

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

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

CONTESTED CASE NO.

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

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

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

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

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

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

23 5. The Settlement Agreement is hereby approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this ___ day of _____, 2002.

Judge of the Superior Court