

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

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

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

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

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

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

diversion of surface water or lawful withdrawal of underground water;

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

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

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

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

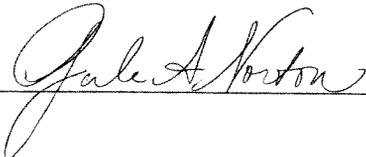
6. Nothing in this Waiver and Release of Claims prevents the Zuni Tribe or the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

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

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

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

THE UNITED STATES OF AMERICA

By: 

THE ZUNI INDIAN TRIBE

By: 