 2 to Chandler's CAP Water Service Subcontract for Hohokam water
30.16B2	Amendment No. 2 to Mesa's CAP Water Service Subcontract for Hohokam water
30.16B3	Amendment to Phoenix's Subcontract for Hohokam water
30.16B4	Amendment to Scottsdale's Subcontract for Hohokam water
30.16C	Amendment to Scottsdale's Yavapai Prescott Subcontract
30.21	Subsidence Damages

4.0 COMMUNITY'S WATER RIGHTS

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

SOURCE	AMOUNT	REFERENCE
Underground Water	156,700 AFY	as set forth in Paragraph 5.0
Globe Equity Decree Water	125,000 AFY	as set forth in Paragraph 6.0
Haggard Decree Water	5,900 AFY	as set forth in Paragraph 7.0
Community CAP Indian Priority Water	173,100 AFY	as set forth in Subparagraph 8.3.1
RWCD CAP Water	18,600 AFY	as set forth in Subparagraph 8.3.3
RWCD Surface Water	4,500 AFY	as set forth in the RWCD Agreement
HVID CAP Water	18,100 AFY	as set forth in Subparagraph 8.3.5
Asarco CAP Water[1]	17,000 AFY	as set forth in Subparagraph 8.3.4
SRP Stored Water[2]	20,000 AFY	as set forth in Paragraph 12.0
Chandler Contributed Reclaimed Water	4,500 AFY	as set forth in Paragraph 18.0
Mesa Reclaimed Water Exchange Premium	5,870 AFY	as set forth in Paragraph 18.0
Chandler Reclaimed Water Exchange Premium	2,230 AFY	as set forth in Paragraph 18.0

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

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

New CAP NIA Priority Water	102,000 AFY	as set forth in Subparagraph 8.3.2
TOTAL	**653,500 AFY**	

4.1.1 The Community, and the United States on behalf of the Community, Members and Allottees recognize that, pursuant to 25 U.S.C. §381, allotted lands within the Reservation have an appurtenant right to an allocation by the Community for irrigation purposes of the water set forth in Subparagraph 4.1. The Community shall enact the Water Code, pursuant to which the Community shall regulate, among other things, such allocation by the Community. The Water Code shall provide Allottees a process to enforce this right against the Community. Nothing in this Subparagraph shall be construed to authorize any action, claim or suit by an Allottee against any person, entity, corporation, or municipal corporation, under Federal, State or other law.

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

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

4.2.1 For purposes of determining compliance with the limitations on total Diversions of this Subparagraph 4.2, the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, may Divert more than six hundred fifty-three thousand five hundred (653,500) acre-feet of water in any Year or Years, provided that such Diversions, as calculated herein, shall not exceed in the aggregate six million five hundred thirty-five thousand (6,535,000) acre-feet for any period of ten (10) consecutive Years, reckoned in continuing progressive series, beginning on January 1 of the Year immediately succeeding the Year in which the Enforceability Date occurs. In no Year may the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, Divert an amount of water that would cause the aggregate Diversions for any period of ten (10) consecutive Years to exceed six million five hundred thirty-five thousand (6,535,000) acre-feet.

4.2.2 Subject to the restrictions on Pumping during the Build-Out Period as described in Subparagraph 4.5.2, the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, shall be entitled to Divert Underground Water in amounts greater than one hundred fifty-six thousand (156,700) acre-feet in any Year or Years so long as Diversions from all sources of water do not exceed an average of six hundred fifty-three thousand five hundred (653,500) AFY, calculated as provided in this Subparagraph 4.2.

4.3 Except as provided in Subparagraph 4.5 for the Build-Out Period and subject to the exceptions in Subparagraph 4.4, the following shall be treated each Year as having been Diverted by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees for use on the Reservation for purposes of implementing the limitations of Subparagraph 4.2:

4.3.1 All water, other than the Reclaimed Water Exchange Premium, Diverted each year by the Community, Members, Allottees, or the United States on behalf of the Community, Members or Allottees from any of the sources listed in Subparagraph 4.1;

4.3.2 All Community CAP Water leased to others without regard to the quantity of water actually delivered under the terms of such lease agreements;[3]

4.3.3 All Community CAP Water available for delivery to or for the benefit of the Community, not accounted for under Subparagraphs 4.3.1 or 4.3.2, less any reduction in such entitlement as a result of any shortage of Community CAP Water as described in Subparagraph 8.16;

4.3.4 All Mesa Reclaimed Water made available to the Community each Year and that the Community accepts or is required to accept pursuant to Exhibit 18.1;

[3] In the event the Community and Asarco conclude an agreement for lease and exchange of Asarco CAP Water, this subparagraph shall be amended as necessary to reflect appropriate accounting for same.

4.3.5 All Chandler Reclaimed Water made available to the Community each Year and that the Community accepts or is required to accept pursuant to Exhibit 18.1;

4.3.6 All water from any of the sources listed in Subparagraph 4.1 delivered each Year by the Community, or the United States on behalf of the Community, Members and Allottees to persons other than the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees in exchange for other water, not including any water diverted by the Secretary pursuant to the NM Consumptive Use and Forbearance Agreement;

4.3.7 All water Diverted each Year by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees from any source other than the sources listed in Subparagraph 4.1 for use on the Reservation;

4.3.8 All NM CAP Water delivered to the Community each Year pursuant to the NM Consumptive Use and Forbearance Agreement.

4.4 The following shall be exceptions to Subparagraphs 4.3 and 4.5 and shall not be treated in any Year as having been Diverted by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees for use on the Reservation for purposes of implementing the limitations of Subparagraph 4.2:

4.4.1 Surface Water Diverted from the Gila River at Ashurst-Hayden Diversion Dam by or for the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees at any time or times when water is spilling over Ashurst-Hayden Diversion Dam;

4.4.2 Water received by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees as Replenishment or Southside Replenishment Bank water pursuant to Subparagraphs 5.3 or 5.4;

4.4.3 Underground Water Diverted in order to alleviate water logging of Reservation lands;

4.4.4 Effluent, agricultural return flows, and any surface drainage water developed on the Reservation and used by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees on the Reservation;

4.4.5 Community CAP Exchange Water;

4.4.6 Water received by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees in exchange for water made available from any of the sources listed in Subparagraph 4.1 to persons other than the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees, excluding Reclaimed Water that is treated as having been Diverted pursuant to Subparagraphs 4.3.4 or 4.3.5;

4.4.7 Water stored by the Community for persons other than the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees and recovered by or for persons other than the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees pursuant to an intergovernmental agreement between the Community and ADWR or the Arizona Water Banking Authority;

4.4.8 Any water, not accounted for under Subparagraph 4.4.7, recovered by the Community or the United States on behalf of the Community, Members and Allottees from an Underground Storage Facility pursuant to an intergovernmental agreement between the Community and ADWR to the extent that the recovered water was accounted for, pursuant to Subparagraphs 4.3 or 4.5, as having been Diverted by the Community for use on the Reservation when stored;

4.4.9 Any Excess CAP Water delivered to the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees by CAWCD for use off the Reservation;

4.4.10 Effluent purchased or acquired by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees other than as provided in Subparagraphs 18.1.1, 18.1.2 and 18.1.3, and Exhibit 18.1;

4.4.11 Any Excess CAP Water, other than Replenishment or Southside Replenishment Bank water, delivered by CAWCD to the Community, or the United States on behalf of the Community, Members and Allottees for storage in an Underground Storage Facility pursuant to an intergovernmental agreement between the Community and ADWR, if:

4.4.11.1 The stored Underground Water is Diverted to supplement the Community's CAP Water supplies only during a Year or Years of shortage of such supplies as described in Subparagraph 8.16;

4.4.11.2 The storage account established for the Community under such agreement is required to be debited for Diversions of the stored Underground Water by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees that occur during the Year of shortage; and

4.4.11.3 The amounts of the stored Underground Water debited against the storage account in any Year are treated as having been Diverted by the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees for use on the Reservation in that Year;

4.4.12 SRP drain water, except as provided in Subparagraph 12.5;

4.4.13 Any Surface Water acquired by the Community or the United States on behalf of the Community after December 31, 2002, pursuant to the provisions of State law relating to the severance and transfer of rights to Surface Water, and used in any Year for M&I Uses on the Reservation, if and to the extent that on-Reservation use of Water for M&I Uses exceeds twenty thousand (20,000) acre-feet in such Year;

4.4.14 Any Surface Water acquired by the Community or the United States on behalf of the Community after December 31, 2002, pursuant to the provisions of State law relating to the severance and transfer of rights to Surface Water, and used for Irrigation Uses on the Reservation, if at the time of the Community's application for severance and transfer:

4.4.14.1 The laws of the State have been changed after December 31, 2002, to allow more than two hundred seventy-five thousand (275,000)[4] acres to be used for Irrigation Uses in any Year within the geographic region currently denominated as the Pinal AMA;

4.4.14.2 The laws of the State have been changed after December 31, 2002, to allow more than two hundred eighty thousand (280,000)[5] acres to be used for Irrigation Uses

[4] It is recognized by the Parties that as of October 31, 2001, State law allows more than two hundred seventy-five thousand (275,000) acres to be used for Irrigation Uses in the Pinal AMA in any Year.

[5] It is recognized by the Parties that as of October 31, 2001, State law allows more than two hundred eighty thousand (280,000) acres to be used for Irrigation Uses in the Phoenix AMA in any Year.

in any Year within the geographic region currently denominated as the Phoenix AMA; or

4.4.14.3 The laws of the State are enforced after December 31, 2002, in such a manner as to allow the irrigation of acres without an Irrigation Grandfathered Right in either of the geographic regions specified in Subparagraphs 4.4.14.1 and 4.4.14.2;

4.4.15 Any Surface Water acquired by the Community or the United States on behalf of the Community after December 31, 2002, other than as provided in Subparagraphs 4.4.13 and 4.4.14, if approved by acts of both the U. S. Congress and the State Legislature after December 31, 2002; and

4.4.16 Subject to the provisions of Subparagraph 12.5.1, all water that flows onto or through the Reservation and that: (1) has not been ordered, scheduled or requested for delivery and (2) the Community does not store or use for an Irrigation Use, an M&I Use or Domestic Purposes.

4.4.17 Up to six hundred thirty-six (636) AFY of Community CAP Water, Exchange Reclaimed Water and RWCD Surface Water (subject to subsequent agreement with RWCD) delivered each Year by the Community or the United States on behalf of the Community to the Toka Sticks trust land described in Exhibit 22.1.

4.5 <u>Build-Out Period</u>.

4.5.1 For purposes of implementing the limitations of Subparagraph 4.2 during the Build-Out Period, only the following Community CAP Water or Excess CAP Water shall be treated each Year as having been Diverted by the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees for use on the Reservation:

4.5.1.1 Water delivered to the Community or the United States on behalf of the Community through the CAP System each Year (other than any Excess CAP Water delivered to the Community, Members, Allottees, or the United States on behalf of the Community, Members and Allottees by CAWCD for use off the Reservation);

4.5.1.2 Community CAP Water leased to others without regard to the quantity of water actually delivered under the terms of such lease agreements;[6] and

4.5.1.3 Except for Community CAP Exchange Water, Community CAP Water delivered each Year by the Community or the United States on behalf of the Community to persons other than the Community, Members, or Allottees in exchange for other Water.

[6] In the event the Community and Asarco conclude a lease and exchange agreement for the Asarco CAP Water, this provision shall be amended as necessary to account appropriately for such water.

4.5.2 Notwithstanding anything in Paragraph 4.0 to the contrary, the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, shall not Divert more than one hundred ninety thousand (190,000) acre-feet of Underground Water on the Reservation in any Year during the Build-Out Period.

4.5.3 All other terms and conditions of Paragraph 4.0 shall be in effect during the Build-Out Period.

4.6 Beginning on March 1 of the first Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the Community shall file with the Gila River Adjudication Court, a report, in the applicable forms set forth in Exhibits 4.6A and 4.6B or as may otherwise be required by the Gila River Adjudication Court, showing: (1) all amounts of Water, by source, Diverted under Subparagraph 4.3 (Exhibit 4.6A) or under Subparagraph 4.5 if prior to the end of the Build-Out Period (Exhibit 4.6B), by the Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, in the Year immediately preceding the Year in which the report is filed; and (2) all amounts of water enumerated in Subparagraph 4.4 that were treated by the Community as not having been Diverted in the Year immediately preceding the Year in which the report is filed. The Community shall give notice by serving a copy of each such report to each Party as provided in Subparagraph 30.23 and as may otherwise be required by the Gila River Adjudication Court.

Beginning with the eleventh Year following the Year in which the Enforceability Date occurs, such report shall include the calculation required by Subparagraph 4.2.1. The Community shall prepare and maintain such records as may be necessary to file such reports. Any Party may petition the Gila River Adjudication Court to modify the forms set forth in Exhibits 4.6A and 4.6B to ensure accurate reporting of the Community's water use. Any other Party may object to such petition.

4.7 Except for water not counted against the Settlement Water Budget pursuant to Subparagraph 4.4.17, uses of Excess CAP Water, exchanges of CAP water involving water other than Community CAP Water, uses of Community CAP Water as authorized by Paragraphs 8.0 and 22.0, and for leases and exchanges involving water from the CAP System as authorized by Paragraphs 8.0, 10.0, 13.0, 17.0, 18.0 or 21.0 and Exhibits 8.2, 10.1, 17.1A, 17.1B, 17.1C, 17.1D and 18.1,[7] no Water available for use by the Community, Members, Allottees, or the United States on behalf of the Community, Members or Allottees under this Agreement may be sold, leased, transferred or in any way used off the Reservation. The Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees shall not transport Groundwater onto the Reservation from off-Reservation lands; provided, however, that nothing in this Agreement shall prohibit the delivery of water by RWCD, SCIIP or SRP to the Community that is commingled with off-Reservation Groundwater; and provided further that a

[7] In the event that the Community and Asarco conclude a lease and exchange agreement for Asarco CAP Water subsequent to the execution of this Agreement, this Subparagraph 4.7 shall be amended to reflect such agreement as being authorized by this Agreement.

city, town or private water company may provide water service from its operating distribution system for Domestic Purposes on the Reservation. Excess CAP Water may be delivered to the Community by the CAP Operating Agency for uses on or off the Reservation.

4.8 Upon the occurrence of the Enforceability Date:

4.8.1 All land held by the United States in trust for the Community, Members and Allottees within the exterior boundaries of the Reservation and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to Water other than those specifically granted pursuant to Paragraph 4.0 to the Community and the United States on behalf of the Community, and on behalf of Allottees as described in section 204 of the Act;

4.8.2 All water use on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Gila and Salt River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in accordance with the provisions of Subparagraphs 4.3 through 4.6 in determining compliance by the Community, and the United States on behalf of the Community, Members and Allottees with the limitations on total Diversions specified in Subparagraph 4.2.

4.9 In the event of any ambiguity in calculating the amount of Water Diverted by the Community pursuant to Subparagraphs 4.3 and 4.5, or in calculating the amount of Water

excluded pursuant to Subparagraph 4.4, the Parties' intention is that such ambiguity be resolved so as to avoid counting against the Settlement Water Budget any particular source of Water more than once in any given Year.

5.0 UNDERGROUND WATER

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

5.1.1 The Community shall install and maintain devices capable of measuring and recording all Diversions of Underground Water by or on behalf of the Community. The Community shall use its best efforts to maintain the accuracy of the measuring and recording devices in accordance with industry standards. The Community shall have no obligation to replace any Diversion measuring devices that meet the accuracy standards of the preceding sentence.

5.2 [Intentionally not used].

5.3 Southside Replenishment Program.

5.3.1 The Parties, other than the United States in any capacity, agree to the establishment of the Southside Replenishment Program to protect the Reservation from the effects of off-Reservation Pumping. It will be necessary to change State law to establish the Southside Replenishment Program. For purposes of establishing the Enforceability Date, the date of establishment of the

Southside Replenishment Program will be the date on which the Secretary, with the concurrence of the Community, and the Director of the ADWR certify in writing that State legislation has been enacted that: (1) meets the minimum requirements set forth in Subparagraph 5.3, and (2) shall take effect not later than the Enforceability Date. Should such State legislation thereafter be repealed or amended so as not to provide the protection set forth in Subparagraph 5.3, the State shall, notwithstanding such repeal or amendment, continue to fulfill the Replenishment obligations to the Community set forth in Subparagraph 5.3.

5.3.2 The Southside Replenishment Program shall, at a minimum:

5.3.2.1 Establish the Eastern Protection Zone North, the Eastern Protection Zone South, the Central Protection Zone, the Western M&I Protection Zone, and the Western Municipal Protection Zone in the Pinal AMA all as described in Exhibit 5.3;

5.3.2.2 Establish the Southside Replenishment Bank as set forth in Subparagraph 5.3.4;

5.3.2.3 Provide for the Underground Water export prohibitions contained in Subparagraph 5.3.8;

5.3.2.4 Provide for the Replenishment obligations of the State as described in Subparagraph 5.3.3;

5.3.2.5 Provide for the enforcement of the Southside Replenishment Program by the Director of ADWR.

5.3.3 <u>Replenishment</u>.

5.3.3.1 Replenishment by the State shall be required to the extent that, in any Year after the Year in which the Enforceability Date occurs:

5.3.3.1.1 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Western M&I Protection Zone is in excess of 2.0 acre-feet per acre;

5.3.3.1.2 The Average Annual Municipal Water Pumped Per Acre in the Western Municipal Protection Zone is in excess of 2.0 acre-feet per acre;

5.3.3.1.3 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Eastern Protection Zone North is in excess of 2.33 acre-feet per acre;

5.3.3.1.4 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Eastern Protection Zone South is in excess of 2.33 acre-feet per acre;

5.3.3.1.5 The Pumping for Irrigation Use in the Western Protection Zones is in excess of the cumulative amount of Groundwater the holders of Irrigation

Grandfathered Rights are permitted to withdraw annually in the Western Protection Zones in accordance with both the Groundwater Code and the Base Agricultural Program within the Third Management Plan, as finally adopted by ADWR for the Pinal AMA; provided, however, that (1) for purposes of this Subparagraph 5.3.3.1.5, the Western Protection Zones will be considered a single area with its own Replenishment obligations; and (2) Imported Water that is put to an Irrigation Use within the Western Protection Zones shall not be included in the calculation of Pumping for Irrigation Use set forth in this Subparagraph 5.3.3.1.5.

5.3.3.1.6 The Pumping for Irrigation Use in the Eastern Protection Zones is in excess of the cumulative amount of Groundwater the holders of Irrigation Grandfathered Rights are permitted to withdraw annually in the Eastern Protection Zones in accordance with both the Groundwater Code and the Base Agricultural Program within the Third Management Plan, as finally adopted by ADWR for the Pinal AMA; provided, however, that (1) for purposes of this Subparagraph 5.3.3.1.6, the Eastern Protection Zones will be considered a single area with its own Replenishment obligations; and (2) Imported Water that is put to an Irrigation Use within the Eastern Protection Zones shall not be included in the calculation of Pumping for Irrigation Use set forth in this Subparagraph 5.3.3.1.6.

5.3.3.1.7 There is Excess Pumping that the State is required to Replenish pursuant to Subparagraph 5.3.10.4.

5.3.3.2 Replenishment shall, at the option of the State or the Replenishing entity, be accomplished by: (1) direct delivery, (2) extinguishment of Long-Term Storage Credits pursuant to Subparagraphs 5.3.3.2.2 or 5.3.3.2.3, or (3) debiting the Community account in the Southside Replenishment Bank established pursuant to Subparagraph 5.3.4.

5.3.3.2.1 When Replenishment is accomplished by direct delivery, no delivery of Water to the Reservation for Replenishment will be made by or for the State without the Community's express written consent, which consent shall describe the locations, times, quantities and other details of water delivery.

5.3.3.2.2 In each of the Western Protection Zones, Replenishment may be accomplished by extinguishing Long-Term Storage Credits that were earned: (1) in accordance with State law within the five (5) Years immediately prior to the Year in which such extinguishment occurs, and (2) within either of the Western Protection Zones.

5.3.3.2.3 In each of the Eastern Protection Zones, Replenishment may be accomplished by extinguishing Long-Term Storage Credits that were earned: (1) in accordance with State law within the seven (7) Years immediately prior to the Year in which such extinguishment occurs, and (2) within either of the Eastern Protection Zones.

5.3.4 <u>Southside Replenishment Bank</u>.

5.3.4.1 The State shall establish the Southside Replenishment Bank, and shall, beginning in the first Year following the Year in which the Enforceability Date occurs, at its expense, store not less than one thousand (1,000) acre-feet each Year on the Reservation, by delivery of water to the Reservation boundary, to be credited to the Community's account in the Southside Replenishment Bank until the balance of the Community's account in the Southside Replenishment Bank has reached fifteen thousand (15,000) acre-feet. All deliveries of Replenishment water to the Community by the State pursuant to Subparagraph 5.3.4 shall be made in accordance with the delivery procedures that will be set forth in the Southside Replenishment Bank IGA. These procedures will include the method by which the Community will schedule and order water from the State with sufficient advance notice to the State for it to make such deliveries.

5.3.4.2 The State shall not be required to deliver more than eleven percent (11%) of the annual water delivery described in Subparagraph 5.3.4.1 to the Southside Replenishment Bank in any one month.

5.3.4.3 The Community shall only order water for delivery to the Southside Replenishment Bank at delivery points on the CAP System that have, at the time of the scheduled delivery, capacity available to the Community to accommodate such delivery. The delivery requirement shall be satisfied when the quantity of water ordered by the Community is available for Diversion at the requested delivery point. The Community shall accept delivery and Divert all such water delivered to it by the State at the requested delivery point.

5.3.4.4 To the extent that Replenishment required under Subparagraph 5.3.3 is not accomplished by direct delivery or extinguishment of Long-Term Storage Credits pursuant to Subparagraph 5.3.3.2, the Southside Replenishment Bank shall, no later than June 1 of the third (3rd) Year after the Exceedance Year in question, be debited the amount by which:

5.3.4.4.1 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.33 acre-feet per acre in the Eastern Protection Zone North;

5.3.4.4.2 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.33 acre-feet per acre in the Eastern Protection Zone South;

5.3.4.4.3 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.0 acre-feet in the Western M&I Protection Zone;

5.3.4.4.4 The Average Annual Municipal Water Pumped Per Acre in the Exceedance Year in question exceeded 2.0 acre-feet in the Western Municipal Protection Zone; and

5.3.4.5 To the extent that Replenishment required under Subparagraph 5.3.10.4 is not accomplished by direct delivery or extinguishment of Long-Term Storage Credits pursuant to Subparagraph 5.3.3.2, the Southside Replenishment Bank shall, no later than June 1 of the third (3rd) Year after the Exceedance Year in question, be debited by the amount of Excess Pumping that the State is required to Replenish pursuant to Subparagraph 5.3.10.4.

5.3.4.6 To the extent that Replenishment required under Subparagraphs 5.3.3.1.5 and 5.3.3.1.6 is not accomplished by direct delivery or extinguishment of Long-Term Storage Credits, the Southside Replenishment Bank shall, not later than June 1 of the fifth (5th) Year after the Exceedance Year, be debited by the amount not yet Replenished for the Exceedance Year.

5.3.4.7 The State shall replace water in the Southside Replenishment Bank for debits incurred as necessary to ensure that the Community's account balance does not fall below five thousand (5,000) acre-feet.

5.3.5 In the Central Protection Zone, neither the State nor ADWR shall allow implementation of Groundwater conservation programs any less restrictive than those finally adopted by ADWR, following resolution of reviews and appeals, in the Third Management Plan for the Pinal AMA. This provision shall not prohibit the State from allowing implementation, if appropriate, of Groundwater conservation programs less restrictive than those adopted in the Third Management Plan for any parts of the Pinal AMA that are outside of the Central Protection Zone.

5.3.6 All of the Parties, other than the United States in any capacity, shall seek State legislative approval of the Southside Replenishment Program as set forth in Subparagraph 5.3.

5.3.7 Wells that Pump Water for Domestic Purposes shall be allowed to be used in the Protection Zones in the same manner and to the same extent as such wells are allowed to be used in accordance with section 45-454, Arizona Revised Statutes; provided, however, that in no event shall any well that has the capacity to Pump more than thirty-five (35) GPM be considered a well that Pumps Water for Domestic Purposes for purposes of this Subparagraph 5.3.7. Water Pumped from wells that Pump Water for Domestic Purposes shall not be counted against the acre-feet limitations set forth in Subparagraph 5.3.

5.3.8 **Underground Water export prohibition for an Industrial Use or a Municipal Use**.

5.3.8.1 Except as provided in Subparagraph 5.3.8.2, no Water Pumped after the Enforceability Date within either of the two Eastern Protection Zones or either of the two Western Protection Zones shall be transported outside of that Protection Zone for:

5.3.8.1.1 A New Use; or

5.3.8.1.2 A Non-Irrigation Use in excess of the highest amount transported outside of that Protection Zone during the Years 1999, 2000, or 2001 for such Non-Irrigation Use.

5.3.8.2 The limitations on transportation of Water Pumped within a Protection Zone set forth in Subparagraph 5.3.8.1 will not apply to the extent such transported Water is:

5.3.8.2.1 Replenished by the transporter, in accordance with Subparagraph 5.3.4, within twenty-four (24) months after the end of the Year in which the transportation occurs;

5.3.8.2.2 Replaced by Imported Water in the Year in which the transportation occur;

5.3.8.2.3 Pumped in one of the Eastern Protection Zones and used in the other Eastern Protection Zone; or

5.3.8.2.4 Pumped in one of the Western Protection Zones for Municipal Use and used in the other Western Protection Zone for Municipal Use.

5.3.8.3 Except as provided in Subparagraph 5.3.10.2.2, Water Pumped in one Eastern Protection Zone and used for Municipal Use or Industrial Use in the other Eastern Protection Zone shall be counted against the 2.33 acre-feet per acre limitation in the Eastern Protection Zone in which such Pumping occurs. Water Pumped in

one Western Protection Zone and used in the other Western Protection Zone for Municipal Use shall be counted against the 2.0 acre-feet per acre limitation in the Western Protection Zone in which such Pumping occurs.

5.3.9 <u>City of Coolidge and Town of Florence</u>.

The City of Coolidge and the Town of Florence shall not drill any new wells within the Protection Zones.

5.3.10 <u>Arizona Water Company</u>.

5.3.10.1 Pumping for Municipal Use and Industrial Use by AWC from wells within the Protection Zones is subject to the provisions of Subparagraph 5.3, except as provided otherwise in this Subparagraph 5.3.10.

5.3.10.2 AWC's Coolidge System includes the Wells, which are located in the Eastern Protection Zone North near the Reservation boundary. When AWC determines that either of the Wells must be replaced, the first such replacement well shall be located outside the Protection Zones. AWC shall replace the second of the Wells outside the Eastern Protection Zone North when AWC determines that the second of the Wells must be replaced. The second replacement well may be located within the Eastern Protection Zone South.

5.3.10.2.1 Water Pumped by AWC from any well located in an Eastern Protection Zone and transported to the other Eastern Protection Zone shall not be considered as Water transported outside the Eastern Protection Zones.

5.3.10.2.2 For purposes of Subparagraph 5.3, all uses served by AWC in the Eastern Protection Zone North shall be considered New Uses. All Underground Water transported by AWC from the Eastern Protection Zone South to the Eastern Protection Zone North shall be treated as having been Pumped from the Eastern Protection Zone North and shall be counted against the Average Annual Municipal and Industrial Water Pumped Per Acre within the Eastern Protection Zone North, in accordance with Subparagraph 5.3.

5.3.10.3 AWC may Pump up to one thousand two hundred seventy five (1,275) AFY from the Wells and all other AWC wells located in the Eastern Protection Zone South, collectively, and transport such Water outside the Eastern Protection Zones without Replenishment.

5.3.10.4 If AWC Pumps more than a total of one thousand two hundred seventy five (1,275) AFY from the Wells and all other wells located within the Eastern Protection Zone South, collectively, and transports such Water

outside the Eastern Protection Zones, each acre-foot of such Excess Pumping shall be Replenished in accordance with this Subparagraph 5.3. Notwithstanding the provisions of Subparagraph 5.3.8, the State shall Replenish such Excess Pumping in accordance with the State legislation required under Subparagraphs 5.3.1 and 5.3.2. The State's obligation to Replenish for such Excess Pumping shall terminate on December 31, 2023. After December 31, 2023, AWC shall Replenish all such Excess Pumping.

5.3.10.5 Subject to any required approval by the Secretary and CAWCD, AWC shall make available to the State, for use in Replenishment required by the State under Subparagraph 5.3.10.4, that portion of AWC's Coolidge System CAP allocation that is not used or committed for service to AWC's customers. AWC shall continue to pay the CAP water service charges associated with any portion of its CAP allocation used by the State for such Replenishment, with the State paying for all other costs associated with such Replenishment.

5.3.10.6 AWC shall not drill any new or replacement wells in the Eastern Protection Zone North. In addition, AWC shall not develop any new wells within the Eastern Protection Zone South other than the replacement well

permitted by Subparagraph 5.3.10.2 and other than new wells needed by AWC to provide water service to New Uses within the Eastern Protection Zones.

5.3.11 <u>Groundwater Storage and Recovery</u>.

Nothing in Subparagraph 5.3 shall affect the rights of any person or entity in the Pinal AMA to store Imported Water or Effluent underground after December 31, 2002, and recover such Water pursuant to State law for transportation outside of a Protection Zone without incurring Replenishment obligations, provided that the storage was not done for purposes of Replenishment pursuant to Subparagraph 5.3.3.

5.3.12 <u>Reporting</u>.

Beginning on June 1 of the Year following the Year in which the Enforceability Date occurs and on June 1 of each Year thereafter, ADWR shall send to the Community a report for each of the Protection Zones for the previous Year: (1) summarizing the amount of Water Pumped for Municipal Use and Industrial Use; (2) calculating the amount of Pumping for which Replenishment is required pursuant to Subparagraph 5.3, including Excess Pumping; (3) reporting the amount of and means by which Replenishment occurred; (4) listing and describing the transactions that occurred in the Southside Replenishment Bank; and (5) containing the information necessary to determine compliance with Subparagraph 5.3.8 ("Report"). On

reasonable notice, the Community shall have the right to examine the books and records on which the Report is based.

5.4 <u>Additional Southside Irrigation Pumping Protection</u>.

5.4.1 <u>MSIDD and CAIDD</u>.

5.4.1.1 CAIDD shall cause the CAP Operating Agency to deliver Excess CAP Water to MSIDD to be used in lieu of Pumping in areas within MSIDD under the circumstances described in Subparagraph 5.4.1. If MSIDD requires additional Excess CAP Water in order to remain within the pumping limitations of paragraph 5.C. of the MSIDD/BOR Agreement, MSIDD shall invoke the provisions of this Subparagraph 5.4.1.1. In such event, MSIDD shall determine the exact quantity needed and provide written notification to that effect to CAIDD and the CAP Operating Agency. Upon receipt of such notification, CAIDD shall cause up to seven thousand (7,000) acre-feet of Excess CAP Water available to CAIDD to be delivered to MSIDD in that Year; provided, however, that in any Year in which CAIDD has less than ten thousand (10,000) acre-feet of Excess CAP Water available to it at the rate equal to the CAP Pumping Energy Charge, determined consistent with Subparagraph 5.4.1.2.2, CAIDD shall have no obligation to deliver to MSIDD any of the Excess CAP Water available to CAIDD in that Year. For purposes of CAIDD's delivery of water to MSIDD, MSIDD and CAIDD shall, prior to the Enforceability Date, enter into an agreement between them that

describes the ordering, delivery and payment procedures necessary to accomplish the purposes of this Subparagraph 5.4.1 and shall thereafter comply with the same.

5.4.1.2 CAIDD and MSIDD shall comply with the requirements of Subparagraph 5.4.1.1 if:

5.4.1.2.1 The CAP Repayment Stipulation is not changed in such a way as to adversely affect CAWCD's ability to sell or use Excess CAP Water; and

5.4.1.2.2 CAWCD executes a contract to deliver Excess CAP Water to CAIDD and MSIDD, through the year 2030, at a cost not exceeding the CAP Pumping Energy Charge for delivery to CAP Contractors and CAP Subcontractors, and during such period CAP Pumping Energy Charges are not more than the amount determined by dividing the estimated CAP Pumping Energy Costs for the following Year by the total amount of CAP water that CAWCD estimates will actually be delivered through the CAP System in the following Year.

5.4.1.3 MSIDD shall:

5.4.1.3.1 Comply with the Groundwater pumping restrictions near the Reservation boundary as set forth in paragraph 5.C. of the MSIDD/BOR Agreement; and

5.4.1.3.2 Not construct or operate any new wells for Irrigation Use within the restriction zone identified in paragraph 5.C. of the MSIDD/BOR Agreement; provided, however, that MSIDD may make repairs or replacement of wells located within such restriction zone that are under MSIDD's control.

5.4.2 <u>Hohokam Irrigation and Drainage District</u>.

Under the terms of the Hohokam Agreement, Hohokam reserved for the benefit of the Community fifteen percent (15%) of the water assigned to the cities of Chandler, Mesa, Phoenix and Scottsdale to be used in a final settlement between the Community and Hohokam and its landowners of all of the Community's Water Right claims against Hohokam and its landowners. Hohokam shall not exercise its rights under paragraph 7.2 of the Hohokam Agreement to request the reassignment of water for the benefit of the Community. Any water reassigned for M&I Use under paragraph 7.1 of the Hohokam Agreement shall remain CAP NIA Priority Water, notwithstanding anything in the Hohokam Agreement to the contrary. Any debt owed by

Hohokam under section 9(d) of the Act of August 4, 1939 (commonly known as the Reclamation Project Act of 1939 (43 U.S.C. §485h)), shall be non-reimbursable to the United States in any capacity except that portion of the debt that is the obligation of the cities of Chandler, Mesa, Phoenix and Scottsdale pursuant to the Hohokam Agreement.

6.0 GLOBE EQUITY DECREE

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

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

6.3 Subject to Subparagraph 30.22, the rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree) shall be binding upon all parties to the Gila River Adjudication Proceedings, and such rights shall be included in the judgment filed in the Gila River Adjudication Proceedings approving this Agreement the form of which is attached as Exhibit 25.18A. Enforcement of the rights described

in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree) shall be subject to Paragraph 26.0. This Subparagraph 6.3 is not intended to change the forum for enforcement of the Globe Equity Decree as among the parties to the Globe Equity Decree.

7.0 HAGGARD DECREE/MARICOPA CONTRACT/SACATON CONTRACT

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

7.2 The Parties to this Agreement ratify, confirm and declare to be valid the Maricopa Contract, which provides that SRP shall make water available for an annual Diversion of five thousand nine hundred (5,900) acre-feet at the location of the SRP delivery point to the Community on the Maricopa Drain. The Community, Members, Allottees, and the United States on behalf of the Community, Members and Allottees shall accept delivery of water under the Maricopa Contract in lieu of water to which they are entitled under the Haggard Decree, as modified in the Benson-Allison Decree, in full satisfaction of such rights.

7.3 The agreement between the United States of America and the Salt River Valley Water Users' Association dated June 3, 1907, as subsequently amended, commonly referred to as the

Sacaton Contract, is terminated on the Enforceability Date and shall be of no further force or effect after that date.

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

8.1 The cost to the United States to design and construct new facilities to deliver the Community's CAP Water shall be as shown in the Community Repayment Contract, a copy of which is attached hereto as Exhibit 8.1. Pursuant to section 213(e) of the Act, the Community Repayment Contract shall provide that the construction costs allocable to the Community associated with that contract are non-reimbursable.

8.2 Pursuant to sections 204 and 205 of the Act, the Community Water Delivery Contract shall conform to the provisions of Subparagraphs 8.3 through 8.11, 8.14 through 8.17, and 8.20 of this Agreement, a copy of which contract is attached hereto as Exhibit 8.2.

8.3 Pursuant to section 204(b) of the Act, the Secretary shall deliver to the Community, upon the terms and conditions set forth in the Community Water Delivery Contract, the following described water, which is also referenced in Subparagraph 4.1:

8.3.1 173,100 AFY of CAP Indian Priority Water that was allocated to the Community in accordance with the Secretarial notice published in the Federal Register on March 24, 1983, and subsequently contracted to the Community for delivery by contract dated October 22, 1992.

8.3.2 102,000 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities and reallocated by the Secretary to the Community.

8.3.3 The 18,600 AFY of RWCD CAP Water reallocated by the Secretary to the Community.

8.3.4 Up to 17,000 AFY of CAP M&I Priority Water allocated and contracted to Asarco if subsequently relinquished by that entity and reallocated by the Secretary to the Community.

8.3.5 18,100 AFY of HVID CAP Water reallocated by the Secretary to the Community.

8.4 Pursuant to section 205(a)(1) of the Act, the Community 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.

8.5 Pursuant to section 205(a)(2) of the Act, the Community may, with the approval of the Secretary, enter into contracts to lease, options to lease, contracts to exchange or options to exchange Community CAP Water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz or Coconino counties, Arizona, providing for the temporary delivery to others of any portion of the Community's CAP Water. Contracts to lease and options to lease shall be for a term not to exceed one hundred (100) years. Contracts to exchange or options to exchange shall be for the term provided for in each such contract or option. The Community

may, with the approval of the Secretary, renegotiate any lease, including a Lease Agreement, at any time during the term of that lease or Lease Agreement provided the term of such renegotiated lease or Lease Agreement does not exceed one hundred (100) years. None of the Community's CAP Water may be permanently alienated.

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

8.7 Pursuant to section 205(a)(3) of the Act, the Community, and not the United States in any capacity, shall be entitled to all consideration due to the Community under any leases, options to lease, exchanges or options to exchange Community CAP Water entered into by the Community. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner, any funds received by the Community as consideration under any such contracts entered into by the Community to lease, option to lease, exchange or option to exchange Community CAP Water.

8.8 Pursuant to section 205(a)(4) of the Act, all Community CAP Water shall be delivered through the CAP System. If the delivery capacity of the CAP System is significantly reduced or anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP Contractors and CAP Subcontractors, if such CAP

Contractors and CAP Subcontractors are allowed to take delivery of water other than through the CAP System.

8.9 Pursuant to section 205(a)(5) of the Act, the Community may use Community CAP Water on or off of the Reservation for Community purposes.

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

8.11 **Payment of CAP water delivery charges**.

8.11.1 Any lease or option to lease providing for the temporary delivery to others of any Community 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 delivery of the leased water. Neither the Community nor the United States in any capacity shall be responsible for the payment of any charges associated with the delivery of Community CAP Water leased to others.

8.11.2 Pursuant to section 205(a)(6) of the Act, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of Community CAP Water, except as provided in Subparagraph 8.11.1.

8.11.3 The Community shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of Community CAP Water, except for Community CAP Exchange Water and Community CAP Water leased to others. CAP Pumping Energy Charges associated with the delivery of Community CAP Exchange Water shall be paid as provided in Exhibit 18.1. CAP Pumping Energy Charges associated with the delivery of Community CAP Water leased to others shall be paid as provided in Subparagraph 8.11.1. Notwithstanding the first sentence of this Subparagraph 8.11.3, other persons or entities with whom the Community may exchange Community CAP Water may agree with the Community to pay to the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of Community CAP Water pursuant to such exchange.

8.12 The CAP Operating Agency shall have no responsibility to deliver any Community CAP Water for which CAP Fixed OM&R Charges and CAP Pumping Energy Charges have not been paid in advance.

8.13 The Community shall schedule delivery of Community CAP Water in accordance with the Community Water Delivery Contract.

8.14 If the combined delivery requests for all CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP

Contractors, CAP Subcontractors and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Community's delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Community requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Community's requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Community, 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 Subparagraph 8.14 if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor or Excess CAP Water Contractor will affect the quantity of Community CAP Water available for delivery to the Community.

8.15 If Community CAP Water is to be delivered for use outside the boundaries of the Reservation, neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or of the Secretary, delivery or

schedule of deliveries for such off-Reservation use would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would delivery of Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the off-Reservation delivery of Community CAP Water has been established shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

8.16 <u>Shortage sharing criteria</u>.

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

8.16.1.1 Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in Subparagraphs 8.16.1.1.1 through 8.16.1.1.3 below:

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

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

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

8.16.1.2 On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in Subparagraphs 8.16.1.2.1 through 8.16.1.2.4 below:

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

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

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

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

8.16.2 <u>Initial distribution of water in time of shortage</u>.

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

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

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

where

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

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in Subparagraphs 8.16.1.1 or 8.16.1.2, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in Subparagraph 8.16.1.1 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.

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 8.16.1.2 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.

8.16.3 <u>Redistribution of unscheduled water in time of shortage</u>.

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

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

8.16.3.2 CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the 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.

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

8.16.3.4 Nothing in this Subparagraph 8.16 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.

8.16.4 <u>Distribution of CAP Indian Priority Water among CAP Indian Priority Water users</u>.

8.16.4.1 In consideration of the Community's agreement to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit 8.16.4.1, the Secretary shall first make available to the Community any water made available for delivery as CAP Indian Priority Water under Subparagraph 8.16.3.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community. After the additional shortages borne by the Community have been fully offset, The Secretary shall then make any remaining water available in accordance with CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water, including the Community Water Delivery

contract, in proportion to their contractual entitlements to CAP Indian Priority Water.

8.16.4.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in Subparagraphs 8.16.1.1 or 8.16.1.2, as applicable, then the Tohono O'odham Nation (TON) shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula set forth in exhibit 5.3.4.1 to the TON CAP Water Delivery Contract (a copy of which is attached as Exhibit 8.16.4.2) and the Community shall incur all remaining shortages of CAP Indian Priority Water 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 Subparagraph 8.16.3.2, are not available to meet orders for CAP Indian Priority Water.

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

During a time of shortage described in this Subparagraph 8.16.4.3, the CAP Indian Priority Water available to the other four (4) tribes referenced above shall be determined in accordance with the provisions of their respective CAP water delivery contracts and any amendments thereto, which amendments shall be consistent with Subparagraph 8.16.4.

8.16.4.4 If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to Subparagraph 8.16.2.1 shall be distributed to the Community by the Secretary based on the ratio of the amount of water delivered pursuant to the Community Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Community had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Community would have been expected to take had the distribution system, as it exists at the time of the shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Community used only one hundred thirty thousand (130,000), acre-feet of its entitlement because the Community's CAP distribution system was only partially completed and

would permit the delivery of only one hundred thirty thousand (130,000) acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Community's CAP distribution system has been completed; and (3) the Community can take and use, and has ordered for delivery, one hundred sixty-five thousand (165,000) acre-feet of CAP water, then the Secretary shall use an imputed quantity of one hundred sixty-five thousand (165,000) acre-feet for the Community when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

8.16.4.5 If any Indian tribe or nation, other than the Community, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or exchange of CAP water, then the Secretary shall require such tribe or nation to include in such new contract or amendment, a provision to share, on a proportional basis[8] with the Community and the TON, the additional shortage that the Community and TON are bearing pursuant to Subparagraphs 8.16.4.2 and 8.16.4.3; provided, however, that any such shortage shared by the other tribe(s) or nation(s) shall not be greater than would have been incurred by the tribe(s) or nation(s) under their existing CAP Water Delivery Contracts at an Available CAP Water Supply of 801,574 acre-feet. The Secretary shall divide any water made

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

available to the Community pursuant to Subparagraph 8.16.4.1 among the Community and those contractors whose contracts have been so amended, on the same proportional basis as shortages were shared. Such amendments shall not require the Community to incur any greater shortage of CAP Indian priority Water than is required under the Community Water Delivery Contract.

8.16.4.6 Subparagraph 8.16.4.5 shall not apply to the renewal of any contract existing on December 31, 2002, with an Indian tribe or nation that the Secretary entered into pursuant to an Indian water settlement approved by an act of Congress.

8.16.5 The shortage sharing criteria in Paragraph 8.16 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community Water Rights Settlement Act, Pub. L. 98-530, or water acquired from the Welton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Pub. L. 100-512, both of which have a higher priority than Fourth Priority Water.

8.17 **<u>Distribution of CAP NIA Priority Water</u>**.

If the Available CAP Supply is insufficient to meet the 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. However, if during the last such Year the Community had not completed construction of the distribution system necessary to take and use its entire entitlement to CAP NIA Priority Water, the Secretary shall impute in the calculation the quantity of CAP NIA Priority Water that the Community would have been expected to take had the distribution system, as it exists in the then current Year, been in place during the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. For example, if the Secretary determines that: (1) in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, the Community used only ninety thousand (90,000) acre-feet of its entitlement to the delivery of CAP NIA Priority Water because the Community's CAP distribution system was only partially completed and would permit the delivery of only ninety thousand (90,000) acre-feet, (2) as of the then current Year, additional construction of the Community's CAP distribution system has been completed, and (3) the Community can take and use, and has ordered for delivery, one hundred ten thousand (110,000) acre-feet of CAP NIA Priority Water, then the Secretary shall use an imputed quantity of one hundred ten thousand (110,000) acre-feet for the Community when pro-rating the CAP NIA Priority Water.

8.18 The CAP Operating Agency shall not unreasonably withhold permission or authorization to construct turnouts on the CAP System to deliver Community CAP Water that are necessary for

the Community either to use its water on or off Reservation or to implement leases of or options to lease, exchanges or options to exchange Community CAP Water entered into by the Community. The costs of construction of turnouts necessary for the delivery of water to a lessee or to a recipient of water by exchange shall be borne by the lessee or recipient of water by exchange.

8.19 Pursuant to section 204(d) of the Act, for purpose of determining the allocation and repayment of costs of any stages of the CAP constructed after December 10, 2004, the costs associated with the delivery of Community CAP Water, whether such water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of Community CAP Water entered into by the Community, shall be non-reimbursable and shall be excluded from the repayment obligation of CAWCD.

8.20 Pursuant to section 205(a)(7) of the Act, the costs associated with the construction of the CAP allocable to the Community shall be non-reimbursable and shall be excluded from any repayment obligation of the Community. Pursuant to section 205(a)(8) of the Act, no CAP water service capital charges shall be due or payable for Community CAP Water, whether such water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP Water entered into by the Community.

8.21 The Community shall be entitled to enter into contracts for Excess CAP Water as provided in the CAP Repayment Stipulation. Subject to the provisions of Subparagraph 8.15, the Community may use such Excess CAP Water on or off the Reservation for Community purposes.

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

8.23 In accordance with section 105(b)(2)(A) of the Act, the State shall firm fifteen thousand (15,000) AFY of CAP NIA Priority Water for the benefit of the Community, to the equivalent of CAP M&I Priority Water for a period of one hundred (100) years after the Enforceability Date.

9.0 RWCD AGREEMENT

9.1 The Community, the United States and the RWCD have entered into the RWCD Agreement, copies of which, including Amendment No. 1 thereto, are attached as Exhibit 9.1.

9.2 The Community and the United States shall have the right to enforce their rights under the RWCD Agreement only as to RWCD and its successors in interest.

9.3 If the RWCD Agreement is not approved in the Gila River Adjudication Proceedings as an Exhibit to this Agreement, all of the Parties shall retain any rights they have to object to the RWCD Agreement.

9.4 As of the Enforceability Date, the waivers and releases set forth in Subparagraphs 25.2 through 25.6, together with Exhibits 25.2 through 25.6, shall be in substitution of and not in addition to the waivers and releases granted to RWCD and others in subsection 8.2 of the RWCD Agreement.

10.0 COMMUNITY/PHELPS DODGE AGREEMENT

10.1 Phelps Dodge, the Community and the United States have entered into the Community/Phelps Dodge Agreement, an executed copy of which is attached as Exhibit 10.1. Subject to Subparagraph 30.3, except as provided in Subparagraphs 10.2.1.1 and 10.2.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 10.1, the terms of Exhibit 10.1 shall prevail as among the parties to Exhibit 10.1. Nothing in Exhibit 10.1 shall be construed as binding the Gila Valley Irrigation District or the Franklin Irrigation District as to any provision contained in Exhibit 10.1 regarding confirmation of rights, or, except as provided in Subparagraph 26.8.2.10.4, agreements not to call or priority of rights to the waters of the Gila River.

10.2 **Confirmation of certain Phelps Dodge Water Rights claims**.

10.2.1 Subject to the condition set forth in Subparagraph 10.2.1.1, SCIDD and the United States to the extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIDD and the Miscellaneous Flow Lands shall not object to the validity or characteristics of Phelps Dodge's Water Rights claims as described in attachment C-1 of the Community/Phelps Dodge Agreement.

10.2.1.1 Notwithstanding anything in the Community/Phelps Dodge Agreement or Subparagraph 10.2.1, the Community, SCIDD, and the United States on behalf of the Community, Members, and Allottees and to the extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIP and the Miscellaneous Flow Lands, reserve the right to challenge in any future proceedings any application for change of use, place of use or exchange with respect to any of the Water Rights claims listed in attachment C-1 of the Community/Phelps Dodge Agreement as to its potential adverse effect on the SCIP water supply.

10.2.2 Subject to Subparagraph 10.2.3, SCIDD and the United States to the extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIDD and the Miscellaneous Flow Lands shall not object to the validity or characteristics of Phelps Dodge's Water Right claims as described in attachments C-2 and C-3 of the Community/Phelps Dodge Agreement.

10.2.3 Notwithstanding anything in the Community/Phelps Dodge Agreement, the Community, SCIDD, and the United States on behalf of the Community, Members, and Allottees and to the

extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in articles V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIP and the Miscellaneous Flow Lands reserve the right to challenge in any future proceedings any application for change of use, place of use or exchange (other than the relocation of the Upper Chase Creek Facility upstream to a location in Chase Creek in the NW¼, NW¼ of Section 28, Township 3 South, Range 29 East, G&SRB&M) with respect to any of the Water Rights listed in attachment C-2 of the Community/Phelps Dodge Agreement as to its potential adverse affect on the SCIP water supply.

10.3 Phelps Dodge shall not convert those Water Rights described in attachment C-2 of the Community/Phelps Dodge Agreement as being for Irrigation Uses to M&I Uses, at more than the consumptive use rate for the then-existing Irrigation Use.

10.4 Subject to the conditions set forth in Subparagraphs 10.4.1, 10.4.2, 10.4.3 and 10.4.4, and in subparagraph 10.0 of Exhibit 20.1 reflecting consideration to be provided to SCIDD by the Community following the Enforceability Date, the Community, SCIDD, and the United States on behalf of the Community, Members, and Allottees and to the extent it holds legal title to (but not the beneficial interest in) the Water Rights as described in articles V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within SCIP and the Miscellaneous Flow Lands shall not

assert a senior priority against, place a call upon or against, any use of water by Phelps Dodge from the sources described in attachment D of the Community/Phelps Dodge Agreement, or object to the withdrawal of water from existing or future wells within the areas shown on attachments E and F of the Community/Phelps Dodge Agreement.

10.4.1 The agreement by the Community, SCIDD and the United States set forth in Subparagraph 10.4 not to assert a senior priority against, or place a call upon or against, any use of water from existing or future wells in the Upper Eagle District (including replacement wells in the same location) shall not apply to the use of water from new wells completed in the conglomerate aquifer unless it is shown by Phelps Dodge that such use will not reduce the flow of the Gila River or its tributaries.

10.4.2 The agreement by the Community, SCIDD, and the United States set forth in Subparagraph 10.4 not to assert a senior priority against or place a call upon or against any use of water from existing or future wells in the Morenci District shall not apply in any month that: (i) Phelps Dodge has Diverted all of the Surface Water allowed to be Diverted for the month, as described in paragraph (d)(1) of attachment D of the Community/Phelps Dodge Agreement and in Subparagraph 10.4.3, and (ii) additional pumping from existing or new production well(s) causes a decline in water levels in the monitor wells associated with the production well(s) referred to in attachment D-1 of the Community/Phelps Dodge Agreement to a level that is below the level of the bed of the San Francisco River.

10.4.3 Phelps Dodge agrees that its Diversions from Eagle Creek and the San Francisco River under that Decree styled as *In Re The Matter of the Determination of the Relative Rights To the Water of the Gila River and its Tributaries in Greenlee County,* Arizona, No. 1154-B, Superior Court, Greenlee County, November 28, 1927, Amended Decree, April 27, 1936 ("the Ling Decree"), shall not exceed 3,000 acre-feet per annum from those sources, with Diversions not to exceed the following amounts in the month indicated:

January	1,000 acre-feet
February	1,000 acre-feet
March	600 acre-feet
April	60 acre-feet
May	60 acre-feet
June	60 acre-feet
July	60 acre-feet
August	60 acre-feet
September	60 acre-feet
October	60 acre-feet
November	600 acre-feet
December	1,000 acre-feet

10.4.4 In the event that water is pumped from any production well(s) when the water level in the monitor well(s) associated with the production well(s) as shown on attachment D-1 of the Community/Phelps Dodge Agreement, is below the level of the bed of the San Francisco River, as provided in Subparagraph 10.4.2(ii), the water withdrawn from such wells shall be charged against the right described in Subparagraph 10.4.3, above.

10.5 Phelps Dodge shall monitor and shall furnish to the Community and SCIDD a monthly report of the volumes of water pumped from the production well(s) referred to in Subparagraph 10.4.4 and shown on attachment D-1 of the Community/Phelps Dodge Agreement, and the water level(s) in such well(s) and the monitor well(s) referred to in Subparagraph 10.4.4 and shown on attachment D-1 of the Community/Phelps Dodge Agreement. Phelps Dodge shall install, maintain and operate such measuring devices and facilities as may be reasonably necessary to provide such reports. The Community and SCIDD shall have the right at all reasonable times, in compliance with applicable Federal laws and Phelps Dodge safety protocols, to inspect records of pumping, measuring devices and the well(s). An example of the report to be provided by Phelps Dodge to the Community and SCIDD is provided as attachment D-2 of the Community/Phelps Dodge Agreement.

10.6 Phelps Dodge shall not object to the validity or characteristics of the Water Rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree) as of the Enforceability Date. Phelps Dodge shall not object to SCIDD's claim of the right to share in all of the Water Rights held by the United States on behalf of the Indian lands within SCIP, including, but not limited to, the right to share in the immemorial water right set forth in article VI of the Globe Equity Decree.

10.7 The Community/Phelps Dodge Agreement shall be in addition to and not in substitution of the waivers and releases granted to Phelps Dodge and others pursuant to Subparagraphs 25.2, 25.3, 25.4, 25.5 and 25.6, together with Exhibits 25.2, 25.3, 25.4, 25.5 and 25.6.

11.0 ASARCO CAP WATER.

The Community represents that it will continue to meet and engage in good faith negotiations for a period of at least two years from the date of the execution of this Agreement in an effort to reach an agreement whereby Asarco shall relinquish the Asarco CAP Water in favor of the Community, such relinquishment to be in consideration of the Community's waiver of certain of its rights, claims and objections.

12.0 SRP STORED WATER

12.1 Except as provided in Subparagraph 12.2, SRP shall credit the Community annually with an entitlement to SRP Stored Water ranging from two thousand (2,000) to thirty-five thousand (35,000) acre-feet when Net SRP Reservoir Storage levels on May 1 of each year exceed one hundred thousand (100,000) acre-feet in accordance with Exhibit 12.1. At Net SRP Reservoir Storage levels on May 1 of less than or equal to one hundred thousand (100,000) acre-feet, no SRP Stored Water shall be credited to the Community for that year. A year under Paragraph 12.0 shall be from May 1 through the following April 30.

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

12.3 **<u>Current and Carryover Accounts</u>**.

12.3.1 SRP shall establish and maintain two separate water accounts for the SRP Stored Water entitlement of the Community under Paragraph 12.0: (1) the Current Account and (2) the

Carryover Account. The Current Account shall be credited at 12:01 a.m. on May 1 of each year with the Community's annual entitlement of SRP Stored Water under Subparagraph 12.1. Any and all credits remaining in the Current Account at 11:59 p.m. on the following April 30 shall be transferred to the Community's Carryover Account; provided, however, that the total of the credits in the SRP Exchange Water Account under Paragraph 13.0, and the credits in the Carryover Account shall not in the aggregate exceed forty-five thousand (45,000) acre-feet at any time. Any credits in excess of forty-five thousand (45,000) acre-feet shall revert to SRP. All storage credits in the Current Account and Carryover Account shall be held in the Salt River Reservoir System.

12.3.2 The credits in the Current Account shall not be subject to transportation losses, evaporation losses, or spills. The credits in the Carryover Account shall not be subject to transportation losses but shall be subject to evaporation and spill losses as provided in this Subparagraph 12.3.2. Evaporation losses shall be deducted from the credits in the Carryover Account monthly by SRP at the rate of one-half of one percent (0.5%) of the credit balance in the Carryover Account at the end of each month. Unless otherwise agreed to in writing by SRP, the credits in the Carryover Account shall be subject to spill at such time and to the extent that the SRP Reservoir Space is full and the amount of Water in the Salt River Reservoir System is increasing. The SRP Reservoir Space shall be deemed full for purposes of this Subparagraph 12.3.2 when the sum of the Water stored in the SRP Reservoir Space and the water storage credits for those entities listed in Subparagraph 2.122 is equal to the capacity of the SRP

Reservoir Space. Credits in the Carryover Account shall not be subject to spill until after all credits in the SRP Exchange Water Account have spilled. The credits in the Carryover Account shall be reduced by one acre-foot for each acre-foot that is spilled under this Subparagraph 12.3.2 until the credit balance is reduced to zero. The Carryover Account credits shall spill prior to any other storage credits in the Salt River Reservoir System that are a result of agreements in effect as of December 31, 2002, among SRP and other entities. The Carryover Account credits shall spill after any other storage credits in the Salt River Reservoir System that are a result of any agreement entered into on or after December 31, 2002, between SRP and another entity, including any amendment of an agreement in effect as of December 31, 2002, that, as a result of such amendment, increases the storage entitlement of the entity above its entitlement existing as of December 31, 2002. In the event that an agreement in effect as of December 31, 2002, is amended to increase the other entity's storage entitlement, only that increase in the storage entitlement shall spill before the credits in the Community's Carryover Account. SRP shall notify the Community of an impending spill as soon as practicable. SRP shall provide to the Community monthly reports showing Carryover Account credits, deliveries to the Community, and losses through evaporation and spills. SRP also shall provide to the Community monthly reports showing Current Account credits and deliveries to the Community.

12.4 <u>SRP Stored Water orders</u>.

12.4.1 Subject to the phase-in percentages set forth in Subparagraph 12.2, the Community shall not be entitled to order more than forty-five thousand (45,000) AFY from the total credits in the

Current Account and the Carryover Account. The credits in the Current Account and in the Carryover Account shall be reduced by one acre-foot for each acre-foot of SRP Stored Water delivered to the Community as provided in Subparagraph 12.4 or Diverted by the Community as provided in Subparagraph 12.5. All Community orders of SRP Stored Water and Water Diverted by the Community as provided in Subparagraph 12.5 first shall be deducted from the credits in the Current Account until that account is exhausted. Once credits in the Current Account are exhausted, orders of SRP Stored Water and Water Diverted by the Community as provided in Subparagraph 12.5 then shall be deducted from the credits in the Carryover Account.

12.4.2 The Community shall, prior to scheduling any Water for delivery under Paragraphs 12.0 or 13.0, notify SRP of the identity of the person or persons authorized to submit water orders to SRP for the Community. SRP shall not be required to honor any water order that is not submitted by an authorized person identified by the Community. SRP shall notify the Community of the identity of the person or persons authorized to receive water orders from the Community.

12.4.3 Unless otherwise agreed to in writing by SRP, the Community shall provide all water orders and any changes to water orders of SRP Stored Water in writing to SRP at least seventy-two (72) hours in advance of the requested time of delivery. All Community water orders of SRP Stored Water shall be subject to the restrictions set forth in Subparagraphs 12.3 and 12.4.

12.4.4 The daily SRP Stored Water order shall be subject to the limits of the water delivery system capacity provided to the Community under Paragraph 15.0 and to the provisions of Subparagraph 12.10.

12.4.5 Unless otherwise agreed to in writing by SRP, the Community shall only order SRP Stored Water for delivery to the Community at the following delivery points: (1) at Gate 4-14.4 on the Eastern Canal, (2) at the Reservation boundary on the Consolidated Canal, (3) at the Reservation boundary on the Gila Drain and (4) at the site of the existing gauge on Dead Horse Ditch. Except as provided in Subparagraph 12.5, the Community's order of SRP Stored Water shall be satisfied when the quantity of Water ordered is available for Diversion by the Community at the requested delivery point and such quantity shall be deducted from the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0. The Community shall accept delivery and Divert all SRP Stored Water delivered to it by SRP at the requested delivery point.

12.4.6 All Community orders of Water for delivery at Gate 4-14.4 on the Eastern Canal shall be made through RWCD. The Community shall request that RWCD place a single water order of Water for delivery at this gate with SRP and identify as part of the water order the portion that is RWCD Water and the portion that is Community Water.

12.4.7 At the sole expense of the Community, SRP shall design, construct, install and maintain a measuring device at each point where Water is delivered to the Community by SRP. SRP shall maintain the accuracy of such measurement device commensurate with the accuracy of measuring devices used by SRP for similar purposes. The measuring device shall include telemetry equipment that shall have the ability to provide real-time data transmission to SRP, the Community and the United States.

12.4.8 The Community shall not be entitled to delivery of any Water from SRP: (1) when there are not sufficient credits in one of the Community's SRP accounts, (2) when payment for the Water has not been received by SRP, (3) when delivery is precluded at a delivery point during dry up of the SRP water delivery system or (4) at any time when emergencies, maintenance or repairs of the SRP water delivery system preclude Water deliveries to the Community.

12.4.9 SRP shall notify the Community of annual dry-ups on the same basis as SRP shareholders, and in any event at least thirty (30) days in advance of each dry up of the water delivery system. SRP shall notify the Community as soon as practicable of any emergencies, maintenance or repairs that may interrupt or curtail deliveries to the Community. Such interruptions or curtailments of the Community's ability to take delivery of Water from SRP shall be at SRP's discretion. The Community shall indemnify and hold SRP harmless against any liability for damages occurring on the Reservation by reason of such interruptions or curtailments if such interruptions or curtailments are not caused by SRP's negligence.

12.5 <u>Water Diverted from drains</u>.

12.5.1 Any and all Water Diverted on the Reservation from the Gila Drain and Dead Horse Ditch during a time that the Community has placed an order for delivery of SRP Stored Water pursuant to Subparagraph 12.4 shall be deducted from, and shall be in satisfaction of, in whole or in part, the amount of SRP Stored Water that the Community is entitled to pursuant to Paragraph 12.0. All Water Diverted by or on behalf of the Community, Members or Allottees from the Maricopa Drain, in excess of the five thousand nine hundred (5,900) AFY delivered pursuant to Exhibit 7.2, during a time that the Community has placed an order for delivery of SRP Stored Water pursuant to Subparagraph 12.4, shall be deducted from, and shall be in satisfaction of, in whole or in part, the amount of SRP Stored Water that the Community is entitled to pursuant to Paragraph 12.0. For purposes of Paragraph 12.0, "Diverts," "Diverted," or "Diversions" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain, and Maricopa Drain. "Diverts," "Diverted," or "Diversions" shall not include the rerouting of Water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch or other structure that serves the same purpose as did such drain, ditch or other structure prior to the realignment.

12.5.2 Notwithstanding Subparagraph 12.5.1, Diversions of Water on the Reservation from the Gila Drain and the Dead Horse Ditch other than Water ordered pursuant to Subparagraph 12.4, and from the Maricopa Drain, shall not reduce the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0 in any year in which the Community's

entitlement to SRP Stored Water under Subparagraph 12.1 is less than or equal to four thousand (4,000) acre-feet.

12.5.3 In addition to the measuring devices referred to in Subparagraph 12.4.7, the Community shall: (1) install and maintain devices capable of measuring and recording all Diversions of Water by or on behalf of the Community, Members and Allottees under Subparagraph 12.5, and (2) implement procedures to record and collect data concerning all Diversions of Water by or on behalf of the Community, Members and Allottees under Subparagraph 12.5. 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 12.5.3, the Community shall retain a registered professional engineer to inspect, and, if necessary, correct the accuracy of the measuring and recording devices and procedures used by the Community under this Subparagraph 12.5.3. 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 Community shall file in the Gila River Adjudication Proceedings a certified copy of the report by the registered professional engineer that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards. At any time, SRP may require, upon seven (7) days written notice, an inspection by a registered professional engineer of the measuring devices required by this Subparagraph 12.5.3. If the results of the

inspection show that the devices' measurement accuracy is within industry standards, then SRP shall pay all costs incurred for the inspection, otherwise, the Community shall bear such costs.

12.5.4 The Community shall install and maintain, at its own expense, water flow sensing and telemetry equipment on any or all water flow measuring devices at such locations where the Community, Members or Allottees Divert or intend to Divert Water from the drains or extensions thereof. The Community shall provide SRP with weekly reports listing daily amounts of all Diversions made at such locations.

12.5.5 In addition to the reports required by Subparagraph 12.5.4, the Community shall provide monthly reports to SRP listing daily amounts of Diversions under Subparagraph 12.5 from those locations not equipped with water flow sensing and telemetry equipment.

12.6 Except as provided in Subparagraph 12.5 and except for up to five thousand nine hundred (5,900) AFY of Water delivered pursuant to Exhibit 7.2, drainage water that is Diverted from SRP drains on the Reservation shall not be deducted from the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0, nor shall such drainage water count against the Settlement Water Budget as set forth in Paragraph 4.0.

12.7 Except as otherwise provided in this Subparagraph 12.7 and Exhibit 7.2, SRP Stored Water shall be delivered to the Community at one hundred percent (100%) of the cost per acre-

foot of Stored Water for SRP shareholders, as determined on an annual basis by the Board of Governors of the Salt River Valley Water Users' Association (eleven dollars and twenty-five cents ($11.25) per acre-foot for 2005). SRP shall notify the Community of the per acre-foot charge for Stored Water for the upcoming Year by December 1 of each year. SRP shall bill the Community by June 1 of each year for Stored Water credited to the Community on May 1 of that year. The billed amount shall be reduced by the product of the price per acre-foot charged to the Community the prior Year for SRP Stored Water multiplied by the number of acre-feet, if any, of non-SRP Stored Water Diverted in the prior Year from the Dead Horse Ditch or the Gila Drain during a time in which the Community had placed an order for delivery of SRP Stored Water and that was deducted in that Year from the amount of SRP Stored Water to which the Community was entitled under Subparagraph 12.1. The Community shall pay this amount to SRP by July 1 of each year. If an SRP Stored Water order is filled in part by Water from the Dead Horse Ditch or the Gila Drain, the Community shall be charged only for that amount, if any, of SRP Stored Water delivered into these two facilities specifically to meet the water order. The Community shall not be charged for the Diversion of non-SRP Stored Water from the Dead Horse Ditch, the Gila Drain, or the Maricopa Drain except as provided in Exhibit 7.2 for quantities of Water greater than five thousand nine hundred (5,900) AFY.

12.8 SRP Stored Water may be used only on the Reservation for any lawful and beneficial purpose as defined by the Water Code. SRP Stored Water credited to the Community under Paragraph 12.0 shall not be assignable or transferable by the Community or the United States on

behalf of the Community, without the prior written consent of SRP and any such attempted assignment or transfer without such consent shall be void; provided, however, the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

12.9 Solely for the purpose of establishing the Settlement Water Budget, the Community's entitlement to SRP Stored Water under Subparagraph 12.1 is estimated to average twenty thousand (20,000) AFY. This estimated amount neither guarantees that the Community shall receive this amount of SRP Stored Water nor restricts the right and ability of the Community to receive more SRP Stored Water in accordance with the provisions of Paragraph 12.0.

12.10 <u>Water quality</u>.

12.10.1 SRP neither guarantees nor warrants to the Community, Members, Allottees, or the United States on behalf of the Community, Members, or Allottees the quality of Water reaching the Reservation boundary through the SRP water delivery and drainage system. SRP shall not be required to purify or otherwise treat the Water delivered by SRP at the Community's delivery points or through SRP drains to meet applicable water quality standards established by Federal, State, Community, or local authorities.

12.10.2 The Community shall indemnify and hold SRP harmless for losses caused to the Community, Members or Allottees resulting from water quality degradation caused by the

delivery of Water to the Community or the United States on behalf of the Community by SRP after the Enforceability Date, and the Community shall defend SRP against all claims for such losses; provided, however, that nothing in this Subparagraph 12.10.2 shall limit the ability of the Community or the United States to assert claims for Injury to Water Quality as provided in Subparagraph 25.12.

12.10.3 SRP shall cooperate with appropriate State and Federal regulatory agencies in their enforcement of regulations related to water quality against persons or entities whose actions have resulted in degradation of SRP water supplies. SRP shall also use its best efforts to restrict point source discharges to the SRP water delivery and drainage system to entities possessing such discharge permits as may be required by State or Federal law. The pendency of an application for such a permit shall be regarded as the possession of such a permit for the purposes of this Subparagraph 12.10.3.

12.11 Notwithstanding the use of the term "SRP Stored Water" in Paragraph 12.0, the Community and the United States on behalf of the Community acknowledge that the Water delivered by SRP to the Community pursuant to Paragraph 12.0 shall not be limited to Surface Water from the Salt River, but may include Water from other sources including, but not limited to, Underground Water, agricultural return flows, drainage water, Colorado River water, and Effluent.

12.12 SRP agrees that it shall: (1) consult with the Community and the United States on behalf of the Community with respect to proposed changes to SRP's reservoir operating criteria that could affect the Community's entitlement to SRP Stored Water under Subparagraph 12.1 and with respect to SRP's annual dry-up and scheduled maintenance of its water delivery system to the extent those activities may affect water deliveries to the Community, and (2) cooperate with the Community and the United States on behalf of the Community and use its best efforts to avoid adverse impacts to the Community from such changes, dry-up and maintenance to the extent reasonably possible and otherwise treat the Community, Members and Allottees in a manner similar to SRP shareholders. Notwithstanding the foregoing, SRP shall retain sole responsibility and authority for decisions relating to the care, operation and maintenance of the SRP water delivery system, including the SRP Reservoirs.

12.13 <u>Conditional Blue Ridge Stored Water entitlement</u>.

12.13.1 In the event SRP agrees, in its sole and absolute discretion, to accept an offer by Phelps Dodge to transfer to SRP all of Phelps Dodge's right, title and interest in Blue Ridge dam and all of its related facilities, including all rights to Water developed thereby, but excluding such real property and subject to the fulfillment of certain provisions, and in the further event all of such developed Water Rights are validly transferred from Phelps Dodge to SRP by the State of Arizona, then SRP shall credit the Community with an annual entitlement to Blue Ridge Stored Water ranging from zero (0) acre-feet to eight hundred thirty-six (836) acre-feet in accordance with Exhibit 12.13. The Community's conditional entitlement to Blue Ridge Stored Water under

this Subparagraph shall be in addition to the Community's entitlement to SRP Stored Water under Subparagraphs 12.1 through 12.9.

12.13.2 SRP shall establish and maintain a separate water account for the Blue Ridge Stored Water entitlement of the Community under Subparagraph 12.13 entitled: The Blue Ridge Account. The Blue Ridge Account shall be credited at 12:01 a.m. on May 1 of each year with the Community's annual entitlement to Blue Ridge Stored Water under Subparagraph 12.13. The Community shall not be entitled to carry over any unused credits in the Blue Ridge Account from year-to-year. All credits remaining in the Blue Ridge Account at 11:59 p.m. on the following April 30 shall be transferred to SRP and the Blue Ridge Account balance, if any, reduced to zero.

12.13.3 The credits in the Blue Ridge Account shall not be subject to transportation losses, evaporation losses or spills. The credits in the Blue Ridge Account shall be reduced by one acre-foot for each acre-foot of Water from the Blue Ridge Account delivered to the Community in accordance with Subparagraphs 12.4.2 through 12.4.9.

12.13.4 Blue Ridge Stored Water shall be delivered to the Community upon the Community's payment to SRP of ten percent (10%) of SRP's fixed operation, maintenance and repair costs for Blue Ridge dam and all of its related facilities, as those costs are defined on Exhibit 12.13.4. SRP shall bill the Community by June 1 of each year for Blue Ridge Stored Water credited to the Community on May 1 of that year. The Community shall pay this amount

to SRP by July 1 of each year. In addition, the Community shall pay SRP on a monthly basis the per acre-foot variable costs incurred by SRP in delivering Water from Blue Ridge reservoir to the point Blue Ridge water is discharged into the East Verde River, as those costs are defined on Exhibit 12.13.4, for each acre-foot delivered to the Community by SRP from the Blue Ridge Account. SRP shall bill the Community by the 8th day of each month for the prior month's per acre foot variable cost to deliver Water from Blue Ridge reservoir and the Community shall pay this amount by the 10th day of the following month.

12.13.5 Water from the Blue Ridge Account may be used only on the Reservation for any lawful and beneficial purpose as defined by the Water Code. Water from the Blue Ridge Account credited to the Community under Subparagraph 12.13 shall not be assignable or transferable by the Community or the United States on behalf of the Community, without prior written consent of SRP and any such attempted assignment or transfer without such consent shall be void; provided, however, the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

12.13.6 Solely for the purpose of establishing the Settlement Water Budget, the Community's entitlement to Blue Ridge Stored Water under Subparagraph 12.13.1 is estimated to average five hundred (500) AFY. This estimated amount neither guarantees that the Community shall receive this amount of Blue Ridge Stored Water nor restricts the right and

ability of the Community to receive more Blue Ridge Stored Water in accordance with the provisions of Subparagraph 12.13.1.

12.13.7 Notwithstanding the use of the term "Blue Ridge Stored Water" in Subparagraph 12.13, the Community and the United States on behalf of the Community acknowledge that the Water delivered by SRP to the Community pursuant to Paragraph 12.13 shall not be limited to Surface Water from the Verde River, but may include Water from other sources including, but not limited to, Underground Water, agricultural return flows, drainage water, Colorado River water, and effluent.

13.0 COMMUNITY/SRP CAP WATER EXCHANGE

13.1 SRP shall accept delivery of Community/SRP Exchange Water from the Community in exchange for SRP water stored in the Salt River Reservoir System pursuant to Paragraph 13.0 unless SRP cannot receive or beneficially use the Community/SRP Exchange Water. Unless otherwise agreed to in writing by SRP and the Community, all deliveries of Community/SRP Exchange Water to SRP under Paragraph 13.0 shall be made through the CSIF.

13.1.1 For Community/SRP Exchange Water delivered to SRP under Paragraph 13.0, the Community shall pay all CAP Pumping Energy Charges and all other contractually required CAP charges associated with such Water. SRP shall not bear any costs associated with the delivery of the Community/SRP Exchange Water to the CSIF or for any Community/SRP Exchange Water delivered to the CSIF that SRP cannot receive or beneficially use.

13.1.2 If SRP cannot receive or cannot beneficially use the Community/SRP Exchange Water, SRP shall notify the Community and the CAP Operating Agency as soon as practicable and in any event before it is Diverted into the CSIF in order that the Community can request delivery of its Community CAP Water to an alternate delivery point.

13.1.3 The Community shall receive SRP Exchange Water Credits when Community/SRP Exchange Water is Diverted at the CSIF. If SRP fails to Divert the Community/SRP Exchange Water at the CSIF and fails to notify the Community of that fact prior to the time that the Water reaches the CSIF, the Community shall be entitled to SRP Exchange Water Credits for the amount of Water SRP failed to Divert unless the Community, the CAP Operating Agency or SRP secures the delivery of such Water to another user without charge against the Community's CAP Water. In this latter event, the Community shall not be entitled to SRP Exchange Water Credits for the Community CAP Water delivered to the other user.

13.2 SRP shall establish and maintain the SRP Exchange Water Account for the benefit of the Community under Paragraph 13.0. One acre-foot of exchange water credit shall be added by SRP to the SRP Exchange Water Account for each acre-foot of the Community/SRP Exchange Water actually Diverted at the CSIF. Unless otherwise agreed to in writing by SRP, no more than three thousand (3,000) acre-feet of SRP Exchange Water Credits may be developed by the Community in a single month and no more than fifteen thousand (15,000) acre-feet of SRP Exchange Water Credits may be developed by the Community in a single Year. Any excess SRP Exchange Water Credits above the monthly and annual limits set forth in this Subparagraph 13.2 shall accrue to SRP. SRP Exchange Water Credits may be carried over in the SRP Exchange Water Account from prior Years; provided, however, that the total amount of Community credits in the SRP Exchange Water Account and in the Carryover Account under Subparagraph 12.3 shall not exceed forty-five thousand (45,000) acre-feet at any time.

13.3 Evaporation losses shall be deducted from the credits in the SRP Exchange Water Account monthly by SRP at the rate of one-half of one percent (0.5%) of the credit balance in the SRP Exchange Water Account at the end of each month. The credits in the SRP Exchange Water Account shall be subject to spill at such time and to the extent that the SRP Reservoir Space is full and the amount of Water in the Salt River Reservoir System is increasing. The SRP Reservoir Space shall be deemed full for purposes of this Subparagraph 13.3 when the sum of the Water stored in the SRP Reservoir Space and the water storage credits for those entities listed in Subparagraph 2.122 is equal to the capacity of the SRP Reservoir Space. Credits in the Carryover Account shall not be subject to spill until after all credits in the SRP Exchange Water Account have spilled. The SRP Exchange Water Credits shall be reduced by one acre-foot for each acre-foot that is spilled under this Subparagraph 13.3 until the credit balance is reduced to zero. The SRP Exchange Water Credits shall spill prior to any other storage credits in the Salt River Reservoir System that are a result of agreements in effect as of December 31, 2002, among SRP and other entities. The SRP Exchange Water Credits shall spill after any other storage credits in the Salt River Reservoir System that are a result of any agreement entered into on or after December 31, 2002, between SRP and another entity, including any amendments of agreements in effect as of December 31, 2002, that, as a result of such amendment, increases the storage entitlement of the entity above its entitlement existing as of December 31, 2002. In the event that an agreement in effect as of December 31, 2002, is amended to increase the other entity's storage entitlement, only that increase in the storage entitlement shall spill before the

SRP Exchange Water Credits. SRP shall notify the Community of an impending spill as soon as practicable. SRP shall provide to the Community monthly reports of exchange water credits developed, deliveries of exchange water to the Community, transportation losses, and SRP Exchange Water Credit losses through evaporation and spills.

13.4 Community/SRP Exchange Water scheduling.

13.4.1 The Community shall provide to SRP on or before September 1 of each Year a proposed schedule of the amount of Community/SRP Exchange Water anticipated to be delivered monthly to SRP by the Community during the upcoming Year. The schedule shall include a listing of the amount of Community/SRP Exchange Water proposed to be delivered to SRP on a monthly basis which, unless otherwise agreed to in writing by SRP, shall not exceed three thousand (3,000) acre-feet per month or fifteen thousand (15,000) AFY.

13.4.2 SRP shall review the Community's proposed schedule and, in consultation with the Community, revise the proposed schedule as may be necessary to permit SRP to satisfy its delivery obligations to its shareholders and to entities with whom SRP has delivery agreements dated prior to December 31, 2002. Notwithstanding the preceding sentence, SRP shall work cooperatively and use its best efforts with the Community to agree to a mutually satisfactory delivery schedule.

13.4.3 SRP shall provide to the CAP Operating Agency by October 1 of each Year, SRP's schedule of projected deliveries of Community/SRP Exchange Water to SRP for the upcoming Year.

13.4.4 On or before December 1 of each Year, the CAP Operating Agency shall provide to SRP and to the Community the CAP Operating Agency Annual Schedule for Community/SRP Exchange Water to be delivered to SRP.

13.4.5 The CAP Operating Agency, SRP or the Community may modify the CAP Operating Agency Annual Schedule as necessary. Any request to modify the CAP Operating Agency Annual Schedule shall include a notice to the CAP Operating Agency, SRP and the Community of the requested modification. The CAP Operating Agency shall respond to the request for modification of the CAP Operating Agency Annual Schedule as provided in the Community Water Delivery Contract, and provide a copy to SRP and the Community.

13.4.6 SRP shall have the right to order the Community/SRP Exchange Water scheduled pursuant to article 4.6 of the Community Water Delivery Contract for delivery to SRP directly from the CAP Operating Agency. SRP shall develop a daily delivery schedule of Community/SRP Exchange Water orders and, as soon as practical, notify the CAP Operating Agency and the Community of any changes to the daily delivery schedule in accordance with the CAP Operating Agency's standard ordering procedures.

13.5 <u>Exchange Water orders</u>.

13.5.1 The Community shall notify SRP by December 1 of each Year of the estimated amount of Water from the SRP Exchange Water Account that it intends to order for delivery during the upcoming Year.

13.5.2 SRP shall fill the water order of the Community for delivery of exchange water through the SRP water delivery system to the extent that SRP Exchange Water Credits exist in the SRP Exchange Water Account. SRP Exchange Water Credits shall be reduced by SRP on the basis of one acre-foot for each acre-foot of Water delivered to the Community as provided in Subparagraph 12.4.5, plus losses for transportation of exchange water from Granite Reef Dam to the delivery points specified in Subparagraph 12.4.5. Transportation losses shall be calculated based on SRP's water balance of supply and delivery using a procedure similar to the loss calculation used in standard reporting to the ADWR and the United States Bureau of Reclamation. SRP shall review and adjust such transportation loss rate annually in April based on annual average SRP water delivery system losses during the preceding five (5) Years. Such adjusted rate shall remain in effect until the next adjusted rate. SRP shall notify the Community by April 1 of each Year of the transmission losses for the upcoming period of April 1 of that Year through March 31 of the following Year. All water orders and deliveries of exchange water to the Community shall be subject to the terms and conditions provided in Subparagraphs 13.5.3 through 13.5.5.

13.5.3 Unless otherwise agreed to in writing by SRP, the Community shall make all orders and any changes to orders of Water from the SRP Exchange Water Account in writing to SRP at least seventy-two (72) hours in advance of the requested time of delivery. All Community orders of exchange water shall be subject to the restrictions set forth in Subparagraphs 12.4.2, 12.4.5, 12.4.6 and 12.4.8.

13.5.4 The delivery of the Community's water from the SRP Exchange Water Account shall be subject to the limits of the SRP water delivery system capacity provided to the Community under Paragraph 15.0 and to the provisions of Subparagraph 12.10.

13.5.5 The Community shall pay SRP the same amount for each acre-foot of Community/SRP Exchange Water delivered to SRP through the CSIF pursuant to Paragraph 13.0 as the Salt River Valley municipalities pay for use of SRP's capacity in the CSIF (ten dollars and six cents ($10.06) per acre-foot for 2005). In addition, the Community shall pay SRP the same transportation charge per acre-foot for each acre-foot of Water delivered by SRP to the Community as the Salt River Valley municipalities pay (twelve dollars and fourteen cents ($12.14) per acre-foot for 2005). SRP shall notify the Community of the CSIF and transportation charges for the upcoming Year by December 1 of each Year. SRP shall bill the Community for the CSIF and transportation charges by February 1 of each Year for that Year. The CSIF charges shall be based on the total amount of Community/SRP Exchange Water listed in the CAP

Operating Agency Annual Schedule. The transportation charges shall be based on the amount of estimated deliveries of Community/SRP Exchange Water notified to SRP pursuant to Subparagraph 13.5.1. The Community shall pay this amount by March 1 of that Year. The billed amount shall be adjusted to reflect the actual amount of Community/SRP Exchange Water received and used by SRP during the previous Year and the actual amount of Community/SRP Exchange Water transported and delivered to the Community by SRP during the previous Year.

13.6 The Community shall pay an administrative fee to SRP in any Year in which an exchange is in effect to cover administrative costs associated with the exchange. The amount of the administrative fee in 2005 was four thousand two hundred and fifty-four dollars ($4,254). SRP shall bill the Community for the administrative fee by February 1 of each Year for the current Year and the Community shall pay the administrative fee by March 1 of each Year. This charge shall be adjusted annually by multiplying the current fee by the Annual Index.

13.7 SRP Exchange Water Credits shall not be assignable or transferable by the Community or the United States on behalf of the Community without the prior written consent of SRP. Any attempted assignment or transfer of such credits without SRP's prior written consent shall be void; provided, however, that the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

14.0 SRP-COMMUNITY DIRECT CAP WATER DELIVERY

14.1 SRP shall accept delivery of Community CAP Water for direct delivery to the Community pursuant to Paragraph 14.0. Unless otherwise agreed to in writing by SRP and the Community, all deliveries of Community CAP Water to SRP under Paragraph 14.0 shall be made through the CSIF.

14.1.1 Community CAP Water delivered to SRP under Paragraph 14.0 shall be paid for as provided in Paragraph 8.0. SRP shall not bear any costs associated with the delivery of Community CAP Water to the CSIF or for any Community CAP Water delivered to the CSIF that SRP cannot: (1) receive for reasons including, but not limited to, structural failures of the CSIF or the SRP water delivery system; or (2) transport for reasons including, but not limited to, water quality problems of the Community CAP Water or spill conditions on the Salt River.

14.1.2 If SRP cannot receive or cannot transport Community CAP Water, SRP shall notify the Community and the CAP Operating Agency as soon as practicable in order that the Community can request delivery of the Community's CAP Water to an alternate delivery point.

14.1.3 If SRP has already received Community CAP Water but cannot transport that Water to the Community, SRP shall use its best efforts to deliver such Water to another water

user connected to SRP's water delivery system in exchange for Water that would otherwise be delivered to that water user. To the extent that SRP is able to accomplish such an exchange with another water user, SRP shall credit the SRP Exchange Water Account under the same terms and conditions as SRP Exchange Water Credits under Paragraph 13.0.

14.2 SRP shall establish and maintain the Direct Delivery Account. Unless otherwise agreed to by SRP, the amount of Community CAP Water that the Community may schedule for delivery by SRP shall be determined on an annual basis by SRP as provided in Subparagraph 14.3. SRP shall provide to the Community and the United States on behalf of the Community monthly reports of direct deliveries of Community CAP Water to the Community and transportation losses.

14.3 SRP shall deliver one acre-foot of Water to the Community for each acre-foot of Community CAP Water delivered to SRP under Paragraph 14.0; provided, however, that the Community shall be charged losses for transportation from the CSIF to the delivery points specified in Subparagraph 12.4.5 at the same rate as transportation losses charged by SRP under Subparagraph 13.5. All Water deliveries to the Community under Paragraph 14.0 shall be subject to the terms and conditions provided in Subparagraphs 14.3.1 through 14.3.7.

14.3.1 The direct delivery of Community CAP Water to the Community shall be subject to the limits of the SRP water delivery system capacity provided to the Community under

Paragraph 15.0, the delivery points specified in Subparagraph 12.4.5, the restrictions under Subparagraph 12.4.8 and the provisions of Subparagraph 12.10.

14.3.2 The Community shall provide to SRP on or before September 1 of each Year a proposed schedule of the amount of Community CAP Water anticipated to be delivered to SRP for direct delivery by SRP to the Community during the upcoming Year. The schedule shall include a listing of the amount of Community CAP Water proposed to be delivered to SRP on a monthly basis for direct delivery to the Community which, unless otherwise agreed to in writing by SRP, shall not exceed four thousand (4,000) acre-feet per month or twenty thousand (20,000) AFY.

14.3.3 SRP shall review the Community's proposed schedule and, in consultation with the Community, revise the proposed schedule as may be necessary to permit SRP to satisfy its delivery obligations to its shareholders and to entities with whom SRP has delivery agreements dated prior to December 31, 2002. Notwithstanding the preceding sentence, SRP shall work cooperatively and use its best efforts with the Community to agree to a mutually satisfactory delivery schedule.

14.3.4 SRP shall provide to the Community and to the CAP Operating Agency by October 1 of each Year, SRP's schedule of projected monthly deliveries of Community CAP Water to SRP for direct delivery to the Community for the upcoming Year.

14.3.5 On or before December 1 of each Year, the CAP Operating Agency shall provide to SRP and to the Community the CAP Operating Agency Annual Schedule for Community CAP Water to be delivered directly to the Community through the SRP water delivery system during the upcoming Year.

14.3.6 The CAP Operating Agency, SRP or the Community may modify the CAP Operating Agency Annual Schedule as necessary. Any request to modify the CAP Operating Agency Annual Schedule shall include a notice to the CAP Operating Agency, SRP and the Community, as the case may be, of the requested modification. The CAP Operating Agency shall respond to the request for modification of the CAP Operating Agency Annual Schedule as provided in the Community Water Delivery Contract and provide a copy to SRP and the Community.

14.3.7 SRP shall have the right to order Community CAP Water scheduled pursuant to article 4.6 of the Community Water Delivery Contract for delivery to SRP directly from the CAP Operating Agency. SRP shall develop a daily delivery schedule of Community CAP Water orders and notify the CAP Operating Agency and the Community of any changes to the daily delivery schedule in accordance with the CAP Operating Agency's standard ordering procedures.

14.4 The Community shall pay SRP the same amount for each acre-foot of Community CAP Water delivered to SRP through the CSIF for direct delivery to the Community pursuant to

Paragraph 14.0 as the Salt River Valley municipalities pay for use of SRP's capacity in the CSIF (ten dollars and six cents ($10.06) per acre-foot for 2005). In addition, the Community shall pay SRP the same transportation charge per acre-foot for each acre-foot of Community CAP Water delivered by SRP to the Community as the Salt River Valley municipalities pay (twelve dollars and fourteen cents ($12.14) per acre-foot for 2005). SRP shall notify the Community of the CSIF and transportation charges for the upcoming Year by December 1 of each Year. SRP shall bill the Community for the CSIF and transportation charges based on the total amount of Water listed in the CAP Operating Agency Annual Schedule by February 1 of each Year for that Year. The Community shall pay this amount by March 1 of that Year. The billed amount shall be adjusted to reflect the actual amount of Community CAP Water received and transported by SRP during the previous Year.

14.5 The rights to direct delivery of Community CAP Water provided to the Community by SRP pursuant to Paragraph 14.0 shall not be assignable or transferable by the Community or the United States on behalf of the Community without the prior written consent of SRP. Any attempted assignment or transfer of such rights without SRP's prior written consent shall be void; provided, however, that the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

15.0 SRP WATER DELIVERY SYSTEM CAPACITY

15.1 SRP shall provide the maximum capacity in the SRP water delivery system to the Community in the amounts specified in Subparagraph 15.2 ("Maximum Capacity") less the amount of SRP Stored Water and Blue Ridge Stored Water ordered by the Community pursuant to Paragraph 12.0 and the amount of Maricopa Contract water ordered by the Community pursuant to Paragraph 7.0. Except as otherwise provided in Paragraph 15.0, Maximum Capacity shall be provided to the Community only at such times as SRP deems such water delivery system capacity to be not necessary for the fulfillment of SRP's other water delivery obligations that exist prior to December 31, 2002. SRP shall provide a portion of the Maximum Capacity to the Community in the amounts specified in Subparagraph 15.2, less the amount of SRP Stored Water and Blue Ridge Stored Water ordered by the Community pursuant to Paragraph 12.0 and the amount of Maricopa Contract water ordered by the Community pursuant to Paragraph 7.0, which capacity shall not be interruptible by SRP ("Firm Capacity") except as provided in Subparagraph 12.4.8.

15.2 Unless otherwise agreed to in writing by SRP the Maximum Capacity and Firm Capacity available to the Community in the SRP water delivery system shall be as set forth in the following table:

SRP Water Delivery System Component	Maximum Capacity (CFS)	Firm Capacity Beginning Enforceability Date	Firm Capacity Beginning 1/1/2008
South Canal (All)	150	75	125
Tempe/Western Canal (Consolidated to Gila Drain)	50	40	40
Western Canal (Gila Drain to End)	30	25	25
Eastern Canal	50	25	45
Consolidated Canal	50	50	50
Gila Drain	15	15	15
Dead Horse Ditch	20	15	15
Maricopa Drain	10	10	10

15.3 The water delivery system capacities provided to the Community by SRP pursuant to Paragraph 15.0 shall not be assignable or transferable by the Community or the United States on behalf of the Community without the prior written consent of SRP. Any attempted assignment or

transfer or these capacities without SRP's prior written consent shall be void; provided, however, that the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

16.0 SRP DRAINS

16.1 SRP has constructed and currently operates and maintains certain drainage ditches and structures that are located in whole or in part on the Reservation north of the Gila River ("Drain Ditches"). For purposes of this Agreement, such Drain Ditches include only the following:

16.1.1 The Gila Drain, which has a cross-sectional area of 230.0 square feet where it enters the Reservation in the NW$^1/_4$ of the NW$^1/_4$ of Section 4, T2S, R4E;

16.1.2 The Dead Horse Ditch, which has a cross-sectional area of 27.3 square feet, and the Laveen Drain, which has a cross-sectional area of 1.8 square feet where they enter the Reservation in the SW$^1/_4$ of the SE$^1/_4$ of Section 7, T1S, R2E;

16.1.3 The Dead Horse Feeder #1, which has a cross-sectional area of 52.5 square feet where it enters the Reservation in the SW$^1/_4$ of the NW$^1/_4$ of Section 17, T1S, R2E;

16.1.4 The Dead Horse Feeder #2, which has a cross-sectional area of 24.0 square feet where it enters the Reservation in the NE$^1/_4$ of the NE$^1/_4$ of Section 18, T1S, R2E;

16.1.5 The 51st Avenue Drain, which has a cross-sectional area of 50.4 square feet where it enters the Reservation in the NE$^1/_4$ of the SE$^1/_4$ of Section 20, T1S, R2E;

16.1.6 The Estrella Drain, which has a cross-sectional area of 17.5 square feet where it enters the Reservation in the SE$^1/_4$ of the SW$^1/_4$ of Section 17, T1S, R2E;

16.1.7 The 24E-7S Drain, which has a cross-sectional area of 38.0 square feet where it enters the Reservation in the NE$^1/_4$ of the NE$^1/_4$ of Section 12, T2S, R4E;

16.1.8 The 24E-8S Drain, which has a cross-sectional area of 40.5 square feet where it enters the Reservation in the NE$^1/_4$ of the NE$^1/_4$ of Section 13, T2S, R4E; and

16.1.9 Consolidated Tail Drain, which enters the Reservation in the SW $^1/_4$ of the SW $^1/_4$ of Section 34, T2S, R5E.

16.2 The Community shall accept any Water that reaches the Reservation through the Drain Ditches at the location at which those Drain Ditches enter the Reservation; provided, however, that SRP shall not enlarge the Drain Ditches beyond their capacity at the Reservation boundary as of January 1, 2000. The Community shall be solely responsible for conveyance and use of Water in the Drain Ditches once the Water reaches the Reservation boundary at any of the locations described in Subparagraph 16.1, and shall obtain all rights-of-way or easements

necessary to convey the Water from the Reservation boundary. The Community shall be responsible for the operation and maintenance of the Drain Ditches to the extent that those facilities are located on lands within the Reservation; provided, however, that such operation and maintenance by the Community shall not interfere with SRP's ability to discharge Water into the Drain Ditches.

16.2.1 The obligation of the Community to accept any Water under Subparagraph 16.2 shall, except as to the Gila Drain, expire and be of no further force and effect for any Drain Ditch listed in Subparagraph 16.1 when SRP fails to convey any Water to the Reservation boundary through such Drain Ditch for a period of sixty (60) consecutive months.

16.2.2 In the event the United States in any capacity becomes responsible for the operation of the irrigation and drainage system on the Reservation, then the United States and not the Community shall be responsible for the obligations set forth in Subparagraph 16.2.

16.3 The Community shall have the right to Divert Water, to the extent available, from the Drain Ditches; provided, however, that neither SRP nor any other entity shall be required to make Water available to the Community in these Drain Ditches except as provided in Paragraphs 12.0, 13.0 and 14.0. SRP shall have the right, at its sole discretion, to discontinue discharging Water into any or all of the Drain Ditches, other than the Maricopa Drain, at any time without prior notice to the United States, the Community, Members or the Allottees.

16.4 Except as provided in Subparagraphs 12.7, 13.5 and 14.4, SRP shall not charge the Community any fee or cost for conveyance of any Water to the Community through the Drain Ditches or for Diversion of any Water by the Community from any of the Drain Ditches.

16.5 Except as otherwise provided in Paragraph 12.0, SRP shall remove all water flow measuring devices from the Drain Ditches on the Reservation promptly after the Enforceability Date.

16.6 The Community shall indemnify and hold SRP harmless against liability for damages occurring on the Reservation by reason of Water being conveyed in the Drain Ditches, except where such damages occur as the result of the sole negligence of SRP.

16.7 The Community, Members, Allottees, and the United States on behalf of the Community, Members or Allottees shall release and discharge SRP from all obligations and liabilities for damages (other than for personal injury or for damages to personal property) claimed to have been sustained on the Reservation from Water discharged by SRP into the Drain Ditches or at any and all other locations on the Reservation at any time prior to the Enforceability Date. For purposes of this Subparagraph 16.7, damages to personal property shall not include Injury to Water Rights or Injury to Water Quality.

16.8 Paragraph 16.0 supersedes all previous agreements relating to SRP drainage facilities on the Reservation, including but not limited to: (1) that Agreement Between United States of America and Salt River Valley Water Users' Association for Construction of Drain Ditch across Gila River Indian Reservation, dated June 21, 1923, (2) that drain ditch right-of-way, Permit No. Phoenix-058368, approved on November 27, 1925 (Laveen Drain/Dead Horse Ditch), and (3) that agreement between the Salt River Valley Water Users' Association and the United States acting through the Superintendent, Pima Agency, Bureau of Indian Affairs for and on behalf of the Gila River Indian Community and various owners of trust allotted lands located within the exterior boundaries of the Gila River Indian Reservation, dated September 11, 1981.

16.9 SRP shall contribute prior to the Enforceability Date five hundred thousand dollars ($500,000) to the Community toward the cost of easements, construction, rehabilitation, operation and maintenance of the Drain Ditches on the Reservation.

16.10 The provisions of Subparagraph 12.10 shall apply to all Water conveyed to the Reservation by SRP in the Drain Ditches.

16.11 All rights, title and interest associated with the following agreements, easements and/or right-of-way documents, as they were originally drafted and as they have, or may have, been amended or modified as between the United States of America and the Salt River Valley Water Users' Association, are assigned and transferred as of the Enforceability Date from the Salt River

Valley Water Users' Association to the Community. Within one hundred eighty (180) days following the Enforceability Date, the Community will record these assignments with the Bureau of Indian Affairs Land, Title, and Records Office in Albuquerque, New Mexico:

16.11.1 Gila Drain Agreement, dated June 21, 1923, as amended;

16.11.2 Dead Horse Ditch, Laveen Drain, Permit No. Phoenix 058368, dated November 27, 1925; and,

16.11.3 Agreement between the Salt River Valley Water Users' Association and the United States acting through the Superintendent, Pima Agency, Bureau of Indian Affairs for and on behalf of the Gila River Indian Community and various owners of trust allotted lands located within the exterior boundaries of the Gila River Indian Reservation, dated September 11, 1981.

17.0 CITIES CAP WATER LEASE AGREEMENTS

17.1 The Community shall lease to any or all of the Cities, and the Cities shall lease from the Community, forty-one thousand (41,000) acre-feet of the CAP Indian Priority Water per year for a term of one hundred (100) years from the later of: (1) January 1, 2005, or (2) thirty (30) days after the Enforceability Date. The terms and conditions of the Community's leases to the Cities referenced herein shall be in accordance with the Lease Agreements.

17.1.1 The cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale may assume a Lease Agreement in accordance with the terms of the assignment and assumption agreements attached as Exhibits 17.1.1A and 17.1.1B. The Lease Agreements shall bind the Cities to those provisions of each City's CAP Subcontract that are enumerated in the Lease Agreement. The Lease Agreements shall not obligate either the Cities or the Community to pay CAP capital repayment charges or any other charges, payments or fees, except as specifically provided in the Lease Agreements. The Cities shall pay operation, maintenance and replacement charges to the CAP Operating Agency in accordance with the terms of the Lease Agreements.

17.1.2 Each of the Cities that elects to lease water in accordance with Paragraph 17.0 shall pay its Water Lease Charge amount pursuant to the terms and conditions of paragraph 4 of the Lease Agreements.

17.2 The Community shall direct the Secretary to deliver the Leased Water in accordance with each City's Lease Agreement, provided, however, that neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or the Secretary, delivery of Leased Water pursuant to a Lease Agreement would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors or Excess CAP Water Contractors to a degree greater than would delivery of Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the Lease Agreement has been executed by the Community and the City shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

17.3 The following shall occur if the Community, the United States acting in any capacity, the State or a City imposes a tax on: (1) a Lease Agreement or transactions or operations undertaken pursuant to a Lease Agreement, (2) Community CAP Water, (3) the value of the Leased Water, or (4) the transportation of the Leased Water:

17.3.1 If the Community imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the Community 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 Community;

17.3.2 If the United States acting in any capacity imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the Community to that City not less than thirty (30) days prior to the date that such tax amount is to be paid by that City;

17.3.3 If the State imposes such a tax on the Community and such tax is lawfully owed by the Community, that amount shall be paid by the Cities to the Community in proportion to the amount of 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 Community to the State; and

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

17.4 The quantity of water initially made available for lease to each of the cities of Goodyear, Peoria, Phoenix, and Scottsdale is as set forth in the Lease Agreements.

17.5 The Leased Water shall always be deemed to be a Federal resource held in trust for the benefit of the Community to which the Cities have acquired only a leasehold interest for the term of the Lease Agreements.

17.6 Subject to Subparagraph 30.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibits 17.1A through 17.1D, and Exhibits 17.1.1A and 17.1.1B, the terms of Exhibits 17.1A through 17.1D, and Exhibits 17.1.1A and 17.1.1B shall prevail as among the parties to such Exhibits.

17.7 Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibits 17.1A through 17.1D, or Exhibits 17.1.1A or 17.1.1.B in any judicial, administrative or legislative proceeding.

18.0 CITIES EXCHANGE OF RECLAIMED WATER

18.1 The United States, the Community and the cities of Mesa and Chandler have entered into an agreement, attached as Exhibit 18.1, providing for the exchange of Reclaimed Water, which provides, in part, for the following:

18.1.1 Exchange of twenty-three thousand five hundred thirty (23,530) AFY of Community CAP Exchange Water for twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water;

18.1.2 Exchange of eight thousand nine hundred seventy (8,970) AFY of Community CAP Exchange Water for eleven thousand two hundred (11,200) AFY of Chandler Exchange Reclaimed Water; and

18.1.3 Chandler's delivery to the Community of four thousand five hundred (4,500) AFY of Chandler Contributed Reclaimed Water.

18.1.4 Subject to Subparagraph 30.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 18.1, the terms of Exhibit 18.1 shall prevail as among the parties to Exhibit 18.1.

18.2 Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibit 18.1 in any judicial, administrative or legislative proceeding.

19.0 BUCKEYE IRRIGATION COMPANY

19.1 The Articles of Agreement between the United States of America and Buckeye Irrigation Company entered into on May 29, 1947, a copy of which is attached as Exhibit 19.1, is ratified, confirmed and made a part of this Agreement on the Enforceability Date; provided, however, that nothing in such Articles of Agreement shall be construed to limit Pumping of Underground Water on the Reservation when such Pumping is in conformance with the terms and conditions of this Agreement.

20.0 SCIDD AGREEMENT

20.1 The United States, the Community and SCIDD have entered into an agreement, a copy of which is attached as Exhibit 20.1. Nothing in Exhibit 20.1 shall be construed as binding the Gila Valley Irrigation District or the Franklin Irrigation District as to any provision contained in Exhibit 10.1 or Exhibit 20.1 regarding confirmation of rights, or, except as provided in Subparagraph 26.8.2.10.4, agreements not to call, or agreements as to priority of rights to the waters of the Gila River.

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

21.0 TERMS AND CONDITIONS OF FUTURE COMMUNITY CAP WATER LEASE AGREEMENTS

21.1 In addition to those Community CAP Water leases specifically provided for in this Agreement, the Community may enter into other leases of Community CAP Water as provided in Subparagraph 8.5. Such other leases shall conform to the provisions of Paragraph 21.0.

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

21.3 The Secretary or the CAP Operating Agency shall deliver the leased Community 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 CAP Operating Agency or the Secretary, such deliveries would limit deliveries of water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would deliveries of such Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the lease of Community CAP Water has been executed shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as “first entered into” if the Excess CAP Water Contractor did not hold an Excess

CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

21.4 Subject to the provisions of the lease, the Secretary or the CAP Operating Agency shall deliver Community 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 Amendment to CAP Subcontracts other than for Hohokam water, Exhibit 30.16A.

21.5 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 Community CAP Water greater than eleven percent (11%) of the lessee's maximum annual entitlement under the lease; provided, however, that the 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 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.

21.6 Community 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.

21.7 The lessee may not transfer, assign or sublease its leased Community CAP Water.

21.8 The lease shall impose upon the lessee terms and conditions equivalent to those contained in sub articles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and articles 4.6, 4.10 and 6.9 of the Amendment to CAP Subcontracts other than for Hohokam water, Exhibit 30.16A. Although Exhibit 30.16A is the standard form of CAP Subcontract for M&I Use, nothing in this Agreement is intended to preclude leases of Community CAP Water for Irrigation Use.

22.0 COMMUNITY'S WATER MANAGEMENT ON TOKA STICKS TRUST LAND

22.1 The Community shall be entitled to Pump and use on the Toka Sticks trust land as described in Exhibit 22.1 up to but not more than six hundred thirty-six (636) AFY of Groundwater for Non-Irrigation Use.

22.2 Subject to Subparagraph 4.4.17, Community CAP Water, Exchange Reclaimed Water and RWCD Surface Water (subject to an agreement with RWCD) may be imported and used on the Toka Sticks trust land.

22.3 Water from sources other than those listed in Subparagraph 4.1, may also be imported and used on the Toka Sticks trust land.

22.4 For so long as the operation of a golf course continues to be the primary use of Toka Sticks trust land: (1) if no Groundwater is Pumped and used on the Toka Sticks trust land, then there shall be no limitation on the quantity of water that may be imported and used thereon; (2) if any Groundwater is pumped and used on the Toka Sticks trust land, then for each acre-foot of Water imported for use thereon, other than Effluent, the Community's right to Pump Groundwater on the Toka Sticks trust land shall be reduced by one acre-foot; and (3) if any Groundwater is Pumped and used on the Toka Sticks trust land, then for each acre-foot of

Effluent imported for use thereon, the Community's right to Pump Groundwater shall be reduced by eight tenths (0.8) of an acre-foot.

22.5 If the Community changes the primary use of the Toka Sticks trust land from operation of a golf course to another use, then the Community shall, upon the Gila River Adjudication Court's finding that the reasonable need for water for such new use(s) is greater than six hundred thirty-six (636) AFY, be entitled to import such additional quantities of water without reducing the quantity of Groundwater pumped and used on the Toka Sticks trust land to the extent that the sum of the imported water and the pumped water does not exceed the reasonable need for the new use(s).

22.6 Water use on the Toka Sticks trust land shall be subject to the Water Code.

23.0 COMMUNITY WATER CODE

23.1 The provisions of 25 U.S.C. §381 shall be applicable to the right to an allocation of water for irrigation purposes recognized by Subparagraph 4.1.1 for the benefit of allotted lands within the Reservation. The Community shall have the right, subject to applicable Federal law, to allocate Water to all users on the Reservation pursuant to the Water Code and manage, regulate, and control the use on the Reservation and on Off-Reservation Trust Land of: (1) all of the Water Rights granted or confirmed to the Community by this Agreement, and (2) the right to an allocation of water for irrigation purposes recognized by Subparagraph 4.1.1 for the benefit of allotted lands within the Reservation.

23.2 No later than eighteen (18) months following the Enforceability Date, the Community shall have enacted a comprehensive Water Code governing all of the water rights granted or confirmed to the Community or allotted lands within the Reservation by this Agreement. Any provisions affecting the rights or interests of Allottees shall be approved by the Secretary. The Secretary shall administer all rights to Water granted or confirmed to the Community by this Agreement until the Water Code is enacted and required approvals are obtained from the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described Subparagraph 4.1.1, subject to section 204(e)(2) of the Act, except that this paragraph shall not impair the right of an Allottee to lease land of the allottee together

with the water rights appurtenant to the land.. The Water Code shall include, at a minimum, the following provisions, which provisions shall be approved by the Secretary:

23.2.1 A due process system by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with Title II of the Act;

23.2.2 A due process system for the consideration and determination by the Community of any request by any water users on the Reservation (including any water users on allotted land), for an allocation of water for irrigation purposes, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions;

23.2.3 A requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to the Act;

23.2.4 The Community's right to prohibit the severance of water rights from allotted lands;

23.2.5 A requirement that any charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without regard to the status of the Reservation land on which the water is used;

23.2.6 conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in Subparagraph 4.1.1 and

23.2.7 The Community's right to regulate the appurtenant right of allotted lands to an allocation of water recognized by Subparagraph 4.1.1 to ensure the use of such water on such allotted lands is reasonable and beneficial.

23.2.8 For purposes of reporting pursuant to Subparagraph 4.6, a requirement that any Allottee who seeks an authorization to Divert or Pump Water, not otherwise reported by the Community, for use on his or her allotment install and maintain, at his or her expense, devices to measure and record such Diversion or Pumping. The Allottee shall use his or her best efforts to maintain such measuring and recording devices in accordance with industry standards.

23.2.9 A requirement that the Allottee report to the Community at least quarterly the Diversions or Pumping measured and recorded with the devices required by Subparagraph 23.2.8.

23.3 Nothing in this Agreement shall be construed to affect an Allottee's right to transfer, convey or lease pursuant and subject to all applicable Federal laws his or her interest in allotted lands, including appurtenant Water Rights as described in Subparagraph 4.1.1, provided that such Water Rights remain appurtenant to such allotted lands.

24.0 APPLICABILITY OF FEDERAL RECLAMATION LAWS AND FULL COST PRICING PROVISIONS

24.1 Pursuant to section 106(c)(4) 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 provisions of Federal law shall not apply to any person, entity or land solely on the basis of: (A) receipt of any benefits under the Act, (B) execution or performance of this Agreement, or (C) the use, storage, delivery, lease, or exchange of CAP Water.

24.2 The Parties agree that the purposes of this Agreement will be promoted if the irrigation districts that are in close proximity to the Community and share common aquifers with the Community are encouraged to displace Groundwater Diversions with deliveries of water from the CAP System to as much irrigable land within the districts as is economically feasible. The Parties, other than the United States in any capacity, agree that the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390aa, *et seq.*) effectively limit the amount of water from the CAP System that may be purchased by these districts, due to land ownership limitations, full cost pricing requirements, and certification and reporting requirements.

24.3 Pursuant to section 106(c)(1)-(3) 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 provisions of Federal law shall not apply to: (1) land within the exterior boundaries of CAWCD or served by

CAP Water: (2) land within the exterior boundaries of the SRRD; and (3) land held in trust by the United States for an Arizona Indian tribe that is either within the exterior boundaries of CAWCD or served by CAP Water.

25.0 WAIVERS OF CLAIMS

25.1 Waivers of claims by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District.

25.1.1 Waivers of claims for Injury to Water Rights by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the Community and Members (but not Members in their capacity as Allottees) and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees).

25.1.1.1 Except as provided in Subparagraphs 25.13.1 and 25.24, the Parties, except the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall execute a waiver and release of any claims against the Community and Members (but not Members in their capacity as Allottees), and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees), under Federal, State or other law for:

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

25.1.1.1.2 Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation, Off-Reservation

Trust Land or Fee Land in a manner not in violation of this Agreement or applicable law;

25.1.1.1.3 Past and present claims for Subsidence Damage occurring outside the exterior boundaries of the Reservation, outside Off-Reservation Trust Land or outside Fee Land arising from time immemorial through the Enforceability Date;

25.1.1.1.4 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of Titles I and II of the Act.

25.1.1.2 The waiver of claims and release described in Subparagraph 25.1.1 shall be in the form set forth in Exhibit 25.1.1 and shall become effective upon the Enforceability Date.

25.1.2 <u>Waivers of claims for Injury to Water Rights by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States as trustee for the Allottees.</u>

25.1.2.1 Except as provided in Subparagraphs 25.13.1 and 25.24, the Parties, except the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall execute a waiver and release of any claims against the United States as trustee for the Allottees, under Federal, State or other law for:

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

25.1.2.1.2 Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation in a manner not in violation of this Agreement or applicable law;

25.1.2.1.3 Past and present claims for Subsidence Damage occurring outside the exterior boundaries of the Reservation arising from time immemorial through the Enforceability Date;

25.1.2.1.4 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of Titles I and II of the Act.

25.1.2.2 The waiver of claims and release described in Subparagraph 25.1.2 shall be in the form set forth in Exhibit 25.1.2 and shall become effective upon the Enforceability Date.

25.1.3 <u>Waiver of claims for Injury to Water Quality arising from time immemorial through December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the Community and Members</u> (but not Members in their capacity as Allottees).

25.1.3.1 Except as provided in Subparagraphs 25.13.2 and 25.24, the Parties, except the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall execute a waiver and release of any claims against the Community and Members (but not Members in their capacity as Allottees) under Federal, State or other law for:

25.1.3.1.1 Past and present claims for Injury to Water Quality, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under CERCLA and WQARF, arising from time immemorial through December 31, 2002, for land outside the exterior boundaries of the Reservation, outside Off-Reservation Trust Land, and outside Fee Land;

25.1.3.1.2 Claims for Injury to Water Quality arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under CERCLA and WQARF, that result from:

25.1.3.1.2.1 the delivery of Water by the Community;

25.1.3.1.2.2 the on-Reservation Diversion (other than Pumping), or ownership or operation of structures for the on-Reservation Diversion (other than Pumping), of Water;

25.1.3.1.2.3 the on-Reservation Pumping, or ownership or operation of structures for the on-Reservation Pumping, of Water in a manner not in violation of this Agreement or of any applicable Pumping limitations under State law;

25.1.3.1.2.4 the Recharge, or ownership or operation of structures for the Recharge, of Water pursuant to an applicable intergovernmental agreement between the Community and ADWR; and

25.1.3.1.2.5 the on-Reservation application of Water to land for irrigation.

25.1.3.2 The waiver provided in Subparagraph 25.1.3.1.2 shall extend to the Community and Members only to the extent that the Community or Members are engaged in an activity specified in Subparagraph 25.1.3.1.2.

25.1.3.3 The waiver of claims and release described in Subparagraph 25.1.3 shall be in the form set forth in Exhibit 25.1.3 and shall become effective upon the Enforceability Date.

25.1.4 <u>Waiver of claims for Injury to Water Quality arising from time immemorial through December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States acting in its capacity as trustee for the Community, Members or Allottees</u>.

25.1.4.1 Except as provided in Subparagraphs 25.13.2 and 25.24, the Parties, except the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall execute a waiver and release of any claims that such Parties may have against the United States acting in its capacity as trustee for the Community, Members or Allottees arising from time immemorial through December 31, 2002, for Injury to Water Quality where all of the following conditions are met:

25.1.4.1.1 the claims are brought against the United States acting solely in its capacity as trustee for the Community, Members or Allottees;

25.1.4.1.2 the claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under CERCLA or WQARF; and

25.1.4.1.3 the Injury to Water Quality asserted arises from activities of the Community, Members or Allottees, or of the United States acting solely as trustee for the

Community, Members or Allottees, within the exterior boundaries of the Reservation or on Off-Reservation Trust Land.

25.1.4.2 The waiver of claims and release described in Subparagraph 25.1.4 shall be in the form set forth in Exhibit 25.1.4 and shall become effective upon the Enforceability Date.

25.1.5 <u>Waiver of common law claims for Injury to Water Quality arising after December 31, 2002, by Parties other than the Community, the United States, the Franklin Irrigation District, and the Gila Valley Irrigation District against the United States in its own right and the United States acting in its capacity as trustee for the Community, Members or Allottees</u>.

25.1.5.1 Except as provided in Subparagraphs 25.13.2 and 25.24, the Parties, except the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall execute a waiver and release of all common law claims for Injury or threat of Injury to Water Quality arising after December 31, 2002, against the United States in its own right andthe United States acting in its capacity as trustee for the Community, Members, or Allottees, where the Injury or threat of Injury to Water Quality arises from:

25.1.5.1.1 the delivery of Water by the Community or, if the United States assumes operation of the Community's water delivery system, then the delivery of water by the United States on behalf of the Community;

25.1.5.1.2 the on-Reservation Diversion (other than Pumping), or ownership or operation of structures for the on-Reservation Diversion (other than Pumping) of Water;

25.1.5.1.3 the on-Reservation Pumping, or ownership or operation of structures for the on-Reservation Pumping of Water in a manner not in violation of this Agreement or of any applicable Pumping limitations under State law;

25.1.5.1.4 the Recharge, or ownership or operation of structures for Recharge, of Water pursuant to an applicable intergovernmental agreement between the Community and ADWR; and

25.1.5.1.5 the on-Reservation application of Water to land for irrigation.

25.1.5.2 The waiver of claims and release provided in Subparagraph 25.1.5 shall extend to the United States in its own right only to the extent that the United States in its own right is engaged in an activity specified in Subparagraphs 25.1.5.1.1 through 25.1.5.1.5. The waiver of claims and release provided in Subparagraph 25.1.5 shall extend to the United States acting as trustee for the Community, Members, or Allottees only to the extent that the Community, Members, or Allottees, or the United States acting as trustee for the Community, Members, or Allottees, are engaged in an activity specified in Subparagraphs 25.1.5.1.1 through 25.1.5.1.5.

25.1.5.3 The waiver of claims and release described in Subparagraph 25.1.5 shall be in the form set forth in Exhibit 25.1.5 and shall become effective upon the Enforceability Date.

25.2 Waiver of claims for Water Rights and Injury to Water Rights by the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) and the United States on behalf of the Community and its Members (but not Members in their capacity as Allottees).

25.2.1 Except as provided in Subparagraphs 25.12.1 and 25.24, the Community, on behalf of itself and Members (but not Members in their capacity as Allottees), and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees), pursuant to the authorization set forth in section 207(a)(1)(A) of the Act, 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:

25.2.1.1 Past, present and future claims for Water Rights for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, and Fee Land arising from time immemorial and, thereafter, forever;

25.2.1.2 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 Community and Members, or their predecessors;

25.2.1.3 Past and present claims for Injury to Water Rights for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land arising from time immemorial through the Enforceability Date;

25.2.1.4 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 Community and Members, or their predecessors;

25.2.1.5 Claims for Injury to Water Rights arising after the Enforceability Date for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of this Agreement or State law;

25.2.1.6 Past, present and future claims arising out of or relating in any manner to the negotiation or execution of this Agreement or the negotiation or enactment of Titles I and II of the Act;

25.2.1.7 Past and present claims for Subsidence Damage occurring to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land arising from time immemorial through the Enforceability Date; and

25.2.1.8 Claims for Subsidence Damage arising after the Enforceability Date occurring to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land resulting from the Diversion of Underground Water in a manner not in violation of this Agreement or State law.

25.2.2 The waiver of claims and release described in Subparagraph 25.2 shall be in the form set forth in Exhibit 25.2 and shall become effective upon the Enforceability Date.

25.3 <u>Waiver of claims for Water Rights and Injury to Water Rights by the United States as trustee for Allottees</u>.

25.3.1 Except as provided in Subparagraphs 25.12.2 and 25.24, the United States as trustee for the Allottees pursuant to the authorization set forth in section 207(a)(1)(B) of the Act 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:

25.3.1.1 Past, present, and future claims for Water Rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever;

25.3.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by Allottees, or their predecessors;

25.3.1.3 Past and present claims for Injury to Water Rights for land within the exterior boundaries of the Reservation arising from time immemorial through the Enforceability Date;

25.3.1.4 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 Allottees or their predecessors;

25.3.1.5 Claims for Injury to Water Rights arising after the Enforceability Date for land within the exterior boundaries of the Reservation resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of this Agreement or State law;

25.3.1.6 Past, present, and future claims arising out of or relating in any manner to the negotiation or execution of this Agreement or the negotiation or enactment of Titles I or II of the Act; and

25.3.1.7 Past and present claims for Subsidence Damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the Enforceability Date.

25.3.2 The waiver of claims and release described in Subparagraph 25.3 shall be in the form set forth in Exhibit 25.3 and shall become effective upon the Enforceability Date.

25.4 <u>Waiver of claims by the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) for Injury to Water Quality</u>.

25.4.1 Except as provided in Subparagraphs 25.12.3 and 25.24, the Community, on behalf of itself and Members (but not Members in their capacity as Allottees), pursuant to the authorization set forth in section 207(a)(1)(C) shall execute a waiver and release of any claims and shall agree to waive its right to request the United States to bring 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:

25.4.1.1 Past and present claims for Injury to Water Quality, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under CERCLA and WQARF, arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, and Fee Land;

25.4.1.2 Past, present, and future claims for Injury to Water Quality, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under CERCLA and WQARF, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Members, or their predecessors;

25.4.1.3 Claims for Injury to Water Quality arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under CERCLA and WQARF, that result from:

25.4.1.3.1 the delivery of Water to the Community;

25.4.1.3.2 the off-Reservation Diversion (other than Pumping), or ownership or operation of structures for the off-Reservation Diversion (other than Pumping), of Water;

25.4.1.3.3 the off-Reservation Pumping, or ownership or operation of structures for the off-Reservation Pumping, of Water in a manner not in violation of the Agreement or of any applicable Pumping limitations under State law;

25.4.1.3.4 the Recharge, or ownership or operation of structures for the Recharge, of Water under a State permit; and

25.4.1.3.5 the off-Reservation application of Water to land for irrigation.

25.4.1.4 The waiver of claims and release provided in Subparagraph 24.4.1.3 shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation is engaged in an activity specified in Subparagraph 25.4.1.3.

25.4.2 The Community shall not request that the United States bring, on behalf of the Community and its Members (but not Members in their capacity as Allottees), any of the claims waived pursuant to this Subparagraph 25.4.

25.4.3 The waiver of claims and release described in Subparagraph 25.4 shall be in the form set forth in Exhibit 25.4 and shall become effective upon the Enforceability Date.

25.5 <u>Waiver of past and present claims for Injury to Water Quality by the United States acting as trustee for the Community, Members and Allottees</u>.

25.5.1 Except as provided in Subparagraph 25.12.4 and 25.24, the United States, acting as trustee for the Community, Members and Allottees, pursuant to the authorization set forth in section 207(a)(1)(D) of the Act, shall execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for Injury to Water Quality where all of the following conditions are met:

25.5.1.1 The claims are brought solely on behalf of the Community, Members, or Allottees;

25.5.1.2 The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation;

25.5.1.3 The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under CERCLA or WQARF; and

25.5.1.4 The claimed injury is to land, Water, or natural resources located on trust land within the exterior boundaries of the Reservation or on Off-Reservation Trust Land.

25.5.2 The waiver of claims and release described in Subparagraph 25.5 shall be in the form set forth in Exhibit 25.5 and shall become effective upon the Enforceability Date.

25.6 <u>Waiver of future Claims for Injury to Water Quality by the United States in its own right and as trustee for the Community, Members and Allottees</u>.

25.6.1 Except as provided in Subparagraphs 25.12.5 and 25.24, the United States, in its own right and as trustee for the Community, Members and Allottees, pursuant to the authorization set forth in section 207(a)(1)(E), shall execute a waiver and release of the following claims for Injury or threat of Injury to Water Quality arising after December 31, 2002, 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:

25.6.1.1 All common law claims for Injury or threat of Injury to Water Quality where the injury or threat of injury asserted is to the Community's, Members' or Allottees' interests in trust land, Water, or natural resources located within the exterior boundaries of the Reservation or within Off-Reservation Trust Land caused by:

25.6.1.1.1 the delivery of Water to the Community;

25.6.1.1.2 the off-Reservation Diversion (other than Pumping), or ownership or operation of structures for the off-Reservation Diversion (other than Pumping), of Water;

25.6.1.1.3 the off-Reservation Pumping, or ownership or operation of structures for the off-Reservation Pumping, of Water in a manner not in violation of this Agreement or of any applicable Pumping limitations under State law;

25.6.1.1.4 the Recharge, or ownership or operation of structures for the Recharge, of Water under a State permit; and

25.6.1.1.5 the off-Reservation application of Water to land for irrigation.

25.6.1.1.6 The waiver of claims and release provided in Subparagraph 25.6.1.1 shall extend only to the State (or any agency or political subdivision of the State) or any other

person, entity, corporation, or municipal corporation to the extent that the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation is engaged in an activity specified in Subparagraphs 25.6.1.1.1 through 25.6.1.1.5.

25.6.1.2 All natural resource damage claims for Injury or threat of Injury to Water Quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, Members or Allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or Off-Reservation Trust Land, caused by:

25.6.1.2.1 the delivery of Water to the Community;

25.6.1.2.2 the off-Reservation Diversion (other than Pumping), or ownership or operation of structures for the off-Reservation Diversion (other than Pumping), of Water;

25.6.1.2.3 the off-Reservation Pumping, or ownership or operation of structures for the off-Reservation Pumping, of Water in a manner not in violation of this Agreement or of any applicable Pumping limitations under State law;

25.6.1.2.4 the Recharge, or ownership or operation of structures for the Recharge, of Water under a State permit; and

25.6.1.2.5 the off-Reservation application of Water to land for irrigation.

25.6.2 The waiver of claims and release described in Subparagraph 25.6 shall be in the form set forth in Exhibit 25.6 and shall become effective upon the Enforceability Date.

25.7 <u>Waiver of claims by the Community on behalf of itself and Members (but not Members in their capacity as Allottees) against SRP</u>.

25.7.1 Except as provided in Subparagraph 25.12.6, the Community, on behalf of itself and Members (but not Members in their capacity as Allottees), pursuant to the authorization set forth in section 207(a)(1)(F), shall execute a waiver and release of claims against SRP (or its successors or assigns, or its officers, governors, directors, employees, agents, or shareholders) where all of the following conditions are met:

25.7.1.1 The claims are brought solely on behalf of the Community or Members;

25.7.1.2 The claims arise from the discharge, transportation, seepage, or other movement of Water in, through, or from drains, canals, or other facilities or land in the SRRD to trust land located within the exterior boundaries of the Reservation;

25.7.1.3 The claims arise from time immemorial through the Enforceability Date; and,

25.7.1.4 The claims assert a past or present Injury to Water Rights, Injury on the Reservation to Water Quality, or injury to trust property located within the exterior boundaries of the Reservation.

25.7.2 The waiver of claims and release provided for in Subparagraph 25.7.1 is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the Enforceability Date, or until such time as SRP alters its historical operations of the drains, canals, or other facilities within the SRRD in a manner that would cause significant harm to trust land within the exterior boundaries of the Reservation, whichever occurs earlier.

25.7.3 The waiver of claims and release described in Subparagraph 25.7 shall be in the form set forth in Exhibit 25.7.

25.7.4 The waiver of claims and release granted to SRP pursuant to this Subparagraph 25.7, together with Exhibit 25.7, shall be in addition to, and not in substitution of the waivers and releases granted to SRP and others pursuant to Subparagraphs 25.2, 25.3, 25.4, 25.5, 25.6, and 25.8, together with Exhibits 25.2, 25.3, 25.4, 25.5, 25.6, and 25.8.

25.8 Waiver of claims by the United States acting as trustee for the Community, Members, and Allottees against the Salt River Project.

25.8.1 Except as provided in Subparagraph 25.12.7, the United States, acting as trustee for the Community, Members and Allottees, pursuant to the authorization set forth in section 207(a)(1)(G) of the Act, shall execute a waiver and release of claims against SRP (or its successors or assigns, or its officers, governors, directors, employees, agents or shareholders), where all of the following conditions are met:

25.8.1.1 The claims are brought solely on behalf of the Community, Members, or Allottees;

25.8.1.2 The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the SRRD to trust land located within the exterior boundaries of the Reservation;

25.8.1.3 The claims arise from time immemorial through the Enforceability Date; and

25.8.1.4 The claims assert a past or present Injury to Water Rights, Injury on the Reservation to Water Quality, or injury to trust property located within the exterior boundaries of the Reservation.

25.8.2 The waiver of claims and release provided for in this Subparagraph 25.8 is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the Enforceability Date, or until such time as SRP alters its historical operations of the drains, canals, or other facilities within the SRRD in a manner that would cause significant harm to trust land within the exterior boundaries of the Reservation, whichever occurs earlier.

25.8.3 The waiver of claims and release described in Subparagraph 25.8 shall be in the form set forth in Exhibit 25.8.

25.8.4 The waiver of claims and release granted to SRP pursuant to this Subparagraph 25.8, together with Exhibit 25.8, shall be in addition to, and not in substitution of the waivers and releases granted to SRP and others pursuant to Subparagraphs 25.2 through 25.7, together with Exhibits 25.2 through 25.7.

25.9 <u>Waiver of claims for Subsidence Damage by the Community, Allottees and the United States on Behalf of the Community and Allottees</u>.

25.9.1 In accordance with the subsidence remediation program under section 209 of the Act, the Community, a Member, or an Allottee, and the United States on behalf of the Community, a

Member, or an Allottee, pursuant to the authorization set forth in section 207(a)(2) of the Act, shall execute a waiver and release of all 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 the damage claimed.

25.9.2 The waiver of claims and release described in Subparagraph 25.9.1 shall be in the form set forth in Exhibit 25.9.1. The waiver of claims and release described in Subparagraph 25.9.1 shall become effective upon satisfactory completion of the requested repair or remediation. The repair or remediation shall be deemed satisfactory when completed or, if contested, upon conclusion of any applicable appeal process available to the Community, Member or Allottee for contesting whether the repair or remediation is satisfactory.

25.10 <u>Waiver of claims by the United States against the Community</u>.

25.10.1 Except as provided in Subparagraph 25.12.8, the United States in all its capacities (except as trustee for an Indian tribe other than the Community), pursuant to the authorization set forth in section 207(a)(3) of the Act, shall execute a waiver and release of any and all claims against the Community, or any agency, official or employee of the Community, under Federal, State or any other law for:

25.10.1.1 Past and present claims for Subsidence Damage to trust land within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land arising from time immemorial through the Enforceability Date; and;

25.10.1.2 Past, present, and future claims arising out of or relating in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of Titles I and II of the Act.

25.10.2 The waiver of claims and release described in Subparagraph 25.10 shall be in the form set forth in Exhibit 25.10 and shall become effective upon the Enforceability Date.

25.11 <u>Waiver of claims by the Community against the United States</u>.

25.11.1 Except as provided in Subparagraphs 25.12.9 and 25.24, the Community, on behalf of itself and Members (but not Members in their capacity as Allottees), pursuant to the authorization set forth in section 207(a)(4) of the Act, shall execute a waiver and release of any claim against the United States (or agencies, officials or employees of the United States) under Federal, State or other law for:

25.11.1.1 Past, present, and future claims for Water Rights for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land arising from time immemorial and, thereafter, forever;

25.11.1.2 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 Community and Members, or their predecessors;

25.11.1.3 Past and present claims for Injury to Water Rights for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land arising from time immemorial through the Enforceability Date;

25.11.1.4 Past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever, that are based upon aboriginal occupancy of land by the Community and Members, or their predecessors;

25.11.1.5 Claims for Injury to Water Rights arising after the Enforceability Date for land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, or Fee Land resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of this Agreement or applicable law;

25.11.1.6 Past, present, and future claims arising out of or relating in any manner to the negotiation or execution of this Agreement or the negotiation or enactment of Titles I and II of the Act;

25.11.1.7 Past and present claims for Subsidence Damage occurring to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, or Fee Land arising from time immemorial through the Enforceability Date;

25.11.1.8 Claims for Subsidence Damage arising after the Enforceability Date occurring to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, or Fee Land resulting from the Diversion of Underground Water in a manner not in violation of this Agreement or applicable law;

25.11.1.9 Past and present claims for failure to protect, acquire or develop Water Rights for or on behalf of the Community and Members arising before December 31, 2002; and,

25.11.1.10 Past, present, and future claims relating to failure to assert any claims expressly waived pursuant to section 207(a)(1)(C) through (E) of the Act.

25.11.2 The waiver of claims and release described in Subparagraph 25.11 shall be in the form set forth in Exhibit 25.11 and shall become effective upon the Enforceability Date.

25.12 <u>Reservation of rights and retention of claims by the Community and the United States</u>.

25.12.1 Notwithstanding the waiver of claims and release described in Subparagraph 25.2 and Exhibit 25.2, the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) and the United States on behalf of the Community and Members (but not Members in their capacity as Allottees) shall retain any right to:

25.12.1.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.1.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community 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 25.18A;

25.12.1.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members

under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.1.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.1.5 Assert past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, against any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.1.6 Participate in the Gila River Adjudication Proceedings to the extent provided in Subparagraph 28.1;

25.12.1.7 Assert any claims arising after the Enforceability Date for Injury to Water Rights or Subsidence Damage not specifically waived herein;

25.12.1.8 Assert any claims arising after the Enforceability Date for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights,

against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2;

25.12.1.9 Object to any claims for Water Rights by or for Phelps Dodge if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.1.10 Assert against Phelps Dodge any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.1.11 Object to any claims for Water Rights by or for the City of Safford if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.1.12 Assert against the City of Safford any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.1.13 Object to any claims for Water Rights by or for BHP;

25.12.1.14 Assert against BHP any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from the Diversion or Use of Water in excess of the quantity specified in Subparagraph 26.8.2.7.1;

25.12.1.15 Object to any claims for Water Rights by or for Asarco;

25.12.1.16 Assert against Asarco any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights;

25.12.1.17 Object to any claims for Water Rights by or for AWC as to the Use of Water in the Gila River Impact Zone and the San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantities specified in Subparagraphs 26.8.2.7.2 and 26.8.2.7.3;

25.12.1.18 Assert against AWC any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights,

arising from or relating in any way to Water Use in the San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantity specified in Subparagraph 26.8.2.7.2;

25.12.1.19 Assert against AWC any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in the Gila River Impact Zone and San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantity specified in Subparagraph 26.8.2.7.3;

25.12.1.20 Object to any claims for Water Rights by or for the Town of Winkelman; and,

25.12.1. 21 Assert against the Town of Winkelman any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in excess of the quantity specified in Subparagraph 26.8.2.7.3.

25.12.2 Notwithstanding the waiver of claims and release described in Subparagraph 25.3 and Exhibit 25.3, the United States as trustee for the Allottees shall retain any right to:

25.12.2.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of the rights, if any, of Allottees under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.2.2 Assert claims for injuries to, and seek enforcement of, the rights, if any, of Allottees under the judgment and decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.18A;

25.12.2.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights, if any, of Allottees under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.2.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.2.5 Assert past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, against any

other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.2.6 Participate in the Gila River Adjudication Proceedings to the extent provided in Subparagraph 28.1;

25.12.2.7 Assert any claims arising after the Enforceability Date for Injury to Water Rights or Subsidence Damage not specifically waived herein;

25.12.2.8 Assert any claims arising after the Enforceability Date for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2;

25.12.2.9 Object to any claims for Water Rights by or for Phelps Dodge if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.2.10 Assert against Phelps Dodge any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water

Rights, if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.2.11 Object to any claims for Water Rights by or for the City of Safford if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.2.12 Assert against the City of Safford any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.2.13 Object to any claims for Water Rights by or for BHP;

25.12.2.14 Assert against BHP any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from the Diversion or Use of Water in excess of the quantity specified in Subparagraph 26.8.2.7.1;

25.12.2.15 Object to any claims for Water Rights by or for Asarco;

25.12.2.16 Assert against Asarco any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights;

25.12.2.17 Object to any claims for Water Rights by or for AWC as to the Use of Water in the Gila River Impact Zone and the San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantities specified in Subparagraphs 26.8.2.7.2 and 26.8.2.7.3;

25.12.2.18 Assert against AWC any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in the San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantity specified in Subparagraph 26.8.2.7.2;

25.12.2.19 Assert against AWC any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in the Gila River Impact Zone and San Pedro M&I and Domestic Purposes Impact Zone in excess of the quantity specified in Subparagraph 26.8.2.7.3;

25.12.2.20 Object to any claims for Water Rights by or for the Town of Winkelman; and,

25.12.2.21 Assert against the Town of Winkelman any past, present, or future claims for Injury to Water Rights or Subsidence Damage, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in excess of the quantity specified in Subparagraph 26.8.2.7.3

25.12.3 Notwithstanding the waiver of claims and release described in Subparagraph 25.4 and Exhibit 25.4, the Community on behalf of itself and Members (but not Members in their capacity as Allottees) shall retain any right to:

25.12.3.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.3.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community 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 25.18A;

25.12.3.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.3.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.3.5 Assert past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, against any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.3.6 Assert any past, present, or future claims arising out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.3.7 Assert any claims for Injury to Water Quality not specifically waived herein;

25.12.3.8 Assert any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.3.9 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land undertaken by the parties to any contract or agreement with the Community or the United States entered into after December 31, 2002, that contemplates any of the following activities, services or transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land, (2) the provision of services or goods on, other than the delivery of Water to, land located within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land, or (3) activities undertaken pursuant to a business license issued by the Community;

25.12.3.10 Assert any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, resulting from the illicit placement

(other than through the delivery, Diversion or Use of Water) of hazardous substances;

25.12.3.11 Assert any claims arising after December 31, 2002 for Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2;

25.12.3.12 Assert against Phelps Dodge any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.3.13 Assert against the City of Safford any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.3.14 Assert against BHP any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights;

25.12.3.15 Assert against Asarco any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights;

25.12.3.16 Assert against AWC any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising from or relating in any way to Water Use in the Gila River Impact Zone and San Pedro M&I and Domestic Purposes Impact Zone;

25.12.3.17 Assert against the Town of Winkelman any past, present, or future claims for Injury to Water Quality, or any other claims other than a claim for Water Rights; and,

25.12.3.18 Assert any past, present, or future claims for Injury to Water Quality against the owners of any fee land located within the exterior boundaries of the Reservation, other than the State.

25.12.4 Notwithstanding the waiver of claim and release described in Subparagraph 25.5 and Exhibit 25.5, the United States acting as trustee for the Community, Members, and Allottees shall retain any right to:

25.12.4.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.4.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the judgment and decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.18A;

25.12.4.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the Globe Equity Decree, including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.4.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.4.5 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, against any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.4.6 Assert any claims arising prior to January 1, 2003, out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.4.7 Assert any claims arising prior to January 1, 2003, for Injury to Water Quality not otherwise waived herein;

25.12.4.8 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, out of activities occurring within the exterior boundaries of the Reservation or Off-Reservation Trust Land undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.4.9 Assert any claims for Injury to Water Quality arising prior to January 1, 2003, out of activities occurring within the exterior boundaries of the Reservation or Off-Reservation Trust Land undertaken by the parties to any contract or agreement with the Community or the United States that contemplates any of the following

activities, services or transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land, (2) the provision of services or goods on, other than the delivery of Water to, land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land, or (3) activities undertaken pursuant to a business license issued by the Community;

25.12.4.10 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances on land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land;

25.12.4.11 Assert any claims arising prior to January 1, 2003, for Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2;

25.12.4.12 Assert against Phelps Dodge any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, if the

"Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.4.13 Assert against the City of Safford any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.4.14 Assert against BHP any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003;

25.12.4.15 Assert against Asarco any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003;

25.12.4.16 Assert against AWC any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, resulting from or relating in any way to Water Use in the Gila River Impact Zone or the San Pedro M&I and Domestic Purposes Impact Zone;

25.12.4.17 Assert against the Town of Winkelman any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003; and,

25.12.4.18 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to January 1, 2003, against the owners of any fee land located within the exterior boundaries of the Reservation, other than the State.

25.12.5 Notwithstanding the waiver of claim and release described in Subparagraph 25.6 and Exhibit 25.6, the United States in its own right and as trustee for the Community, Members, and Allottees shall retain any right to:

25.12.5.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.5.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the

judgment and decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.18A;

25.12.5.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.5.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.5.5 Assert any claims for Injury to Quality or any other claims other than a claim for Water Rights, against any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.5.6 Assert any claims arising after December 31, 2002, out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.5.7 Assert any claims arising after December 31, 2002, for Injury to Water Quality not specifically waived herein;

25.12.5.8 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, out of activities occurring within the exterior boundaries of the Reservation or Off-Reservation Trust Land undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.5.9 Assert any claims arising after December 31, 2002, for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising out of activities occurring within the exterior boundaries of the Reservation or Off-Reservation Trust Land undertaken by the parties to any contract or agreement with the Community or the United States that contemplates any of the following activities, services or transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land, (2) the provision of services or goods on, other than the delivery of Water to, land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land, or (3) activities undertaken pursuant to a business license issued by the Community;

25.12.5.10 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances on land located within the exterior boundaries of the Reservation or Off-Reservation Trust Land;

25.12.5.11 Assert any claims arising after December 31, 2002, for Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2;

25.12.5.12 Assert against Phelps Dodge any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred;

25.12.5.13 Assert against the City of Safford any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.12.5.14 Assert against BHP any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002;

25.12.5.15 Assert against Asarco any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002;

25.12.5.16 Assert against AWC any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, resulting from or relating in any way to Water Use in the Gila River Impact Zone and San Pedro M&I and Domestic Purposes Impact Zone;

25.12.5.17 Assert against the Town of Winkelman any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002; and,

25.12.5.18 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising after December 31, 2002, against the owners of any fee land located within the exterior boundaries of the Reservation, other than the State.

25.12.6 Notwithstanding the waiver of claims and release described in Subparagraph 25.7 and Exhibit 25.7, the Community on behalf of itself and its Members (but not Members in their capacity as Allottees) shall retain any right against SRP (or its successors or assigns, or its officers, governors, directors, employees, agents, or shareholders) to:

25.12.6.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.6.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community 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 25.18A;

25.12.6.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.6.4 Assert any claims arising prior to the Enforceability Date out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.6.5 Assert any claims arising prior to the Enforceability Date for Injury to Water Quality not specifically waived herein;

25.12.6.6 Assert any claims for Injury to Water Quality arising prior to the Enforceability Date out of activities occurring within the exterior boundaries of the Reservation undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.6.7 Assert any claims for Injury to Water Quality arising prior to the Enforceability Date out of activities occurring within the exterior boundaries of the Reservation undertaken by the parties to any contract or agreement with the Community or the United States that contemplates any of the following activities, services or transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation, (2) the provision of services or goods on, other than the delivery of Water to, land located within the exterior boundaries of the Reservation, or (3) activities undertaken pursuant to a business license issued by the Community; and,

25.12.6.8 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to the Enforceability Date resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances on land located within the exterior boundaries of the Reservation.

25.12.7 Notwithstanding the waiver of claim and release described in Subparagraph 25.8 and Exhibit 25.8, the United States acting as trustee for the Community, Members and Allottees shall retain any right against SRP (or its successors or assigns, or its officers, governors, directors, employees, agents, or shareholders) to:

25.12.7.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.7.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the judgment and decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.18A;

25.12.7.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members, as well as the rights, if any, of Allottees under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.7.4 Assert any claims arising prior to the Enforceability Date out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.7.5 Assert any claims arising prior to the Enforceability Date for Injury to Water Quality not specifically waived herein;

25.12.7.6 Assert any claims for Injury to Water Quality arising prior to the Enforceability Date out of activities occurring within the exterior boundaries of the Reservation undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.7.7 Assert any claims for Injury to Water Quality arising prior to the Enforceability Date out of activities occurring within the exterior boundaries of the Reservation undertaken by the parties to any contract or agreement with the Community or the United States that contemplates any of the following activities, services or

transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation, (2) the provision of services or goods on, other than the delivery of Water to, land located within the exterior boundaries of the Reservation, or (3) activities undertaken pursuant to a business license issued by the Community; and,

25.12.7.8 Assert any claims for Injury to Water Quality, or any other claims other than a claim for Water Rights, arising prior to the Enforceability Date resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances on land located within the exterior boundaries of the Reservation.

25.12.8 Notwithstanding the waiver of claims and release described in Subparagraph 25.10 and Exhibit 25.10, the United States acting in all of its capacities shall retain any right to:

25.12.8.1 Assert any claims not specifically waived in Subparagraph 25.10 or Exhibit 25.10.

25.12.9 Notwithstanding the waiver of claim and release described in Subparagraph 25.11 and Exhibit 25.11, the Community on behalf of itself and Members (but not Members in their capacity as Allottees) shall retain any right to:

25.12.9.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.12.9.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community 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 25.18A;

25.12.9.3 Subject to Paragraph 26.0 and Exhibits 26.1 through 26.5, assert claims for injuries to, and seek enforcement of, the rights of the Community and Members under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.12.9.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.9.5 Assert past, present, or future claims for Injury to Water Rights, Injury to Water Quality, Subsidence Damage, or any other claims other than a claim to Water

Rights, against any other Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;

25.12.9.6 Assert any past, present, or future claims arising out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1;

25.12.9.7 Assert any claims not specifically waived herein;

25.12.9.8 Assert any past, present or future claims arising out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.12.1.10A through D;

25.12.9.9 Assert any claims arising out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land undertaken by the parties to any contract or agreement with the Community or the United States that contemplates any of the following activities, services or transactions: (1) leases of land or other occupancy agreements for land located within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land, (2) the provision of services or goods on, other than the delivery of Water to, land located

within the exterior boundaries of the Reservation, Off-Reservation Trust Land or Fee Land, or (3) activities undertaken pursuant to a business license issued by the Community;

25.12.9.10 Assert any past, present or future claims resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances;

25.12.9.11 Assert any claims arising after the Enforceability Date, other than a claim for Water Rights, against any Non-GE 59 Water User Diverting or using Water upstream from the Ashurst-Hayden Diversion Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2; and,

25.12.9.12 Assert any past, present, or future claims for Injury to Water Quality against the owners of any fee land located within the exterior boundaries of the Reservation, other than the State.

25.12.10 Except as provided in Subparagraphs 25.5, 25.6 and 25.8, nothing in this 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.

25.13 <u>Reservation of rights and retention of claims by the Parties other than the Community or the United States</u>.

25.13.1 Notwithstanding the waivers of claims and releases described in Subparagraphs 25.1.1 and 25.1.2 and Exhibits 25.1.1 and 25.1.2, the Parties, other than the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall retain any right to:

25.13.1.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any court of competent jurisdiction, but not the courts of the Community;

25.13.1.2 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 as Exhibit 25.18A;

25.13.1.3 Assert claims for injuries to, and seek enforcement of, their rights under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.13.1.4 Assert past, present, and future claims to Surface Water that are not inconsistent with this Agreement as well as any additional claims that do not adversely affect the Community's Water Rights as provided for by this Agreement or the Act;

25.13.1.5 Assert any claims to Underground Water that are subject to the Gila River Adjudication Proceedings or other applicable law;

25.13.1.6 Assert any claims for Injury to Water Rights not specifically waived herein;

25.13.1.7 With respect to Phelps Dodge only and no other party, Phelps Dodge may assert any claim otherwise waived pursuant to Subparagraphs 25.1.1 and 25.1.2 of this Agreement if the "Final Effective Date" of the Community/Phelps Dodge Agreement as that term is defined therein has not occurred;

25.13.1.8 With respect to the City of Safford only and no other party, the City of Safford may assert any claim otherwise waived pursuant to Subparagraphs 25.1.1 and 25.1.2 of this Agreement if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.13.1.9 Assert any claims for Subsidence Damage not specifically waived herein; and

25.13.1.10 Assert any claims for Injury to Water Rights, or any other claims, against the owners of any fee land located within the exterior boundaries of the Reservation.

25.13.2 Notwithstanding the waivers of claims and releases described in Subparagraphs 25.1.3, 25.1.4 and 25.1.5 and Exhibits 25.1.3, 25.1.4 and 25.1.5, the Parties, other than the Community, the United States, the Franklin Irrigation District and the Gila Valley Irrigation District, shall retain any right to:

25.13.2.1 Subject to Subparagraph 30.9, assert claims for injuries to, and seek enforcement of their rights under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.13.2.2 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 as Exhibit 25.18A;

25.13.2.3 Assert claims for injuries to, and seek enforcement of their rights under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.18B;

25.13.2.4 Assert any claims for Injury to Water Quality not specifically waived herein;

25.13.2.5 With respect to Phelps Dodge only and no other party, Phelps Dodge may assert any claim otherwise waived pursuant to Subparagraphs 25.1.3, 25.1.4 and 25.1.5 of this Agreement if the "Final Effective Date" of the Community/Phelps Dodge Agreement, as that term is defined therein, has not occurred;

25.13.2.6 With respect to the City of Safford only and no other party, the City of Safford may assert any claim otherwise waived pursuant to Subparagraphs 25.1.3, 25.1.4 and 25.1.5 of this Agreement if the City of Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1 thereof;

25.13.2.7 Assert any past, present, or future claims arising out of the actions that resulted in the remediations listed in Exhibit 25.4.1.1; and

25.13.2.8 Assert any past, present or future claims resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances; and

25.13.2.9 Assert any claims for Injury to Water Quality, or any other claims, against the owners of any fee land located within the exterior boundaries of the Reservation.

25.13.3 Except as provided in Subparagraphs 25.1.3, 25.1.4 and 25.1.5, nothing in this Agreement precludes the State from taking any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

25.13.4 The State's participation as a Party shall be as described in Subparagraph 30.4 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).

25.14 <u>Land outside the Reservation</u>.

Except as provided in Subparagraphs 25.2.1.2, 25.2.1.4, 25.3.1.2 and 25.3.1.4, nothing in this Agreement shall affect any rights to Water of the Community, the United States, or any Member, Allottee or Successor in Interest to an Allottee for land outside the exterior boundaries of the Reservation that is not Off-Reservation Trust Land or Fee Land.

25.15 Individual Member rights.

Nothing in this Agreement shall affect any rights of any Member to bring any action available under law for personal injury or personal property damage. For purposes of this Agreement, personal property damage shall not include claims for Water Rights, Injury to Water Rights, or Injury to Water Quality.

25.16 Lone Butte agreement.

Nothing in Paragraph 25.0 shall be construed in a manner to limit the Community's or the City of Chandler's rights, remedies, or defenses under the agreement between the Community and the City of Chandler, dated December 16, 1981, and any amendments or extensions thereof.

25.17 Voluntary dismissals.

25.17.1 The Gila River Indian Community for and on behalf of itself and Members shall re-file in the United States District Court for the District of Arizona, a complaint in a form identical to that complaint filed in the action styled *Gila River Indian Community for and on behalf of itself and its members, Plaintiffs v. the Gila Valley Irrigation District, et al., Defendants*

CIV No. 82-2185, PHX CAM, except that such complaint shall not name the following parties as defendants: American Smelting and Refining Company, Asarco Inc., Asarco Incorporated, Asarco Incorporated a New Jersey Corporation, Magma Copper Co., Arizona Water Co., Arizona Water Company, an Arizona Corporation. The Gila River Indian Community for and on behalf of itself and its members shall then promptly file the motion to stay pending settlement and voluntary dismissal with prejudice of this complaint in the form set forth in Exhibit 25.17.1A. With respect to Phelps Dodge and its predecessors in interest, upon the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein), the Community shall promptly file a motion to stay pending settlement and voluntary dismissal with prejudice of this complaint in the form set forth in Exhibit 25.17.1B. The Gila River Indian Community for and on behalf of its Members shall retain any and all rights it may have against American Smelting and Refining Company, Asarco Inc., Asarco Incorporated, Asarco Incorporated a New Jersey Corporation, Magma Copper Co., Arizona Water Co., Arizona Water Company, an Arizona Corporation, and nothing in this Subparagraph shall be construed to affect such rights.

25.17.2 The United States shall promptly file in the United States District Court for the District of Arizona, a motion to stay pending settlement and voluntary dismissal with prejudice (and voluntary dismissal without prejudice with respect to AWC) in the form set forth in Exhibit 25.17.2 in the action styled *United States of America on behalf of the Gila River Indian Community v. Roosevelt Water Conservation District, et al.*, CIV No. 82-2174, PHX RGS.

25.17.3 With respect to all defendants other than Asarco, Phelps Dodge, BHP, and the Town of Winkelman (and the affiliates of, and predecessors in interest and successors in interest to, each of the aforementioned entities), the Gila River Indian Community for and on behalf of itself and its Members shall promptly file in the United States District Court for the District of Arizona a motion to stay pending settlement and voluntary dismissal with prejudice (and without prejudice with respect to AWC) in the form set forth in Exhibit 25.17.3A in the action styled *Gila River Indian Community, for and on behalf of itself, Plaintiffs v. American Smelting and Refining Company, et al., Defendants* No. CIV 78-145 TUC WDB. With respect to Phelps Dodge and its predecessors in interest, upon the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein), the Gila River Indian Community for and on behalf of itself and its Members shall promptly file in the United States District Court for the District of Arizona a motion to stay pending settlement and voluntary dismissal with prejudice in the form set forth in Exhibit 25.17.3B in the action styled *Gila River Indian Community for and on behalf of itself and its members, Plaintiffs v. American Smelting and Refining Company, et al. Defendants,* No. CIV 78-145 TUC WDB.

25.17.4 Upon the occurrence of the Enforceability Date, the Gila River Indian Community for and on behalf of itself and its Members and the United States on behalf of the Community, Members and Allottees shall promptly file in the Supreme Court of Arizona a voluntary dismissal with prejudice of all interlocutory appeals filed by them in the Gila River Adjudication

Proceedings with respect to their claims in such proceedings. The form of such voluntary dismissal is set forth in Exhibit 25.17.4.

25.18 Stipulations and forms of judgment.

The Parties shall file a stipulation and form of judgment and decree in the Gila River Adjudication Proceedings in the form of Exhibit 25.18A and a stipulation and form of judgment in the Globe Equity Enforcement Court in the form of Exhibit 25.18B.

25.19 Replacement, substitution, and satisfaction of Water Rights and other benefits.

25.19.1 The benefits realized by the Community, Members, and Allottees under this Agreement and the Act shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Members and Allottees for Water Rights, Injury to Water Rights, Injury to Water Quality, and Subsidence Damage, except as set forth in this Agreement, under federal, State, or other law with respect to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, and Fee Land. Notwithstanding the preceding sentence, and except as provided in Paragraph 23.0 and section 204(a) of the Act, nothing in this Agreement or the Act has the effect of recognizing or establishing any right of a Member or Allottee to Water on the Reservation.

25.19.2 Any entitlement to Water of the Community, Members, any Allottee or any Successor in Interest to an Allottee, or the United States on behalf of the Community, Members,

or Allottees for lands within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land shall be satisfied out of the Water resources and other benefits granted, confirmed or recognized to or for the Community, Members, Allottees and the United States on behalf of the Community, Members, or Allottees by this Agreement and in the Act.

25.20 Assistance in identifying hazardous substance discharges.

The Community may request any Party to assist it in identifying a discharge of a substance that may be contributing to an exceedance of an applicable State or Federal standard at the point of delivery of Water to the Community and any Party so requested shall provide such assistance. The Party shall have fully satisfied this obligation by providing to the Community, at the Community's expense, relevant, non-privileged information in its possession that may assist the Community in identifying the discharge.

25.21 Relation of waiver to other contracts.

The Community's and the United States' waiver of claims relating to Injury to Water Quality in Paragraph 25.0 shall be in addition to the other terms and conditions of any contract with the Community or the United States for the delivery of Water.

25.22 [Intentionally not used.]

25.23 Community water quality standards.

The Community on behalf of itself and Members, pursuant to the authorization set forth in section 207(a)(6) of the Act, shall never adopt any Water quality standards, or ask the United States to promulgate such standards, that are more stringent than Water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State of Arizona or the United States of more stringent Water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on (i) any Water delivery system used to deliver Water to the Community or (ii) the discharge of Water into any such system.

25.24 <u>UVD Agreement Beneficiary</u>.

25.24.1 A UVD Agreement Beneficiary shall have the benefit of the waivers and retentions provided in paragraph 4.0 of the UVD Agreement pursuant to the terms, conditions, limitations and requirements provided in the UVD Agreement, but shall not have the benefit of the waivers set forth in this Paragraph 25.0.

25.24.2 Nothing in this Paragraph 25.0 shall be construed to alter, amend, modify or otherwise diminish any waiver or retention provided in paragraph 4.0 of the UVD Agreement.

25.24.3 To the extent a Party is also a UVD Agreement Beneficiary, the waivers of claims and releases set forth in Subparagraph 25.1 do not constitute a waiver of claims by that Party in its capacity as a UVD Agreement Beneficiary.

26.0 UPPER GILA VALLEY AND GILLESPIE DIVERTERS

26.1 Safford Agreement.

The Community, SCIDD, the United States, and the City of Safford have entered into the Safford Agreement, a copy of which is attached as Exhibit 26.1. Subject to Subparagraph 30.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 26.1, the terms of Exhibit 26.1 shall prevail, as among the parties to Exhibit 26.1.

26.2 UVD Agreement.

The Community, SCIDD, the United States, the Franklin Irrigation District, the Gila Valley Irrigation District, and other parties located in the Upper Valley of the Gila River have entered into the UVD Agreement, a copy of which is attached as Exhibit 26.2. Subject to Subparagraph 30.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 26.2, the terms of Exhibit 26.2 shall prevail, as among the parties to Exhibit 26.2 and all UVDs as that term is defined therein.

26.3 Duncan Agreement.

The Community, SCIDD, the United States, and the Town of Duncan have entered into the Duncan Agreement, a copy of which is attached as Exhibit 26.3.

26.4 Kearny Agreement.

The Community, SCIDD, the United States, and the Town of Kearny have entered into the Kearny Agreement, a copy of which is attached as Exhibit 26.4.

26.5 Mammoth Agreement.

The Community, SCIDD, the United States, and the Town of Mammoth have entered into the Mammoth Agreement, a copy of which is attached as Exhibit 26.5.

26.6 Form of Paloma Agreement.

At any time prior to the Enforceability Date, a Gillespie Diverter may elect to execute exhibit 26.6. Upon notice from such Gillespie Diverter to the Community and the United States that such Gillespie Diverter has executed exhibit 26.6, the Community and the United States shall promptly execute exhibit 26.6, provided that such notice is provided prior to the Enforceability Date. Notwithstanding the attachment of exhibit 26.6 to this Agreement for informational purposes only, the Gillespie Diverters are not, and shall not be deemed to be, Parties to this Agreement for any purpose whatsoever; nor shall exhibit 26.6, once executed, be construed or interpreted for any purpose whatsoever as an Exhibit to this Agreement. The Parties acknowledge and confirm that the Paloma Agreement, once executed: (1) shall be binding solely on the parties to the Paloma Agreement, and (2) may be amended by the parties thereto, provided, that any such amendment shall be solely binding on such parties.

26.7 No effect on non-parties to Exhibits.

Nothing in any Exhibit shall be construed to preclude any Party that is not also a party to such Exhibit from enforcing its rights, if any, with respect to the use of Water from within the watershed of the Gila River.

26.8 Non-GE 59 Water Users in the upper Gila River watershed.

26.8.1 State legislation/Upper Gila River Watershed Maintenance Program.

The Parties agree to the establishment of an Upper Gila River Watershed Maintenance Program. It will be necessary to enact State legislation to establish the Upper Gila River Watershed Maintenance Program. For purposes of establishing the Enforceability Date, the date of establishment of the Upper Gila River Watershed Maintenance Program shall be the date on which the Secretary, with the concurrence of the Community and the Director of ADWR, certifies in writing that State legislation has been enacted that: (1) meets the minimum requirements set forth in Exhibit 26.8.1; and (2) shall take effect not later than the Enforceability Date. The continued existence and enforcement of the Upper Gila River Watershed Maintenance Program shall constitute a term and condition of the Community's and SCIDD's provision of the safe harbors set forth in Subparagraph 26.8.2, a violation of which term and condition shall nullify the safe harbors set forth therein.

26.8.1.1 One or more of the following conditions shall constitute the violation of the term or condition referred to in Subparagraph 28.8.1, resulting in the nullification of the safe harbors set forth in Subparagraph 26.8.2:

26.8.1.1.1 the repeal of, or substantive amendment to, some or all of the state legislation establishing the Upper Gila Watershed Maintenance Program in a manner that is inconsistent with this Subparagraph 26.8.1 or Exhibit 26.8.1 or that may have a material adverse impact on the Community or SCIDD or both;

26.8.1.1.2 the absence of an adequate enforcement effort on the part of the State that constitutes a pattern of failure to enforce the provisions of the Upper Gila Watershed Maintenance Program, which shall be demonstrated by one or more of the following:

26.8.1.1.2.1 the failure by ADWR to revise the Notice of Intent to Drill forms, subject to concurrence of the Community and SCIDD, as required under Subparagraphs 26.8.2.5.1, 26.8.2.5.2, 26.8.2.6.1, and 28.8.2.6.2 of this Agreement, such forms shall include at a minimum notice of the safe harbor provisions and notice of the requirement to report certain information to the Community and SCIDD in order to qualify for safe harbor protections;

26.8.1.1.2.2 a failure by ADWR to file a report every five (5) years with the Gila River Adjudication Court, as required under Subparagraph 26.8.2.9.1.2, on the status of

the use of Water Diverted or Pumped from within the Impact Zones or the failure to provide copies of the report to the Community, SCIDD, and the United States;

26.8.1.1.2.3 the failure to by ADWR to take enforcement action pursuant to A.R.S. 45-2652 after the Enforceability Date to prohibit the construction of a new dam or the enlargement of an existing dam within the Gila River watershed upstream and to the east of Ashurst-Hayden Diversion Dam. ADWR shall initiate such enforcement action within one hundred eighty (180) days from the date on which ADWR receives notice of the violation;

26.8.1.1.2.4 the issuance of a permit for the construction of a new dam or the enlargement of an existing dam within the Gila River watershed upstream and to the east of Ashurst-Hayden Diversion Dam, except as provided in Exhibit 26.8.1; or

26.8.1.1.2.5 the failure by ADWR to take enforcement action pursuant to A.R.S. 45-2652 after the Enforceability Date to prohibit New Ag Use of Water from the appropriate Impact Zone in the Gila River watershed upstream and to the east of Ashurst-Hayden Diversion Dam, except for lands located in Cochise County. ADWR shall initiate such enforcement action within one hundred eighty (180) days from the date on which ADWR receives notice of the violation.

26.8.1.1.2.5.1 the ADWR shall not be found to have violated Subparagraph 26.8.1.1.2.5 if the total amount of New Ag Uses is less than fifty (50) acres during any rolling three year period, provided that each acre or portion thereof that constitutes a New Ag Use in any single Year shall be applied against the fifty (50) acre total.

26.8.1.2 The Community, SCIDD, or the United States may revoke the safe harbors protections provided under Subparagraph 26.8.2 for any individual who violates the prohibitions of Subparagraph 26.8.1. Nothing in Subparagraph 26.8.1 shall preclude the Community, SCIDD, or the United States from enforcing their respective rights under the Settlement Agreement for violations of Subparagraph 26.8.1.

26.8.2 <u>Safe harbor uses of Water</u>.

26.8.2.1 <u>Applicable only to Non-GE 59 Water Users</u>.

The safe harbor provisions of this Subparagraph 26.8.2 shall be construed to benefit only Non-GE 59 Water Users.

26.8.2.2 <u>Water Diverted outside the Impact Zones</u>.

For purposes of Subparagraph 2.124B and the safe harbors set forth in Subparagraph 26.8.2, a well that is drilled after December 31, 2002, and that is located outside of the exterior boundary of an Impact Zone, but the Pumping of

which results in a cone of depression that extends into an Impact Zone, shall be considered to be Diverting Water from within such Impact Zone. Whether and the extent to which Pumping from a well located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting Water from within such Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court; provided, however, that any well for Domestic Purposes only that is located more than one-quarter (1/4) mile outside the exterior boundary of an Impact Zone shall be deemed to be Diverting Water from outside such Impact Zone.

26.8.2.3 **Water Diverted for Irrigation Uses from within the San Pedro Ag and New Large Industrial Use Impact Zone.**

The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water User's use of Water Diverted from within the San Pedro Ag and New Large Industrial Use Impact Zone for irrigation of Eligible Safe Harbor Acres; provided, however, that the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights

described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree may, after adjudication of a Non-GE 59 Water User's Water Right in the Gila River Adjudication Proceedings, object to such Non-GE 59 Water User's use of Water if that use exceeds such Non-GE 59 Water User's adjudicated Water entitlement. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.3, a Non-GE 59 Water User must file with the Gila River Adjudication Court, with a copy to the Community, SCIDD and the United States, a description of the Eligible Safe Harbor Acres that such Non-GE 59 Water User owns. The Community, SCIDD, and the United States on behalf of the Community and Allottees and as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall have the right to challenge the accuracy of such filing.

26.8.2.4 <u>Water Diverted for M&I Uses from within the San Pedro M&I and Domestic Purposes Impact Zones or the Gila River Impact Zone</u>.

With respect to any Non-GE 59 Water User using Water Diverted from within the San Pedro M&I and Domestic Purposes Impact Zone or the Gila River Impact Zone for M&I Uses, the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, shall not exercise their

respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water User's Diversion or use of such Water for an M&I Use so long as such Diversion or use does not exceed the highest amount used by such Non-GE 59 Water User for such M&I Use in any of the Years during the period 1997-2001, inclusive; provided, however, that the Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree, may, after adjudication of a Non-GE 59 Water User's Water Right in the Gila River Adjudication Proceedings, object to such Non-GE 59 Water User's Diversion or use of Water if that use exceeds such Non-GE 59 Water User's adjudicated Water entitlement. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.4, a Non-GE 59 Water User must file with the Gila River Adjudication Court, with a copy to the Community, SCIDD, and the United States an accounting of Water Diverted from within an Impact Zone and used for M&I Uses during the period 1997 through 2001, inclusive. The Community, SCIDD and the United States on behalf of the Community and Allottees and to the extent the United States holds legal title to (but not the beneficial interest in) the Water Rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the

Globe Equity Decree), shall have the right to challenge the accuracy of such filing.

26.8.2.5 **<u>Water Diverted for Domestic Purposes</u>.**

The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any Non-GE 59 Water User's use of Water for a Domestic Purpose existing as of January 31, 2002.

26.8.2.5.1 **<u>San Pedro M&I and Domestic Purposes Impact Zone</u>.**

The Community, SCIDD and the United States on behalf of Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of Water Diverted from within the San Pedro M&I and Domestic Purposes Impact Zone for New Domestic Uses. Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the San Pedro Ag and New Large Industrial

Use Impact Zone or within the area one-quarter (¼) mile outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.5.1; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Domestic Use as set forth in a form to be mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.5.1: (i) a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR; (ii) the New Domestic Use must be limited to no more than 2 acre-feet per well per Year; and (iii) the total use of Water for all New Domestic Uses at the time of the filing with the Community and SCIDD required in clause (i) above must not exceed one thousand (1,000) AFY; provided, however, that at least twenty-five (25) of the wells allowed pursuant to this Subparagraph shall be reserved for use on State trust lands. New Domestic Uses that commence after the limit of one thousand (1,000) AFY has been reached shall not be eligible for a safe harbor pursuant to this Subparagraph 26.8.2.

26.8.2.5.2 <u>Gila River Impact Zone</u>.

The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of Water Diverted from within the Gila River Impact Zone for a New Domestic Use. Upon the filing of a Notice of Intention to Drill under A.R.S. § 45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the Gila River Impact Zone or within the area one-quarter (¼) mile outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.5.2; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Domestic Use as set forth in a form to mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.5.2: (i) a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR; (ii) the New Domestic Use must be limited to no more than 2 acre-feet per well per Year; and (iii) the total use of Water for all New Domestic Uses at the time of the filing with the Community and SCIDD required in clause (i) above must not exceed one

thousand (1,000) AFY; provided, however, that at least fifteen (15) of the wells allowed pursuant to this Subparagraph shall be reserved for use on State trust lands. New Domestic Uses that commence after the limit of one thousand (1,000) AFY has been reached shall not be eligible for a safe harbor pursuant to this Subparagraph 26.8.2.

26.8.2.6 **Water Diverted for New Large Industrial Use from within the San Pedro Ag and New Large Industrial Use Impact Zone or the Gila River Impact Zone.** The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of such Water for a New Large Industrial Use within the San Pedro Ag and New Large Industrial Use Impact Zone or the Gila River Impact Zone so long as such use does not exceed the New Large Industrial Use Cap; provided, however, that the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree may, after adjudication of a Non-GE 59 Water User's Water Right in the Gila River Adjudication Proceedings,

object to such Non-GE 59 Water User's New Large Industrial Use of Water if that use exceeds such Non-GE 59 Water User's adjudicated Water entitlement.

26.8.2.6.1 **<u>San Pedro Ag and New Large Industrial Use Impact Zone</u>.**

Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the San Pedro Ag and New Large Industrial Use Impact Zone or within the area three (3) miles outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.6.1; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Large Industrial Use as set forth in a form to mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.6.1, a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR and the New Large Industrial Use must be limited to no more than the New Large Industrial Use Cap.

26.8.2.6.2 **<u>Gila River Impact Zone</u>.**

Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the Gila River Impact Zone or within the area three (3) miles outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.6.2; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Large Industrial Use as set forth in a form mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.6.2, a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR and the New Large Industrial Use must be limited to no more than the New Large Industrial Use Cap.

26.8.2.7 <u>BHP, San Manuel CC&N, Winkelman CC&N</u>.

BHP, AWC and the Town of Winkelman shall each be entitled to the specific safe harbor for Water use as set forth below. Each such specific safe harbor shall be the exclusive safe harbor available to each of BHP, AWC and Town of Winkelman and shall be in replacement of and not in addition to any other safe harbor described in Subparagraph 26.8.2.

26.8.2.7.1 <u>BHP</u>.

BHP may divert up to, but not more than two thousand (2,000) AFY including any water Diverted by or on behalf of AWC without challenge or objection by the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree provided, however, that BHP may acquire and use additional Water within the Impact Zones to the extent that such additional Water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into such Impact Zone and is considered to be Diverting Water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.7.2 <u>San Manuel CC&N</u>.

The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon AWC's use of up to, but not

more than, one thousand (1,000) AFY of Water Diverted from within the Impact Zones for use within the San Manuel CC&N, any or all of which may be Diverted from BHP wells or from wells owned or operated by AWC within the San Pedro Impact Zone; provided, however, that AWC may acquire and use additional Water within the San Manuel CC&N to the extent that such additional Water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting Water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.7.3 <u>Winkelman CC&N</u>.

The Community, SCIDD and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon Winkelman's and/or AWC's combined use of up to, but not more than, two hundred fifty (250) AFY of Water Diverted from within the Impact Zones for use within Winkelman or the Winkelman CC&N, any or all of which may be Diverted from wells owned or

operated by either Winkelman or AWC within an Impact Zone; provided, however, that Winkelman or AWC may acquire and use additional Water within Winkelman or the Winkelman CC&N to the extent that such additional Water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting Water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.8 **Water Diverted in Cochise County for an M&I Use or Domestic Purposes.** Notwithstanding any other provision of this Subparagraph 26.8.2, the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not exercise their respective rights under the Globe Equity Decree to challenge, object to, or call upon any person or entity's use of Water Diverted in Cochise County for M&I Use or Domestic Purposes other than for a New Large Industrial Use.

26.8.2.9 Monitoring of safe harbor water uses.

26.8.2.9.1 GIS database.

The Eligible Safe Harbor Acres shall be memorialized by a GIS database. ADWR, the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall agree upon a set of aerial photographs, satellite images, or both, that reflect the Eligible Safe Harbor Acres.

26.8.2.9.1.1 Such images will be archived in digital format, and shall be made a permanent part of the court record in the Gila River Adjudication Proceedings upon the Gila River Adjudication Court's approval of the Agreement, which shall be available for review. The Community, SCIDD, the United States and ADWR shall also retain complete copies of the images and the digital GIS database.

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

26.8.2.10 **<u>Miscellaneous</u>.**

26.8.2.10.1 Any Non-GE 59 Water User that Diverts Water from within an Impact Zone for Irrigation Uses, New Domestic Uses or M&I Uses that fails to make the filings required by Subparagraph 26.8.2.3, 26.8.2.4, 26.8.2.5, and 26.8.2.6 to be an eligible Non-GE 59 Water User shall remain subject to the Community's retention of rights under Subparagraph 25.12.1.

26.8.2.10.2 The Diversion or use of Water by any Non-GE 59 Water User in a manner that is in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2 in any given Year shall be subject for the duration of such Year to objection, challenge or call by the Community, SCIDD, or the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree without limitation and without regard to the safe harbor rights set forth in Subparagraph 26.8.2.

26.8.2.10.3 Any Non-GE 59 Water User that violates or acts in a manner contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2

on three separate occasions shall thereafter no longer be eligible for any of the safe harbors described in Subparagraph 26.8.2 and shall thereafter be subject to call, challenge or objection by the Community, SCIDD, or the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree without limitation and without regard to any safe harbors set forth in Subparagraph 26.8.2.

26.8.2.10.4 A failure to call by any Party pursuant to any provision of this Agreement, including the safe harbor provisions described in Subparagraph 26.8.2, shall not serve as a defense against any call against any other Water user at or upstream of the Ashurst-Hayden Diversion Dam.

26.8.2.10.5 The safe harbors set forth in Subparagraph 26.8.2 are subject to the approval by the Gila River Adjudication Court of the stipulation and form of judgment set forth in Exhibit 25.18A. Such stipulation shall include the right of the Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree to enforce their rights under the Globe Equity Decree in the Gila River Adjudication Court against Non-GE 59 Water Users for actions in

violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2.

26.8.2.10.6 The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall recognize and be limited by the safe harbors set forth in Subparagraph 26.8.2 as to any person or entity to which any Water Rights attendant to such safe harbor are transferred pursuant to a severance and transfer or a change in the type of use procedure under State law.

26.8.2.10.7 The Community, SCIDD, and the United States on behalf of the Community and Allottees and in its capacity as owner of all Water Rights described as belonging to the plaintiff in articles V and VI (excluding those described in article VI(2)) of the Globe Equity Decree shall not object to the transfer or change in type of use by an eligible Non-GE 59 Water User, AWC (but only in its capacity as provider of Water to the San Manuel CC&N and the Winkelman CC&N), BHP or the Town of Winkelman of any Water Rights attendant to Eligible Safe Harbor Acres to M&I Use or Domestic Purposes; provided, however, that for this Subparagraph to apply, the amount of Water transferred or for which the use has been changed shall not exceed the consumptive use of Water by crops being irrigated on such

Eligible Safe Harbor Acres and the agricultural lands from which the Water is transferred must be maintained by the transferee in a manner that prevents growth of Phreatophytes on those lands.

26.8.2.10.8 <u>Emergency use for public safety purposes</u>.

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

27.0 COMMUNITY FUNDS

27.1 Water OM&R Fund.

Section 208(a) of the Act established the Water OM&R Fund. Other subsections of section 208 of the Act govern the management, disbursement, and uses of the Water OM&R Fund.

27.2 Community Water monitoring program.

To assist the Community in the establishment of the Water quality monitoring program necessary to protect the Community from Injuries to Water Quality arising after the Enforceability Date, the Parties, other than the United States, shall support the Community in obtaining a grant under section 104(b)(3) of the Clean Water Act (33 U.S.C. § 1254(b)(3)) an amount equal to three million four hundred thousand dollars ($3,400,000), no later than three (3) years following the date of the enactment of the Act. This money shall be in addition to any other funds the Community will receive pursuant to the terms of this Agreement or the Act.

27.3 SCIP rehabilitation funds.

Pursuant to section 203(d)(3) of the Act, the rehabilitation costs allocable to the Community under Exhibit 20.1 shall be paid from the funds available under section 403(f)(2)(C) of the Colorado River Basin Project Act, 43 U.S.C. §1543(f), as amended by section 107(a) of the Act.

27.4 <u>State contribution</u>.

If the State legislature and the Governor of the State deem it appropriate, the State shall make a contribution to this settlement that is appropriate and commensurate with Federal law and policy and prior Indian water settlements as determined by the State legislature.

27.5 <u>No per capita distributions</u>.

Neither the Federal funds authorized in the Act nor any State contribution pursuant to Subparagraph 27.4 nor the SRP contribution pursuant to Subparagraph 16.9 shall be distributed to any Member on a per capita basis.

28.0 CONFIRMATION OF RIGHTS

28.1 Status of Community's claims.

28.1.1 The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid, and shall not object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the Community, Members, Allottees, and the United States on behalf of the Community, Members, and Allottees to Water or to the use of Water, as described in this Agreement and in the Act.

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

28.1.3 Except as provided in Subparagraphs 6.2, 6.3, 25.12, 25.24, 28.1.4 and 30.9, and subject to Subparagraph 28.1.3.1, the Community and the United States on behalf of the Community, Members and Allottees shall neither challenge nor object to claims for use of Water from the Gila River or its tributaries; provided, however, that the Community and the United States on behalf of the Community, Members and Allottees reserve and retain the right to challenge or object to any claim for use of or call for Water from the Gila River or its tributaries that includes both: (1)

a priority date of 1924 or earlier, and (2) a point of Diversion at or downstream from the Diversions into the Gila Bend Canal and the Enterprise Canal.

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

28.1.4 The Community and the United States on behalf of the Community, Members and Allottees reserve and retain the right to challenge or object to any claim for use of Water by or on behalf of the following persons or entities:

28.1.4.1 The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona;

28.1.4.2 The Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona;

28.1.4.3 The Tonto Apache Tribe of Arizona;

28.1.4.4 The San Carlos Apache Tribe of the San Carlos Reservation, Arizona, for all claims except claims on the Salt River;

28.1.4.5 The Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States on behalf of the Community, Members, and Allottees under this Agreement;

28.1.4.6 The Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States on behalf of the Community, Members, and Allottees under this Agreement; and

28.1.4.7 The Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States on behalf of the Community, Members, and Allottees under this Agreement.

28.1.5 Nothing in Subparagraph 28.1 in any way restricts or limits the rights of the Community, Members, Allottees, or the United States on behalf of the Community, Members or Allottees set forth in Subparagraphs 6.2, 25.12, 25.24, or 30.9.

28.2 <u>SRP rights</u>.

28.2.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid, and 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:

28.2.1.1 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.

28.2.1.2 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.

28.2.1.3 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.

28.2.1.4 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.

28.2.1.5 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.

28.2.1.6 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.

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

28.2.1.8 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.

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

28.2.1.10 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.

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

28.2.1.12 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).

28.2.1.13 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.

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

28.3 <u>Buckeye rights</u>.

28.3.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, but not including Phelps Dodge, 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:

28.3.1.1 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.

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

28.3.1.3 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.

28.3.1.4 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.

28.3.1.5 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.

28.4 <u>Arizona Game and Fish Commission rights</u>.

28.4.1 The Community and the United States on behalf of the Community confirm that certain Arizona Game and Fish Commission uses of Water for wildlife purposes do not adversely affect

users on the Reservation and shall not dispute in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights and claims to Water described in Exhibit 28.4.1, on the condition that the Arizona Game and Fish Commission does not change the use or sever or transfer these rights and claims. These uses are not subject to call in the event the Community enforces the earlier priority of its rights.

28.4.2 The Community and the United States on behalf of the Community acknowledge that the Arizona Game and Fish Commission has a responsibility to conserve wildlife species and habitat on non-Reservation lands. For the limited purpose of the conservation of wildlife watering facilities, the Community agrees not to object to an application by the Arizona Game and Fish Commission for a special use permit from the United States in any capacity or for a certificate of water rights from the State; provided that (1) the Water appropriated for each facility does not exceed one-half (0.5) AFY, and (2) the use of the Water does not cause material harm to the Community. The Arizona Game and Fish Commission shall provide not less than sixty (60) days notice to the Community upon application of any special use permit or certificate of water rights described in this Subparagraph 28.4.2.

28.5 <u>City of Phoenix rights</u>.

28.5.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid and 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:

28.5.1.1 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.

28.5.1.2 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 28.5.1.1.

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

28.6 <u>Plan 6 Bureau of Reclamation storage and appropriative rights</u>.

28.6.1 <u>Modified Roosevelt Dam</u>.

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid and 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.

28.6.2 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 Community, 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.

28.7 Plan 6 State appropriative rights.

28.7.1 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 Community, 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:

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

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

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

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

28.7.1.5 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

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

28.7.2 <u>New Waddell Dam</u>.

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 Community, 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.

28.8 RWCD rights.

28.8.1 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, 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 effective date of the RWCD Agreement. 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 Community, 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, 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.

28.8.2 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, recognize and confirm that the measure of RWCD's surface water entitlement under the documents and instruments identified in Subparagraph 28.8.1 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 28.8.2, (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 28.8.2, and (c) all surface water delivered to SRP below Granite Reef Dam for use on the lands within the SRRD listed on Exhibit 28.8.2 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 Paragraph 28.8.2, all rights and obligations contained in the documents and instruments referred to in Paragraph 28.8.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this Subparagraph 28.8 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 28.8 is limited to modifications to Roosevelt Dam on the Salt River).

28.8.3 All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, acknowledge that RWCD's Water Rights as described in the documents and instruments referred to in Subparagraph 28.8.1 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 Community 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.

28.8.4 "Spill Water," for purposes of Subparagraph 28.8.2, 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.

29.0 PROCEDURES FOR CERTAIN PAYMENTS FROM LCRBDF

29.1 The Parties recognize that numerous benefits or programs are to be funded with funds from the LCRBDF.

29.1.1 The Parties further recognize that the expectation as to the schedule on which the benefits or programs are to receive funding under 43 U.S.C. 1543(f)(2)(D), as amended by the Act, is set forth in Exhibit 29.1.1.

29.1.2 The Parties further recognize that the expectation of each Funded Party as to the schedule on which each such Funded Party is to receive funding is under 43 U.S.C. 1543(f)(2)(D), as amended by the Act, set forth in Exhibit 29.1.2.

29.2 Subject to Subparagraph 29.2.1, no Funded Party shall request from the Secretary in any Year an amount greater than is set forth in Exhibit 29.1.2 for such Funded Party for such Year.

29.2.1 A Funded Party may request in any given Year more than the amount set forth in Exhibit 29.1.2 for such Funded Party in such Year up to an amount equal to the sum of the amount set forth in Exhibit 29.1.2 for such Funded Party for such Year plus an amount equal to any funding that such Funded Party either did not request or did not receive in previous Years.

29.3 If all Funded Parties' requests for funding under 43 U.S.C. 1543(f)(2)(D), as amended by the Act, in a given Year, as limited in Subparagraph 29.2, are not fully funded with the funds available in the LCRBDF for disbursement by the Secretary in that Year, the Funded Parties that have made requests for funding in that Year shall reduce their requests by a like percentage to the level where the funds available are fully obligated and the Secretary shall take such reduced requests into account in making final allocation decisions for that Year.

30.0 OTHER PROVISIONS

30.1 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.

30.2 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.

30.3 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. 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.

30.4 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 5.3, 8.23, 25.1, 26.8.1, 27.4 and 30.5. 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. Except as provided in this Agreement, nothing herein shall be construed as a waiver of any rights that the State has as to its natural resources.

30.5 Obligation to work in good faith to achieve enforceability of Agreement.

As of December 31, 2002, each Party shall have the obligation to work in good faith to satisfy the conditions set forth in section 207(c) 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.

30.6 Arizona Water Settlement Agreement condition precedent to Enforceability Date.

The Parties recognize that a fully enforceable Arizona Water Settlement Agreement among the United States, acting through the Secretary on behalf of the Department of the Interior, ADWR, and CAWCD ("Master Agreement") is a necessary condition precedent to the Enforceability Date. The Parties further recognize that the relinquishment of CAP subcontract entitlements by non-Indian agricultural subcontractors pursuant to the Master Agreement is a

condition precedent to that agreement. In order for the Master Agreement and individual relinquishment agreements to be fully enforceable, certain conditions must be satisfied. The effectiveness of any relinquishment by MSIDD and CAIDD of their CAP subcontract entitlements is expressly conditioned upon a finding by a court of competent jurisdiction that MSIDD and CAIDD possess the legal authority to relinquish their CAP subcontract entitlements.

30.7 Authority to execute.

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

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

otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Parties including the United States in all of its capacities except as trustee for Indian tribes other than the Community agree that the historical practices of the cities and towns located within the geographic limits of SRRD and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached as Exhibit 30.8. Nothing in this Subparagraph 30.8 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.

30.9 Right to petition any court of competent jurisdiction.

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

30.10 Governing law.

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

30.11 Successors and assigns.

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

30.12 Destruction of Water delivery facilities.

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

30.13 Anti-deficiency Act.

The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Agreement shall be contingent upon

appropriation of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not appropriated.

30.14 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.

30.15 Reallocation of uncontracted CAP M&I Priority water.

The Secretary shall, on recommendation of the Director of the Arizona Department of Water Resources, reallocate and execute CAP Subcontracts for the delivery of sixty-five thousand six hundred forty-seven (65,647) acre feet of uncontracted CAP M&I Priority water to entities and in the amounts provided in section 104(b) of the Act.

30.16 Amendment of CAP Subcontracts.

Pursuant to section 104(d) of the Act, the Secretary and CAWCD shall amend the CAP Subcontracts for M&I Uses in accordance with Exhibits 30.16A, 30.16B1 through 4, and 30.16C.

30.17 Federal authority.

Public Law 108-451 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 no later than the Enforceability Date.

30.18 State authority.

Arizona Water Settlements Act, 2005 Arizona Sessions Law Chapter 143 is the State law that authorizes the State action required to carry out the terms of Subparagraphs 5.3, 26.8.1 and 27.4. The Parties anticipate that the State Legislature will enact legislation authorizing the State actions required under Subparagraph 8.23 in 2006.

30.19 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.

30.20 No consent to Community jurisdiction or authority.

No part of this Agreement should be construed, in whole or in part, as providing consent by any of the non-Indian Parties to the legislative, executive or judicial jurisdiction or authority of the Community in connection with activities, rights, or duties contemplated by the Agreement and conducted by any of those Parties outside the exterior boundaries of the Reservation. This Agreement should not be construed as a commercial dealing, contract, lease or other

arrangement that creates a consensual relationship between any non-Indian Party and the Community so as to provide a basis for the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to this Agreement under *Montana v. United States*, 450 U.S. 544 (1981) for activities conducted outside the exterior boundaries of the Reservation. The activities, rights or duties conducted or undertaken by the non-Indian parties pursuant to the Agreement outside the exterior boundaries of the Reservation shall not be construed as conduct that threatens or affects the political integrity, economic security or health and welfare of the Community so as to provide a basis for the exercise of the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to this Agreement under *Montana v. United States 450 U.S. 544 (1981)*. Benefits and rights accruing to the non-Indian Parties to this Agreement are provided as consideration for benefits and rights accruing to the Community, and shall not be construed as privileges, benefits, tribal services or other advantages of civilized society provided by the Community that would justify the imposition of the Community's legislative, executive or judicial authority over those Parties in regard to the activities, rights and duties conducted outside the exterior boundaries of the Reservation. The enactment of legislation authorizing or ratifying this Agreement shall not be construed as a congressional delegation of authority to the Community of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

30.21 <u>Repair, rehabilitation and remediation of Subsidence Damage</u>.

Pursuant to section 209(d) of the Act, the Secretary, acting through the Bureau of Reclamation, shall repair, rehabilitate and remediate the Subsidence Damage that has occurred as set forth in Exhibit 30.21.

30.22 <u>No quantification or effect on Water Rights, claims or entitlements to Water of other tribes</u>.

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 Community.

30.23 <u>Construction and effect</u>.

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

30.24 <u>Notices</u>.

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

As to the United States of America:

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

Regional Director
Bureau of Indian Affairs
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

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

As to the State of Arizona:

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

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

Arizona Game and Fish Commission
2221 W. Greenway Road
Phoenix, Arizona 85023-4399
Attn: Chairman

As to the Gila River Indian Community:

Office of the Governor
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

Office of the General Counsel
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

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 the Roosevelt Irrigation District:

Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326
Attn: Superintendent

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 Casa Grande:

City of Casa Grande
510 East Florence Boulevard
Casa Grande, Arizona 85222
Attn: 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 Coolidge:

City of Coolidge
P.O. Box 1498
Coolidge, Arizona 85228
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 Goodyear:

City of Goodyear
119 N. Litchfield Rd.
Goodyear, Arizona 85338
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 Peoria:

City of Peoria
8401 West Monroe
Peoria, Arizona 85345
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 Safford:

City of Safford
P.O. Box 272
Safford, Arizona 85548-0272
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 Florence:

Town of Florence
P.O. Box 2670
Florence, Arizona 85232
Attn: Town Manager

As to the Town of Mammoth:

Town of Mammoth
P.O. Box 130
Mammoth, Arizona 85618
Attn: Town Manager

As to the Town of Kearny:

Town of Kearny
501 Veterans Avenue
Kearny, Arizona 85237
Attn: Town Manager

As to the Town of Duncan:
Town of Duncan
526 High Street
Duncan, Arizona 85534
Attn: Town Manager

As to the Town of Gilbert:

Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296
Attn: Town Manager

As to the Maricopa-Stanfield Irrigation and Drainage District:

Maricopa-Stanfield Irrigation and Drainage District
41630 W. Louis Johnson Dr.
Maricopa, Arizona 85239
Attn: General Manager

As to the Central Arizona Irrigation and Drainage District:

Central Arizona Irrigation and Drainage District
231 N. Sunshine Blvd.
Eloy, Arizona 85231
Attn: General Manager

As to the San Carlos Irrigation and Drainage District:

San Carlos Irrigation and
Drainage District
P.O. Box 218
Coolidge, Arizona 85228
Attn: General Manager

As to the Hohokam Irrigation and Drainage District:

Hohokam Irrigation District
142 Arizona Blvd.
Coolidge, Arizona 85228
Attn: General 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 Franklin Irrigation District:

Franklin Irrigation District
Rt. 1 Box 51
Duncan, Arizona 85514
Attn: General Manager

As to the Gila Valley Irrigation District:

Gila Valley Irrigation District
207 Fifth Street
Safford, Arizona 85546

Attn: General Manager

As to the CAWCD:

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

As to the Phelps Dodge Corporation:

Phelps Dodge Corporation
One North Central Avenue
General Counsel
Phoenix, Arizona 85004

With a copy to

Michael J. Brophy and
Cynthia M. Chandley
Ryley Carlock and Applewhite
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004
United States of America

or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by Subparagraph 30.24.

31.0 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

THE STATE OF ARIZONA

By:_____

Dated:_____

Governor

Attest:_____

Secretary of State

GILA RIVER INDIAN COMMUNITY

By:_____

Dated:_____

Governor

Attest:_____

Approved as to form:

_____

General Counsel

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

ROOSEVELT IRRIGATION DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

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 CASA GRANDE

By: _____

Dated _____

Mayor

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 COOLIDGE

By: _____

Dated:_____

City Manager

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 GOODYEAR

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:_____

Mayor

By: _____

Dated:_____

Chairman, Phoenix City Council Natural Resources Subcommittee

By: _____

Dated:_____

City Manager

Attest: _____

City Clerk

Approved as to form:

_____

City Attorney

CITY OF SAFFORD

By: _____

Dated: _____

City Manager

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 FLORENCE

By: _____

Dated:_____

Town Manager

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

TOWN OF MAMMOTH

By: _____

Dated:_____

Town Manager

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

TOWN OF KEARNY

By: _____

Dated:_____

Town Manager

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

TOWN OF DUNCAN

By: _____

Dated:_____

Town Manager

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

TOWN OF GILBERT

By: _____

Dated:_____

Town Mayor

Attest: _____

Town Clerk

Approved as to form:

_____

Town Attorney

MARICOPA-STANFIELD IRRIGATION
& DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

District's Attorney

CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

District's Attorney

SAN CARLOS IRRIGATION
AND DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

HOHOKAM IRRIGATION AND DRAINAGE DISTRICT

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

District's 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

FRANKLIN IRRIGATION DISTRICT

By: _____

Dated:_____

Attest: _____

Secretary

Approved as to form:

_____

General Counsel

GILA VALLEY IRRIGATION 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

PHELPS DODGE CORPORATION

By: _____

Dated:_____

President

Attest: _____

Secretary

Approved as to form:

_____

Counsel

ARIZONA GAME AND FISH COMMISSION

By: _____

Dated:_____

Commissioner

Approved as to form:

_____

Counsel