

YAVAPAI-APACHE NATION WATER RIGHTS SETTLEMENT AGREEMENT

Dated: June 26, 2024

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This Yavapai-Apache Nation Water Rights Settlement Agreement, dated as of _____, is entered into among the Yavapai-Apache Nation; the United States of America; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Central Arizona Water Conservation District; the Town of Camp Verde; the Town of Clarkdale; and the City of Cottonwood.

1.0 RECITALS

1.1 Proceedings to determine the nature and extent of the rights to water of the Yavapai-Apache Nation, on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), the United States, and other claimants are pending in the Gila River Adjudication Proceedings.

1.2 Recognizing that final resolution of these pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the Yavapai-Apache Nation, its neighboring non-Indian communities, and other Arizona water users have agreed to permanently settle the Water Rights of the Yavapai-Apache Nation, the Members of the Yavapai-Apache Nation (but not Members in the capacity of the Members as Allottees), and the United States acting as trustee for the Yavapai-Apache Nation and the Members of the Yavapai-Apache Nation (but not Members in the capacity of the Members as Allottees) as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this Agreement.

1.3 In keeping with its trust responsibility to Indian Tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to, wherever

possible, permanently resolve 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 “Abstract” means a summary of Water Rights or Uses held or owned by the YAN, as represented in a form substantially similar to the one attached as Exhibit 2.1 to the Agreement.

2.2 “Act” means the Yavapai-Apache Nation Water Rights Settlement Act of 20__, the form of which is attached as Exhibit 2.2.

2.3 “AFY” means acre-feet per Year.

2.4 “Agreement” means: (A) this Yavapai-Apache Nation Water Rights Settlement Agreement dated _____, 20__; and (B) any amendment or exhibit (including exhibit amendments) to this Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary and the Parties.

2.5 “Allocation Capacity” means the capacity of C.C. Cragin Dam and Reservoir used to store water for beneficial Use, which is set at 12,832 acre-feet and adjusted periodically for sedimentation as provided in Subparagraphs 8.1 and 8.2.

2.6 “Allottee” means an individual Indian holding an undivided fractional beneficial interest in the Dinah Hood Allotment, or an Indian Tribe holding an undivided fractional beneficial interest in the Dinah Hood Allotment.

2.7 “Arizona Water Banking Authority” means the Arizona Water Banking Authority,

formed pursuant to A.R.S. §§ 45-2401 et seq.

2.8 “Available CAP Supply” means, for any Year: (A) all Fourth Priority Water available for delivery through the CAP; (B) water available from CAP dams and reservoirs other than the Modified Roosevelt Dam; and (C) return flows captured by the Secretary for CAP use.

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

2.10 “CAP Contract” means a long-term contract (as defined in the CAP Repayment Stipulation) with the United States for delivery of CAP Water through the CAP System.

2.11 “CAP Contractor” means a person or entity that has entered into a CAP Contract. The term “CAP Contractor” includes the YAN.

2.12 “CAP Excess Water” has the meaning given the term ‘Excess Water’ in the CAP Repayment Stipulation.

2.13 “CAP Fixed OM&R Charge” has the meaning given the term ‘Fixed OM&R Charge’ in the CAP Repayment Stipulation.

2.14 “CAP Indian Priority Water” means water within the Available CAP Supply having an Indian delivery priority.

2.15 “CAP Operating Agency” means: (A) the 1 or more entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System; and (B) as of the date of enactment of the Act, is CAWCD.

2.16 “CAP Pumping Energy Charge” means the term ‘Pumping Energy Charge’ in the CAP Repayment Stipulation.

2.17 “CAP Repayment Contract” means: (A) the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), between the United States and CAWCD for the Delivery of Water and Repayment of Costs of the CAP; and (B) any amendment to, or revision of, that contract.

2.18 “CAP Repayment Stipulation” means the Stipulated Judgment and the Stipulation for Judgment, including any exhibits to those documents, entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action Central Arizona Water Conservation District v. United States, et al., numbered CIV 95-625-TUC-WDB-EHC and CIV 95-1720-PHX-EHC.

2.19 “CAPSA” means the Central Arizona Project Settlement Act of 2004, Title I of the Arizona Water Settlements Act, P.L. 108-451, 118 Stat. 3478 (2004).

2.20 “CAP Subcontract” means a long-term subcontract (as defined in the CAP Repayment Stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of CAP water through the CAP System.

2.21 “CAP Subcontractor” means a person or entity that has entered into a CAP Subcontract.

2.22 “CAP System” means: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct (E) any pumping plant or appurtenant work of a feature described in (A), (B), (C), or (D); and (F) and any extension of, addition to, or replacement for a feature described in (A), (B), (C), (D), or (E).

2.23 “CAP System Use Agreement” means that certain Central Arizona Project System Use Agreement dated February 2, 2017, between the United States of America and the

Central Arizona Water Conservation District.

2.24 “CAP Water” has the meaning given the term ‘Project Water’ in the CAP Repayment Stipulation.

2.25 “CAWCD” or “Central Arizona Water Conservation District” means the political subdivision of the State that is the contractor under the CAP Repayment Contract and is the CAP Operating Agency as of the date of enactment of the Act.

2.26 “C.C. Cragin Dam and Reservoir” means: (A) the C.C. Cragin Dam and Reservoir located on East Clear Creek in Coconino County, Arizona, owned by the United States and operated by the Salt River Project Agricultural Improvement and Power District; (B) associated facilities located in Gila and Coconino Counties, Arizona, including pipelines, tunnels, buildings, hydroelectric generating facilities and other structures of every kind; transmission, telephone and fiber optic lines; pumps, machinery, tools and appliances; and (C) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with the C.C. Cragin Dam and Reservoir. The term “C.C. Cragin Dam and Reservoir” does not include the Cragin-Verde Pipeline Project.

2.27 “CFS” means cubic feet per second.

2.28 “Colorado River Water” means the waters of the Colorado River apportioned for use within the State by the Boulder Canyon Project Act of 1928, 43 U.S.C. §§ 617c and 617d, as amended, the Upper Colorado River Basin Compact of 1948, as ratified and reprinted in Title 45, Chapter 7, Article 3, of the Arizona Revised Statutes, the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501 et seq., as amended, the Contract for Delivery of Water Between the United States and the State of Arizona dated February 9, 1944, and the Decree. The definition of Colorado River Water in this Agreement shall only be used

for purposes of interpreting this Agreement and shall not be used for any interpretation of existing law or contract, including but not limited to: the Boulder Canyon Project Act of 1928, 43 U.S.C. §§ 617c and 617d, as amended; the Upper Colorado River Basin Compact of 1948, as ratified and reprinted in Title 45, Chapter 7, Article 3 of the Arizona Revised Statutes; the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501 et seq., as amended; the Contract for Delivery of Water Between the United States and the State of Arizona dated February 9, 1944; and the Decree.

2.29 “Cragin Capital Costs” means all costs incurred by SRP for the acquisition and improvement of land, facilities, equipment, and inventories related to the C.C. Cragin Dam and Reservoir, which shall include but not be limited to labor, overhead, materials, supplies, spare parts, equipment purchase and rental, and transportation. Prior to May 1, 2009, all expenses incurred by SRP are accrued as Cragin Capital Costs excluding capital costs of the SRP-Cragin Pumping System as defined in the YAN-SRP Water Delivery and Use Agreement attached as Exhibit 10.1.

2.30 “Cragin O&M Costs” means all costs incurred by SRP for the operation and maintenance of all C.C. Cragin facilities, except for those costs defined as Cragin Capital Costs. Such costs shall include, but not be limited to, costs for the following items: insurance, inspections, permits, taxes, fees, licenses, contract services, legal services, accounting, travel, environmental compliance, repairs, testing, labor, salaries, overhead, materials, supplies, expenses, equipment, vehicles, energy, fuel, and any cost borne by SRP prior to the assumption of CVPP care, operation, and maintenance by SRP from the United States pursuant to the 1917 Agreement, excluding O&M Costs and A&G Costs of SRP-Cragin Pumping System as defined in the YAN-SRP Water Delivery and Use

Agreement attached as Exhibit 10.1.

2.31 “Cragin-Verde Pipeline Project” or “CVPP” means the water infrastructure project described in section 103(b) of the Act.

2.32 “Cragin-Verde Pipeline Intake” means the point of water intake from C.C. Cragin Dam and Reservoir into the Cragin-Verde Pipeline Project.

2.33 “CSIF” means the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP’s water delivery system.

2.34 “Date of Substantial Completion” means the date on which notice is provided to the Parties by the United States Bureau of Reclamation that the Tú nłííníchoh Water Infrastructure Project, as described in section 103(a) of the Act, is sufficiently complete to place the project into service for its intended use.

2.35 “Decree” means, collectively, the decree of the Supreme Court of the United States in *Arizona v. California*, 376 U.S. 340 (1964), the Consolidated Decree entered on March 27, 2006, in that case (547 U.S. 150), and any modifications thereof.

2.36 “Depletion” or “Deplete” means the amount of Water Diverted less return flows to the Verde River Watershed.

2.37 “Dinah Hood Allotment” means the tract of land allotted pursuant to Section 4 of the General Allotment Act of 1887, 24 Stat. 389, ch. 119 (formerly codified at 25 U.S.C. § 334) and held in trust by the United States for the benefit of Allottees under patent number 926562, as described and depicted in Exhibit 2.37.

2.38 “Diversion” means an act to Divert.

2.39 “Divert” or “Diverting” means to receive, withdraw, develop, produce, or capture Water using: (A) a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery,

conduit, well, pump, turnout, dam, or any other mechanical device; or (B) any other human act.

2.40 “Domestic Use” means, for purposes of Paragraph 13.0, a Use of Water serving a residence, or multiple residences up to a maximum of three residential connections, for household purposes with associated irrigation of lawns, gardens or landscape in an amount of not more than one-half acre per residence. Domestic Use does not include the Use of Water delivered to a residence or multiple residences by a city, town, private water company, irrigation provider or special taxing district established pursuant to Title 48, Arizona Revised Statutes.

2.41 “East Verde Delivery Point” means the point along the SRP-Cragin Pumping System near Washington Park, Arizona where SRP may deliver YAN Cragin Water from the C.C. Cragin Dam and Reservoir to the YAN or the United States acting as trustee for the YAN as described in the YAN-SRP Exchange Agreement attached as Exhibit 6.5.

2.42 “Effective Date” means the date that this Agreement is signed by all of the Parties, other than the United States.

2.43 “Effluent” means water that: (A) has been used in the State for domestic, municipal, or industrial purposes, other than solely for hydropower generation; and (B) is available for reuse for any purpose in accordance with applicable law and this Agreement, regardless of whether the water has been treated to improve the quality of the water.

2.44 “Enforceability Date” means the date described in section 112 of the Act and in Subparagraph 15.1.

2.45 “Exchange” means a trade between 1 or more persons or entities, of any Water for any other Water, if each person or entity has a right or claim to use the Water the person

or entity provides in the trade, regardless of whether the Water is traded in equal quantities or other consideration is included in the trade.

2.46 “Exhibit” means an exhibit to this Agreement as set forth in Paragraph 3.0.

2.47 “Fourth Priority Water” means Colorado River Water available for delivery within the State for satisfaction of entitlements: (A) in accordance with 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, in a total quantity not to exceed 164,652 AFY of diversions; and (B) after first providing for the delivery of Colorado River Water for the CAP System, including for Use on Indian land, under section 304(e) of the Colorado River Basin Project Act (43 U.S.C. 1524(e)), in accordance with the CAP Repayment Contract.

2.48 “Gila River Adjudication Court” means the Superior Court of the State, in and for the County of Maricopa, exercising jurisdiction over the Gila River Adjudication Proceedings.

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

2.50 “Groundwater” means all water beneath the surface of the Earth within the State that is not: (A) Surface Water; (B) Effluent; or (C) Colorado River Water.

2.51 “Impoundment” means any human-made permanent body of Water on the surface of the Earth, including Stockponds, lakes, Effluent ponds, open-air water storage tanks, irrigation ponds, and gravel pits. For purposes of this Agreement, the term Impoundment

does not include recharge basins or swimming pools.

2.52 “Indian Tribe” shall have the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

2.53 “Injury to Water Rights” means 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 Groundwater table and any effect of such a change. For purposes of Paragraph 13.0, the term “Injury to Water Rights” does not include any injury to water quality.

2.54 “Interim Period” means the period beginning on the Enforceability Date and ending on the Date of Substantial Completion.

2.55 “Irrigation” means the application of Water to two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry.

2.56 “Lease Agreement” means any agreement entered into between the YAN and any other person or entity pursuant to Paragraph 7.0, with the approval of the Secretary.

2.57 “Leased Water” means the YAN CAP Water that is leased pursuant to a Lease Agreement.

2.58 “Little Colorado River Adjudication Proceedings” means the action pending in the Superior Court of the State, in and for the County of Apache, *In re the General Adjudication of All Rights To Use Water In The Little Colorado River System and Source*, No. 6417.

2.59 “M&I Use” or “M&I Uses” means the Use of Water for domestic, municipal, industrial, and commercial purposes.

2.60 “Maximum Annual Depletion Amount” means the maximum amount of Water Depleted per Year for each Water Right set forth in Subparagraph 4.1.

2.61 “Maximum Annual Diversion Amount” means the maximum amount of Water Diverted per Year for each Water Right set forth in Subparagraph 4.1.

2.62 “Member” means any person duly enrolled as a member of the Yavapai-Apache Nation.

2.63 “Municipal Water Provider” means a city, town, private water company, specially designated homeowners association, or any special taxing district established pursuant to Title 48 of the Arizona Revised Statutes that supplies water for M&I Use.

2.64 “Paragraph” means a numbered paragraph of this Agreement including all Subparagraphs in such Paragraph.

2.65 “Party” means a person or entity represented by a signatory to this Agreement and “Parties” means more than one of such persons or entities. The State’s participation as a Party shall be as described in Subparagraph 17.5. The United States’ participation as a Party shall be in the capacity as described in Subparagraph 2.81.

2.66 “Public Water System” means a water system that: (A) provides water for human consumption through pipes or other constructed conveyances; and (B) has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a Year.

2.67 “Replacement Well” means a well that: (A) is constructed to replace a well in existence on the Effective Date; (B) is located no more than 660 feet from the well being replaced; and (C) has a pumping capacity and case diameter that do not exceed the pumping capacity and case diameter of the well being replaced.

2.68 “Secretary” means the Secretary of the United States Department of the Interior or the Secretary’s designee.

2.69 “SRP” means 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.

2.70 “SRP-Cragin Pumping System” means the pipeline, pumping system, generating station, and associated facilities used to deliver Water from the C.C. Cragin Dam and Reservoir to the East Verde Delivery Point.

2.71 “SRP Water” means the Water made available in Subparagraph 8.1, not to exceed an average of 500 AFY, up to a maximum of 583.86 acre-feet in any given Year, to be stored in C.C. Cragin Reservoir, without cost to SRP, and delivered for Use on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land for beneficial purposes.

2.72 “SRRD” means the Salt River Reservoir District as defined on December 31, 2023 in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users’ Association.

2.73 “State” means the State of Arizona.

2.74 “Stockpond” means an on-channel or off-channel impoundment of any size that stores Water under Title 45, Arizona Revised Statutes, and that is for the sole purpose of watering livestock and wildlife.

2.75 “Stock Watering Use” means the consumption of Water by livestock and wildlife, either: (A) directly from a naturally occurring body of Water, such as an undeveloped spring, cienega, seep, bog, lake, depression, sink or stream; or (B) from small facilities, other than a Stockpond, that are served by a Diversion of Water.

- 2.76** “Subparagraph” means a numbered subparagraph of this Agreement.
- 2.77** “Surface Water” means all Water that is appropriable under State law.
- 2.78** “Total Maximum Annual Depletion Amount” means the total of all Maximum Annual Depletion Amounts described in Subparagraph 4.1, which is 5,991 AFY, except as described in Subparagraphs 8.1 and 8.2.
- 2.79** “Total Maximum Annual Diversion Amount” means the total of all Maximum Annual Diversion Amounts described in Subparagraph 4.1, which is 6,888.50 AFY, except as described in Subparagraphs 8.1 and 8.2.
- 2.80** “Tú níííníchoh Water Infrastructure Project” or “TWIP” means the water infrastructure project including: (A) the Cragin-Verde Pipeline Project, as described in section 103(b) of the Act, which will deliver Water from the C.C. Cragin Dam and Reservoir to the Yavapai-Apache Nation and to other beneficiaries in the Verde Valley Watershed; and (B) the YAN Drinking Water System Project, as described in section 103(c) of the Act, which will treat and distribute the water delivered from the Cragin-Verde Pipeline Project for the benefit of the Yavapai-Apache Nation.
- 2.81** “United States” or “United States of America” means the United States acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), except as otherwise expressly provided. When the term ‘United States’ or ‘United States of America’ is used in reference to a particular agreement or contract, the term means the United States acting in the capacity as set forth in such agreement or contract.
- 2.82** “Underground Water”, for purposes of Subparagraph 13.1.3(g)(4)(vi) and Subparagraph 16.6, means all water beneath the surface of the Earth, within the State,

regardless of its legal characterization as appropriable or non-appropriable under federal, State or other law.

2.83 “Use” means any beneficial use, including instream flows, recharge, underground storage and recovery, or any other use recognized as beneficial under applicable law.

2.84 “Verde River Decree” means the decree to be entered by the Gila River Adjudication Court adjudicating all rights to water in the Verde River Watershed.

2.85 “Verde River Subflow Zone” or “Subflow Zone” means the area in the Verde River Watershed delineated by the Arizona Department of Water Resources as the subflow zone on a map or maps that are approved by the Gila River Adjudication Court.

2.86 “Verde River Water” means the Water described in Paragraph 5.0, whether Diverted from the stream or pumped from a well.

2.87 “Verde River Watershed” means all lands located within the surface water drainage of the Verde River and its tributaries, as depicted on the map attached as Exhibit 2.87.

2.88 “Water,” when used without a modifying adjective, means: (A) Groundwater; (B) Surface Water; (C) Colorado River Water; (D) Effluent; or (E) CAP Water.

2.89 “Water Right” means any right in or to Groundwater, Surface Water, Colorado River Water, or Effluent under federal, State, or other law.

2.90 “WaterSense Labeled Fixture” means a fixture that is labeled as a water-efficient product that has been independently certified to meet the Environmental Protection Agency’s WaterSense criteria for efficiency and performance as of the Effective Date, or a fixture that meets the standards of efficiency that are not more stringent than the WaterSense standards which existed on the Effective Date, as described in Exhibit 2.90.

2.91 “YAN After-Acquired Trust Land” means land that is taken into trust by the United

States for the benefit of the YAN pursuant to applicable federal law after the Enforceability Date, regardless of whether or not such land has also been added to the Yavapai-Apache Reservation pursuant to applicable federal law.

2.92 “YAN Amended CAP Water Delivery Contract” means: (A) Contract No. _____ between the YAN and the United States dated _____, a copy of which is attached hereto as Exhibit 6.1; and (B) any amendments to the contract described in (A).

2.93 “YAN CAP Water” means CAP Water to which the YAN is entitled pursuant to Subparagraph 6.1 and section 111 of the Act, and as provided in the YAN Amended CAP Water Delivery Contract.

2.94 “YAN Cragin Water” means that amount of the water made available in Subparagraph 8.2, not to exceed an average of 2910.26 AFY, up to a maximum of 3394.06 acre-feet in any given Year, to be stored in C.C. Cragin Dam and Reservoir, without cost to SRP, and delivered for Use on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land for beneficial purposes.

2.95 “YAN Delivery Point” means the point or points located at the end of the Cragin-Verde Pipeline Project where Water may be delivered to the YAN or the United States acting as trustee for the YAN as described in the YAN-SRP Water Delivery and Use Agreement attached as Exhibit 10.1.

2.96 “YAN Districts” means: (A) the Camp Verde District; (B) the Middle Verde District; (C) the Montezuma District; (D) the Clarkdale District; and (E) the Rimrock District of the YAN Reservation, each of which districts is separately depicted in Exhibits 2.96A, 2.96B, 2.96C, 2.96D, and 2.96E, respectively, and any additions to a YAN District under applicable law. Exhibits 2.96A, 2.96B, 2.96C, 2.96D, and 2.96E shall be updated before

the Enforceability Date to correct any errors or reflect any additions to the YAN Districts.

2.97 “YAN Drinking Water System Project” means the water treatment facility and water distribution system as described in section 103(c) of the Act.

2.98 “YAN Fee Land” means land that, as of the Enforceability Date, is: (A) located outside the exterior boundaries of the YAN Reservation; (B) owned in fee by the YAN and has not been taken into trust by the United States for the benefit of the YAN; and (C) described and shown in Exhibit 2.98. Exhibit 2.98 shall be updated before the Enforceability Date to correct any errors or reflect any additions or subtractions to YAN Fee Land.

2.99 “YAN Judgment” means the judgment and decree entered by the Gila River Adjudication Court in substantially the same form as Exhibit 13.9.

2.100 “YAN Land” means, collectively, the YAN Reservation, YAN Trust Land, and YAN Fee Land.

2.101 “YAN Pumped Water” means the Water described in Paragraph 9.0 that is pumped from beneath the surface of the Earth, regardless of its legal characterization as appropriable or non-appropriable under federal, State or other law.

2.102 “YAN Reservation”, “Yavapai-Apache Reservation”, or “Reservation” means: (A) the land located within the exterior boundaries of the Yavapai-Apache Reservation, as described in section 3 of the Act and depicted in Exhibit 2.102; (B) the land added to the Yavapai-Apache Reservation pursuant to section 110 of the Act; and (C) land that, as of the Enforceability Date, has been added to the Reservation pursuant to federal law. Exhibit 2.102 shall be updated by the Parties to correct any errors or to reflect any additions to the YAN Reservation existing as of the Enforceability Date

2.103 “YAN Trust Land” means land that, as of the Enforceability Date, is: (A) located outside the boundaries of the YAN Reservation; (B) held in trust by the United States for the benefit of the YAN; and (C) depicted on the map attached as Exhibit 2.103. Exhibit 2.103 shall be updated before the Enforceability Date to correct any errors or reflect any additions or subtractions to YAN Trust Land.

2.104 “YAN-SRP Exchange Agreement” means that agreement between the Nation and SRP, as approved by the United States, in the form substantially similar to that attached as Exhibit 6.5

2.105 “YAN-SRP Water Delivery and Use Agreement” or “YAN-SRP WDUWA” means that agreement among the Nation and SRP, as approved by the United States, in the form substantially similar to that attached as Exhibit 10.1.

2.106 “Yavapai-Apache Nation”, “YAN”, or “Nation” means the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 5123).

2.107 “Year,” when used in the context of deliveries of YAN Cragin Water and SRP Water pursuant to Paragraph 8.0, means May 1 through April 30. In all other instances, the term “Year” means a calendar year.

3.0 EXHIBITS

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

this Agreement; provided, however, that each Exhibit shall be binding only on the specific Parties to such Exhibit unless expressly provided otherwise in the Exhibit. Amendments to Exhibits shall be governed by Subparagraph 17.4. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraph 17.4. No Party shall have, by reason of this Agreement, any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit.

<u>PARAGRAPH & EXHIBIT NO.</u>	<u>DESCRIPTION</u>
2.1	Form of Abstract
2.2	Yavapai-Apache Nation Water Rights Settlement Act of _____, P.L. _____, ____ Stat. _____ (20__)
2.37	Description and Map of Dinah Hood Allotment
2.87	Map of the Verde River Watershed
2.90	WaterSense Standards in Existence on the Effective Date
2.96A	Map of the Camp Verde District
2.96B	Map of the Middle Verde District
2.96C	Map of the Montezuma District
2.96D	Map of the Clarkdale District
2.96E	Map of the Rimrock District
2.98	Maps of YAN Fee Land
2.102	Map of the YAN Reservation
2.103	Map of YAN Trust Land
4.20.1.1	Abstracts of YAN Fee Land
5.1	Abstract – Historic OK Ditch Right
5.2	Abstract – Historic Verde Ditch Right

5.2.5	Hance v. Arnold Judgment
5.3	Daley Decree
5.3.1.1	Abstract – Historic Daley Right – Daley Parcel I
5.3.1.2	Abstract – Historic Daley Right – Daley Parcel II
5.3.1.3	Abstract – Historic Daley Right – Daley Parcel III
5.3.1.4	Abstract – Historic Daley Right – Daley Parcel IV
5.4.1.1.1	Abstract – OK Ditch Right – OK Parcel I
5.4.1.1.2	Abstract – OK Ditch Right – OK Parcel II
5.4.1.1.3	Abstract – OK Ditch Right – OK Parcel III
5.4.2	Abstract – Verde Ditch Right
5.4.3.1.1	Abstract – Daley Parcel I-A
5.4.3.1.2	Abstract – Daley Parcel II-A
5.4.3.1.3	Abstract – Daley Parcel III-A
5.4.3.1.4	Abstract – Daley Parcel III-B
5.4.3.1.5	Abstract – Daley Parcel III-C
5.4.3.1.6	Abstract – Daley Parcel IV-A
5.4.3.2	Abstract – Daley Parcel – Domestic and Stock Watering Use
6.1	YAN Amended CAP Water Delivery Contract
6.5	YAN-SRP Exchange Agreement
7.4	Standard Form of CAP Subcontract for M&I Use
8.3	Map of the Lower Verde Valley Subwatershed
9.5.3	Additional YAN Pumped Water Accounting Example
10.1	YAN-SRP Water Delivery and Use Agreement
11.1A	Application for a Permit to Appropriate Public Water of the State

of Arizona No. 33-96926.01 for Instream Flow

- 11.1B Instream Flow Attributes
- 12.2 Sample Report Required by Subparagraph 12.2.1
- 12.3.1 Inventory of Impoundments
- 12.3.2.2 Depletion Calculation for Irrigation Use
- 13.1 Waiver, Release, and Retention of Claims for Water Rights and Injury to Water Rights by the YAN, on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), and the United States acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees)
- 13.1.3 A.R.S. 45-555
- 13.2 Waiver, Release, and Retention of Claims for Water Rights and Injury to Water Rights by the YAN, on Behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), Against the United States
- 13.3 Waiver, Release, and Retention of Claims By the United States in All Capacities (except as trustee for an Indian Tribe other than the YAN) Against the YAN and the Members of the YAN
- 13.4 Waiver, Release, and Retention of Claims By the Parties Other than the YAN and the Members of YAN, and the United States Acting as Trustee for the YAN and the Members of the YAN
- 13.9 Form of YAN Judgment
- 14.9 Form of Stipulation – Stay of Litigation and Withdrawal of Objections
- 16.1.2.1 Agreement with City of Cottonwood
- 16.1.2.2 Agreement with Town of Camp Verde
- 16.1.2.3 Agreement with Town of Clarkdale
- 17.8 Water Commissioner’s Report of June 3, 1977
- 17.20 Addresses for Notice

4.0 WATER RIGHTS FOR THE YAN RESERVATION, YAN TRUST LAND, YAN AFTER-ACQUIRED TRUST LAND, AND YAN FEE LAND

4.1 The YAN and the United States acting as trustee for the YAN shall have the permanent Water Rights with the attributes specified in this Subparagraph 4.1 and in Paragraphs 5.0, 6.0, 8.0 and 9.0, and shall have the permanent Water Right to Verde River instream flow, in accordance with Paragraph 11.0. The YAN shall also have the permanent Water Right to Divert and Use Effluent as specified in Subparagraph 4.15.

Ref ¶	Water Source	Maximum Annual Diversion Amount (AFY)	Maximum Annual Depletion Amount (AFY)
5.1	Verde River (OK Ditch Right)	1,025.78	556.85
5.2	Verde River (Verde Ditch Right)	107.38	58.29
5.3	Verde River (Daley Decree Right)	460.6	250.04
6.0	CAP Water	1,200.00	1,200.00
8.1	SRP Water ¹	500.00	500.00
8.2	YAN Cragin Water ²	2,910.26	2,910.26
9.0	YAN Pumped Water	684.48	515.56
Total Maximum Annual Diversion Amount³:			6,888.50
Total Maximum Annual Depletion Amount³:			5,991.00

4.2 The Water Rights of the YAN, as described in Paragraphs 5.0, 6.0, 8.0, 9.0, and 11.0, shall be held in trust by the United States acting as trustee for the YAN and shall not be subject to forfeiture, abandonment, or loss through nonuse. If Water Rights are

¹ SRP Water, as set forth in Subparagraph 8.1, is calculated as an average of 500 AFY, not to exceed 583.86 acre-feet in any given Year.

² YAN Cragin Water, as set forth in Subparagraph 8.2, is calculated as an average of 2910.26 AFY, up to a maximum of 3394.06 acre-feet in any given Year.

³ The Total Maximum Annual Diversion Amount is the total of all Maximum Annual Diversion Amounts described in Subparagraph 4.1, which is 6,888.50 AFY, except as described in Subparagraphs 8.1 and 8.2. The Total Maximum Annual Depletion Amount is the total of all Maximum Annual Depletion Amounts described in Subparagraph 4.1, which is 5,991 AFY, except as described in Subparagraphs 8.1 and 8.2.

acquired pursuant to Subparagraphs 4.13.2.1 and 4.14 and are taken into trust by the United States, such Water Rights shall not be subject to forfeiture, abandonment, or loss through nonuse. The Water Rights of the YAN to Effluent, described in Subparagraph 4.15, shall not be held in trust by the United States.

4.3 Except as provided in Subparagraphs 4.13.2.1, 4.14, 4.15, and 4.18, the YAN and the United States acting as trustee for the YAN shall not exceed: (A) the Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount listed for each Water Right set forth in Subparagraph 4.1; and (B) the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount.

4.4 Except as provided in Subparagraphs 4.14, all land within the Reservation and YAN Trust Land shall have only those Water Rights specified in Subparagraph 4.1.

4.5 The YAN may elect to receive deliveries of Water from a Municipal Water Provider or Public Water System for M&I Use on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land, either directly or through an Exchange in accordance with State law on an acre-foot for acre-foot basis using those Water sources listed in Subparagraph 4.1. Any Water delivered directly by a Municipal Water Provider or Public Water System for Use on the YAN Reservation, YAN Trust Land, or YAN After-Acquired Trust Land shall be counted against the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount. Except for the sources of Water described in Subparagraphs 4.13.2.1, 4.14, 4.15, and 4.19, any Water delivered by a Municipal Water Provider or Public Water System in an Exchange with the YAN shall be counted against the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount.

4.6 Subject to Paragraph 5.0, the Water Rights of the YAN and the United States acting

as trustee for the YAN as set forth in Subparagraph 4.1 may be used for any Use permitted by this Agreement, including Exchanges in accordance with State law.

4.7 Except for Effluent as provided in Subparagraph 4.15, YAN CAP Water as provided in Paragraph 6.0, and Water that is subject to an Exchange in accordance with State law, the rights to Water set forth in Subparagraph 4.1 may not be sold, leased, transferred or used outside the boundaries of the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land.

4.8 Nothing in this Agreement shall preclude the treatment, storage and delivery of Water described in Subparagraph 4.1 by a Municipal Water Provider, Public Water System, or the YAN off of the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land, so long as all Uses of the Water, other than CAP Water as provided in Paragraph 6.0 and Effluent, are within the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land as provided in Subparagraph 4.13.2.2.

4.9 The exercise of the right of the YAN and the United States acting as trustee for the YAN to Divert Water as described in Subparagraph 4.1 is subject to the physical availability of such Water at the location of Diversion and is subject to the dates of priority and other Water Right attributes for the Diversion of such Water set forth in Subparagraph 4.1 and in the YAN Judgment, a copy of which is attached as Exhibit 13.9. Nothing in this Subparagraph 4.9 is intended to require the Parties to guarantee the physical availability of Water at any location or point of Diversion for the YAN.

4.10 Except as provided in Subparagraphs 4.13.2.1, 4.14, and 4.15, all Diversions of Water for Use within the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land pursuant to Subparagraph 4.13.2.2, shall be counted in determining compliance by

the YAN and the United States acting as trustee for the YAN with the Maximum Annual Diversion Amounts specified for each Water Right set forth in Subparagraph 4.1. All YAN CAP Water leased, exchanged or otherwise Used off the Reservation pursuant to Subparagraph 6.0 shall be counted in determining compliance by the YAN and the United States acting as trustee for the YAN with the Total Maximum Annual Diversion Amount specified in Subparagraph 4.1. Diversions shall be measured or calculated as provided in Paragraph 12.0.

4.11 Except as provided in Subparagraphs 4.13.2.1, 4.14, and 4.15, all Depletions of Water in each Year from Diversions of Water for Use within the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land pursuant to Subparagraph 4.13.2.2 shall be counted in determining compliance by the YAN and the United States acting as trustee for the YAN with the Maximum Annual Depletion Amounts specified for each Water Right in Subparagraph 4.1. All YAN CAP Water leased, exchanged or otherwise Used off the Reservation pursuant to Paragraph 6.0 shall be counted in determining compliance by the YAN and the United States acting as trustee for the YAN with the Total Maximum Annual Depletion Amount specified in Subparagraph 4.1. Depletions shall be measured or calculated as provided in Paragraph 12.0.

4.12 Except for YAN Pumped Water as provided in Subparagraphs 4.18, 9.4, 9.5, and 9.6, and SRP Water and YAN Cragin Water as provided in Subparagraphs 8.1 and 8.2, in the event the Maximum Annual Diversion Amount or Maximum Annual Depletion Amount for any of the Water Rights specified in Subparagraph 4.1 is exceeded in any Year by the YAN or the United States acting as trustee for the YAN, then the Maximum Annual Diversion Amount or the Maximum Annual Depletion Amount, as applicable, for any such

Water Rights shall be reduced by the amount of any such exceedance in the following Year, or in a manner as otherwise approved by the Gila River Adjudication Court.

4.13 Water Rights for YAN Trust Land and YAN After-Acquired Trust Land

4.13.1 YAN Trust Land The YAN and the United States acting as trustee for the YAN may Divert Water for Use on YAN Trust Land from the sources described in Subparagraphs 4.14, 4.15, and Paragraphs 6.0, 8.0, and 9.0. The YAN and the United States acting as trustee for the YAN may Divert Water from the sources described in Subparagraph 4.13.2.1 and Paragraph 5.0 for Use on YAN Trust Land only if a Water Right severance and transfer has been approved pursuant to applicable State law. Except for Water Diverted from the sources described in Subparagraphs 4.13.2.1 and 4.14, and Effluent Diverted and Used pursuant to Subparagraph 4.15, all Water Diverted for Use on YAN Trust Land pursuant to this Subparagraph 4.13.1 shall be counted against the Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount for each Water source and shall be reported in the annual report required by Subparagraph 12.2.2.

4.13.2 YAN After-Acquired Trust Land

4.13.2.1 The YAN and the United States acting as trustee for the YAN may Use appurtenant Water Rights on YAN After-Acquired Trust Land that were initiated and perfected under applicable State law before the date the lands were taken into trust. The Use of Water pursuant to the Water Rights described in this Subparagraph 4.13.2.1 shall not count against the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount. Any severance and transfer of the Water Rights described in this Subparagraph 4.13.2.1 from YAN After-Acquired Trust Land to other land must be approved pursuant to applicable

State law. Subject to all valid and existing rights, any Water Rights appurtenant to YAN After-Acquired Trust Land at the time such land is taken into trust shall be held in trust by the United States acting as trustee for the YAN.

4.13.2.2 The YAN and the United States acting as trustee for the YAN may Divert Water for Use on YAN After-Acquired Trust Land from the sources described in Subparagraphs 4.14, 4.15, and Paragraphs 6.0, 8.0, and 9.0. The YAN and the United States acting as trustee for the YAN may Divert Water from the sources described in Paragraph 5.0 for Use on YAN After-Acquired Trust Land only if a Water Right severance and transfer has been approved pursuant to applicable State law. Except for Effluent Diverted and Used pursuant to Subparagraph 4.15, and Water Diverted and Used pursuant to Subparagraphs 4.13.2.1 and 4.14, the amounts of Water Diverted for Use on YAN After-Acquired Trust Land pursuant to this Subparagraph 4.13.2.2 shall be counted against the Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount for each source set forth in Subparagraph 4.1 and shall be reported in the annual report required by Subparagraph 12.2.

4.14 Future Acquisitions of Water Rights

4.14.1 Notwithstanding any other provision of this Agreement, after the Effective Date, the YAN may, pursuant to applicable State law acquire Water Rights appurtenant to lands elsewhere in the State of Arizona. If the YAN acquires Water Rights appurtenant to lands within the Verde River Watershed, the YAN may, pursuant to applicable State law, sever and transfer such Water Rights for Use on the Reservation, YAN Trust Land, YAN After-Acquired Trust Land, YAN Fee Land, or any land acquired in fee pursuant to

Subparagraph 4.20.2; provided, however, that the place of Use for such Water Rights is located within the Verde River Watershed. Any Diversion or Use of Water pursuant to Water Rights acquired, severed and transferred after the Effective Date as provided in this Subparagraph 4.14.1 shall not count against the Total Maximum Annual Diversion Amount or Total Maximum Annual Depletion Amount.

4.14.2 Subject to all valid and existing rights, upon the request of the YAN and in accordance with federal law, the Secretary shall accept and take into trust for the benefit of the YAN, any Water Rights severed and transferred to the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land as provided in Subparagraph 4.14.1.

4.14.3 The YAN or the United States acting as trustee for the YAN shall petition the Gila River Adjudication Court to incorporate into the YAN Judgment any Water Rights severed and transferred as provided in Subparagraph 4.14.1.

4.15 Effluent Notwithstanding any provision of this Agreement, Effluent generated from any source, whether on or off the Reservation, YAN Trust Land, or YAN After-Acquired Land may be Used by the YAN on or off the Reservation in accordance with applicable federal, State, or Tribal law and this Agreement, and such Use of Effluent shall not be counted in determining the Total Maximum Annual Diversion Amount or Total Maximum Annual Depletion Amount.

4.16 Water Impoundments

4.16.1 The YAN and the United States acting as trustee for the YAN shall have the right to construct, maintain, and Use Water in Impoundments. Except for the Water described in Subparagraphs 4.13.2.1, 4.14, and 4.15, or Water that is previously accounted for as a Diversion, the Water entering the Impoundment shall be counted

against the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount for the Water source stored in the Impoundment in accordance with Subparagraph 12.3.1.

4.16.2 Dam Safety If the YAN, or the United States acting in its capacity as trustee for the YAN, constructs an Impoundment, the Impoundment shall be constructed and maintained in accordance with all requirements of applicable law.

4.17 The Parties agree to refrain from challenging in the Gila River Adjudication or in any other judicial or administrative proceeding the Water Rights of the YAN, and the United States acting as trustee for the YAN, described in Subparagraph 4.1 and the YAN Judgment.

4.18 Additional YAN Pumped Water

The YAN and the United States acting as trustee for the YAN may exceed the entitlement to YAN Pumped Water set forth in Subparagraph 4.1 for M&I Uses under the circumstances and conditions described in Subparagraphs 9.4, 9.5, and 9.6.

4.19 Underground Storage and Recovery of Water

4.19.1 The YAN may, to the extent permitted by State law, store the Water sources described in Paragraph 4.0 for subsequent Use in an underground storage facility or groundwater savings facility permitted under State law. The storage and recovery of such Water shall be in accordance with State law and the subsequent use of such Water shall be in accordance with this Agreement.

4.19.2 Except for the Water sources described in Subparagraphs 4.13.2.1, 4.15, 4.20, 6.8, and 6.10, the Water recovered from storage shall only be Used on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land.

4.19.3 The total amount of Water delivered for storage in any given Year from any of

the sources of Water described in Subparagraph 4.1, except for Effluent, shall count against the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount in the Year in which the Water is delivered for storage and shall not count against the Total Maximum Annual Diversion Amount and Total Maximum Annual Depletion Amount in the Year in which the Water is recovered for Use.

4.19.4 The storage or recovery of the Water sources described in Subparagraphs 4.13.2.1, 4.14, 4.15 and 4.20 shall not be counted as a Diversion or Depletion under this Agreement.

4.19.5 The measurement and calculation for Diversions and Depletions of Water delivered for storage shall be as provided in Subparagraph 12.1, 12.3.6 and 12.3.7.

4.20 Water Rights For YAN Fee Land

4.20.1 Water Rights and Uses of Water for YAN Fee Land

4.20.1.1 As of the Enforceability Date, the YAN owns YAN Fee Land, as described and shown in Exhibit 2.98. The YAN shall continue to have all Water Rights and Uses of Water existing under State law that, as of the Enforceability Date, are appurtenant to or associated with YAN Fee Land, as described in the Abstracts attached as Exhibit 4.20.1.1. Such Water Rights and Uses of Water shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or in any other judicial or administrative proceeding. After their incorporation in the YAN Judgment, the Water Rights and Uses of Water described in this Subparagraph 4.20.1.1 shall be binding on all parties to the Gila River Adjudication and shall be added to Exhibits 2.98 and 4.20.1.1.

4.20.1.2 Prior to seeking approval of the YAN Judgment in the Gila

River Adjudication Court, the Parties may update Exhibits 2.98 and 4.20.1.1 to supplement, correct any errors or reflect any additions or subtractions to YAN Fee Land and the Abstracts described in Exhibit 4.20.1.1.

4.20.1.3 After entry of the YAN Judgment, but before the Enforceability Date, Exhibit 2.98 may be updated to correct any errors or reflect any additions or subtractions to YAN Fee Land, and the YAN may petition the Gila River Adjudication Court to update, supplement, or correct the description of YAN Fee Land set forth in Exhibit 2.98, or to supplement or correct the Abstracts described in Subparagraph 4.20.1.1 and Exhibit 4.20.1.1. If the updates, supplements, or corrections are agreed to by all of the Parties before being submitted to the Gila River Adjudication Court for approval, such updates, supplements, or corrections shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or any other judicial or administrative proceeding. If such updates, supplements, or corrections are not agreed to by all of the Parties before their submission to the Gila River Adjudication Court for approval, the Parties who have not agreed reserve the right to object to the incorporation of all or portions of such updates, supplements, or corrections in the YAN Judgment. After the incorporation of the updates, supplements, or corrections described in this Subparagraph 4.20.1.3 in the YAN Judgment, such updates, supplements, or corrections shall be binding on all parties to the Gila River Adjudication and shall be added to Exhibits 2.98 and 4.20.1.1.

4.20.1.4 After the Enforceability Date, the YAN may obtain new Water Rights or initiate new Uses of Water for YAN Fee Land as permitted by State law, subject to the terms of this Agreement. The YAN shall complete Abstracts for all

Water Rights and Uses of Water obtained or initiated for YAN Fee Land after the Enforceability Date and submit such Abstracts to the Parties for their review. The YAN shall promptly move to supplement the YAN Judgment to include the Abstracts of any such additional Water Rights and Uses of Water.

4.20.1.5 If the Abstracts described in Subparagraph 4.20.1.4 are agreed to by all of the Parties before being submitted to the Gila River Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraph 4.20.1.4 are not agreed to by all of the Parties before their submission to the Gila River Adjudication Court for approval, the Parties who have not agreed reserve the right to object to the incorporation of all or portions of such Abstracts in the YAN Judgment. After the incorporation of the Abstracts described in Subparagraph 4.20.1.4 in the YAN Judgment, such Abstracts shall be binding on all parties to the Gila River Adjudication.

4.20.1.6 The Use of Water pursuant to the Water Rights described in Subparagraph 4.20.1 shall not count against the Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount.

4.20.2 Water Rights and Uses of Water for Lands Acquired in Fee by the YAN after the Enforceability Date

4.20.2.1 The YAN or the United States acting as trustee for the YAN may acquire lands in fee after the Enforceability Date and such lands shall be entitled to Water Rights and Uses of Water appurtenant to or associated with the

lands that were held by the grantor or transferor of the lands and included in the transaction under applicable principles of State law.

4.20.2.2 The YAN may obtain new Water Rights or initiate new Uses of Water for the lands described in Subparagraph 4.20.2.1 as permitted by applicable provisions of State law. The Use of Water pursuant to the Water Rights described in Subparagraphs 4.20.2.1 and 4.20.2.2 shall not count against the Total Maximum Annual Diversion Amount and the Total Maximum Annual Depletion Amount. Any severance and transfer of the Water Rights described in Subparagraphs 4.20.2.1 and 4.20.2.2 from lands acquired in fee by the YAN after the Enforceability Date to other land must be approved pursuant to applicable State law.

5.0 VERDE RIVER WATER

5.1 OK Ditch Right The YAN and the United States acting as trustee for the YAN shall have the historic right to Divert Surface Water from the Verde River for Irrigation Use on **146.54 acres** within the area described and shown in Exhibit 5.1 within the Middle Verde District of the Reservation (hereafter the “OK Ditch Right”), with the following attributes:

5.1.1 Place of Use The place of Use of the OK Ditch Right is on **146.54 acres** within the Middle Verde District of the Reservation in Sections 11 and 14, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.1.

5.1.2 Priority Date The priority date associated with the OK Ditch Right for all Uses is January 12, 1877.

5.1.3 Diversion and Depletion

5.1.3.1 Maximum Annual Diversion Amounts The Maximum Annual Diversion Amount for all Uses of the OK Ditch Right is 1,025.78 AFY. The YAN and the United States acting as trustee for the YAN shall not exceed the Maximum Annual Diversion Amount of 1,025.78 AFY for all Uses of the OK Ditch Right.

5.1.3.2 Maximum Annual Depletion Amounts The Maximum Annual Depletion Amount for all Uses of the OK Ditch Right is 556.85 AFY. The YAN and the United States acting as trustee for the YAN shall not exceed the Maximum Annual Depletion Amount of 556.85 AFY for all Uses of the OK Ditch Right.

5.1.3.3 Ditch Losses The Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount for the OK Ditch Right does not include any losses which may occur from the OK Ditch Point of Diversion to a point at which YAN receives delivery of Water from the OK Ditch on the Reservation. Any losses that may be determined by the Gila River Adjudication Court for the OK Ditch shall not be deducted from the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount for the OK Ditch Right as set forth in Subparagraphs 5.1.3.1 and 5.1.3.2.

5.1.4 Point of Diversion The point of Diversion of the OK Ditch from the Verde River is located in the SW1/4 SW1/4 NW1/4 of Section 28, Township 15 North, Range 4 East, Gila and Salt River Meridian, Arizona (hereafter "OK Ditch Point of Diversion"). The points of delivery of the OK Ditch Right from the OK Ditch to the Middle Verde District of the Reservation are located in the E1/2 of Section 11, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.1.

5.1.5 OK Ditch Administration

5.1.5.1 The YAN and the United States acting as trustee for the YAN shall have the right to participate in the continuing administration of the OK Ditch.

5.1.5.2 The YAN and the United States acting as trustee for the YAN holds five and three quarters (5 $\frac{3}{4}$) shares in the capacity of the OK Ditch (“OK Ditch Shares”). Subject to the approval of the entity commonly referred to as the OK Ditch Company, and, if applicable, a court with jurisdiction over the administration of the OK Ditch, the YAN shall have the right, in its sole discretion, to sell, transfer or modify the use of its OK Ditch Shares not otherwise required for use of the OK Ditch Right described in Subparagraphs 5.1 and 5.4.1.

5.2 Verde Ditch Right The YAN and the United States acting as trustee for the YAN shall have the historic right to Divert Surface Water from the Verde River for Irrigation Use of **15.34 acres** within the area described and shown in Exhibit 5.2, within the Camp Verde District of the Reservation (hereafter “Verde Ditch Right”), with the following attributes:

5.2.1 Place of Use The place of Use of the Verde Ditch Right is on **15.34 acres** within the Camp Verde District of the Reservation in Section 32, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.2.

5.2.2 Priority Date The priority date associated with the Verde Ditch Right for all Uses is December 31, 1878.

5.2.3 Diversion and Depletion

5.2.3.1 Maximum Annual Diversion Amounts The Maximum Annual Diversion Amount for all Uses of the Verde Ditch Right is **107.38 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Diversion Amount of 107.38 AFY for all Uses of the Verde Ditch Right.

5.2.3.2 Maximum Annual Depletion Amounts The Maximum Annual Depletion Amount for all Uses of the Verde Ditch Right is **58.29 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Depletion Amount of 58.29 AFY for all Uses of the Verde Ditch Right.

5.2.3.3 Ditch Losses The Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount of the Verde Ditch Right does not include any losses which may occur from the Verde Ditch Point of Diversion to a point at which YAN receives delivery of Water from the Verde Ditch on the Reservation. Any losses that may be determined by the Gila River Adjudication Court for the Verde Ditch shall not be deducted from the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount for the Verde Ditch Right as set forth in Subparagraphs 5.2.3.1 and 5.2.3.2.

5.2.4 Point of Diversion The point of Diversion of the Verde Ditch from the Verde River is located in the NE1/4 SW1/4 NE1/4 of Section 14, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona (hereafter "Verde Ditch Point of Diversion"). The point of delivery of the Verde Ditch Right from the Verde Ditch to the Camp Verde District of the Reservation is located in the NW1/4 SW1/4 SW1/4 of Section 32, Township 14 North, Range 5 East, Gila and Salt River Meridian, Arizona, as described and shown in

Exhibit 5.2.

5.2.5 Hance v. Arnold Judgment

5.2.5.1 The YAN and the United States acting as trustee for the YAN shall have the right to participate in the continuing administration of the Verde Ditch pursuant to the Conclusions of Law and Judgment entered on March 23, 1909, by the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Yavapai, in *Hance v. Arnold et al.*, No. 4772, attached as Exhibit 5.2.5, including all successive orders thereto (hereafter "*Hance v. Arnold Judgment*").

5.2.5.2 The YAN and the United States acting as trustee for the YAN holds 25 shares in the capacity of the Verde Ditch that are to be sufficient for the irrigation of 25 acres of land ("Verde Ditch Shares"). Subject to the approval of the court with jurisdiction over the administration of the Verde Ditch under the *Hance v. Arnold Judgment*, the YAN shall have the right, in its sole discretion, to sell, transfer or modify the use of its Verde Ditch Shares which are not otherwise required for use of the Verde Ditch Right described in Subparagraph 5.2.

5.3 Daley Right The YAN and the United States acting as trustee for the YAN shall have the historic right to Divert Surface Water from the Verde River within the Middle Verde District of the Reservation for Irrigation Use on **65.80 acres**, and for Domestic and Stockwatering Use incidental to the cultivation of said lands, pursuant to the Decree entered on November 19, 1958 by the Superior Court of the State of Arizona, in and for the County of Yavapai, in *Jeanette E. Daley v. Salt River Valley Water Users' Association*, No. 20304 (hereafter the "Daley Decree"), attached as Exhibit 5.3, with the following

attributes (hereafter “Daley Right”):

5.3.1 Place of Use The place of Use for the Daley Right within the Middle Verde District of the Reservation, is as follows:

5.3.1.1 On **Parcel I** of the Daley Decree, comprised of **28.70** acres within the Reservation, located in Section 4, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.3.1.1 (hereafter “Daley Parcel I”).

5.3.1.2 On a portion of **Parcel II** of the Daley Decree, comprised of **8.60** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.3.1.2 (hereafter “Daley Parcel II”).

5.3.1.3 On **Parcel III** of the Daley Decree, comprised of **19.60** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.3.1.3 (hereafter “Daley Parcel III”).

5.3.1.4 On a portion of **Parcel IV** of the Daley Decree, comprised of **8.90** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.3.1.4 (hereafter “Daley Parcel IV”).

5.3.2 Priority Date The priority date of the Daley Right associated with Daley Parcel I located within the Reservation is December 31, 1878. The priority date of the Daley Right associated with Daley Parcels II, III and IV located within the Reservation is December 31, 1913.

5.3.3 Diversion and Depletion

5.3.3.1 Maximum Annual Diversion Amounts The Maximum Annual Diversion Amount for all Uses of the Daley Right is **460.60 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Diversion Amount of 460.6 AFY for all Uses of the Daley Right. The Maximum Annual Diversion Amount for each place of Use described in Subparagraph 5.3.1 shall be as follows:

- (A) **200.90 AFY** for the **28.70 acres** of Daley Parcel I as described and shown in Exhibit 5.3.1.1;
- (B) **60.20 AFY** for the **8.60 acres** of Daley Parcel II as described and shown in Exhibit 5.3.1.2;
- (C) **137.20 AFY** for the **19.60 acres** of Daley Parcel III as described and shown in Exhibit 5.3.1.3; and
- (D) **62.30 AFY** for the **8.90 acres** of Daley Parcel IV as described and shown in Exhibit 5.3.1.4.

5.3.3.2 Maximum Annual Depletion Amounts The Maximum Annual Depletion Amount for all Uses of the Daley Right is **250.04 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Depletion Amount of 250.04 AFY for all Uses of the Daley Right. The Maximum Annual Depletion Amounts for each place of Use described in Subparagraph 5.3.1 shall be as follows:

- (A) **109.06 AFY** for the **28.70 acres** of Daley Parcel I as described and shown in Exhibit 5.3.1.1;

(B) **32.68 AFY** for the **8.60 acres** of Daley Parcel II as described and shown in Exhibit 5.3.1.2;

(C) **74.48 AFY** for the **19.60 acres** of Daley Parcel III as described and shown in Exhibit 5.3.1.3; and

(D) **33.82 AFY** for the **8.90 acres** of Daley Parcel IV as described and shown in Exhibit 5.3.1.4.

5.3.4 Points of Diversion The historic points of Diversion for the Daley Right are located in the NW1/4 SW1/4 NE1/4 of Section 4, Township 14 North, Range 4 East, and the NW1/4 SW1/4 SE1/4 of Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibits 5.3.1.1 through 5.3.1.4.

5.4 Severance and Transfer; Change in Place of Use; Change in Points of

Diversion Concurrent with the special proceedings instituted by the Gila River Adjudication Court to approve the YAN Judgment, the YAN or the United States acting as trustee for the YAN shall request that the Gila River Adjudication Court approve the severance and transfer, changes in place of Use, and changes in point of Diversion for the rights to Surface Water described in Subparagraphs 5.1, 5.2, and 5.3, as follows:

5.4.1 OK Ditch Right

The YAN or the United States acting as trustee for the YAN shall request the partial severance and transfer, changes in place of Use, and changes in point of Diversion of the OK Ditch Right, as described in this Subparagraph 5.4.1, to be included in the YAN Judgment. If the requested partial severance and transfer, changes in place of Use, and changes in point of Diversion of the OK Ditch Right are approved by the Gila River Adjudication Court, the YAN and the United States acting as trustee for the YAN shall

have the right to Divert Surface Water from the Verde River, as described and shown in Exhibits 5.4.1.1.1, 5.4.1.1.2 and 5.4.1.1.3 (hereafter “OK Ditch Right”), with the following attributes:

5.4.1.1 Place of Irrigation Use The place of Irrigation Use of the OK Ditch Right shall be as follows:

5.4.1.1.1 On **OK Parcel I**, comprised of **158.40** acres of land within the Middle Verde District of the Reservation in Sections 11 and 14, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.1.1.1 (hereafter “OK Parcel I”); and

5.4.1.1.2. On **OK Parcel II**, comprised of **31.48** acres of land within the Middle Verde District of the Reservation in Section 10, Township 14 North, Range 5 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.1.1.2 (hereafter “OK Parcel II”); and

5.4.1.1.3 On **OK Parcel III**, comprised of **2.84** acres of land within the Middle Verde District of the Reservation in Sections 2 and 11, Township 14 North, Range 5 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.1.1.3 (hereafter “OK Parcel III”).

5.4.1.2 Priority Date The priority date for the Irrigation Use associated with the OK Ditch right for OK Parcels I, II, and III shall remain January 12, 1877.

5.4.1.3 Diversion and Depletion

5.4.1.3.1 Maximum Annual Diversion Amounts The Maximum Annual Diversion Amount for each place of Irrigation Use described in Subparagraph 5.4.1.1 shall be as follows:

(A) **969.85 AFY** for the **158.40 acres** as described and shown in Exhibit 5.4.1.1.1;

(B) **36.05 AFY** for the **31.48 acres** as described and shown in Exhibit 5.4.1.1.2; and

(C) **19.88 AFY** for the **2.84 acres** as described and shown in Exhibit 5.4.1.1.3.

5.4.1.3.2 Maximum Annual Depletion Amounts The Maximum Annual Depletion Amount for each place of Irrigation Use described in Subparagraph 5.4.1.1 shall be as follows:

(A) **526.49 AFY** for the **158.40 acres** as described and shown in Exhibit 5.4.1.1.1;

(B) **19.57 AFY** for the **31.48 acres** as described and shown in Exhibit 5.4.1.1.2; and

(C) **10.79 AFY** for the **2.84 acres** as described and shown in Exhibit 5.4.1.1.3.

5.4.1.3.3 Ditch Losses The Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount of the OK Ditch Right does not include any losses which may occur from the OK Ditch Point of Diversion to a point at which YAN receives delivery of Water from the OK Ditch on the Reservation. Any losses that may be determined by the Gila River Adjudication Court for the OK Ditch shall not be deducted from the Maximum Annual Diversion Amounts and Maximum Annual Depletion Amounts for the OK Ditch Right as set forth in Subparagraphs 5.4.1.3.1 and 5.4.1.3.2.

5.4.1.4 Points of Diversion The points of Diversion for the OK Ditch Right shall be as described and shown in Exhibits 5.4.1.1.1, 5.4.1.1.2 and 5.4.1.1.3.

5.4.1.5 Impoundments The YAN and the United States acting as trustee for YAN may Divert the OK Ditch Right into Impoundments for Irrigation Use of the OK Ditch Right as described and shown in Exhibit 5.4.1.1.1. The OK Ditch Right Water entering each Impoundment shall be counted against the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount in accordance with Subparagraph 4.16.

5.4.2 Verde Ditch Right The YAN or the United States acting as trustee for the YAN shall request the partial severance and transfer, changes in place of Use, and changes in point of Diversion of the Verde Ditch Right, as described in this Subparagraph 5.4.2, to be included in the YAN Judgment. If the requested partial severance and transfer, changes in place of Use and changes in point of Diversion of the Verde Ditch Right are approved by the Gila River Adjudication Court, the YAN and the United States acting as trustee for the YAN shall have the right to Divert Surface Water from the Verde River, as described and shown in Exhibit 5.4.2.1 (hereafter “Verde Ditch Right”), with the following attributes:

5.4.2.1 Place of Irrigation Use The place of Irrigation Use for the Verde Ditch Right shall be within the Camp Verde District of the Reservation on **15.34 acres** of land located in Section 32, Township 14 North, Range 5 East, as described and shown in Exhibit 5.4.2.1.

5.4.2.2 Priority Date The priority date for the Irrigation Use associated with the Verde Ditch Right shall remain December 31, 1878.

5.4.2.3 Diversion and Depletion

5.4.2.3.1 Maximum Annual Diversion Amount The Maximum Annual Diversion Amount for Irrigation Use of the Verde Ditch Right shall continue to be **107.38 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Diversion Amount of 107.38 AFY for all Uses of the Verde Ditch Right.

5.4.2.3.2 Maximum Annual Depletion Amount The Maximum Annual Depletion Amount for Irrigation Use of the Verde Ditch Right shall continue to be **58.29 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Depletion Amount of 58.29 AFY for all Uses of the Verde Ditch Right.

5.4.2.3.3 Ditch Losses The Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount of the Verde Ditch Right does not include any losses which may occur from the Verde Ditch Point of Diversion to a point at which YAN receives delivery of Water from the Verde Ditch on the Reservation. Any losses that may be determined by the Gila River Adjudication Court for the Verde Ditch shall not be deducted from the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount for the Verde Ditch Right as set forth in Subparagraphs 5.4.2.3.1 and 5.4.2.3.2.

5.4.2.4 Point of Diversion The Point of Diversion for the Verde Ditch Right shall remain the same as described and shown in Exhibit 5.4.2.1.

5.4.3 Daley Right

The YAN or the United States acting as trustee for the YAN shall request the partial severance and transfer, changes in place of Use, and changes in point of Diversion, of the Daley Right, as described in this Subparagraph 5.4.3, to be included in the YAN Judgment. If the requested partial severance and transfer, changes in place of Use and changes in point of Diversion of the Daley Right are approved by the Gila River Adjudication Court, the YAN and the United States acting as trustee for the YAN shall have the right to Divert Surface Water from the Verde River, as described and shown in Exhibits 5.4.3.1 and 5.4.3.2 (hereafter “Daley Right”), with the following attributes:

5.4.3.1 Place of Irrigation Use The places of Irrigation Use for the Daley Right shall continue to be within the Middle Verde District of the Reservation, as follows:

5.4.3.1.1 On **Daley Parcel I-A**, comprised of **30.36** acres within the Reservation, located in Section 4, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.3.1.1 (hereafter “Daley Parcel I-A”).

5.4.3.1.2 On **Daley Parcel II-A**, comprised of **9.20** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.3.1.2 (hereafter “Daley Parcel II-A”).

5.4.3.1.3 On **Daley Parcel III-A**, comprised of **8.66** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila

and Salt River Meridian, Arizona, as described and shown in Exhibit

5.4.3.1.3 (hereafter “Daley Parcel III-A”).

5.4.3.1.4 On **Daley Parcel III-B**, comprised of **9.76** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit

5.4.3.1.4 (hereafter “Daley Parcel III-B”).

5.4.3.1.5 On **Daley Parcel III-C**, comprised of **25.71** acres within the Reservation, located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit

5.4.3.1.5 (hereafter “Daley Parcel III-C”).

5.4.3.1.6 On **Daley Parcel IV-A**, comprised of **25.71** acres within the Reservation, shall be located in Section 3, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.3.1.6 (hereafter “Daley Parcel IV-A”).

5.4.3.2 Place of Domestic and Stock Watering Use The place of Domestic and Stock Watering Uses incidental to the Irrigation Use of the Daley Right shall be within the Middle Verde District of the Reservation in Sections 3 and 4, Township 14 North, Range 4 East, Gila and Salt River Meridian, Arizona, as described and shown in Exhibit 5.4.3.2.

5.4.3.3 Priority Date The priority date of the Daley Right associated with Daley Parcel I for Daley Parcel I-A shall remain December 31, 1878. The priority date of the Daley Right associated with Daley Parcels II, III and IV for Daley Parcels II-A, III-A, III-B, III-C, and IV-A shall remain December 31, 1913. The Priority

Date of the Daley Right associated with Domestic and Stockwatering Use on the lands described in Subparagraph 5.4.3.2 shall be December 31, 1878.

5.4.3.4 Diversion and Depletion

5.4.3.4.1 Maximum Annual Diversion Amounts The Maximum Annual Diversion Amount for all Uses of the Daley Right shall remain **460.60 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Diversion Amount of 460.60 AFY for all Uses of the Daley Right. The Maximum Annual Diversion Amount for each place of Use for Irrigation described in Subparagraph 5.4.3.1 and shown in Exhibits 5.4.3.1.1 through 5.4.3.1.6 shall be as follows:

- (A) **200.90 AFY** for the **30.36 acres** described and shown in Exhibit 5.4.3.1.1 (Daley Parcel I-A);
- (B) **56.28 AFY** for the **9.20** acres described and shown in Exhibit 5.4.3.1.2 (Daley Parcel II-A);
- (C) **60.62 AFY** for the **8.66** acres described and shown in Exhibit 5.4.3.1.3 (Daley Parcel III-A);
- (D) **68.32 AFY** for the **9.76** acres described and shown in Exhibit 5.4.3.1.4 (Daley Parcel III-B);
- (E) **12.18 AFY** for the **25.71** acres described and shown in Exhibit 5.4.3.1.5 (Daley Parcel III-C); and
- (F) **62.30 AFY** for the **25.71** acres described and shown in Exhibit 5.4.3.1.6 (Daley Parcel IV-A).

5.4.3.4.2 Maximum Annual Depletion Amount The Maximum Annual Depletion Amount for all Uses of the Daley Right shall remain **250.04 AFY**. The YAN and the United States acting as trustee for the YAN shall not exceed a Maximum Annual Depletion Amount of 250.04 AFY for all Uses of the Daley Right. The Maximum Annual Depletion Amount for each place of Use for Irrigation described in Subparagraph 5.4.3.1 and shown in Exhibits 5.4.3.1.1 through 5.4.3.1.6 shall be as follows:

- (A) **109.06 AFY** for the **30.36 acres** described and shown in Exhibit 5.4.3.1.1 (Daley Parcel I-A);
- (B) **30.55 AFY** for the **9.20** acres described and shown in Exhibit 5.4.3.1.2 (Daley Parcel II-A);
- (C) **32.91 AFY** for the **8.66** acres described and shown in Exhibit 5.4.3.1.3 (Daley Parcel III-A);
- (D) **37.09 AFY** for the **9.76** acres described and shown in Exhibit 5.4.3.1.4 (Daley Parcel III-B);
- (E) **6.61 AFY** for the **25.71** acres described and shown in Exhibit 5.4.3.1.5 (Daley Parcel III-C); and
- (F) **33.82 AFY** for the **25.71** acres described and shown in Exhibit 5.4.3.1.6 (Daley Parcel IV-A).

5.4.3.5 Points of Diversion The points of Diversion for the Daley Right shall be as described and shown in Exhibits 5.4.3.1.1 through 5.4.3.1.6 and 5.4.3.2.

5.4.3.6 Impoundments The YAN and the United States acting as trustee for YAN may Divert the Daley Right into Impoundments to make Use of the Daley Right for Irrigation Use as described and shown in Exhibits 5.4.3.1.1, 5.4.3.1.5 and 5.4.3.1.6, and for Stock Watering Use as described and shown in Exhibit 5.4.3.2. The Daley Right Water entering each Impoundment shall be counted against the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount in accordance with Subparagraph 4.16.

5.5 Future Changes in Place of Use, Purpose of Use, and Points of Diversion

5.5.1 In addition to the changes in place of Use and changes in point of Diversion described in Subparagraph 5.4, after the Enforceability Date, the YAN or the United States acting as trustee for the YAN may apply to the Gila River Adjudication Court for changes in purpose of Use, changes in place of Use, or changes in points of Diversion for the Water Rights described in Paragraph 5.0; provided, however, that any such changes shall not increase the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts for any such Water Rights.

5.5.2 The Parties shall not object to a change in purpose of Use, change in place of Use, or change in point of Diversion for the Water Rights described in Paragraph 5.0, provided that the change in purpose of Use, change in place of Use, or change in point of Diversion is within the same YAN District and is in accordance with Subparagraph 5.5.1.

5.6 Nothing in this Agreement or the Act shall prohibit the YAN or the United States acting as trustee for the YAN from applying to the Arizona Department of Water Resources or the Gila River Adjudication Court, as applicable, at any time for a change in place of Use, change in purpose of Use, or change in points of Diversion for the Water

Rights described in Paragraph 5.0 within a YAN District, from one YAN District to another YAN District, to YAN Trust Land, or to YAN After-Acquired Trust Land.

5.7 The YAN and the United States acting as trustee for the YAN are entitled to Use the Water Rights to Surface Water described in Paragraph 5.0 in combination with any other Water Rights described in this Agreement.

5.8 The terms of Subparagraphs 5.4 and 5.5 are the product of negotiation among the Parties and the terms shall have no precedential effect in any judicial or administrative proceedings other than a proceeding to interpret or enforce the terms of this Agreement or the Act and shall not be binding in any future Indian water rights settlement.

5.9 Nothing in this Paragraph 5.0 is intended to establish the attributes of Water Rights to Surface Water associated with the OK Ditch, Verde Ditch, or the Daley Decree, for any person or entity other than the YAN and the United States acting as trustee for YAN. The attributes to Surface Water described in Paragraph 5.0 shall not be used or relied upon as precedent by any party in the Gila River Adjudication Proceedings.

6.0 CAP WATER

6.1 Pursuant to section 111 of the Act, and in accordance with Section 104(d)(1) of the CAPSA, the Secretary shall execute the YAN Amended CAP Water Delivery Contract, a copy of which is attached hereto as Exhibit 6.1, which shall provide for the delivery of 1,200 AFY of CAP Indian Priority Water previously allocated by the Secretary to the YAN. The YAN Amended Water Delivery Contract attached as Exhibit 6.1 may be modified or amended, either before or after execution, to reflect changes necessary to correct drafting mistakes as may be agreed to by the Secretary and YAN.

6.2 Pursuant to section 111 of the Act, the Secretary may deliver YAN CAP Water to

the YAN through an Exchange with a party acceptable to the YAN and the Secretary, upon the terms and conditions set forth in the YAN Amended CAP Water Delivery Contract and the CAP System Use Agreement. Under the terms of this Agreement, YAN and the Secretary agree that SRP is an acceptable party for an Exchange.

6.3 Pursuant to section 111 of the Act, the YAN Amended CAP Water Delivery Contract shall be for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, and shall be without limit as to term.

6.4 Pursuant to section 111 of the Act and Paragraph 7.0, the YAN may, with the approval of the Secretary, enter into contracts or options to lease or to Exchange YAN CAP Water in Coconino, Gila, Maricopa, Pinal, Pima, and Yavapai counties, Arizona, providing for the temporary delivery to any individual or entity of any portion of the YAN CAP Water. The term of a contract or option to lease shall not be longer than one hundred (100) years. A contract or option to Exchange shall be for the term provided for in the contract or option. A lease or option to lease providing for the temporary delivery of YAN CAP Water shall require the lessee to pay to the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the Leased Water. The YAN may, with the approval of the Secretary, renegotiate any lease at any time during the term of that lease, subject to the condition that the term of the renegotiated lease shall not exceed one hundred (100) years. No portion of the YAN CAP Water may be permanently alienated.

6.5 SRP shall accept delivery of any YAN CAP Water Exchanged for Diversions of Water from C.C. Cragin Dam & Reservoir, pursuant to the YAN-SRP Exchange Agreement in the form substantially similar to that attached as Exhibit 6.5. SRP assumes

no liability whatsoever with respect to the quantity, or allocation of shortages of water available from the CAP System for diversion by SRP. In no event shall SRP, its governing bodies, officers, directors, governors, agents, or employees be liable for any costs or damages, direct or indirect, of any nature, arising out of or in any way connected with any suspension or reduction in the diversion of YAN CAP Water from the CAP water delivery system.

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

6.7 Pursuant to Section 111 of the Act, the YAN, and not the United States in any capacity, shall be entitled to all consideration due to the YAN under any lease, option to lease, Exchange, or option to Exchange YAN CAP Water entered into by the YAN. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner: (A) any funds received by the YAN as consideration under any such contracts entered into by the YAN to lease, option to lease, Exchange, or option to Exchange YAN CAP Water; or (B) the expenditure of those funds.

6.8 Pursuant to section 111 of the Act and the YAN Amended CAP Water Delivery Contract, in accordance with State law, the YAN may engage in underground water storage of YAN CAP Water as a Use of YAN CAP Water, and YAN may subsequently sell, transfer or assign any earned long-term storage credits without approval of the Secretary.

6.9 Pursuant to section 111 of the Act, all YAN CAP Water shall be delivered through the CAP System; and if the delivery capacity of the CAP System is significantly reduced or anticipated to be significantly reduced for an extended period of time, the YAN shall have

the same CAP delivery rights as a CAP Contractor or CAP Subcontractor that is allowed to take delivery of water other than through the CAP System.

6.10 Pursuant to section 111 of the Act, the YAN may use YAN CAP Water on or off the Reservation, but all such Uses shall be considered Diversions and Depletions under Paragraph 4.0 and accounted as provided for in Subparagraph 12.3.6.

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

6.12 Payment of CAP Water Delivery Charges

6.12.1 Neither the YAN nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of YAN CAP Water leased to others.

6.12.2 The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all YAN CAP Water. Pursuant to section 111 of the Act and except as provided in Subparagraphs 6.4 and 6.12.1, as authorized by 43 U.S.C. §1543(f)(2)(A), as amended, to the extent that funds are available in the Lower Colorado River Basin Development Fund, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of YAN CAP Water for any Use by the YAN, and thereafter such charges shall be paid by the YAN.

6.12.3 The YAN shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of YAN CAP Water for any Use, except for YAN CAP Water leased to others. CAP Pumping Energy Charges associated with the delivery of YAN CAP Water leased to others shall be paid as provided in Subparagraphs 6.4 and 6.12.1.

6.12.4 Notwithstanding the first sentence of Subparagraph 6.12.3, other persons or entities with whom the YAN may Exchange YAN CAP Water may agree with the YAN to pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of YAN CAP Water pursuant to such Exchange.

6.13 The CAP Operating Agency shall have no responsibility to deliver any YAN CAP Water for which CAP Fixed OM&R Charges and CAP Pumping Energy Charges have not been paid in advance, or in accordance with the YAN Amended CAP Water Delivery Contract attached as Exhibit 6.1. The charges for delivery of YAN CAP Water shall be calculated in accordance with the CAP Repayment Stipulation.

6.14 The YAN shall schedule delivery of YAN CAP Water in accordance with the YAN Amended CAP Water Delivery Contract.

6.15 Pursuant to section 111 of the Act, no CAP Water service capital charges shall be due or payable for YAN CAP Water, whether such water is delivered for Use by the YAN or pursuant to a contract or option to lease or Exchange YAN CAP Water entered into by the YAN.

6.16 Pursuant to section 111 of the Act, for purposes of determining the allocation and repayment of costs of any stages of the CAP constructed after November 21, 2007, the capital costs associated with the delivery of YAN CAP Water, whether such water is delivered for use by the YAN or in accordance with any assignment, Exchange, lease, option to lease, or other agreement for the temporary disposition of YAN CAP Water entered into by the YAN, shall be non-reimbursable and shall be excluded from the repayment obligation of the CAWCD.

6.17 Nothing in this Agreement shall preclude the YAN from seeking CAP Excess Water, if available, subject to the terms of the Repayment Stipulation. The YAN may use such CAP Excess Water on or off the Reservation for YAN purposes and such Use does not constitute a Diversion or Depletion for purposes of Paragraphs 4.0 and 12.0.

6.18 Nothing in this Agreement shall prohibit the YAN from leasing CAP Water from another Arizona Indian Tribe and the Use of such water by the YAN or the United States acting as trustee for the YAN shall not constitute a Diversion or Depletion for purposes of Paragraphs 4.0 and 12.0.

6.19 Delivery of CAP Indian Priority Water in Times of Shortage

If, in any Year, a time of shortage exists, as described in the YAN Amended CAP Water Delivery Contract, the amount of CAP Indian Priority Water available to YAN in such Year shall be computed in accordance with subsection ____ of the YAN Amended CAP Water Delivery Contract.

6.20 The YAN, in accordance with State law, may store the YAN CAP Water at 1 or more underground storage facilities or groundwater savings facilities. The YAN, in accordance with State law, may assign any long-term storage credits accrued as a result of storage under this Subparagraph 6.20.

6.21 Nothing in the Act or this Agreement limits the right of the YAN to enter into any agreement for the storage or banking of Water in accordance with State law with: (A) the Arizona Water Banking Authority (or any successor agency or entity); or (B) any other lawful authority. Any YAN CAP Water stored pursuant to such an agreement is subject to Subparagraphs 4.19.1, 6.8, and 6.20.

6.22 YAN may recapture and reuse Return Flow within the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land. Return Flow for purposes of this Subparagraph 6.22 shall mean all waste water, seepage, and Groundwater which originates or results from YAN CAP Water delivered to the YAN through an Exchange with SRP or any other individual or entity acceptable to the YAN and the Secretary.

7.0 TERMS AND CONDITIONS OF FUTURE YAN CAP WATER LEASE AGREEMENTS

7.1 The YAN may enter into leases of YAN CAP Water as provided in Subparagraph 6.4. Such leases shall conform to the provisions of Paragraph 7.0.

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

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

7.4 Subject to the provisions of the lease, the Secretary or the CAP Operating Agency shall deliver YAN CAP Water to a lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in Article 4.4 of the standard form of CAP Subcontract for M&I Use, a copy of which is attached hereto as Exhibit 7.4.

7.5 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 YAN CAP Water greater than eleven percent (11.0%) of the lessee's maximum annual entitlement under the lease; provided however, that that Secretary or the CAP Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP Water to other CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors as determined by the Secretary and the CAP Operating Agency if the lessee agrees to accept such increased deliveries.

7.6 YAN 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.

7.7 The lessee may not transfer, assign, or sublease its leased YAN CAP Water.

7.8 The lease shall impose upon the lessee terms and conditions equivalent to those contained in Subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and Articles 4.6, 4.10 and 6.9 of Exhibit 7.4. Although Exhibit 7.4 is the standard form of CAP Subcontract for M&I Use, nothing in this Agreement is intended to preclude leases of YAN CAP Water for any other Use.

8.0 YAN CRAGIN WATER AND SRP WATER

8.1 SRP Water

The YAN and the United States acting as trustee for the YAN shall have the right to delivery of SRP Water from C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline Project pursuant to the severance and transfer described in Subparagraphs 8.3.1 and 8.3.2, for Use on the Reservation, YAN Trust Land, and YAN After-Acquired Trust

Land, calculated as four and fifty-five hundredths percent (4.55%) of water stored in the Allocation Capacity on May 1, with a Maximum Annual Diversion Amount not to exceed an average of 500 AFY, up to a maximum of 583.86 acre-feet in any given Year and a Maximum Annual Depletion Amount of not to exceed an average of 500 AFY, up to a maximum of 583.86 acre-feet in any given Year; provided, however, that SRP Water shall not be available for Diversion and Use by the YAN or the United States acting as trustee for the YAN unless all of the Water sources available for delivery to the Reservation in any Year pursuant to Paragraph 6.0 and Subparagraph 8.2 have been Used, via direct delivery to the Reservation, via underground storage pursuant to Subparagraphs 4.19 or 6.8, through an Exchange, or through a lease pursuant to Subparagraph 7.1. The average quantities described in the preceding sentence shall be calculated over the period of historical operation of C.C. Cragin Dam and Reservoir, beginning in 1967. The Allocation Capacity used in computing the average quantities is subject to periodic adjustment for sedimentation as provided in the YAN-SRP Water Delivery and Use Agreement.

8.2 YAN Cragin Water

The YAN and the United States acting as trustee for the YAN shall have the right to delivery of YAN Cragin Water from the C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline Project or the SRP-Cragin Pumping System pursuant to the severance and transfer described in Subparagraphs 8.3.1 and 8.3.2, for Use on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land, the sum of twenty-six and forty-five hundredths percent (26.45%) of water stored in the Allocation Capacity on May 1, plus twenty-six and forty-five hundredths percent (26.45%) of the amount of water Diverted from C.C. Cragin Dam and Reservoir during the period from January 1 through

April 30 of that year by SRP for its own Use, with a Maximum Diversion Amount not to exceed an average of 2910.26 AFY, up to a maximum of 3394.06 acre-feet in any given Year, and a Maximum Annual Depletion Amount not to exceed an average of 2910.26 AFY, up to a maximum of 3394.06 in any given Year. The average quantities described in the preceding sentence shall be calculated over the period of historical operation of C.C. Cragin Dam and Reservoir, beginning in 1967. The Allocation Capacity used in computing the average quantities is subject to periodic adjustment for sedimentation as provided in the YAN-SRP Water Delivery and Use Agreement.

8.3 Severance and Transfer of SRP Water and YAN Cragin Water

8.3.1 Within sixty (60) days after the date of enactment of the Act, the YAN or the United States acting as trustee for the YAN shall apply to the Arizona Department of Water Resources to partially sever and transfer to the United States acting as trustee for the YAN, SRP's right to the diversion and beneficial Use of SRP Water described in Subparagraph 8.1 and YAN Cragin Water described in Subparagraph 8.2 under Certificate of Water Right No. 3696.0002, in an amount not to exceed an average of 3410.26 AFY, up to a maximum of 3977.92 acre-feet in any given Year.

8.3.2 If the Arizona Department of Water Resources approves the severance and transfer described in Subparagraph 8.3, such severance and transfer shall become effective upon the occurrence of the Enforceability Date. The YAN shall pay any fee or fees associated with the application to partially sever and transfer described in Subparagraph 8.3.

8.3.3 If the Arizona Department of Water Resources approves the severance and

transfer described in Subparagraph 8.3, the place of Use of the SRP Water and YAN Cragin Water shall be on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land located within the boundary of the Lower Verde Valley Subwatershed as depicted on the map attached as Exhibit 8.3, provided that such lands are (A) served by infrastructure delivering SRP Water or YAN Cragin Water from the YAN Delivery Point; or (B) served pursuant to an Exchange of SRP Water or YAN Cragin Water with a Municipal Water Provider or Public Water System as provided for in Subparagraph 4.5 and pursuant to the appropriate Exchange permits issued by the Arizona Department of Water Resources.

8.4 SRP to Retain Right Not Transferred

Upon the partial severance and transfer provided for in Subparagraph 8.3 becoming effective, SRP shall retain the right to an amount of water not to exceed an average of 11,000 AFY for the beneficial purposes stated in Certificate of Water Right 3696.0002, less the amounts delivered to the YAN as provided in this Agreement and to: (A) the Town of Payson pursuant to Revised Certificate of Water Right No. 3696.0003; (B) Payson Water Company; (C) Bonita Creek Land and Homeowners' Association; (D) Cowan Ranch Homeowners' Association; (E) any other entity or water provider in northern Gila County following a severance and transfer of the water made available in Section 213(i)(3)(B) of the Arizona Water Settlements Act, P.L. 108-451, 118 Stat. 3478 (2004); and (F) any other entity or Water provider in Yavapai County, following a severance and transfer of the Water made available in section 102 of the Act.

8.5 No Storage Right Conveyed

It is expressly understood by the Parties that the water right severed and transferred to the

YAN and the United States acting as trustee for the YAN as described in Subparagraph 8.3 is limited to a right to Divert and Use water from C.C. Cragin Dam and Reservoir, and that neither the Tribe nor the United States acting as trustee for the YAN has a storage right in C.C. Cragin Dam and Reservoir.

8.6 Payment of Charges

8.6.1 For delivery of the YAN Cragin Water, SRP Water, and participation in the C.C. Cragin Dam and Reservoir, excluding the SRP-Cragin Pumping System, the United States acting as trustee for the YAN shall pay SRP the following Cragin Capital Costs and Cragin O&M Costs within sixty (60) days after the Enforceability Date, unless such 60-day period is extended by mutual agreement of the United States and SRP.

8.6.1.1 Twenty-six and forty-five hundredths of a percent (26.45%) of Cragin Capital Costs accrued to C.C. Cragin Dam and Reservoir, excluding the SRP-Cragin Pumping System, from the date the C.C. Cragin Dam and Reservoir was acquired by SRP to the date SRP first begins delivering YAN Cragin Water or SRP Water pursuant to the YAN-SRP Water Delivery and Use Agreement.

8.6.1.2 Twenty-six and forty-five hundredths of a percent (26.45%) of Cragin O&M Costs accrued to C.C. Cragin Dam and Reservoir, excluding the SRP-Cragin Pumping System, beginning on May 1, 2009 to the date SRP first begins delivering YAN Cragin Water or SRP Water pursuant to the YAN-SRP Water Delivery and Use Agreement.

8.7 SRP Contribution

8.7.1 As a contribution to the consideration given pursuant to this Agreement, SRP shall pay on behalf of the YAN and the United States acting as trustee for the YAN, and

the YAN and the United States acting as trustee for the YAN shall not pay to SRP, the following cost of SRP Water:

8.7.1.1 Four and fifty-five hundredths of a percent (4.55%) of Cragin Capital Costs accrued to C.C. Cragin Dam and Reservoir, excluding the SRP-Cragin Pumping System, from the date the C.C. Cragin Dam and Reservoir was acquired by SRP to the date SRP first begins delivering YAN Cragin Water or SRP Water pursuant to the YAN-SRP Water Delivery and Use Agreement.

8.7.1.2 Four and fifty-five hundredths of a percent (4.55%) of Cragin O&M Costs accrued to C.C. Cragin Dam and Reservoir, excluding the SRP-Cragin Pumping System, beginning on May 1, 2009 to the date SRP first begins delivering YAN Cragin Water or SRP Water pursuant to the YAN-SRP Water Delivery and Use Agreement.

8.8 SRP neither guarantees nor warrants the quality of water SRP delivers to the YAN Delivery Point. The YAN assumes all responsibility and liability for: (a) making arrangements for purifying or otherwise treating such water delivered by SRP to the YAN Delivery Point to meet applicable water quality standards established by federal, state, or other applicable authorities; or (b) operating water treatment facilities on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land to meet applicable water quality standards.

9.0 YAN PUMPED WATER

9.1 The YAN and the United States acting as trustee for the YAN shall have the right to Use YAN Pumped Water from the following sources: (A) wells that pump Water on the YAN Reservation, YAN Trust Land, or YAN After-Acquired Trust Land; and (B) Water

delivered by a Municipal Water Provider or Public Water System under Subparagraph 4.5. Except as provided for in Subparagraphs 4.12, 4.13.2.1, 4.18, 9.4, 9.5, and 9.6, the total amount of Water from all such sources shall not exceed a Maximum Annual Diversion Amount of 684.48 AFY and a Maximum Annual Depletion Amount of 515.56 AFY. The quantity of YAN Pumped Water Diverted for Use on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land in that Year shall count against the Total Maximum Annual Diversion Amounts and Total Maximum Annual Depletion Amounts set forth in Subparagraph 4.1.

9.2 To the extent that the Gila River Adjudication Court determines that YAN Pumped Water Diverted from wells operated by the YAN is Surface Water, the court may determine the priority date for such wells, if necessary.

9.3 YAN Pumped Water shall not include: (A) Water described in Subparagraphs 4.13.2.1 and 4.14.1 and Paragraph 5.0 that is Diverted from a well; and (B) Water that is recovered for Use from an underground storage facility permitted under State law under Subparagraph 4.19.

9.4 Pumping During the Interim Period

9.4.1 Subject to Subparagraph 9.1, during the Interim Period, the YAN or the United States acting as trustee for YAN, may exceed the limits for YAN Pumped Water prescribed in Subparagraph 9.1 up to a Maximum Annual Diversion Amount of 2,410.26 AFY and a Maximum Annual Depletion Amount of 2,410.26 AFY.

9.4.2 If, during the Interim Period, the YAN or the United States acting as trustee for the YAN exceeds the Maximum Annual Diversion Amount of 2,410.26 AFY or a Maximum Annual Depletion Amount of 2,410.26 AFY set forth in Subparagraph 9.4.1, the

YAN shall provide notice to the Parties and shall, upon request, meet and confer with the Salt River Project and any other affected Party to develop a plan to avoid any exceedance in the following Year, or if future exceedances cannot reasonably be avoided, to mitigate any future exceedance under a plan agreed to by the YAN, the United States acting as trustee for the YAN, SRP, and any affected Party. If a plan to mitigate for the exceedance cannot be developed after good faith negotiations among the YAN, the United States acting as trustee for the YAN, SRP, and any affected Party, the exceedance may be addressed in the Gila River Adjudication Proceedings.

9.5 Additional YAN Pumped Water When YAN Cragin Water, SRP Water, and CAP Water Are Insufficient for M&I Uses

9.5.1 After the Interim Period, in any Year in which the total amount of Water available to the YAN pursuant to Paragraph 6.0 and Subparagraphs 8.1 and 8.2 is insufficient to supply M&I Uses under Subparagraph 9.5.3 on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land, the YAN may exceed the Maximum Annual Diversion Amount of 684.48 AFY and the Maximum Annual Depletion Amount of 515.56 AFY for YAN Pumped Water in such Year to provide Water for M&I Uses on the YAN Reservation, YAN Trust Land, or YAN After-Acquired Trust Land, provided that such exceedance is (i) Used only for M&I Purposes, and (ii) satisfies at least one of the following conditions:

9.5.1.1 Any YAN Pumped Water that exceeds the Maximum Annual Diversion Amount of 684.48 AFY or the Maximum Annual Depletion Amount of 515.56 AFY is Diverted only from wells constructed after the Effective Date that are withdrawing only Groundwater, or, to the extent that such wells are withdrawing

Surface Water, the YAN, pursuant to State law, has severed and transferred a surface water right held under Paragraph 5.0 or Subparagraph 4.14 in an amount equal to or exceeding the amount of Surface Water being withdrawn from the wells, as defined by State law and consistent with the standards established by the Gila River Adjudication Court; or

9.5.1.2 The YAN uses Effluent, credits recovered from Water stored underground, or both, to offset pumping or ditch Diversions for its agricultural operations, to recharge the aquifer, or to augment the flow of the Verde River, as permitted by applicable law, in an amount that, in the aggregate, is equal to at least 25% of the YAN's M&I Uses, as calculated beginning at the end of the Interim Period using a ten (10)-Year rolling average. In addition to the measures described in the preceding sentence, the YAN and SRP may agree upon alternative actions to meet the requirements of this Subparagraph 9.5.1.2.

9.5.2 If the YAN exceeds the Maximum Annual Diversion Amount of 684.48 AFY or the Maximum Annual Depletion Amount of 515.56 AFY for YAN Pumped Water in any Year pursuant to Subparagraph 9.5.1, the exceedance may be addressed in the Gila River Adjudication Proceedings only if the YAN has failed to satisfy the conditions set forth in Subparagraph 9.5.1.1 or Subparagraph 9.5.1.2.

9.5.3 For purposes of Subparagraph 9.5, the Water sources described in Subparagraphs 8.1 and 8.2 and in Paragraph 6.0 shall be deemed "insufficient" to supply M&I Uses on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land when, in any given Year:

9.5.3.1 The aggregate quantity of Water available for delivery to the YAN from the sources described in Paragraph 6.0 and Subparagraphs 8.1 and 8.2 (not including YAN CAP Water that is leased pursuant to Subparagraph 6.4) is less than the amount of Water required by YAN to provide Water for all M&I Uses on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land as accounted for pursuant to Exhibit 9.5.3; or

9.5.3.2 The Water described in Subparagraph 9.5.3.1 cannot be physically delivered through the Cragin-Verde Pipeline Project to the YAN Delivery Point in an amount that is equal to the amount of Water required by YAN to provide Water for all M&I Uses on the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land as accounted for pursuant to Exhibit 9.5.3; or

9.5.3.3 The Water described in Subparagraph 9.5.3.1 to be delivered to the YAN Delivery Point is of such limited water quality that: (A) the existing YAN Drinking Water System is not technologically capable of treating such Water to produce potable Water that meets Safe Drinking Water Act standards; or (B) acceptance of such Water will cause substantial harm to the YAN Drinking Water System Project.

9.5.4 Upon the occurrence of any of the circumstances in Subparagraph 9.5.3, the YAN shall promptly provide notice to the Parties and shall meet and confer with SRP and the United States acting as trustee for the YAN to develop a plan to resolve the issue. Upon the occurrence of any of the circumstances in Subparagraph 9.5.3.3, the YAN shall take all commercially reasonable actions necessary to ensure that the YAN Drinking Water

System Project can treat the Water delivered through the Cragin-Verde Pipeline Project to produce potable Water that meets Safe Drinking Water Act standards.

9.6 Use of Additional YAN Pumped Water Required to Operate and Maintain Infrastructure on the YAN Reservation, YAN Trust Land or YAN After-Acquired Trust Land

9.6.1 After the Interim Period, in addition to the circumstances described in Subparagraph 9.5, the YAN may exceed the Maximum Annual Diversion Amount of 684.48 AFY and the Maximum Annual Depletion Amount of 515.56 AFY for YAN Pumped Water if:

9.6.1.1 the amount of the exceedance is attributable to the withdrawal of Water necessary under applicable industry standards to start up, test, accept, or maintain YAN wells, arsenic treatment systems or other water treatment systems and related equipment, such as motors, flow meters, pumps, and instrumentation on the YAN Reservation, YAN Trust Land or YAN After Acquired Trust Land; and

9.6.1.2 the amount of such withdrawals, collectively, do not exceed 2.5% of the YAN's M&I Uses, as calculated beginning at the end of the Interim Period using a ten (10)-Year rolling average; and

9.6.1.3 the YAN uses Effluent, credits recovered from Water stored underground, or both, to offset pumping or ditch Diversions for its agricultural operations, to recharge the aquifer, or to augment the flow of the Verde River as permitted by applicable law, in an amount that, in the aggregate, is equal to at least 2.5% of the YAN's M&I Uses, as calculated beginning at the end of the Interim Period using a ten (10)-Year rolling average. In addition to the measures described

in the preceding sentence, the YAN and SRP may agree upon alternative actions to meet the requirements of this Subparagraph 9.6.1.3.

9.6.2 If the YAN exceeds the Maximum Annual Diversion Amount of 684.48 AFY or the Maximum Annual Depletion Amount of 515.56 AFY for YAN Pumped Water in any Year pursuant to Subparagraph 9.6.1.1, the exceedance may be addressed in the Gila River Adjudication Proceedings only if the YAN has failed to satisfy the conditions set forth in Subparagraph 9.6.1.3.

9.7 Notwithstanding any exceedance permitted by Subparagraphs 9.4, 9.5, and 9.6, the YAN and the United States acting as trustee for the YAN shall not exceed the Total Maximum Annual Diversion Amount or the Total Maximum Annual Depletion Amount set forth in Subparagraph 4.1.

9.8 The YAN or the United States acting as trustee for the YAN shall report the amount of any exceedance in the Maximum Annual Diversion Amount and Maximum Annual Depletion Amount pursuant to Subparagraphs 4.12, 4.18, 9.4, 9.5 and 9.6 for YAN Pumped Water in the annual report required by Subparagraph 12.2.

10.0 DELIVERY OF YAN CRAGIN WATER, SRP WATER, AND YAN CAP WATER

10.1 The YAN and SRP shall execute the YAN-SRP Water Delivery and Use Agreement, a copy of which is attached as Exhibit 10.1 hereto.

10.2 Under the terms and conditions set forth in the YAN-SRP Water Delivery and Use Agreement, the YAN shall order from SRP, and SRP shall deliver, an amount not to exceed an average of 2910.26 AFY, up to a maximum of 3394.06 AFY of YAN Cragin Water, to the YAN Delivery Point or the East Verde Delivery Point, and an amount not to exceed an average of 500 AFY, up to a maximum of 583.86 AFY of SRP Water, to the

YAN Delivery Point. SRP shall have no obligation to transport YAN Cragin Water and SRP Water beyond the YAN Delivery Point nor any liability for failure to deliver YAN Cragin Water or SRP Water beyond the YAN Delivery Point under this Agreement. SRP's obligation under this Agreement to deliver YAN Cragin Water or SRP Water to the YAN is satisfied when YAN Cragin Water or SRP Water is delivered to the YAN Delivery Point for the benefit of the YAN. The YAN shall have the obligation to ensure the delivery of YAN Cragin Water or SRP Water from the YAN Delivery Point to the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land.

10.3 The delivery schedule on which the YAN shall receive YAN Cragin Water and SRP Water in a given Year shall be established pursuant to the terms of the YAN-SRP Water Delivery and Use Agreement.

10.4 The delivery schedule on which YAN shall receive YAN CAP Water, or YAN-Cragin Water delivered to the East Verde Delivery Point, via Exchange for Water from C.C. Cragin Reservoir, shall be established pursuant to the terms of the YAN-SRP Exchange Agreement entered into in accordance with Subparagraph 6.5.

10.5 Suspension, Interruption, or Reduction in Deliveries Pursuant to the YAN-SRP Water Delivery and Use Agreement

10.5.1 Temporary Interruptions Cragin Water and SRP Water shall be delivered to the YAN Delivery Point for the benefit of the YAN in accordance with this Agreement and the YAN's water order pursuant to the YAN-SRP Water Delivery and Use Agreement, except for: (A) interruptions or reductions in deliveries due to (1) water supply or water delivery facility limitations, or (2) uncontrollable forces as set forth in Subparagraph 10.7; (B) interruptions or reductions which are reasonably necessary or desirable for the

purposes of maintenance, repairs, replacements, installations, investigations, inspections, and associated activities of the C.C. Cragin Dam and Reservoir equipment, works, and facilities including, but not limited to, system dry-ups; (C) interruptions or reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations, inspections, and associated activities of the Cragin-Verde Pipeline Project equipment, works, and facilities; and (D) interruptions or reductions in the event that any agency of the State or federal government, or other entity with requisite jurisdiction and pursuant to applicable legal authority directs SRP to release water from C.C. Cragin Dam and Reservoir, in order to: (1) preserve the structural safety of C.C. Cragin Dam and Reservoir, (2) mitigate environmental impacts of the C.C. Cragin Dam and Reservoir, or (3) satisfy senior downstream Water Rights; and (E) interruptions or reductions in deliveries due to the YAN's delinquency in the payment of charges billed by SRP pursuant to the YAN-SRP Water Delivery and Use Agreement.

10.5.1.1 SRP, except in case of emergency, will give the YAN reasonable, advance notice of temporary interruptions or reductions in delivery pursuant to Subparagraph 10.5.1 and will attempt to remove the cause thereof with reasonable diligence.

10.5.1.2 After conferring with the YAN, SRP shall revise the delivery schedule under the YAN-SRP Water Delivery and Use Agreement, to the extent possible, to account for the occurrence of any interruptions or reductions in deliveries as described in Subparagraph 10.5.1.

10.5.2 Suspension. SRP's obligation to deliver water pursuant to the YAN-SRP Water Delivery and Use Agreement shall be suspended upon the occurrence of any of the following:

10.5.2.1 C.C. Cragin Dam and Reservoir no longer exists or is permanently disabled from storing water within the Allocation Capacity due to any circumstance;

10.5.2.2 The Cragin-Verde Pipeline Project no longer exists or is permanently disabled from delivering water due to any circumstance;

10.5.2.3 Uncontrollable forces as set forth in Subparagraph 10.7; or

10.5.2.4 The Little Colorado River Adjudication Court, in a final, nonappealable order, declines to confirm SRP's claimed right to store and use water in C.C. Cragin Dam and Reservoir as set forth in Certificate of Water Right No. 3696.0002.

10.6 Suspension, Interruption, or Reduction Deliveries Pursuant to the YAN-SRP Exchange Agreement

10.6.1 Temporary Interruptions Cragin Water shall be delivered to the East Verde Delivery Point and the YAN Delivery Point for the benefit of the YAN in accordance with this Agreement and the YAN's water order pursuant to the YAN-SRP Exchange Agreement, except for: (A) interruptions or reductions in deliveries due to (1) water supply or water delivery facility limitations, or (2) uncontrollable forces as set forth in Subparagraph 10.7; (B) interruptions or reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations, inspections, and associated activities of the C.C. Cragin Dam and

Reservoir equipment, works, and facilities including, but not limited to, system dry-ups; (C) interruptions or reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations, inspections, and associated activities of the SRP-Cragin Pumping System and the Cragin-Verde Pipeline Project, equipment, works, and facilities, including but not limited to, system dry ups and seasonal operations; (D) interruptions or reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations, inspections, and associated activities of the SRP water delivery system equipment, works, and facilities used to transport YAN Cragin Water to a permitted storage facility including, but not limited to, system dry-ups; and (E) interruptions or reductions in the event that any agency of the State or federal government, or other entity with requisite jurisdiction and pursuant to applicable legal authority directs SRP to release Water from C.C. Cragin Dam and Reservoir, in order to: (1) preserve the structural safety of C.C. Cragin Dam and Reservoir, (2) mitigate environmental impacts of the C.C. Cragin Dam and Reservoir, or (3) satisfy senior downstream Water Rights; and (F) interruptions or reductions in deliveries due to the YAN's delinquency in the payment of charges billed by SRP pursuant to the YAN-SRP Exchange Agreement.

10.6.1.1 SRP, except in case of emergency, will give the YAN reasonable, advance notice of temporary interruptions or reductions in delivery to the East Verde Delivery Point or YAN Delivery Point pursuant to Subparagraph 10.6.1 and will attempt to remove the cause thereof with reasonable diligence.

10.6.1.2 After conferring with the YAN, SRP shall revise the schedule under the YAN-SRP Exchange Agreement, to the extent possible, to account for the occurrence of any interruptions or reductions as described in Subparagraph 10.6.1.

10.6.2 Suspension SRP's obligation to deliver water pursuant to the YAN-SRP Exchange Agreement shall be suspended upon the occurrence of any of the following:

10.6.2.1 C.C. Cragin Dam and Reservoir no longer exists or is permanently disabled from storing water within the Allocation Capacity due to any circumstance;

10.6.2.2 The Cragin-Verde Pipeline Project no longer exists or is permanently disabled from delivering water due to any circumstance;

10.6.2.3 The SRP-Cragin Pumping System no longer exists or is permanently disabled from delivering water due to any circumstance;

10.6.2.4 Uncontrollable forces as set out in Subparagraph 10.7; or

10.6.2.5 The Little Colorado River Adjudication Court, in a final, nonappealable order, declines to confirm SRP's claimed right to store and use water in C.C. Cragin Dam and Reservoir as set forth in Certificate of Water Right No. 3696.0002.

10.7 Uncontrollable Forces The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform an obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, failure or shutdown of banks or banking systems; labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action

or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained in this Agreement shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

10.8 Resumption of Deliveries

10.8.1 In the event SRP suspends scheduled deliveries pursuant to Subparagraphs 10.5.2.1, 10.5.2.2, 10.6.2.1, 10.6.2.2 or 10.6.2.3, the Parties shall proceed in accordance with Subparagraph 10.10.

10.8.2 In the event SRP suspends scheduled deliveries pursuant to Subparagraphs 10.5.2.3 or 10.6.2.4, SRP shall resume scheduled deliveries once the “uncontrollable forces” no longer render performance impossible under the SRP Water Delivery and Use Agreement or YAN-SRP Water Exchange Agreement, as applicable.

10.9 Obligations and Rights Conditioned Upon Performance by the YAN The right of the YAN and the United States acting in its capacity as trustee for the YAN to receive YAN Cragin Water, SRP Water, and YAN CAP Water by Exchange pursuant to this Agreement, and SRP’s obligation to deliver YAN Cragin Water, SRP Water, and YAN CAP Water by Exchange pursuant to this Agreement, is conditioned upon performance by the YAN of its obligations under the YAN-SRP Water Delivery and Use Agreement and YAN-SRP Exchange Agreement, respectively, including payment by the YAN to SRP of all fees and costs required by such agreements.

10.10 Destruction of Facilities The sources of Water described in Paragraphs 6.0 and 8.0 and the delivery of YAN CAP Water to the YAN Delivery Point by Exchange are

dependent upon the existence of the C.C. Cragin Dam and Reservoir and the Cragin-Verde Pipeline Project to deliver such Water for Use by the YAN or the United States acting as trustee for the YAN. The destruction of any of these facilities by any cause shall not permanently extinguish the right of the YAN or the United States acting as trustee for the YAN to receive Water otherwise made available by the affected facility; provided, however, that such destruction may relieve the other Parties of the obligation to deliver such Water to the YAN or the United States acting as trustee for the YAN, until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the affected Parties in interest. For the C.C. Cragin Dam and Reservoir and the Cragin-Verde Pipeline Project, SRP and the Secretary shall use commercially reasonable efforts to seek the repair or replacement of the affected facility. If repair or replacement of the affected facility is not commercially reasonable: (1) the YAN shall be relieved of its payment obligations for the delivery of YAN Cragin Water, SRP Water, and YAN CAP Water by Exchange, to the YAN Delivery Point, pursuant to the YAN-SRP Water Delivery and Use Agreement and the YAN-SRP Exchange Agreement; (2) the YAN may pump additional YAN Pumped Water in accordance with Subparagraph 9.5, except that such additional YAN Pumped Water may be Used to provide water for any Use by the YAN on the YAN Reservation, YAN Trust Land and YAN After-Acquired Trust Land; and (3) neither the YAN nor SRP shall be responsible for the costs of the care, operation, and maintenance of the CVPP.

10.11 Within thirty (30) days of the occurrence of an event that has or will result in an interruption, reduction, or suspension pursuant to Subparagraphs 10.5 or 10.6;

10.11.1 If the affected facility is a component of the Cragin-Verde Pipeline Project, SRP, the Secretary, the YAN and other Parties with certificated rights to C.C. Cragin Dam and Reservoir who receive Water through the Cragin-Verde Pipeline Project shall meet to discuss such interruption, reduction, or suspension, and attempt to resolve the circumstances giving rise to the interruption, reduction, or suspension.

10.11.2 If the affected facility is a component of C.C. Cragin Dam and Reservoir, SRP, the Secretary, the YAN and other persons or entities with certificated rights to C.C. Cragin Dam and Reservoir shall meet to discuss such interruption, reduction, or suspension, and attempt to resolve the circumstances giving rise to the interruption, reduction, or suspension.

10.12 With respect to any action for interpretation or enforcement of the YAN-SRP Water Delivery and Use Agreement or the YAN-SRP Exchange Agreement, the Parties agree that the United States is not an indispensable party under Rule 19, Federal Rules of Civil Procedure, or Rule 19, Arizona Rules of Civil Procedure.

11.0 INSTREAM FLOW

11.1 As of the Effective Date, the YAN's Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-96926.001 for instream flow maintenance in the Verde River ("Instream Flow Application") is pending with the Arizona Department of Water Resources, a copy of which is attached to this Agreement as Exhibit 11.1A.

11.2 No later than 60 days after the date of enactment of the Act, the YAN shall file an amendment to the Instream Flow Application with Arizona Department of Water Resources setting forth Water Right attributes for the Instream Flow Application set forth in

Exhibit 11.1B of this Agreement. Any Party that has filed a Statement of Protest to the Instream Flow Application shall, at YAN's request, withdraw that Party's Protest.

11.3 Nothing in Paragraph 11.0 precludes the YAN from (A) further amending the Instream Flow Application; or (B) withdrawing the YAN Instream Flow Application No. 33-96926.001, and submitting a new application for a permit to appropriate public Water for instream flow maintenance in the Verde River within the Middle Verde District of the YAN Reservation as permitted by State law; provided, however, that any further amendment to the Instream Flow Application or the submission of a new application shall contain instream flow attributes that are substantially similar to those attributes set forth in Exhibit 11.1B. In the event the YAN seeks to further amend its Instream Flow Application or to submit a new application for a permit to appropriate Water for instream flow maintenance under the terms of this Subparagraph 11.3, any Party that has filed a Statement of Protest to the amended Instream Flow Application or to a new application shall, at YAN's request, withdraw that Party's Protest.

11.4 The YAN shall pay any fee or fees associated with meeting the requirements of Paragraph 11.0.

11.5 If the Arizona Department of Water Resources issues a certificate of water right for instream flow maintenance in the Verde River pursuant to Subparagraphs 11.2 or 11.3 to the YAN, or the United States acting as trustee for the YAN, the instream flow right described in the certificate of water right shall be included in the YAN Judgment. Upon the request of the YAN, the Secretary shall accept the assignment of and take into trust for the benefit of the YAN, any instream flow right described in such certificate of water right.

11.6 The Parties agree to support the inclusion of language in the Act that recognizes the YAN's cultural, religious, and traditional Uses for an instream flow in the Verde River.

12.0 MEASUREMENT, REPORTING, AND CALCULATION OF DIVERSIONS AND DEPLETIONS OF WATER

12.1 Measurement

12.1.1 The YAN shall install and maintain devices capable of measuring and recording all Diversions of Water from the sources of Water delivered to the YAN Reservation, YAN Trust Land, and YAN After-Acquired Trust Land under Subparagraphs 5.1, 5.2, 5.3, 9.0, and for the Uses of Effluent if necessary to comply with Subparagraph 9.5.1.2 and 9.6.1.3. The accuracy and verification of the measuring and recording devices used to measure Uses of Water for reporting under Paragraph 12.0 shall be in accordance with the manufacturer's specifications and to industry accepted accuracy standards. SRP may at reasonable times, at its sole expense and upon reasonable notice to the YAN, test or have tested the accuracy of the measuring and recording devices used to measure Uses of Water as required by this Subparagraph 12.1.1. If such measuring or recording device is not within the industry standards for measurement accuracy, then the YAN shall use due diligence, and in no event more than six (6) months, to correct the operation of the non-conforming device in order to bring it into compliance with industry standards.

12.1.2 SRP shall install and maintain devices capable of measuring and recording all Diversions of Water for the sources of Water delivered from the C.C. Cragin Dam and Reservoir to the YAN Delivery Point and to the East Verde Delivery Point. The accuracy and verification of the measuring and recording devices used to measure such deliveries shall be in accordance with the manufacturer's specifications and to industry accepted

accuracy standards. The YAN may at reasonable times, at its sole expense and upon reasonable notice to SRP, test or have tested the accuracy of the measuring and recording devices used to measure Uses of Water as required by this Subparagraph 12.1.2. If such measuring or recording device is not within the industry standards for measurement accuracy, then SRP shall use due diligence, and in no event more than six (6) months, to correct the operation of the non-conforming device in order to bring it into compliance with industry standards.

12.1.3 YAN shall implement procedures to record and collect data concerning all such Diversions of Water necessary to comply with Subparagraph 12.1.1. SRP shall implement procedures to record and collect data concerning all deliveries of Water necessary to comply with Subparagraph 12.1.2.

12.2 Reporting to the Gila River Adjudication Court

12.2.1 No later than July 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before July 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall file in the Gila River Adjudication Proceedings a report for the Year immediately preceding the Year in which the report is filed, in the form set forth as Exhibit 12.2 or as may otherwise be required by the Gila River Adjudication Court, showing:

12.2.1.1 all Diversions of Water from the sources of Water described in Subparagraph 4.1, except for Effluent (unless required to comply with Subparagraphs 9.5.2 or 9.6.1.3), Used on the Reservation, YAN Trust Land, and YAN After-Acquired Land by (A) the source of Water; (B) point(s) of Diversion; and (C) the place(s) of Use;

12.2.1.2 all Depletions of Water from the sources of Water described in Subparagraph 4.1, except for Effluent (unless required to comply with Subparagraphs 9.5.2 or 9.6.1.3), Used on the Reservation, YAN Trust Land, and YAN After-Acquired Land by: (A) the source of Water; (B) point(s) of diversion; and (C) the place(s) of Use, measured or calculated as provided in Subparagraphs 12.3, 12.5, and 12.6 for the Diversions of Water described in this Subparagraph 12.2.1.1;

12.2.1.3 all amounts of Water delivered to others in Exchange for the Diversion of Water described in Subparagraph 12.2.1.1;

12.2.1.4 all amounts of Water from the sources of Water described in Subparagraph 4.1, except Effluent (unless required to comply with Subparagraphs 9.5.2 or 9.6.1.3), Diverted by YAN for storage in underground storage facilities permitted under State law;

12.2.1.5 all amounts of YAN CAP Water leased to others; and

12.2.1.6 the median instream flow of the Verde River for each month of the Year as measured at the point of compliance under a certificate of water right issued by the Arizona Department of Water Resources pursuant to Paragraph 11.0, or as otherwise ordered by the Gila River Adjudication Court.

12.2.2 On or before July 1 of each Year, the YAN shall provide a copy of the report required to be filed pursuant to Subparagraph 12.2.1 to each Party as provided in Subparagraph 17.20 and as may otherwise be required by the Gila River Adjudication Court.

12.2.3 The YAN shall prepare such records as may be necessary to file and audit the reports required to be filed pursuant to Subparagraph 12.2.1, and shall maintain such records for a minimum period of three (3) years or as otherwise ordered by the Gila River Adjudication Court.

12.2.4 Any Party may petition the Gila River Adjudication Court to modify the form set forth in Exhibit 12.2 to ensure accurate reporting of the YAN Water Diversions and Depletions. Any other Party may object to such petition.

12.3 Calculation of Diversions and Depletions

12.3.1 Impoundments

The inventory of all Impoundments of Water on the Reservation or YAN Trust Land existing as of the Enforceability Date is attached as Exhibit 12.3.1. The inventory in Exhibit 12.3.1 shall be updated by the YAN and included in the annual report required by Subparagraph 12.2, as necessary to: (A) add or modify the description of any Impoundments of Water enlarged or constructed on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land after the Enforceability Date, and (B) to delete or modify the description of any Impoundments of Water no longer physically and permanently capable of partially or completely impounding Water.

12.3.2 Irrigation Use

12.3.2.1 No later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide to each Party a written report of all irrigated lands on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land irrigated at any time during the Year.

The report shall include for each YAN District: (A) the number of acres and type(s) of crop irrigated; (B) the source(s) of Water; (C) the point(s) of Diversion; (D) the method(s) of Diversion of all Water; (E) the AFY of Water Diverted at the point(s) of Diversion; and (F) the first and last dates of Diversion of Water for Irrigation Use.

12.3.2.2 Depletions of Water resulting from the Irrigation of lands on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land shall be computed annually as provided by Exhibit 12.3.2.2.

12.3.3 M&I Uses

12.3.3.1 No later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide to each Party a written report, of: (A) all Diversions of Water within each YAN District of the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land for all M&I Use of Water during the prior Year, and (B) all Diversions of Water supplied by an off-Reservation Municipal Water Provider or Public Water System for M&I Use, directly or by exchange, on each YAN District of the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land.

12.3.3.2 For Water Diverted on the Reservation, YAN Trust Land, and YAN After-Acquired Land, the report shall include: (A) the point(s) of Diversion; (B) method(s) of Diversion; (C) place(s) of Use; and (D) the AFY Diverted. For all M&I Uses on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land that are supplied by an off-Reservation Municipal Water Provider or Public Water System, the report shall include: (A) the place(s) of Use; (B) the AFY Diverted; and

(C) the identity of the Municipal Provider or Public Water System providing water for M&I Uses.

12.3.3.3 Depletions of Water for M&I Uses on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land in any Year shall be equal to the amount Diverted for such M&I Uses.

12.3.4 Livestock Consumption

12.3.4.1 No later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide to each Party a written report of the total estimated Diversion of Water on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land for livestock consumption that is not otherwise accounted for under Subparagraph 12.3.4.2. The report shall include: (A) an estimate of the greatest number of livestock on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land during the prior Year, and (B) the methodology used in calculating the estimated Diversions of Water for livestock consumption. Notwithstanding this Subparagraph 12.3.4.1, livestock consumption of Effluent shall not count against the Total Maximum Annual Diversion Amount and Total Maximum Annual Depletion Amount.

12.3.4.2 Water consumed by livestock on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land that is provided by an M&I provider, or is otherwise counted against the Total Maximum Annual Diversion Amount and Total Maximum Annual Depletion Amount shall not be included in the quantity required to be reported under Subparagraph 12.3.4.1.

12.3.4.3 Depletions of Water for livestock consumption on the Reservation, YAN Trust Land, or YAN After-Acquired Trust Land in any Year shall be equal to the amount Diverted for such Uses.

12.3.5 Mining Use

12.3.5.1 No later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide each Party a written report of all Diversions of Water on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land for all mining Use of Water during the prior Year. The report shall include: (A) the point(s) of Diversion; (B) method(s) of Diversion; (C) place(s) of use; and (D) AFY Diverted.

12.3.5.2 Depletion of water used for mining purposes on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land shall be equal to the amount Diverted for such Uses.

12.3.6 YAN CAP Water

12.3.6.1 All YAN CAP Water leased to others in any Year shall be counted as a Diversion and Depletion by YAN in such Year without regard to the quantity of water actually delivered under the terms of any such Lease Agreement.

12.3.6.2 For YAN CAP Water Exchanged with SRP pursuant to the YAN-SRP Exchange Agreement, the Diversion of YAN CAP Water in any Year shall be the quantity of YAN CAP Water delivered to SRP as described in the YAN-SRP Exchange Agreement. Delivery of Water by SRP to the YAN Delivery Point

pursuant to the YAN-SRP Exchange Agreement in Exchange for YAN CAP Water shall not count as a Diversion or Depletion by YAN in such Year.

12.3.6.3 The Depletion of YAN CAP Water in any Year shall equal the amount Diverted.

12.3.7 YAN Cragin Water

All YAN Cragin Water delivered to the East Verde Delivery Point and all YAN Cragin Water delivered to the YAN Delivery Point in any Year shall be counted as a Diversion and Depletion by YAN in such Year. Notwithstanding the foregoing, and in accordance with Subparagraph 12.5.1, the recovery and Use of credits recovered from the storage of YAN Cragin Water and delivered to the YAN Delivery Point by Exchange pursuant to the YAN SRP Exchange Agreement shall not count as a Diversion or Depletion.

12.3.8 SRP Water

SRP Water delivered to the YAN Delivery Point in any Year shall be counted as a Diversion and Depletion in such Year.

12.4 Effluent

12.4.1 To the extent necessary to demonstrate compliance with Subparagraphs 9.5.1.2 and 9.6.1.3, no later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide each Party a written report of the amount of Effluent Used on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land to comply with Subparagraphs 9.5.1.2 and 9.6.1.3. The report shall include:

(A) the source of Effluent; (B) the purpose(s) of use of the Effluent; (C) the method(s) of Use; (D) the place(s) of Use; and (E) the AFY of Effluent Used.

12.4.2 The Use or reuse of Effluent or return flows generated from the Use of such Effluent, including the storage of Effluent in an Impoundment or in a permitted storage facility pursuant to Subparagraph 4.19, shall not count as a Diversion or Depletion and shall not count in determining the Total Maximum Annual Diversion Amount or Total Maximum Annual Depletion Amount.

12.5 Recovery of Storage Credits

12.5.1 The recovery and Use of credits recovered from Water stored underground pursuant to Subparagraph 4.19 or return flows generated from the Use of such credits, shall not count as a Diversion or Depletion and shall not count in determining the Total Maximum Annual Diversion Amount or Total Maximum Annual Depletion Amount in any Year.

12.5.2 To the extent necessary to demonstrate compliance with Subparagraphs 9.5.1.2 or 9.6.1.3, no later than April 1 of the second Year following the Year in which the Enforceability Date occurs, and on or before April 1 of each Year thereafter, the YAN or the United States acting as trustee for the YAN shall provide each Party a written report of the amount of credits recovered from Water stored underground pursuant to Subparagraph 4.19 and Used on the Reservation, YAN Trust Land, and YAN After-Acquired Trust Land to comply with Subparagraphs 9.5.1.2 and 9.6.1.3. The report shall include: (A) the point(s) of Diversion; (B) the method(s) of Diversion; (C) the place of Use, and (D) the AFY of credits recovered from Water stored underground pursuant to Subparagraph 4.19 and Used.

12.6 Except for the Use of Effluent and the Use of credits recovered from Water stored underground pursuant to Subparagraph 4.19, any Diversion of Water from sources described in Subparagraph 4.1, which does not result in return flow to the Verde River Watershed, shall be considered a Depletion.

12.7 In the event any Party believes the calculation of Diversions or Depletions as provided in Subparagraphs 12.2 or 12.3 is no longer the most accurate measure of such Diversions or Depletions, such Party may request the other Parties to consider amending Subparagraphs 12.2 or 12.3 as applicable, including their Exhibits, to provide a more accurate measure of calculating such Diversions or Depletions. Any such requests shall include the proposed change in methodology for measuring Diversions or Depletions. In the event the Parties cannot agree on any such requested change, the requesting Party may petition the Gila River Adjudication Court to review the calculation of Diversions or Depletions as provided in Subparagraphs 12.2 or 12.3 and modify the calculation for future reports to the Court. Notwithstanding any other provisions of Paragraph 12.0, any recalculation of the Diversions or Depletions by the Gila River Adjudication Court shall not reduce the Maximum Annual Depletion Amount or the Maximum Annual Diversion Amount available to the YAN and the United States as trustee for the YAN for each Water Right set forth in Subparagraph 4.1

12.8 Notwithstanding any other provisions of Paragraph 12.0, the Diversion or Depletion of Water shall not be counted more than once for a single Use of Water.

13.0 WAIVERS, RELEASES AND RETENTIONS OF CLAIMS

13.1 Waiver, Release, And Retention of Claims for Water Rights and Injury to Water Rights by the YAN, on Behalf of the YAN and the Members of the YAN (but not Members in the Capacity of the Members as Allottees), and the United States, Acting as Trustee for the YAN and the Members of the YAN (but not Members in the Capacity of the Members as Allottees)

13.1.1 Except as provided in Subparagraph 13.1.3, the YAN, on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), and the United States, acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), as part of the performance of the respective obligations of the YAN and the United States under this Agreement and the Act, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), and any other individual, entity, corporation, or municipal corporation under federal, State, or other law for all:

(a) Past, present, and future claims for Water Rights, including rights to Colorado River Water, for YAN Land, arising from time immemorial and, thereafter, forever;

(b) Past, present, and future claims for Water Rights, including rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on the aboriginal occupancy of land by the YAN, the predecessors of the YAN, the Members of the YAN, or the predecessors of the Members of the YAN;

(c) Past and present claims for Injury to Water Rights, including rights to Colorado River Water, for YAN Land, arising from time immemorial through the Enforceability Date;

(d) Past, present, and future claims for Injury to Water Rights, including

rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on the aboriginal occupancy of land by the YAN, the predecessors of the YAN, the Members of the YAN, or the predecessors of the Members of the YAN;

(e) Claims for Injury to Water Rights, including rights to Colorado River Water, arising after the Enforceability Date, for YAN Land, resulting from the off-Reservation Diversion or use of Water in a manner not in violation of this Agreement or State law; and

(f) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, any judgment or decree approving or incorporating the Agreement, or the Act.

13.1.2 The waiver and release of claims described in Subparagraph 13.1.1 shall be in the form set forth in Exhibit 13.1 and shall take effect on the Enforceability Date.

13.1.3 Notwithstanding the waiver and release of claims described in Subparagraph 13.1.1 and set forth in Exhibit 13.1, the YAN, acting on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), and the United States, acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), shall retain any right:

(a) Subject to Subparagraph 17.9, to assert claims for injuries to, and seek enforcement of, their rights under the Agreement or the Act, in any federal or State court of competent jurisdiction; and

(b) To assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the Gila River Adjudication Court,

including the Verde River Decree; and

(c) To assert claims for Water Rights or Injury to Water Rights acquired before the Enforceability Date pursuant to Subparagraph 4.14.1; and

(d) To challenge or object to any claims for Water Rights or Injury to Water Rights by or for any Indian Tribe, or the United States, acting on behalf of any Indian Tribe; and

(e) To assert past, present, or future claims for Injury to Water Rights against any Indian Tribe, or the United States, acting on behalf of any Indian Tribe; and

(f) To assert claims for Injury to Water Rights arising after the Enforceability Date for YAN Land resulting from any off-Reservation Diversion of Surface Water within the Verde River Watershed, other than from a well, if the Diversion or Use of Surface Water was first initiated after the Effective Date and was not the subject of a permit to appropriate Surface Water issued by the Arizona Department of Water Resources before the Effective Date; and

(g) To assert claims for Injury to Water Rights arising after the Enforceability Date for YAN Land resulting from any off-Reservation Diversion or Use of Water from a well, if:

(1) the Water is determined by the Gila River Adjudication Court to be Surface Water; and

(2) the well is located within the Verde River Watershed above USGS Gage No. 09506000, identified as “Verde River near Camp Verde, AZ”; and

(3) the well was constructed after the Effective Date; and

(4) the well is not:

(i) a Replacement Well; or

(ii) a new point of Diversion for a Surface Water Use predating the Effective Date; or

(iii) operated by a Municipal Water Provider pursuant to an agreement with the YAN under Subparagraph 16.1.2; or

(iv) constructed for Domestic Use or Stock Watering Use; or

(v) constructed to supply a Stockpond with a capacity not to exceed 4 acre-feet; or

(vi) used by a city or town in the Prescott active management area to:

(a) withdraw Underground Water from land located in the Big Chino sub-basin of the Verde River groundwater basin that has historically irrigated acres for transportation to an adjacent initial active management under the criteria set forth in A.R.S. §45-555(A)-(D) as that statute exists as of the Effective Date, a copy of which is attached as Exhibit 13.1.3; or

(b) withdraw and transport up to 8,068 AFY of Underground Water from the Big Chino sub-basin of the Verde River groundwater basin to the Prescott active management area pursuant to the criteria set forth in A.R.S. §45-555(E) and (G) as that statute exists as of the Effective Date, a copy of which is attached as Exhibit 13.1.3; or

(c) withdraw and transport Underground Water from land located in the Big Chino sub-basin of the Verde River groundwater

basin to the Prescott active management area to meet the additional needs of an Indian tribe in the Prescott active management area pursuant to a federally-approved Indian water rights settlement under A.R.S §45-555(G) and (F) as that statute exists as of the Effective date, a copy of which is attached as Exhibit 13.1.3; or

(vii) providing a source of supply for an M&I Use for a Municipal Water Provider or a Public Water System (that does not have an agreement with the YAN pursuant to Subparagraph 16.1.2) that meets all of the following conditions:

(a) the well is located outside the lateral limits of the Verde River Subflow Zone; and

(b) all buildings constructed after the well is drilled that are served by the Municipal Water Provider or Public Water System have WaterSense Labeled Fixtures, or fixtures that are equivalent to or exceed WaterSense specifications for water efficiency and performance as set forth in Exhibit 2.90; and

(c) the Municipal Water Provider or Public Water System uses its best efforts to ensure that all outdoor landscaping installed after the well is drilled that is served by the Municipal Water Provider or Public Water System uses only native or drought tolerant plants, except as provided for in Subsection 13.1.3(g)(4)(vii)(d); and

(d) all turf or other landscape areas not using native or drought tolerant plants, including for schools, parks, cemeteries, golf courses,

or common areas, installed after the well is drilled are, to the extent permitted by State law, prohibited by the Municipal Water Provider or Public Water System unless the plants are 100% served with Effluent, greywater, harvested rainwater, or some combination thereof; and

(e) ornamental water features (except swimming pools), ponds, and lakes constructed after the well is drilled are, to the extent permitted by State law, prohibited by the Municipal Water Provider or Public Water System unless the features, ponds, and lakes are 100% served with Effluent, greywater, harvested rainwater, or some combination thereof.

13.2 Waiver, Release, and Retention of Claims for Water Rights and Injury to Water Rights by the YAN, on Behalf of the YAN and the Members of the YAN (but not Members in the Capacity of the Members as Allottees), Against the United States

13.2.1 Except as provided in Subparagraph 13.2.3, the YAN, acting on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), as part of the performance of the obligations of the YAN under this Agreement and the Act, shall execute a waiver and release of all claims against the United States, including agencies, officials, and employees of the United States, under federal, State, or other law for all:

- (a) Past, present, and future claims for Water Rights, including rights to Colorado River Water, for YAN Land, arising from time immemorial and, thereafter, forever;
- (b) Past, present, and future claims for Water Rights, including rights to

Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on the aboriginal occupancy of land by the YAN, the predecessors of the YAN, the Members of the YAN, or the predecessors of the Members of the YAN;

(c) Past and present claims relating in any manner to damage, losses, or injury to land or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, Diversion, or taking of Water, or claims relating to the failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the State that first accrued at any time prior to the Enforceability Date;

(d) Past and present claims for Injury to Water Rights, including rights to Colorado River Water, for YAN Land, arising from time immemorial through the Enforceability Date;

(e) Past, present, and future claims for Injury to Water Rights, including rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on the aboriginal occupancy of land by the YAN, the predecessors of the YAN, the Members of the YAN, or the predecessors of the Members of the YAN;

(f) Claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date for YAN Land, resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of this Agreement or State law; and

(g) Past, present, and future claims arising out of, or relating in any

manner to, the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act;

13.2.2 The waiver and release of claims described in Subparagraph 13.2.1 shall be in the form set forth in Exhibit 13.2 and shall take effect on the Enforceability Date.

13.2.3 Notwithstanding the waiver and release of claims described in Subparagraph 13.2.1 and set forth in Exhibit 13.2, the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees) shall retain any right:

(a) Subject to Subparagraph 17.9, to assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any federal or State court of competent jurisdiction;

(b) To assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the Gila River Adjudication Court, including the Verde River Decree;

(c) To assert claims for Water Rights or Injury to Water Rights acquired before the Enforceability Date pursuant to Subparagraph 4.14.1;

(d) To challenge or object to any claims for Water Rights or Injury to Water Rights by or for any Indian Tribe or the United States, acting on behalf of any Indian Tribe;

(e) To assert past, present, or future claims for Injury to Water Rights against any Indian tribe or the United States, acting on behalf of any Indian Tribe;

(f) To assert claims for Injury to Water Rights arising after the Enforceability Date for YAN Land resulting from any off-Reservation Diversion of Surface Water within the Verde River Watershed, other than from a well, if the

Diversion or Use of Surface Water was first initiated after the Effective Date and was not the subject of a permit to appropriate Surface Water issued by the Arizona Department of Water Resources before the Effective Date; and

(g) To assert claims for Injury to Water Rights arising after the Enforceability Date for YAN Land resulting from any off-Reservation Diversion or use of Water from a well, if:

(1) the Water is determined by the Gila River Adjudication Court to be Surface Water; and

(2) the well is located within the Verde River Watershed above USGS Gage No. 09506000, identified as “Verde River near Camp Verde, AZ”; and

(3) the well was constructed after the Effective Date; and

(4) the well is not:

(i) a Replacement Well; or

(ii) a new point of Diversion for a Surface Water Use predating the Effective Date; or

(iii) operated by a Municipal Water Provider pursuant to an agreement with the YAN under Subparagraph 16.1.2; or

(iv) constructed for Domestic Use or Stock Watering Use; or

(v) constructed to supply a Stockpond with a capacity not to exceed 4 acre-feet.

13.3 Waiver, Release, and Retention of Claims by the United States in all Capacities (Except as Trustee for an Indian Tribe Other Than the YAN) Against the YAN and the Members of the YAN

13.3.1 Except as provided in Subparagraph 13.3.3, the United States, in all capacities (except as trustee for an Indian Tribe other than the YAN), as part of the performance of the obligations of the United States under this Agreement and the Act, shall execute a waiver and release of all claims against the YAN, the Members of the YAN, or any agency, official, or employee of the YAN, under federal, State, or any other law for all:

(a) Past and present claims for Injury to Water Rights, including injury to rights to Colorado River Water, resulting from the Diversion or use of Water on YAN Land arising from time immemorial through the Enforceability Date;

(b) Claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date, resulting from the Diversion or use of Water on YAN Land in a manner that is not in violation of this Agreement or State law; and

(c) Past, present, and future claims arising out of, or related in any manner to, the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act.

13.3.2 The waiver and release of claims under Subparagraph 13.3.1 shall be in the form set forth in Exhibit 13.3 and shall take effect on the Enforceability Date.

13.3.3 Notwithstanding the waiver and release of claims described in Subparagraph 13.3.1 and set forth in Exhibit 13.3, the United States shall retain any right to assert any claim not expressly waived in accordance with that Subparagraph and that Exhibit.

13.4 Waiver, Release, and Retention of Claims by Parties Other Than the YAN on Behalf of the YAN and the Members of the YAN, and the United States Acting as Trustee for the YAN and the Members of the YAN

13.4.1 Except as provided in Subparagraph 13.4.3, the Parties, except the YAN on behalf of the YAN and the Members of the YAN, and the United States, acting as trustee for the YAN and the Members of the YAN, shall execute a waiver and release of any claims against the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees) and the United States, acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), under federal, State, or other law for all:

(a) Past and present claims for Injury to Water Rights, including rights to Colorado River Water, resulting from the Diversion or use of Water on YAN Land arising from time immemorial through the Enforceability Date;

(b) Claims for Injury to Water Rights, including rights to Colorado River Water, arising after the Enforceability Date resulting from the Diversion or Use of Water on or for YAN Land in a manner not in violation of this Agreement or State law; and

(c) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act.

13.4.2 The waiver and release of claims described in Subparagraph 13.4.1 shall be in the form set forth in Exhibit 13.4 and shall take effect on the Enforceability Date.

13.4.3 Notwithstanding the waiver and release of claims described in Subparagraph 13.4.1 and set forth in Exhibit 13.4, the Parties, other than the YAN, acting on behalf of the

YAN and the Members of the YAN, and the United States, acting as trustee for the YAN and the Members of the YAN, shall retain any right to:

(a) Subject to Subparagraph 17.9, assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State or federal court of competent jurisdiction;

(b) Assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the court in the Gila River Adjudication Proceedings, including the Gila River Adjudication Decree;

(c) Assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the court in the Little Colorado River Adjudication Proceedings;

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

(e) Assert past, present, and future claims to Colorado River Water that are not inconsistent with this Agreement;

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

(g) Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein.

13.5 Satisfaction of Water Rights and Other Benefits

13.5.1 YAN and the Members of the YAN

13.5.1.1 The benefits provided under this Agreement shall be in complete replacement of, complete substitution for, and full satisfaction of any claim of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees) against the Parties, including the United States, that is waived and released by the YAN acting on behalf of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees) under Subparagraphs 13.1 and 13.2.

13.5.1.2 Any entitlement to Water of the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees) or the United States acting in the capacity of the United States as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees), for YAN Land shall be satisfied out of the water resources and other benefits granted, confirmed, quantified, or recognized by this Agreement or the Act to or for the YAN, the Members of the YAN (but not Members in the capacity of the Members as Allottees), and the United States, acting in the capacity of the United States as trustee for the YAN and the Members of the YAN (but not Members in the capacity of the Members as Allottees).

13.5.2 Notwithstanding Subparagraph 13.5.1, nothing in this Agreement or the Act:

13.5.2.1 Recognizes or establishes any right of a Member of the Tribe to Water on YAN Land; or

13.5.2.2 Prohibits the YAN from acquiring additional Water Rights by purchase or donation of land, credits, or Water Rights.

13.6 Effect on Members

Except as provided in Subparagraphs 13.1, 13.2 and 13.5.1, this Agreement and the Act shall not affect any rights of any Member of the YAN to Water for land outside of YAN Land.

13.7 Effect on Dinah Hood Allotment

13.7.1 Nothing in this Agreement:

- (a) Quantifies or diminishes any Water Right, or any claim or entitlement to water for the Dinah Hood Allotment; or
- (b) Precludes beneficial owners of the Dinah Hood Allotment, or the United States, acting in its capacity as trustee for beneficial owners of the Dinah Hood Allotment, from making claims for Water Rights in Arizona. To the extent authorized by applicable law, beneficial owners of the Dinah Hood Allotment, or the United States, acting in its capacity as trustee for beneficial owners of the Dinah Hood Allotment, may make claims to, and may be adjudicated, individual Water Rights in Arizona.

13.7.2 Notwithstanding Subparagraph 13.7.1, the YAN, in its capacity as a holder of a beneficial real property interest in the Dinah Hood Allotment, shall not object to, challenge or dispute the claims of Water users to Water from the Verde River Watershed, in the Gila River Adjudication Proceedings or in any other judicial or administrative proceeding.

13.8 No Effect on Actions Relating to Health, Safety or Environment

13.8.1 Nothing in the Agreement or the Act affects any right of the United States or the YAN on its own behalf or on behalf of its Members to take any action authorized by law relating to health, safety, or the environment, including: (A) The Federal Water Pollution Control Act, commonly known as “the Clean Water Act”, (33 U.S.C.1251 et seq.); (B) The Safe Drinking Water Act (42 U.S.C. 300f et seq.); (C) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and (D) any regulations implementing the Acts described in Subparagraphs 13.8.1(A), (B), or (C).

13.9 Form of Judgment

The Parties that are parties to the Gila River Adjudication Proceedings shall file and seek approval of the YAN Judgment substantially in the form of Exhibit 13.9.

14.0 OBLIGATIONS OF THE PARTIES

14.1 No Per Capita Distributions Neither the federal funds authorized in the Act nor any contribution pursuant to this Agreement shall be distributed to any Member of the YAN on a per capita basis.

14.2 Binding Affect Except as provided in Subparagraphs 14.6, 14.7, and 14.9, or the Act the Parties shall not be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

14.3 SRP Rights to East Clear Creek and C.C. Cragin Reservoir SRP shall assert and defend its claims and rights to divert water from East Clear Creek for storage in C.C. Cragin Dam and Reservoir in the Gila River Adjudication Proceedings and Little Colorado River Adjudication Proceedings, as applicable. SRP shall assert and defend its claim to the diversion of water from C.C. Cragin Dam and Reservoir for use within the Salt River

Reservoir District and for delivery of YAN Cragin Water and SRP Water to the YAN Delivery Point for the benefit of the YAN in accordance with the terms of this Agreement.

14.4 SRP Rights to East Clear Creek and C.C. Creek and C.C. Cragin Dam and Reservoir Consistent with the terms of this Agreement, the YAN, and the United States acting as trustee for the YAN, shall not object to the claims and rights of SRP to store and use water from East Clear Creek and C.C. Cragin Dam and Reservoir.

14.5 YAN Rights to YAN Cragin Water and SRP Water The YAN, and the United States acting as trustee for the YAN, shall assert and defend the YAN's claims and rights to the diversion of water from C.C. Cragin Dam and Reservoir in accordance with the terms of this Agreement for Use on the Reservation, on YAN Trust Land, and on YAN After-Acquired Trust Land in the Gila River Adjudication Proceedings and Little Colorado River Adjudication Proceedings, as applicable. Consistent with the terms of this Agreement, the Parties shall not object to the claims and rights of the YAN, or the United States acting as trustee for the YAN, to use water from C.C. Cragin Dam and Reservoir in accordance with the terms of this Agreement.

14.6 Obligations of the Parties Upon the Effective Date Upon the Effective Date, the Parties agree to be bound by the obligations described in this Subparagraph 14.6.

14.6.1 Good Faith Each Party shall have the obligation to work in good faith to satisfy the conditions of this Agreement and the conditions of enforceability of this Agreement as set forth in Paragraph 15.0 and section 112 of the Act.

14.6.2 Legislative Support The Parties, excluding the United States, agree to use their good faith efforts to support the appropriations authorized in section 107 of the Act.

14.6.3 Stay of Litigation for YAN Upon the Effective Date As of the Effective Date, the Parties agree to: (A) request a stay of all litigation in the Verde River Watershed relating to the claims of the YAN and the United States acting as trustee for the YAN (except for the United States' claims as trustee for the Allottees of the Dinah Hood Allotment); and (B) request to remove the claims of the YAN and the United States acting as trustee for the YAN (except for the United States' claims as trustee for the Allottees of the Dinah Hood Allotment) from the Lower Verde Valley Hydrographic Survey Report under A.R.S. 45-256 that is currently scheduled for publication by Arizona Department of Water Resources on or before September 30, 2028. Nothing in this Subparagraph shall prohibit the YAN or the United States acting as trustee for the YAN from filing or amending claims in the Gila River Adjudication Proceedings, consistent with this Agreement.

14.7 Obligations of the Parties Upon the Enactment of the Act through the Enforceability Date Upon the enactment of the Act but before the Enforceability Date, the Parties agree to be bound by the additional obligations described in this Subparagraph 14.7.

14.7.1 Subject to the obligations of the YAN and the United States acting as trustee for the YAN as set forth in separate agreements with City of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale under Subparagraph 16.1.2, the YAN and the United States acting as trustee for the YAN, may participate in the Gila River Adjudication Proceedings only with respect to the following: (A) seeking the court's approval of (1) the YAN Judgment in the Gila River Adjudication Proceedings pursuant to the Arizona Supreme Court's May 16, 1991, Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes and (2) any motions or

stipulations required by the Settlement Agreement; (B) providing comments, statutory objections, briefing, or argument on technical reports prepared by the Arizona Department of Water Resources pertaining to the Subflow Zone, including cone of depression testing, groundwater modeling, depletion testing, and determination of the vertical extent of the Subflow Zone in the Verde River Watershed; and (C) providing comments, briefing, or argument regarding a petition or motion to adopt or modify a special procedural rule for the Gila River Adjudication Proceedings. Nothing in this Subparagraph shall prohibit the YAN or the United States acting as trustee for the YAN from filing or amending claims in the Gila River Adjudication Proceedings, consistent with this Agreement.

14.7.2 Withdrawal of Objections in the San Pedro HSR and Agreement Not to Object The Arizona Department of Water Resources issued a Hydrographic Survey Report for the San Pedro River Watershed in November 1991 (“San Pedro HSR”). The YAN and the United States filed objections to watershed file reports within the San Pedro HSR. The YAN and the United States acting as trustee for the YAN shall: (A) withdraw their objections to watershed file reports within the San Pedro HSR; (B) not object to or comment on future preliminary or final hydrographic survey reports issued by the Arizona Department of Water Resources in the Gila River Adjudication Proceedings; and (C) participate in the Gila River Adjudication Proceedings only as provided in Subparagraphs 14.7.1, 14.7.2 and 14.8.

14.8 Participation in the Gila River Adjudication Proceedings After the Enforceability Date The YAN and the United States acting as trustee for the YAN and the Members of the YAN (except for the United States’ claims as trustee for the Allottees of the Dinah Hood Allotment), may participate in the Gila River Adjudication Proceedings after

the Enforceability Date only with respect to administration and enforcement of the YAN Judgment and this Agreement, including the right to assert and defend claims in the Gila River Adjudication Proceedings for Water Rights based on State law that are acquired or initiated after the Enforceability Date pursuant to Subparagraphs 4.13.2.1, 4.14.1, and 4.20.2.

14.9 Stipulation Not later than 30 days after the Effective Date, in order to effectuate the obligations set forth in Subparagraphs 14.6.3 and 14.7, the Parties who are parties to the Gila River Adjudication Proceedings shall file a stipulation or stipulations in the Gila River Adjudication Proceedings in substantially the form attached hereto as Exhibit 14.9.

14.10 Expanded Definition of the YAN For purposes of Subparagraphs 14.7 and 14.8 only, “YAN” includes the Yavapai-Apache Nation and its agents or any third party acting on its behalf.

14.11 Failure to Enact the Yavapai-Apache Nation Water Rights Settlement Act of 20__ If the Parties are unable to secure the enactment of the Act, before: (A) the publication of the Final Lower Verde Valley Hydrographic Survey Report under A.R.S. 45-256(B); or (B) December 31, 2031, whichever is sooner, the YAN may elect, after discussions with the Parties, to terminate this Agreement in its entirety.

15.0 ENFORCEABILITY DATE

15.1 Conditions to the Enforceability Date This Agreement, including the waivers and releases of claims described in Subparagraphs 13.1 through 13.4, shall take effect and be fully enforceable, on the date that the Secretary publishes in the Federal Register a statement of findings that:

15.1.1 to the extent this Agreement conflicts with the Act, this Agreement has been

revised through an amendment to eliminate the conflict and the revised Agreement, including any exhibit requiring execution by any Party, has been executed by the required Party;

15.1.2 the waivers and releases of claims described in section 108 of the Act have been executed by the YAN and the United States;

15.1.3 the Abstracts referenced in Subparagraphs 4.20.1 have been completed by the YAN

15.1.4 the full amounts described in section 107 of the Act, have been appropriated;

15.1.5 the full amount described in section 107 of the Act, as adjusted through the Enforceability Date by section 107 of the Act, has been deposited into the Cragin-Verde Pipeline Project Fund Account of the Tú nłjłńíhoh Water Infrastructure Project Fund;

15.1.6 the full amount described in section 107 of the Act, as adjusted through the Enforceability Date by section 107 of the Act, has been deposited into the YAN Drinking Water System Fund Account of the Tú nłjłńíhoh Water Infrastructure Project Fund;

15.1.7 the full amounts described in section 107 of the Act, as adjusted through the Enforceability Date by section 107 of the Act, has been deposited into the Yavapai-Apache Nation Water Settlement Trust Fund Accounts;

15.1.8 the Arizona Department of Water Resources has conditionally approved the severance and transfer of SRP's right to the diversion and beneficial use of water under Arizona Department of Water Resources' Certificate of Water Right No. 3696.0002 as described in Paragraph 8.0 of the Agreement, in an amount not to exceed an average of 3,410.26 AFY, to the YAN and the United States in its capacity as trustee for the YAN, and has issued a conditional certificate of water right to the YAN and the United States in its

capacity as trustee for the YAN, to become effective on the Enforceability Date;

15.1.9 the changes in places of use and points of diversion for the surface water rights to the Verde River as described in Subparagraph 5.4 of the Agreement have been conditionally approved, to become effective on the Enforceability Date, provided that the YAN, in its sole discretion, may waive this condition;

15.1.10 the Gila River Adjudication Court has included the water right for instream flow for the YAN and the United States acting as trustee for the YAN as described in Subparagraphs 11.2 and 11.3 in the YAN Judgment, which substantially conforms to the attributes described in Exhibit 11.1B, provided that the YAN, in its sole discretion, may waive this condition;

15.1.11 except as otherwise provided in Subparagraphs 15.1.9 and 15.1.10, the Gila River Adjudication Court has approved the YAN Judgment in substantially the same form attached as Exhibit 13.9, as amended to ensure consistency with the Act;

15.1.12 the Secretary has issued a final record of decision approving the construction of the Tú níííníhoh Water Infrastructure Project as described in section 112 of the Act;

15.1.13 the YAN and the Town of Clarkdale have executed the Water and Sewer Service Agreement described in Exhibit 16.1.2.3 to the Yavapai-Apache Nation Water Rights Settlement Agreement, provided that, the YAN, in its sole discretion, may waive this condition;

15.1.14 the YAN and the Town of Camp Verde have executed the Interconnection Agreement described in Exhibit 16.1.2.2 to the Yavapai-Apache Nation Water Rights Settlement Agreement provided that, the YAN, in its sole discretion, may

waive this condition; and

15.1.15 the YAN's tribal council has adopted a resolution providing for a limited waiver of the YAN's sovereign immunity in accordance with section 112 of the Act.

15.2 Failure to Satisfy Conditions If the Secretary does not publish the statement of findings under Subparagraph 15.1 by June 30, 2035, or such alternative later date as may be agreed to by the Yavapai-Apache Nation, the Secretary, and the State, then this Agreement shall be null and void.

16.0 CONFIRMATION OF RIGHTS

16.1 YAN and the United States

16.1.1 Confirmation of YAN Water Rights and Uses of Water by the Parties

The Parties, including the United States in all its capacities except as trustee for Indian tribes other than the YAN, 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 YAN and the Members of the YAN, and the United States acting as trustee for the YAN, and the Members of the YAN, to the Water Rights and the Use of Water, quantified in this Agreement, the YAN Judgment, and in the Act.

16.1.2 Community Agreements The YAN, on behalf of the YAN and the Members of the YAN (but not Members in the capacity of Members as Allottees), and the United States acting as trustee for the YAN and the Members of the YAN (but not Members in the capacity of Members as Allottees), have entered into separate agreements with the City of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale, which are attached as Exhibits 16.1.2.1, 16.1.2.2 and 16.1.2.3, respectively (collectively, the "Community

Agreements”). The Community Agreements attached as Exhibits 16.1.2.1, 16.1.2.2, and 16.1.2.3 shall only be binding upon the parties to those respective agreements and shall not be binding upon any other Party to the Agreement.

16.1.3 Claims by the Parties The YAN shall neither challenge nor object to claims by the Parties for the Use of Water from the Verde River and its tributaries, in the Gila River Adjudication Proceedings or in any other judicial or administrative proceedings, to the extent that such claims are not inconsistent with this Agreement, the YAN Judgment or the Act.

16.2 SRP Rights

16.2.1 The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the YAN, but excluding the City of Cottonwood, the Town of Clarkdale, and the Town of Camp Verde, 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:

16.2.1.1 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.

16.2.1.2 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.

16.2.1.3 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.

16.2.1.4 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.

16.2.1.5 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.

16.2.1.6 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.

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

16.2.1.8 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.

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

16.2.1.10 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.

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

16.2.1.12 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).

16.2.1.13 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.

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

16.2.1.15 Certificate of Water Right 3696 and associated certificates for C.C. Cragin Dam and Reservoir, Nos. 3696.0002 and 3696.0003.

16.2.1.16 Certificate of Water Right Nos. 33-11.0000 (Application Nos. R-30, R-45, R-46, R-71, R-72, 4A-135, 4A-136, and E-11) to Enlarge or Extend the Salt River Project; 33-97001.0000 (Application Nos. R-30, R-46, and E-11) for Mormon Flat Dam/Canyon Lake; 33-97002.0000 (Application Nos. R-30, R-72, 4A-136, E-11) for Horse Mesa Dam/Apache Lake; 33-97003.0000 (Application Nos. R-

45, R-71, 4A-135, and E-11) for Stewart Mountain Dam/Saguaro Lake; 33-97004.0000 (Application Nos. R-45, 4A-135 and E-11) for Horseshoe Dam/Horseshoe Reservoir; and 33-97005.0000 (Application Nos. R-45, 4A-135, and E-11) for Bartlett Dam/Bartlett Reservoir.

16.2.1.17 Water rights claimed for parcels owned by SRP under Water Rights Registration Act filings 36-43605, 36-68056, 36-68057 and Statements of Claimant filings 39-49592, 39-49593, 39-48355, 39-48356, 39-48357. Such rights are served water from the Verde Ditch and from wells located on the SRP parcels. Location Notice posted and recorded by John Davis, John Wood, and James Brown, with the Yavapai County, Arizona, Recorder's Office in Mill Sites and Water Rights Book 2 page 224 on March 30, 1891.

16.3 City Of Phoenix Rights

16.3.1 The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the YAN, but excluding the City of Cottonwood, the Town of Clarkdale, and the Town of Camp Verde, 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:

16.3.1.1 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.

16.3.1.2 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 16.3.1.1.

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

16.4 Plan 6 Bureau of Reclamation Storage and Appropriative Rights

16.4.1 Modified Roosevelt Dam

The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the YAN, but excluding the City of Cottonwood, the Town of Clarkdale, and the Town of Camp Verde, 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.

16.4.2 New Waddell Dam

The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the YAN, 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.

16.5 Plan 6 State Appropriative Rights

16.5.1 Modified Roosevelt Dam

The Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than the YAN, but excluding the City of Cottonwood, the

Town of Clarkdale, and the Town of Camp Verde, 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:

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

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

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

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

16.5.1.5 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

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

16.5.2 New Waddell Dam

All of the Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than YAN, 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.

16.6 Wells in the Big Chino Sub-basin of the Verde River Groundwater Basin The

YAN and the United States acting as trustee for the YAN shall not object to, dispute, challenge, place a call, or exercise rights of priority against, in the Gila River Adjudication Proceedings or in any other judicial or administrative proceeding, a well used by a city or town in the Prescott active management area to:

(a) withdraw Underground Water from land located in the Big Chino sub-basin of the Verde River groundwater basin that has historically irrigated acres for transportation to an adjacent initial active management under the criteria set forth in A.R.S. §45-555(A)-(D) as that statute exists as of the Effective Date, a copy of which is attached as Exhibit 13.1.3; or

(b) withdraw and transport up to 8,068 AFY of Underground Water from the Big Chino sub-basin of the Verde River groundwater basin to the Prescott active management area pursuant to the criteria set forth in A.R.S. §45-555(E) and (G) as that statute exists as of the Effective Date, a copy of which is attached as Exhibit 13.1.3; or

(c) withdraw and transport Underground Water from land located in the Big Chino sub-basin of the Verde River groundwater basin to the Prescott active management area to meet the additional needs of an Indian tribe in the Prescott active management area pursuant to a federally-approved Indian water rights settlement under A.R.S §45-555(G) and (F) as that statute exists as of the Effective date, a copy of which is attached as Exhibit 13.1.3.

16.7 Wells Constructed Prior to the Effective Date Subject to the terms of the Community Agreements under 16.1.2 of this Agreement, the YAN and the United States acting as trustee for the YAN shall not assert claims for Injury to Water Rights against: (A) the withdrawal and Use of Water from any well drilled or constructed prior to the Effective Date, regardless of whether such well is determined to be pumping Surface Water; or (B) the withdrawal and Use of Water from a Replacement Well, regardless of whether such well is determined to be pumping Surface Water. Nothing in this subparagraph 16.7 shall preclude the YAN and the United States on behalf of the YAN from asserting claims for Injury to Water Rights based on Water Rights acquired or initiated after the Enforceability Date pursuant to Subparagraphs 4.13.2.1, 4.14.1, and 4.20.2.

16.8 For purposes of Subparagraphs 16.6 and 16.7, “YAN” includes the Yavapai-Apache Nation and its agents or any third party acting on its behalf.

17.0 OTHER PROVISIONS

17.1 Reclamation Reform Act

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

17.2 No Standard for Use for Quantification of Other Indian Rights or Claims

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

17.3 Entire Understanding

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

17.4 Modifications to Agreement and Amendments to Exhibits

No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court. 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.

17.5 State Capacity

Execution of this Agreement by the Governor of the State constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 13.4 and 14.6.1. Except as provided in the preceding sentence, it is not intended that this Agreement shall be determinative of any decision or recommendation to be made by any State agency in any administrative, adjudicatory, rulemaking, or other proceeding or matter. The State's participation as a Party shall be as described herein and shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

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

Mexico);

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

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

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

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

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

17.6 Obligation to Work in Good Faith to Achieve Enforceability of Agreement

Except as provided in Subparagraphs 14.2, 14.6, 14.7 and 14.9 or the Act, 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.

17.7 Authority to Execute

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

17.8 Changes in Uses on SRRD Lands

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the YAN, recognize that Water uses on the urbanized portions of the lands within SRRD 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 YAN 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 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 YAN, 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 YAN 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 17.8. Nothing in this Subparagraph 17.8 shall be construed as authorizing the delivery of Water to any municipality by SRP for M&I uses within the SRRD, respectively, in the absence of a written delivery agreement between any such municipality and SRP.

17.9 Right to Petition any Court of Competent Jurisdiction

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

17.10 Governing Law

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

17.11 Successors and Assigns

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

17.12 Anti-Deficiency Act

Notwithstanding any authorization of appropriations to carry out the Act, the United States shall not be liable for any failure of the United States to carry out any obligation or activity authorized by the Act (including all agreements or exhibits ratified or confirmed by this Act) if: (1) adequate appropriations are not provided expressly by Congress to carry out the purposes of the Act; or (2) there are not enough monies available to carry out the Act in the Lower Colorado River Basin Development Fund.

17.13 No Benefit to Members of Congress or Resident Commissioners

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

17.14 Federal Authority

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

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

17.15 Notice of A.R.S. § 38-511

Notice is hereby given of the provisions of A.R.S. § 38-511. By this reference, the provisions of said statute are incorporated herein to the extent they may be applicable to agreements of the nature of this Agreement under the laws of the State.

17.16 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.

17.17 No Quantification or Effect on Water Rights, Claims or Entitlements to Water of Other Tribes

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

17.18 No Effect on Future Allocations

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

17.19 Construction and Effect

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

17.20 Notices and Reports

All notices and reports required to be given hereunder shall be in writing and may be given in person 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 on Exhibit 17.20 or to such other address as such Party may from time to time designate in writing. Any communication by facsimile transmission or electronic mail by one Party to another shall not constitute effective notice as is required by this Subparagraph, but shall be deemed to be given as a courtesy only. Any notice or report required to be given hereunder, if due on a date certain that falls on a Saturday, Sunday or federally recognized holiday, shall be due the next following business day.

18.0 EXECUTION BLOCKS

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

YAVAPAI-APACHE NATION

By: _____

Dated: _____

Chairperson

Attest: _____

Approved as to form:

Attorney

THE UNITED STATES OF AMERICA

By: _____

Dated: _____

Secretary of the Interior

THE STATE OF ARIZONA

By: _____

Dated: _____

Governor

Attest: _____

Secretary of State

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____

Dated: _____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

Attorney

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: _____

Dated: _____

President

Attest and Countersigned: _____

Secretary

Approved as to form:

Attorney

TOWN OF CAMP VERDE

By: _____

Dated: _____

Mayor

Attest: _____

Town Clerk

Approved as to form:

Town Attorney

TOWN OF CLARKDALE

By: _____

Dated: _____

Mayor

Attest: _____

Town Clerk

Approved as to form:

Town Attorney

CITY OF COTTONWOOD

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as to form:

City Attorney

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____

Dated: _____

General Manager

Attest and Countersigned: _____

Secretary

Approved as to form:

Attorney