

YAVAPAI-PRESCOTT INDIAN TRIBE  
WATER RIGHTS SETTLEMENT AGREEMENT

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EXHIBITS

2.1 YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS  
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2.15 WATER SERVICE AGREEMENT BETWEEN YAVAPAI-  
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AGREEMENT

THIS AGREEMENT, dated as of \_\_\_\_\_, 1995, is entered into by and between the United States of America, the State of Arizona, the Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino Valley Irrigation District.

1.0           RECITALS

1.1           The representatives of the United States of America, the State of Arizona, the Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino Valley Irrigation District have agreed to permanently settle the water rights of the Yavapai-Prescott Indian Tribe and its members, to finally resolve certain pending litigation on water rights.

1.2           Section 2(a)(1) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994), states that it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.3           The objective of this settlement is to resolve certain outstanding water-related litigation and to settle, once and for always, the water rights of the Yavapai-Prescott Indian Tribe and its members based upon Federal, State and other laws by confirming to the Yavapai-Prescott Indian Tribe sufficient water from various sources to develop lands within the Yavapai-Prescott Indian Tribe's Reservation.

1           NOW, THEREFORE, in consideration of the premises and of the  
2 promises and agreements hereinafter set forth, the parties hereto  
3 agree as follows:

4           2.0           DEFINITIONS

5           This Agreement will employ abbreviated terms which will have  
6 the meanings stated below.

7           2.1           "Act" means the Yavapai-Prescott Indian Tribe Water Rights  
8 Settlement Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994). The  
9 Act is attached as Exhibit 2.1 to this Agreement.

10          2.2           "CAP" means the Central Arizona Project, a reclamation  
11 project authorized under title III of the Colorado River Basin Project  
12 Act of 1968 (43 U.S.C. 1521 et seq.).

13          2.3           "CVID" means the Chino Valley Irrigation District, an  
14 irrigation district organized under the laws of the State of Arizona.

15          2.4           "Divert" means to remove surface water from its natural  
16 course or location by means of a ditch, canal, flume, bypass,  
17 pipeline, conduit, well, pump or other act of man, either (1)  
18 downstream of the gauging station as more particularly identified in  
19 Section 11(d) of the Act; or (2) upstream of the gauging station, so  
20 long as the Tribe provides, at its own expense, other reasonable means  
21 of measuring the rate and quantity of water it diverts. "Diversion"  
22 means the act of diverting.

23          2.5           "Effluent" means water which, after being diverted as  
24 surface water or withdrawn as groundwater, has been used for domestic,  
25 municipal or industrial purposes and which is available for reuse for  
26

1 any purpose, whether or not the water has been treated to improve its  
2 quality.

3 2.6 "Fund" means the Verde River Basin Water Fund, a federal  
4 fund to be created pursuant to section 6(a) of the Act

5 2.7 "Gila River Adjudication" means that action pending in the  
6 Superior Court of the State of Arizona in and for the County of  
7 Maricopa styled as In Re the General Adjudication of All Rights to Use  
8 Water in the Gila River System and Source, W-1 (Salt), W-2 (Verde),  
9 W-3 (Upper Gila) and W-4 (San Pedro), including subsequent enforcement  
10 proceedings therein.

11 2.8 "Groundwater" means subsurface water which is not defined  
12 as surface water or effluent pursuant to Subparagraphs 2.13 and 2.5  
13 hereof.

14 2.9 "Parties" means the entities represented by the signatories  
15 to this Agreement.

16 2.10 "Prescott" means the City of Prescott, an Arizona municipal  
17 corporation.

18 2.11 "Prescott Active Management Area" means the Active  
19 Management Area, established pursuant to Arizona law and encompassing  
20 the little Chino and upper Agua Fria sub-basins, wherein the  
21 groundwater management goal is to achieve and thereafter maintain a  
22 long-term balance between annual groundwater withdrawals and annual  
23 natural and artificial groundwater recharge by the year 2025 or such  
24 earlier date as may be determined by the director of the Arizona  
25 Department of Water Resources.

26

1 2.12 "Reservation" means the reservation established by the Act  
2 of June 7, 1935, 49 Stat. 332, and the Act of May 18, 1956, 70 Stat.  
3 157, for the Yavapai-Prescott Indian Tribe.

4 2.13 "Secretary" means the Secretary of the United States  
5 Department of the Interior or his duly authorized representative.

6 2.14 "Surface Water" means all water on or beneath the surface  
7 of the earth which is appropriable under applicable law.

8 2.15 "Tribe" means the Yavapai-Prescott Indian Tribe, a tribe of  
9 Yavapai Indians duly recognized by the Secretary.

10 2.16 "Water Service Agreement" means that agreement between the  
11 Yavapai-Prescott Indian Tribe and the City of Prescott dated  
12 \_\_\_\_\_, 1995. The Water Service Agreement is attached as  
13 Exhibit 2.15 to this Agreement.

14 2.17 "Withdraw" means to remove groundwater from its natural  
15 location by means of a well, pump, pipeline, ditch, conduit or other  
16 act of man. "Withdrawal" means the act of withdrawing.

17 3.0 EXHIBITS

18 This Agreement includes as exhibits additional and  
19 subsidiary documents and agreements in the form of legislation,  
20 contracts, stipulations for settlement of litigation, and waivers of  
21 claims, which are attached and incorporated herein as follows:

22 A. The Act, a copy of which is attached hereto as Exhibit  
23 2.1 and incorporated herein by this reference.

24 B. The Water Service Agreement, a copy of which is  
25 attached hereto as Exhibit 2.15 and incorporated herein by reference  
26 in Subparagraph 5.1.

1 C. A Memorandum of Understanding between the Yavapai-  
2 Prescott Indian Tribe and the State of Arizona, a copy of which is  
3 attached hereto as Exhibit 7.1 and incorporated herein by this  
4 reference.

5 D. A Waiver and Release of Claims, a copy of which is  
6 attached hereto as Exhibit 9.1 and incorporated herein by this  
7 reference.

8 E. A Stipulation and Form of Judgment, a copy of which is  
9 attached hereto as Exhibit 9.5 and incorporated herein by this  
10 reference.

11 F. An Intergovernmental Agreement between the City of  
12 Prescott and Chino Valley Irrigation District (adopted May 30, 1995),  
13 a copy of which is attached hereto as Exhibit 3.0 and incorporated  
14 herein by this reference.

15 4.0 WATER ENTITLEMENT

16 Water for the settlement will be provided to the Tribe from  
17 the sources and in the quantities outlined and defined in this  
18 Paragraph 4.0 and Paragraphs 5.0 and 6.0 hereof.

19 4.1 In addition to water supplies provided to the Tribe pursuant  
20 to Subparagraphs 4.2, 4.3 and 4.4 hereof, Reservation water users  
21 shall be provided with water service from Prescott pursuant to the  
22 Water Service Agreement, as further described in Paragraph 5.0 hereof  
23 and the Water Service Agreement. The Water Service Agreement provides  
24 for water service to Reservation users as Prescott customers, with  
25 priority access to five hundred and fifty (550) acre-feet per annum,  
26 hereinafter "AFA", during times of severe shortage.

1 4.2 In addition to water supplies provided to the Tribe pursuant  
2 to Subparagraphs 4.1, 4.3 and 4.4 hereof, the Tribe shall have the  
3 right to beneficially use on the Reservation, and to store and divert  
4 on or off the Reservation, up to one thousand (1,000) AFA, of the  
5 right to Granite Creek surface water established by CVID pursuant to  
6 Arizona law and to be confirmed in the Gila River Adjudication, or to  
7 permit the diversion, treatment and delivery by Prescott of a portion  
8 of this water to facilitate deliveries of absolute priority water by  
9 Prescott pursuant to Subparagraph 5.1 of the Water Service Agreement,  
10 as further described in paragraph 6.0 hereof. The priority of the  
11 Tribe's right to such Granite Creek water shall be the priority for  
12 that water as determined by the confirmation of CVID's right to  
13 Granite Creek water in the Gila River Adjudication.

14 4.3 In addition to water supplies provided to the Tribe pursuant  
15 to Subparagraphs 4.1, 4.2 and 4.4 hereof, the Tribe shall have the  
16 right to withdraw groundwater beneath the Reservation for on-  
17 Reservation beneficial use in accordance with any groundwater  
18 management plan which may be developed by the Tribe pursuant to  
19 Section 11(c) of the Act and Paragraph 7.0 hereof. The parties to  
20 this Agreement, except as provided in Section 13(a) and 13(b) of the  
21 Act, recognize, ratify, confirm and declare to be valid the Tribe's  
22 right and entitlement to the on-Reservation beneficial use of all  
23 groundwater beneath the Reservation, in accordance with any  
24 groundwater management plan developed by the Tribe pursuant to Section  
25 11(c) of the Act and Paragraph 7.0 hereof, and agree to not object to,  
26 dispute or challenge, in the Gila River Adjudication or in any other

1 judicial or administrative proceeding, this right and entitlement.

2 4.4 In addition to water supplies provided to the Tribe pursuant  
3 to Subparagraphs 4.1, 4.2 and 4.3 hereof, effluent generated on the  
4 Reservation may either be used on the Reservation or sold to off-  
5 Reservation users, in accordance with the Water Service Agreement.  
6 The parties to this Agreement, except as provided in Sections 13(a)  
7 and 13(b) of the Act, recognize, ratify, confirm and declare to be  
8 valid the Tribe's right and entitlement to use and/or sell to third  
9 parties all effluent generated by Reservation water users, in  
10 accordance with the Water Service Agreement, and agree to not object  
11 to, dispute or challenge, in the Gila River Adjudication or in any  
12 other judicial or administrative proceeding, this right and  
13 entitlement. All use of Effluent off the Reservation shall be in  
14 accordance with applicable state and federal law.

15 5.0 WATER SERVICE AGREEMENT

16 5.1 The Water Service Agreement between the Tribe and Prescott,  
17 attached as Exhibit 2.15 hereof, is hereby incorporated into and made  
18 a part hereof.

19 5.2 The parties to this Agreement, except as provided in  
20 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
21 declare to be valid Prescott's rights and entitlements to water from  
22 the Verde and Gila River watersheds and agree to not object to,  
23 dispute or challenge, in the Gila River Adjudication or in any other  
24 judicial or administrative proceeding, such rights and entitlements,  
25 which rights and entitlements are evidenced by, described, stated,  
26 claimed, confirmed or established in the following documents and

1 instruments:

2 a. Judgment, Chino Valley Irrigation Dist. v. City of  
3 Prescott, No. 12,681 (Yavapai County Super. Ct., June 28, 1935).

4 b. Town of Chino Valley v. City of Prescott, 131 Ariz. 78,  
5 638 P.2d 1324 (1981).

6 c. Statement of Claimant Form for Other Uses No. 39-05-  
7 50068, In Re the General Adjudication of All Rights to Use Water in  
8 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
9 County Super. Ct.).

10 d. Statement of Claimant Form for Other Uses No. 39-05-  
11 55003, In Re the General Adjudication of All Rights to Use Water in  
12 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
13 County Super. Ct.).

14 e. Certificate of Water Right No. 1659 (Application No.  
15 R-432, Permit No. R-222).

16 f. Certificate of Water Right No. 3711 (Application No.  
17 A-4584, Permit No. A-3032).

18 g. Water Right Registration Act Statement of Claim of  
19 Right to Use Public Waters of the State No. 36-40301.

20 h. Water Right Registration Act Statement of Claim of  
21 Right to Use Public Waters of the State No. 36-40302.

22 i. Water Right Registration Act Statement of Claim of  
23 Right to Use Public Waters of the State No. 36-41650.

24 j. Water Right Registration Act Statement of Claim of  
25 Right to Use Public Waters of the State No. 36-43928.

26 k. Water Right Registration Act Statement of Claim of

1 Right to Use Public Waters of the State No. 36-43929.

2 l. Water Right Registration Act Statement of Claim of  
3 Right to Use Public Waters of the State No. 36-43930.

4 m. Water Right Registration Act Statement of Claim of  
5 Right to Use Public Waters of the State No. 36-43931.

6 n. Water Right Registration Act Statement of Claim of  
7 Right to Use Public Waters of the State No. 36-43932.

8 o. Water Right Registration Act Statement of Claim of  
9 Right to Use Public Waters of the State No. 36-43933.

10 p. Water Right Registration Act Statement of Claim of  
11 Right to Use Public Waters of the State No. 36-60238.

12 q. Right to Withdraw Groundwater, Service Area Right No.  
13 56-003017.0000.

14 r. Certificate of Type 2 Non-Irrigation Grandfathered  
15 Right No. 58-117267.

16 5.3 The parties to this Agreement, except as provided in  
17 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
18 declare to be valid the Tribe's rights and entitlements under the  
19 Water Service Agreement and agree to not object to, dispute or  
20 challenge, in the Gila River Adjudication or in any other judicial or  
21 administrative proceeding, such rights and entitlements.

22 5.4 The parties to this Agreement, except as provided in  
23 Sections 13(a) and 13(b) of the Act, further recognize, ratify,  
24 confirm and declare to be valid the Tribe's conditional right and  
25 entitlement, under the Water Service Agreement, to elect to assume  
26 Reservation water service in the circumstances listed in Subparagraph

1 8.5 of the Water Service Agreement and agree, in the event of such an  
2 assumption, to not object to, dispute or challenge, in the Gila River  
3 Adjudication or in any other judicial or administrative proceeding,  
4 the Tribe's right and entitlement to utilize the specified Type 2  
5 Grandfathered Groundwater Rights or the equivalent thereof to withdraw  
6 groundwater in the Prescott Active Management Area for delivery to and  
7 use on the Reservation in accordance with the State of Arizona's  
8 Groundwater Code.

9 6.0 GRANITE CREEK WATER

10 6.1 The parties to this Agreement, except as provided in  
11 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
12 declare to be valid CVID's rights and entitlements to water from the  
13 Verde River watershed and agree to not object to, dispute or  
14 challenge, in the Gila River Adjudication or in any other judicial or  
15 administrative proceeding, such rights and entitlements, which rights  
16 and entitlements are evidenced by, described, stated, claimed,  
17 confirmed or established in the following documents and instruments:

18 a. Judgment, Chino Valley Irrigation Dist. v. City of  
19 Prescott, No. 12,681 (Yavapai County Super. Ct., June 28, 1935).

20 b. Judgment and Decree, Rees v. Chino Valley Irrigation  
21 Dist., No. 20,219 (Yavapai County Super. Ct., Mar. 19, 1958).

22 c. Judgment and Decree, Ericson v. Chino Valley Irrigation  
23 Dist., No. 25,649 (Yavapai County Super. Ct., May 11, 1971).

24 d. Judgment, Salt River Valley Water Users' Ass'n v. Chino  
25 Valley Irrigation Dist., No. 22,088 (Yavapai County Super. Ct., Nov.  
26 22, 1971).

1 e. Statement of Claimant Form for Domestic Use No. 39-05-  
2 46143, In Re the General Adjudication of All Rights to Use Water in  
3 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
4 County Super. Ct.).

5 f. Statement of Claimant Form for Irrigation and Other  
6 Uses No. 39-05-46144, In Re the General Adjudication of All Rights to  
7 Use Water in the Gila River System and Source, Nos. W-1 through W-4  
8 (Maricopa County Super. Ct.).

9 g. Statement of Claimant Form for Irrigation Use No. 39-  
10 05-46145, In Re the General Adjudication of All Rights to Use Water  
11 in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
12 County Super. Ct.).

13 h. Certificate of Water Right No. 1673.

14 i. Certificate of Water Right No. 1674.

15 j. Certificate of Water Right No. 593.

16 k. Certificate of Water Right No. 594.

17 l. Water Right Registration Act Statement of Claim of  
18 Right to Use Public Waters of the State No. 36-40234.

19 m. Permit to appropriate No. 33-86560, to the extent the  
20 exercise of such right is not adverse to the rights of Prescott  
21 pursuant to Arizona Public Service Co. v. Long, 160 Ariz. 429, 773  
22 P.2d 988 (1989), or the Tribe pursuant to the Water Service Agreement  
23 and Subparagraph 4.4 of this Agreement.

24 n. Certificate of Irrigation Grandfathered Right No. 57-  
25 003001.0000.

26

1 6.2 Of such right or entitlement to Granite Creek surface water  
2 described in Subparagraph 6.1 hereof as is confirmed in the Gila River  
3 Adjudication, the Tribe shall be entitled each year to store, divert  
4 and use: (a) as its Minimum Annual Entitlement, fifty (50) percent of  
5 the flow, as measured at the State Highway 89 bridge across Granite  
6 Creek adjacent to the Reservation, until it has diverted five hundred  
7 and fifty (550) AFA; provided, however, that if the existing and  
8 customary beneficial uses of surface water by CVID pursuant to the  
9 rights described in Subparagraph 6.1 hereof are reduced to an annual  
10 entitlement of less than one thousand one hundred (1,100) AFA by a  
11 determination of the Court in the Gila River Adjudication which is not  
12 subject to further appeal, then the Tribe's Minimum Annual Entitlement  
13 shall be reduced by an amount equal to one-half the difference between  
14 one thousand one hundred (1,100) AFA and CVID's reduced entitlement;  
15 and (b) as its Maximum Annual Entitlement, an additional ten (10)  
16 percent of that portion of the flow of Granite Creek which exceeds  
17 1100 AFA, as measured at the State Highway 89 bridge across Granite  
18 Creek adjacent to the Reservation, up to a total combined diversion  
19 of one thousand (1,000) AFA; provided, however, that if existing and  
20 customary beneficial uses of surface water by CVID pursuant to the  
21 rights described in Subparagraph 6.1 hereof are reduced by virtue of  
22 a determination by the Court in the Gila River Adjudication which is  
23 not subject to further appeal that one or more of such rights is or  
24 are invalid, the Tribe's total Maximum Annual Entitlement pursuant to  
25 this Subparagraph shall be reduced by the same percentage as the  
26 percentage reduction in CVID's use rights. The priority of storage,

1 diversion and use of surface water by the Tribe pursuant to this  
2 Subparagraph 6.2 shall be as determined by the confirmation of CVID's  
3 right to Granite Creek water in the Gila River Adjudication. Any  
4 surface water not stored, diverted or used by the Tribe in a year  
5 shall be available for use by CVID, and the Tribe's annual entitlement  
6 under this Subparagraph 6.2 shall not be carried over from year to  
7 year; provided, however, that: (i) any water stored by the Tribe  
8 during a given year may be left in storage and/or consumptively used  
9 by the Tribe in subsequent years without such storage and/or use being  
10 counted against the Tribe's annual entitlements for such subsequent  
11 years; (ii) if the flow of Granite Creek is insufficient in any year  
12 to permit the Tribe to divert five hundred and fifty (550) AFA  
13 pursuant to this Subparagraph 6.2, then an amount equal to the  
14 difference between the amount the Tribe actually diverts in that year  
15 and its five hundred and fifty (550) AFA Minimum Annual Entitlement  
16 shall be carried forward from year to year (but not to exceed four  
17 years) as a Deficiency until the Tribe is able to recover such  
18 Deficiency pursuant to this Subparagraph 6.2; and (iii) the Tribe's  
19 total Maximum Annual Entitlement pursuant to clause (b) of the first  
20 sentence of this Subparagraph 6.2 shall be increased in any given year  
21 by an amount equal to the sum of the Deficiencies carried forward from  
22 the preceding four years. If the Tribe is permitted to divert, and  
23 does divert, an amount in excess of one thousand (1,000) AFA pursuant  
24 to this Subparagraph 6.2, then the Tribe's accumulated Deficiencies  
25 shall be reduced by an amount equal to such excess. All such excess  
26 diversions shall be applied to the earliest deficiency still being

1 carried forward. Deficiencies older than four years shall lapse.

2 6.3 During such times as the Tribe receives water from Prescott  
3 to which it has an absolute prior right (herein referred to as  
4 "absolute priority water"), as more fully described in Subparagraph  
5 5.1 of the Water Service Agreement, Prescott may elect, after  
6 receiving the Tribe's permission, to divert from Granite Creek a  
7 quantity of water equivalent to the absolute priority water delivered  
8 to the Reservation. Any such diversion by Prescott shall be in lieu  
9 of diversion by the Tribe of a corresponding portion of the Tribe's  
10 Granite Creek right as described in Subparagraph 6.2 hereof, and shall  
11 be subject to the same restrictions applicable to diversions by the  
12 Tribe under Subparagraph 6.2 hereof.

13 6.4 CVID's obligations pursuant to this Paragraph 6.0 shall be  
14 binding upon its successors and assigns. The parties to this  
15 Agreement agree that, notwithstanding a change of circumstances such  
16 as the termination of CVID's corporate existence, the Tribe's  
17 entitlement pursuant to this Paragraph 6.0 shall remain in full force  
18 and effect.

19 6.5 The parties to this Agreement, except as provided in  
20 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
21 declare to be valid the Tribe's right and entitlement to store, divert  
22 and beneficially use CVID surface water pursuant to this Paragraph 6.0  
23 and agree to not object to, dispute or challenge, in the Gila River  
24 Adjudication or in any other judicial or administrative proceeding,  
25 this right and entitlement.

26

1       7.0           REGULATION OF TRIBAL WATER RESOURCES

2       7.1           As provided in Section 11(c) of the Act, the Tribe shall  
3       establish a groundwater management plan for the Reservation which,  
4       except to be consistent with the Water Service Agreement, this  
5       Agreement and the Act, will be compatible with the groundwater  
6       management plan in effect for the Prescott Active Management Area and  
7       will include an annual information exchange with the Arizona  
8       Department of Water Resources. In establishing a groundwater  
9       management plan pursuant to this Paragraph, the Tribe will enter into  
10      a Memorandum of Understanding with the Arizona Department of Water  
11      Resources for consultation. The Memorandum of Understanding will be  
12      in the form set out in Exhibit 7.1 to this Agreement.

13      7.2           Notwithstanding other law, the Tribe may establish a Tribal  
14      water code, consistent with the above-described groundwater management  
15      plan, under which the Tribe will manage, regulate, and control the  
16      water resources granted it in the Act, this Agreement, and the Water  
17      Service Agreement; provided, however, that such management, regulation  
18      and control shall not authorize any action inconsistent with the trust  
19      ownership of the Tribe's water resources.

20      8.0           ACQUISITION OF CAP CONTRACTS AND ESTABLISHMENT OF TRUST  
21                   ACCOUNTS

22      8.1           In accordance with Section 6(d) of the Act, the Tribe hereby  
23      agrees to establish a trust account into which revenues from the Fund  
24      will be deposited. Revenues deposited into the Fund to the credit of  
25      the Tribe will be derived from the sale of the Tribe's CAP contract  
26      entitlement in accordance with Section 5 of the Act.

1           A.    The Tribe hereby agrees that revenues from the trust  
2 account may only be used to defray the Tribe's water service costs  
3 under the Water Service Agreement or to develop and maintain  
4 facilities for water or Effluent use on the Reservation. Any funds  
5 withdrawn from the trust account but not used for the purposes stated  
6 herein shall be returned to the Fund, with interest at the Federal  
7 Reserve Discount Rate (the interest rate charged on loans to  
8 depository institutions by the Federal Reserve Banks) in effect from  
9 time to time.

10           B.    The Tribe agrees to permit complete and thorough audits  
11 of the trust account and all expenditures therefrom and deposits  
12 thereto on an annual basis. Such audits may be conducted by the Area  
13 Director, Phoenix Area Office, Bureau of Indian Affairs or its  
14 designees.

15    8.2        In accordance with Section 6(d) of the Act, Prescott hereby  
16 agrees to establish a trust account into which revenues from the Verde  
17 River Basin Water Fund will be deposited. Revenues deposited to the  
18 Fund to the credit of Prescott will be derived from the sale of  
19 Prescott's CAP contract entitlement in accordance with Section 5 of  
20 the Act.

21           A.    Prescott hereby agrees that revenues from the trust  
22 account may only be used to defray expenses associated with the  
23 investigation, acquisition or development of alternative sources of  
24 water to replace the CAP water relinquished under the Act.  
25 Alternative sources shall be understood to include, but not be limited  
26 to, retirement of agricultural land and acquisition of associated

1 water rights, development of ground water resources outside the  
2 Prescott Active Management Area established pursuant to the laws of  
3 the State of Arizona and artificial recharge; except that none of the  
4 moneys paid to Prescott may be used for construction or renovation of  
5 the city's existing waterworks or water delivery system. Any funds  
6 withdrawn from the trust account but not used for the purposes stated  
7 herein shall be returned to the Fund, with interest at a rate equal  
8 to the average rate of interest paid on governmental deposits by the  
9 Arizona State Treasurer's Pool during the period of time that the  
10 monies were erroneously expended from the trust account.

11 B. Prescott also agrees that it will comply with all  
12 applicable federal environmental and state environmental and water  
13 laws in developing alternative water sources. Development of such  
14 alternative water sources shall not be inconsistent with the goals of  
15 the Prescott Active Management Area, preservation of the riparian  
16 habitat, flows and biota of the Verde River and its tributaries.

17 C. Prescott agrees to permit complete and thorough audits  
18 of the trust account and all expenditures therefrom and deposits  
19 thereto on an annual basis. Such audits may be conducted by the  
20 Regional Director, Lower Colorado River Region, Bureau of Reclamation,  
21 or its designees.

22 9.0 WAIVER OF CLAIMS

23 9.1 Except as provided in Subparagraph 9.2 hereof, the Tribe,  
24 on behalf of itself and its members, and the United States shall  
25 execute a waiver and release of:  
26

1           A. Any and all past and present claims of water rights or  
2 injuries to water rights (including water rights in groundwater,  
3 surface water and effluent) for lands within the Reservation, from  
4 time immemorial to the date of execution of such waiver and release,  
5 which the Tribe and/or its members may have, against the United  
6 States, the State of Arizona or any agency or political subdivision  
7 thereof, or any other person, corporation or municipal corporation,  
8 arising under the laws of the United States or the State of Arizona.

9           B. Any and all future claims of rights to water (including  
10 water rights in groundwater, surface water and effluent) for lands  
11 within the Reservation, from and after the date of execution of such  
12 waiver and release, which the Tribe and/or its members may have,  
13 against the United States, the State of Arizona or any agency or  
14 political subdivision thereof, or any other person, corporation or  
15 municipal corporation, arising under the laws of the United States or  
16 the State of Arizona.

17           C. Any and all past, present and future claims of water  
18 rights or injuries to water rights (including water rights in  
19 groundwater, surface water and effluent) for lands outside of the  
20 exterior boundaries of the Reservation for claims based upon  
21 aboriginal occupancy, which the Tribe and/or its members may have,  
22 against the United States, the State of Arizona or any agency or  
23 political subdivision thereof, or any other person, corporation or  
24 municipal corporation, arising under the laws of the United States or  
25 the State of Arizona. The waiver and release will be in the form set  
26 out in Exhibit 9.1 to this Agreement.

1 9.2 Notwithstanding the execution by the Tribe of the waiver and  
2 release described in Subparagraph 9.1 hereof, the Tribe, its members,  
3 and the United States for their benefit, shall retain the right to  
4 assert the following claims:

5 A. Claims for protection and/or enforcement of the Tribe's  
6 surface water, groundwater and effluent rights and entitlements as  
7 provided for in this Agreement under the continuing jurisdiction of  
8 the Court in the Gila River Adjudication or otherwise.

9 B. Claims for the breach or enforcement of the terms of  
10 this Agreement or rights or entitlements recognized herein, or for the  
11 breach or enforcement of the Water Service Agreement or rights or  
12 entitlements recognized therein, including claims for future injuries  
13 to such rights and entitlements.

14 C. Claims for past, present and/or future injuries to  
15 Tribal natural resources and property, including but not limited to  
16 surface water and groundwater and rights thereto, resulting from,  
17 caused by or related to pollution or contamination of any kind.

18 D. Claims for water rights and/or injuries to water rights  
19 asserted in the circumstances described in Subparagraphs 10.3, 10.4  
20 and 10.5 hereof.

21 9.3 Any entitlement to water of any individual member of the  
22 Tribe for lands within the Reservation shall be satisfied out of the  
23 water resources provided to the Tribe in this Agreement.

24 9.4 Except as provided in Paragraph 9.2 hereof, the United  
25 States shall not assert any claim against the State of Arizona and any  
26 agency or political subdivision thereof or any other person,

1 corporation, or municipal corporation, in its own right or for the  
2 benefit of the Tribe and its members based upon (1) water rights or  
3 injuries to water rights of the Tribe and its members; or (2) water  
4 rights or injuries to water rights held by the United States for the  
5 benefit of the Tribe and its members.

6 9.5 The parties shall file a stipulation and form of judgment  
7 in the Gila River Adjudication in the form of Exhibit 9.5 hereto. The  
8 United States or the Tribe shall be permitted to support any claim of  
9 any party to this Agreement filed in the Gila River Adjudication from  
10 which the Tribe's water rights under this Agreement are derived.

11 9.6 In the event any party to this Agreement files a lawsuit in  
12 a United States district court relating only and directly to the  
13 interpretation or enforcement of this Agreement or the Act, naming the  
14 United States of America or the Tribe as parties, the sovereign  
15 immunity of the United States and the Tribe from such suit is waived  
16 by Section 11(a) of the Act. In the event Prescott submits a dispute  
17 under the Water Service Agreement to arbitration or seeks review by  
18 the United States District Court for the District of Arizona of an  
19 arbitration award under the Water Service Agreement, any claim by the  
20 Tribe to sovereign immunity from such arbitration or review is waived  
21 by Section 11(a) of the Act.

22 9.7 Nothing herein shall affect the water rights or claims  
23 related to any trust allotment located outside the exterior boundaries  
24 of the Reservation of any member of the Tribe; provided, however, that  
25 any water rights determined to exist for such allotments shall not be  
26 exercised for use on the Reservation.

1 9.8 Nothing herein shall be deemed to recognize or establish any  
2 right of a member of the Tribe to water on the Tribe's Reservation.

3 9.9 Nothing herein shall prevent the Tribe from participating  
4 with other entities in further activities to augment the water supply  
5 available to the Prescott Active Management Area and the Granite Creek  
6 watershed. In addition to the water provided to the Tribe under this  
7 Agreement and the Water Service Agreement, the Tribe may, consistent  
8 with state and federal law, acquire rights to water pursuant to state  
9 law or by contract with the United States; provided, however, that no  
10 rights so acquired shall be based upon claims waived pursuant to this  
11 Paragraph 9.0 and Section 10 of the Act, nor shall the acquisition of  
12 any such rights vitiate the Waiver and Release of Claims executed by  
13 the Tribe and the United States pursuant to this Paragraph 9.0 and  
14 Section 10 of the Act.

15 10.0 ENFORCEABILITY DATE AND RELATED MATTERS

16 10.1 This Agreement shall be effective and binding when it has  
17 been executed by all parties hereto and when the parties to this  
18 Agreement have executed all exhibits to the Agreement which call for  
19 their signatures. Other than to take all steps described in this  
20 Subparagraph 10.1 to occur, no party to this Agreement shall be  
21 required to perform any of the obligations, or be entitled to receive  
22 any of the benefits, under the Agreement or under any of the Exhibits  
23 hereto until such time as the waivers authorized in Section 10(b) of  
24 the Act have become effective pursuant to Section 12(a) of the Act,  
25 which date is referred to herein as the "Enforceability Date". In the  
26 event the waivers authorized in Section 10(b) of the Act have not

1 become effective by December 31, 1995, this Agreement shall be of no  
2 further force or effect.

3 10.2 Exhibit 2.1 hereto is the Act, which authorizes the federal  
4 action required to carry out this Agreement. Any act of Congress  
5 which materially amends the Act set forth in Exhibit 2.1 hereto, as  
6 it affects this Agreement, prior to the Enforceability Date of this  
7 Agreement, without the written consent of the parties adversely  
8 affected by such amendment, shall relieve all parties to this  
9 Agreement of their obligations hereunder.

10 10.3 In the event the waivers authorized in Section 10(b) of the  
11 Act have become effective and a party to the Gila River Adjudication  
12 has obtained the reversal of the judgment of the Maricopa County  
13 Superior Court approving Exhibit 9.5 hereto and no further appeal may  
14 be taken, the parties to this Agreement shall:

15 A. Perform all of their respective obligations under this  
16 Agreement, unless otherwise ordered by a court of competent  
17 jurisdiction; and

18 B. Permit the Tribe and its members, and the United States  
19 for their benefit, to assert in the Gila River Adjudication claims for  
20 water rights and entitlements in excess of the Tribe's rights and  
21 entitlements under this Agreement and the Water Service Agreement, and  
22 the other parties to this Agreement agree not to assert any defense  
23 against the Tribe and the United States; however, the Tribe and the  
24 United States agree that a reserved right awarded to the Tribe will  
25 be satisfied as provided in this Agreement and the Water Service  
26 Agreement, and that if a right in excess of the Tribe's rights and

1 entitlements under this Agreement and the Water Service Agreement is  
2 awarded, the excess of such right will not be exercised, in any phase  
3 of the Gila River Adjudication or any subsequent proceedings, against  
4 junior rights held by other parties to this Agreement.

5 10.4 In the event the waivers authorized in Section 10(b) of the  
6 Act have become effective and a court of competent jurisdiction has  
7 permanently ordered any single party to this Agreement not to perform  
8 an obligation to deliver water to the Tribe as provided in this  
9 Agreement and no further appeal may be taken,

10 A. All other parties to this Agreement shall perform all  
11 of their respective obligations under this Agreement, unless otherwise  
12 ordered by a court of competent jurisdiction;

13 B. The party ordered not to perform an obligation to  
14 deliver water to the Tribe as provided in this Agreement shall perform  
15 all of its remaining obligations, if any, under this Agreement; that  
16 party shall be relieved of its obligations under this Agreement only  
17 to the extent necessary to comply with the court's order; and

18 C. The Tribe and its members, and the United States for  
19 their benefit, may assert in the Gila River Adjudication claims for  
20 water rights and entitlements in excess of the Tribe's rights and  
21 entitlements under this Agreement and the Water Service Agreement, and  
22 the other parties to this Agreement agree not to assert any defense  
23 against the Tribe and the United States; however, the Tribe and the  
24 United States agree that a reserved right awarded to the Tribe will  
25 be satisfied as provided in this Agreement and the Water Service  
26 Agreement, to the extent not precluded by an order of a court of

1 competent jurisdiction as provided in this Subparagraph 10.4, and that  
2 if a right in excess of the Tribe's rights and entitlements under this  
3 Agreement and the Water Service Agreement is awarded, the excess of  
4 such right will not be exercised, in any phase of the Gila River  
5 Adjudication or any subsequent proceedings, against junior rights held  
6 by other parties to this Agreement.

7 10.5 In the event the waivers authorized in Section 10(b) of the  
8 Act have become effective and a court of competent jurisdiction has  
9 permanently ordered more than one of the parties to this Agreement not  
10 to perform an obligation to deliver water to the Tribe as provided in  
11 this Agreement and no further appeal may be taken, then, unless  
12 otherwise agreed by the Tribe, this Agreement shall be null and void  
13 and, except as provided in Subparagraph 9.6 hereof and in this  
14 Subparagraph 10.5, all parties shall be relieved of their obligations  
15 under this Agreement.

16 11.0 STATE OF ARIZONA CONTRIBUTION

17 11.1 Pursuant to Paragraph 8.0, Section 6(d) of the Act and by  
18 contract with the Secretary, the Tribe shall establish a trust account  
19 into which funds appropriated pursuant to the Act and this Agreement  
20 shall be deposited for use by the Tribe consistent with Section 7(b)  
21 of the Act.

22 11.2 Upon establishment of the trust account pursuant to  
23 Subparagraph 11.1 hereof, the Tribe shall so notify the State of  
24 Arizona. Within one calendar year of such notice, but not later than  
25 December 31, 1995, the State of Arizona, subject to appropriation by  
26 the Legislature, shall deposit or cause to be deposited \$200,000.00

1 into the trust account established pursuant to Subparagraph 11.1  
2 hereof.

3 11.3 In the event the waivers authorized in Section 10(b) of the  
4 Act have not become effective by December 31, 1995, the Tribe shall  
5 return to the State of Arizona any funds appropriated and deposited  
6 by the State of Arizona into the Tribe's trust account pursuant to  
7 Subparagraph 11.2 hereof.

8 12.0 OTHER PROVISIONS

9 12.1 Cooperation with Tribal Water Development. The State of  
10 Arizona, Prescott and CVID will cooperate with the Tribe in obtaining  
11 any necessary Federal approval required for the Tribe's enjoyment of  
12 the rights and entitlements provided by this Agreement and the Water  
13 Service Agreement, including their good offices to assist in obtaining  
14 the cooperation of others necessary for such approvals. The United  
15 States, Prescott and CVID will cooperate with the Tribe in obtaining  
16 any necessary State approval required for the Tribe's enjoyment of the  
17 rights and entitlements provided by this Agreement and the Water  
18 Service Agreement, including their good offices to assist in obtaining  
19 the cooperation of others necessary for such approvals.

20 12.2 Cancellation by State, Prescott and CVID. The state,  
21 Prescott or CVID may cancel this Agreement without penalty or further  
22 obligation pursuant to A.R.S. § 38-511, if any person significantly  
23 involved in initiating, negotiating, securing, drafting or creating  
24 this Agreement on behalf of the state, Prescott or CVID is an employee  
25 or becomes a consultant to any other party to this Agreement with  
26 respect to the subject matter of this Agreement while this Agreement

1 or any extension of this Agreement is in effect. Cancellation shall  
2 be effective when written notice from the Governor or the governing  
3 bodies of Prescott or CVID is received by all parties to this  
4 Agreement unless the notice specifies a later time. To the extent  
5 A.R.S. § 38-511 is applicable to this Agreement, Prescott hereby  
6 represents that the persons significantly involved in the initiating,  
7 negotiating, securing, drafting and creating of this Agreement on  
8 behalf of Prescott are John R. Moffitt, City Attorney, and Brad Huza,  
9 Environmental Services Director, and the other parties hereto each  
10 hereby represents that neither Mr. Moffitt nor Mr. Huza is or has been  
11 an employee or agent of or consultant to that party during any time  
12 material to the creation of this Agreement. Each party hereto, other  
13 than Prescott, also hereby covenants to not employ either Mr. Moffitt  
14 or Mr. Huza as an employee, agent or consultant for a term of at least  
15 three years following the execution hereof. To the extent A.R.S.  
16 § 38-511 is applicable to this Agreement, CVID hereby represents that  
17 the persons significantly involved in the initiating, negotiating,  
18 securing, drafting and creating of this Agreement on behalf of CVID  
19 are Melvin Shellhorn, Delbert Applebee, Robert Davis and Helen Wells,  
20 as past or current members of the Board, and Thelton D. Beck and L.  
21 Richard Mabery, CVID's counsel, and the other parties hereto each  
22 hereby represents that neither Mr. Beck nor Mr. Mabery is or has been  
23 an employee or agent of or consultant to that party during any time  
24 material to the creation of this Agreement. Each party hereto, other  
25 than CVID, also hereby covenants to not employ either Mr. Beck or Mr.  
26 Mabery as an employee, agent or consultant for a term of at least

1 three years following the execution hereof.

2 12.3 Use Limitation. The water made available to the Tribe from  
3 the various sources under this Agreement is solely for use on the  
4 Reservation, except as otherwise provided. The water made available  
5 to the Tribe under this Agreement may be put to any beneficial use or  
6 reuse on the Reservation without restriction.

7 12.4 Effect of Non-Use. In recognition of the Tribe's waiver and  
8 release of claims based on federal law pursuant to Exhibit 9.1 hereto,  
9 said federal-law claims not being subject to loss due to non-use under  
10 current federal law, the parties recognize and acknowledge that the  
11 water rights and entitlements acquired or confirmed by the Tribe  
12 hereunder are not subject to forfeiture or abandonment due to non-use  
13 by the Tribe. The parties agree to not assert the defenses of  
14 forfeiture, abandonment due to non-use or like defenses based upon the  
15 passage of time against the Tribe.

16 12.5 Environmental Compliance. Environmental compliance shall  
17 be as set forth in Section 8 of the Act.

18 12.6 Disclaimer. Nothing in this Agreement shall be construed  
19 as establishing any standard to be used for the quantification of  
20 federal reserved rights, aboriginal claims, or any other Indian water  
21 claims in any judicial or administrative proceeding.

22 12.7 Evidentiary Effect of Negotiations. This Agreement has been  
23 arrived at in the process of good faith negotiation for the purpose  
24 of resolving legal disputes, including pending litigation, and all  
25 parties hereto agree that no offers and/or compromises made in the  
26 course thereof shall be construed as admissions against interest or

1 be used in any legal proceeding other than one for approval,  
2 confirmation, interpretation, or enforcement of this Agreement.

3 12.8 Effect of Execution by State of Arizona. Execution of this  
4 Agreement by the State of Arizona constitutes the confirmation that  
5 it is the policy of the State of Arizona to assist in carrying out the  
6 provisions hereof to the extent it may do so in accordance with its  
7 responsibility and authority under the law. It is not intended that  
8 this Agreement shall be determinative of the action to be taken by any  
9 state agency in any adjudicatory or rule making proceeding. Nothing  
10 herein shall be construed as a waiver of any rights which the State  
11 of Arizona has as to its trust lands under the Enabling Act.

12 12.9 Rights Held in Trust. The Tribe's rights hereunder shall  
13 be held in trust by the United States for the benefit of the Tribe as  
14 other Indian rights are held. Nothing contained in this Agreement  
15 shall be deemed to alter, amend or diminish the status of those  
16 rights.

17 12.10 Succession. This Agreement shall inure to the benefit of,  
18 and shall be binding upon, the respective successors and assigns of  
19 the parties hereto.

20 12.11 Destruction of Facilities. To the extent that use of water  
21 by the Tribe under this Agreement is dependent on diversion, storage  
22 and/or transmission facilities, the destruction of any such facilities  
23 by any cause shall not permanently extinguish the Tribe's right to  
24 receive water otherwise made available by the affected facility;  
25 however, such destruction may temporarily excuse the parties of the  
26 obligation to deliver such water to the Tribe until the affected

1 facility is repaired or replaced or other suitable facilities have  
2 been agreed to by the principal parties in interest. Any party  
3 responsible for repairing or replacing an affected facility under  
4 other contractual arrangements shall have that same obligation under  
5 this Agreement. In the event no party has such an obligation, all of  
6 the parties, including the Secretary, shall use all reasonable efforts  
7 to provide a permanent equitable substitute source for the affected  
8 water supply in a manner consistent with the parties' respective  
9 obligations under this Agreement.

10 12.12 Contingent on Appropriation of Funds. The expenditure or  
11 advance of any money or the performance of any obligation by the  
12 United States under this Agreement shall be contingent upon  
13 appropriation of funds therefor. No liability shall accrue to the  
14 United States in case funds are not appropriated.

15 12.13 Officials Not to Benefit. No member of or delegate to  
16 Congress or Resident Commissioner shall be admitted to any share or  
17 part of this Agreement or to any benefit that may arise herefrom.  
18 This restriction shall not be construed to extend to this Agreement  
19 if made with a corporation or company for its general benefit.

20 12.14 Additional Documents. Each party agrees in good faith to  
21 execute such further or additional documents as may be necessary or  
22 appropriate to fully carry out the intent and purpose of this  
23 Agreement.

24 12.15 Governing Law. This Agreement shall be governed by all  
25 applicable laws of the United States of America and the State of  
26 Arizona. Nothing contained herein waives the right of the United

1 States or the Tribe to object to the jurisdiction of the courts of the  
2 State of Arizona to adjudicate any disputes arising under this  
3 Agreement.

4 12.16 Headings. The headings of this Agreement are for reference  
5 only and shall not limit or define the meaning of any provision of  
6 this Agreement.

7 12.17 Counterparts. This Agreement may be executed in duplicate  
8 originals, each of which shall constitute an original Agreement.

9 12.18 Notices. Any notice to be given hereunder shall have been  
10 properly given or made when received by the officer or manager  
11 designated herein, or two (2) days after deposit with the United  
12 States Postal Service, certified or registered mail, postage prepaid,  
13 addressed as follows:

14 If to the United States:

15 Secretary of the Interior  
16 Department of the Interior  
Washington, D.C. 20240

17 Area Director  
18 Phoenix Area Office  
19 Bureau of Indian Affairs  
P.O. Box 10  
Phoenix, Arizona 85001

20 With a copy to:

21 Office of Solicitor  
22 Department of Interior  
Two North Central Avenue  
23 Suite 1130  
Phoenix, Arizona 85004

1 If to the State of Arizona:

2 Office of the Governor  
3 1700 West Washington  
4 Phoenix, Arizona 85007

5 With a copy to:

6 Director  
7 Arizona Department of Water Resources  
8 15 South 15th Avenue, Suite 204  
9 Phoenix, Arizona 85007

10 If to the Tribe:

11 Yavapai-Prescott Indian Tribe  
12 530 Merritt Avenue  
13 Prescott, Arizona 86301  
14 Attn: President

15 With a copy to:

16 Steptoe & Johnson  
17 40 North Central Avenue, 24th Floor  
18 Phoenix, Arizona 85004  
19 Attn: David J. Bodney, Esq.

20 If to Prescott:

21 Prescott City Manager  
22 P.O. Box 2059  
23 Prescott, Arizona 86302

24 With copies to:

25 Prescott City Attorney  
26 P.O. Box 2059  
Prescott, Arizona 86302

City of Prescott  
Environmental Services Director  
P.O. Box 2059  
Prescott, Arizona 86302

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If to CVID:

Chino Valley Irrigation District  
P.O. Box 105  
Chino Valley, Arizona 86323  
Attn: Bob Williams

With a copy to:

Murphy, Schmidt, Lutey & Beck  
P.O. Box 591  
Prescott, Arizona 86302-0591  
Attn: Thelton D. Beck, Esq.

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this paragraph.

12.19 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the parties.

12.20 Term. The term of this Agreement shall be in perpetuity.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement herein the day and year first above written.

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Secretary of the Interior

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STATE OF ARIZONA

By: \_\_\_\_\_  
Governor

YAVAPAI-PRESCOTT INDIAN TRIBE

By: Stan Rice  
STAN RICE, JR., President

CITY OF PRESCOTT, a municipal corporation

By: Daikon Rutkowski  
DAITON RUTKOWSKI, Mayor

Attest:

Marie L. Watson  
MARIE L. WATSON, City Clerk

Pursuant to Arizona Revised Statutes Section § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Prescott.

John R. Moffitt  
JOHN R. MOFFITT, City Attorney

CHINO VALLEY IRRIGATION DISTRICT

By: Robert J. Davis

\_\_\_\_\_  
CLERK

Pursuant to Arizona Revised Statutes Section § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Chino Valley Irrigation District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Chino Valley Irrigation District.

Thelton D. Beck  
THELTON D. BECK, Attorney



1ST DOCUMENT of Level 1 printed in FULL format.

UNITED STATES CODE SERVICE  
 ADVANCE LEGISLATIVE SERVICE  
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PUBLIC LAW 103-434

103rd Congress -- 2nd Session

S. 1146

103 P.L. 434; 108 Stat. 4526  
 1994 Enacted S. 1146; 103 Enacted S. 1146

BILL TRACKING REPORT: <=1> 103 Bill Tracking S. 1146  
 FULL TEXT VERSION(S) OF BILL: <=2> 103 S. 1146

DATE: OCT. 31, 1994 -- PUBLIC LAW 103-434

SYNOPSIS: An Act

To provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I--YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT

[\*101] SEC. 101.--SHORT TITLE.

This title may be cited as the "Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994".

[\*102] SEC. 102. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) Findings.--The Congress finds that--

(1) it is the policy of the United States, in fulfillment of its trust responsibility to the Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 7, 1935, and by actions subsequent thereto, the United States established a reservation for the Yavapai-Prescott Indian Tribe in Arizona adjacent to the city of Prescott;

(5) proceedings to determine the full extent of Yavapai-Prescott Tribe's water rights are currently pending before the Superior Court of the State of Arizona in and for Maricopa County, as part of the general adjudication of the Gila River system and source;

(6) recognizing that final resolution of the general adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the full extent of the Yavapai-Prescott Tribe's entitlement to water and the availability of water supplies to fulfill that entitlement, and impair orderly planning and development by the Tribe and the city of Prescott; the Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have sought to settle all claims to water between and among them;

(7) representatives of the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have negotiated a Settlement Agreement to resolve all water rights claims between and among them, and to provide the Tribe with long term, reliable water supplies for the orderly development and maintenance of the Tribe's reservation;

(8) pursuant to the Settlement Agreement and the Water Service Agreement, the quantity of water made available to the Yavapai-Prescott Tribe by the city of Prescott and the Chino Valley Irrigation District will be secured, such Agreements will be continued in perpetuity, and the Tribe's continued on-reservation use of water for municipal and industrial, recreational and agricultural purposes will be provided for;

(9) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and assist in firming up the long-term water supplies of the city of Prescott and the Yavapai-Prescott Tribe so as to enable the Tribe to utilize fully its water entitlements in developing a diverse, efficient reservation economy; and

(10) the assignment of the CAP contract of the Yavapai-Prescott Tribe and the CAP subcontract of the city of Prescott is a cost-effective means to ensure reliable, long-term water supplies for the Yavapai-Prescott Tribe and to promote efficient, environmentally sound use of available water supplies in the Verde River basin.

(b) Declaration of Purposes.--The Congress declares that the purposes of this title are--

(1) to approve, ratify and confirm the Settlement Agreement among the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement;

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Yavapai-Prescott Tribe as provided in the Settlement Agreement and this title;

(4) to require that expenditures of funds obtained through the assignment of CAP contract entitlements by the Yavapai-Prescott Tribe and Prescott for the acquisition or development of replacement water supplies in the Verde River basin shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of riparian habitat, flows and biota of the Verde River and its tributaries; and

(5) to repeal section 406(k) of Public Law 101-628 which authorizes \$ 30,000,000 in appropriations for the acquisition of land and water resources in the Verde River basin and for the development thereof as an alternative source of water for the Fort McDowell Indian Community.

[\*103] SEC. 103. DEFINITIONS.

For purposes of this title:

(1) The term "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(2) The term "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 1, 1988, for the delivery of water and repayment of costs of the Central Arizona Project.

(3) The term "CVID" means the Chino Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(4) The term "Prescott AMA" means the Active Management Area, established pursuant to Arizona law and encompassing the Prescott ground water basin, wherein the primary goal is to achieve balance between annual ground water withdrawals and natural and artificial recharge by the year 2025.

(5) The term "Prescott" means the city of Prescott, an Arizona municipal corporation.

(6) The term "Reservation" means the reservation established by the Act of June 7, 1935 (49 Stat. 332) and the Act of May 18, 1956 (70 Stat. 157) for the Yavapai-Prescott Tribe of Indians.

(7) The term "Secretary" means the Secretary of the United States Department of the Interior.

(8) The term "Settlement Agreement" means that agreement entered into by the city of Prescott, the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona, and the United States, providing for the settlement of all water claims between and among them.

(9) The term "Tribe" means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

(10) The term "Water Service Agreement" means that agreement between the Yavapai-Prescott Indian Tribe and the city of Prescott, as approved by the Secretary, providing for water, sewer, and effluent service from the city of Prescott to the Yavapai-Prescott Tribe.

## [\*104] SEC. 104. RATIFICATION OF SETTLEMENT AGREEMENT.

(a) Approval of Settlement Agreement.--To the extent the Settlement Agreement does not conflict with the provisions of this title, such Agreement is approved, ratified and confirmed. The Secretary shall execute and perform such Agreement and shall execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(b) Perpetuity.--The Settlement Agreement and Water Service Agreement shall include provisions which will ensure that the benefits to the Tribe thereunder shall be secure in perpetuity. Notwithstanding the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81) relating to the term of the Agreement, the Secretary is authorized and directed to approve the Water Service Agreement with a perpetual term.

## [\*105] SEC. 105. ASSIGNMENT OF CAP WATER.

The Secretary is authorized and directed to arrange for the assignment of, or to purchase, the CAP contract of the Tribe and the CAP subcontract of the city of Prescott to provide funds for deposit into the Verde River Basin Water Fund established pursuant to section 106.

## [\*106] SEC. 106. REPLACEMENT WATER FUND; CONTRACTS.

(a) Fund.--The Secretary shall establish a fund to be known as the "Verde River Basin Water Fund" (hereinafter called the "Fund") to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations.

(b) Content of Fund.--The Fund shall consist of moneys obtained through the assignment or purchase of the contract and subcontract referenced in section 105, appropriations as authorized in section 109, and any moneys returned to the Fund pursuant to subsection (d) of this section.

(c) Payments From Fund.--The Secretary shall, subsequent to the publication of a statement of findings as provided in section 112(a), promptly cause to be paid from the Fund to the Tribe the amounts deposited to the Fund from the assignment or purchase of the Tribe's CAP contract, and, to the city of Prescott, the amounts deposited to the Fund from the assignment or purchase of the city's CAP subcontract.

(d) Contracts.--The Secretary shall require, as a condition precedent to the payment of any moneys pursuant to subsection (c), that the Tribe and Prescott agree, by contract with the Secretary, to establish trust accounts into which the payments would be deposited and administered, to use such moneys consistent with the purpose and intent of section 107, to provide for audits of such accounts, and for the repayment to the Fund, with interest, any amount determined by the Secretary not to have been used within the purpose and intent of section 107.

## [\*107] SEC. 107. EXPENDITURES OF FUNDS.

(a) By the City.--All moneys paid to Prescott for relinquishing its CAP subcontract and deposited into a trust account pursuant to section 106(d),

shall be used for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under this title. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated water rights, development of ground water resources outside the Prescott Active Management Area established pursuant to the laws of the State of Arizona, and artificial recharge; except that none of the moneys paid to Prescott may be used for construction or renovation of the city's existing waterworks or water delivery system.

(b) By the Tribe.--All funds paid to the Tribe for relinquishing its CAP contract and deposited into a trust account pursuant to section 106(d), shall be used to defray its water service costs under the Water Service Agreement or to develop and maintain facilities for on-reservation water or effluent use.

(c) No Per Capita Payments.--No amount of the Tribe's portion of the Fund may be used to make per capita payments to any member of the Tribe, nor may any amount of any payment made pursuant to section 106(c) be distributed as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.

(d) Disclaimer.--Effective with the payment of funds pursuant to section 106(c), the United States shall not be liable for any claim or cause of action arising from the use of such funds by the Tribe or by Prescott.

[\*108] SEC. 108. ENVIRONMENTAL COMPLIANCE.

The Secretary, the Tribe and Prescott shall comply with all applicable Federal environmental and State environmental and water laws in developing alternative water sources pursuant to section 107(a). Development of such alternative water sources shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

[\*109] SEC. 109. APPROPRIATIONS AUTHORIZATION AND REPEAL.

(a) Authorization.--There are authorized to be appropriated to the Fund established pursuant to section 106(a):

(1) Such sums as may be necessary, but not to exceed \$ 200,000, to the Secretary for the Tribe's costs associated with judicial confirmation of the settlement.

(2) Such sums as may be necessary to establish, maintain and operate the gauging station required under section 111(e).

(b) State Contribution.--The State of Arizona shall contribute \$ 200,000 to the trust account established by the Tribe pursuant to the Settlement Agreement and section 106(d) for uses consistent with section 107(b).

(c) Repeal.--Subsection 406(k) of the Act of November 28, 1990 (Public Law 101-628; 104 Stat. 4487) is repealed.

[\*110] SEC. 110. SATISFACTION OF CLAIMS.

(a) Waiver.--The benefits realized by the Tribe or any of its members under the Settlement Agreement and this title shall constitute full and complete satisfaction of all claims by the Tribe and all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water and effluent) from time immemorial to the effective date of this title, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this title. Nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's reservation.

(b) Waiver and Release.--The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized and required, as a condition to the implementation of this title, to execute a waiver and release, except as provided in subsection (d) and the Settlement Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Waiver by United States.--Except as provided in subsection (d) and the Settlement Agreement, the United States, in its own right or on behalf of the Tribe, shall not assert any claim against the State of Arizona or any political subdivision thereof, or against any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona based upon water rights or injuries to water rights of the Tribe and its members or based upon water rights or injuries to water rights held by the United States on behalf of the Tribe and its members.

(d) Rights Retained.--In the event the waivers of claims authorized in subsection (b) of this section do not become effective pursuant to section 112(a), the Tribe, and the United States on behalf of the Tribe, shall retain the right to assert past and future water rights claims as to all reservation lands.

(e) Jurisdiction.--The United States District Court for the District of Arizona shall have original jurisdiction of all actions arising under this title, the Settlement Agreement and the Water Service Agreement, including review pursuant to title 9, United States Code, of any arbitration and award under the Water Service Agreement.

(f) Claims.--Nothing in this title shall be deemed to prohibit the Tribe, or the United States on behalf of the Tribe, from asserting or maintaining any claims for the breach or enforcement of the Settlement Agreement or the Water Service Agreement.

(g) Disclaimer.--Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation of any member of the Tribe.

(h) Full Satisfaction of Claims.--Payments made to Prescott under this title shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation,

relinquishment or delivery of CAP water.

[\*111] SEC. 111. MISCELLANEOUS PROVISIONS.

(a) Joining of Parties.--In the event any party to the Settlement Agreement should file a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, naming the United States of America or the Tribe as parties, authorization is hereby granted to join the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived. In the event Prescott submits a dispute under the Water Service Agreement to arbitration or seeks review by the United States District Court for the District of Arizona of an arbitration award under the Water Service Agreement, any claim by the Tribe to sovereign immunity from such arbitration or review is hereby waived.

(b) No Reimbursement.--The United States of America shall make no claims for reimbursement of costs arising out of the implementation of the Settlement Agreement or this title against any lands within the Yavapai-Prescott Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water Management.--The Tribe shall establish a ground water management plan for the Reservation which, except to be consistent with the Water Service Agreement, the Settlement Agreement and this title, will be compatible with the ground water management plan in effect for the Prescott Active Management Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a ground water management plan pursuant to this section, the Tribe may enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. Notwithstanding any other law, the Tribe may establish a tribal water code, consistent with the above-described water management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Settlement Act, the Settlement Agreement, and the Water Service Agreement, except that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

(d) Gauging Station.--The Secretary, acting through the Geological Survey, shall establish, maintain and operate a gauging station at the State Highway 89 bridge across Granite Creek adjacent to the reservation to assist the Tribe and the CVID in allocating the surface flows from Granite Creek as provided in the Settlement Agreement.

[\*112] SEC. 112. EFFECTIVE DATE.

(a) Waivers and Releases.--The waivers and releases required by section 110(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that--

(1) (A) the Secretary has determined that an acceptable party, or parties, have executed contracts for the assignments of the Tribe's CAP contract and the City of Prescott's CAP subcontract, and the proceeds from the assignments have been deposited into the Fund as provided in section 106(d); or



WATER SERVICE AGREEMENT  
BETWEEN  
YAVAPAI-PRESCOTT INDIAN TRIBE AND  
CITY OF PRESCOTT



1 1.4 Pursuant to the Act, the Tribe, the City and other parties  
2 are authorized to enter into a Yavapai-Prescott Indian Tribe Water  
3 Rights Settlement Agreement, hereinafter the "Settlement Agreement."  
4 Subparagraphs 5.1 and 5.3 of the Settlement Agreement ratify and  
5 incorporate the terms of this Agreement.

6  
7 1.5 The Tribe and the City desire to enter into this Agreement  
8 to provide for water, sewer and effluent service to the Reservation  
9

10 NOW, THEREFORE, in consideration of the premises and of the  
11 promises and agreement hereinafter set forth, the parties hereto agree  
12 as follows:

13  
14 2.0 EXISTING AGREEMENTS AND EASEMENTS

15  
16 2.1 The previous agreements listed in Exhibit 1.1 are superseded  
17 by the terms of this Agreement unless expressly stated otherwise  
18 herein.

19  
20 2.2 The grants of easements and rights-of-way listed in Exhibit  
21 1.2 are hereby ratified and approved, with the exception of that  
22 portion of the easement listed in paragraph B of Exhibit 1.2 which was  
23 abandoned pursuant to the 1980 Agreement between the Tribe and the  
24 City, as well as any other easements or portions thereof, if any,  
25 which have been amended, modified or relinquished pursuant to previous  
26 agreements between the Tribe and the City. All easements and rights-

1 of-way listed in Exhibit 1.2 are subject to the rental payments, term  
2 and conditions contained in the granting instruments, all applicabl  
3 laws and regulations and the provisions of subparagraph 2.6.  
4

5 2.3 Paragraphs 1 and 2 of the First Amendment to the 1980 Water  
6 and Sewer Agreement (described in paragraph I of Exhibit 1.1), which  
7 provide for the payment of an annual rental fee for the easement  
8 described in paragraph G of Exhibit 1.2 and a waiver of claims by the  
9 Tribe and the City, remain in full force and effect.  
10

11 2.4 Nothing in this Agreement shall in any way modify, change  
12 or abrogate any rights of the Tribe or its members under those  
13 provisions of the documents described in paragraph F of Exhibit 1.2  
14 and paragraphs F and H of Exhibit 1.1 which provide for the domestic  
15 water service for Tribal members through one meter, for payment for  
16 water and sewer service by the Tribe on behalf of its members to the  
17 City, and for the ownership of certain residential installations.  
18

19 2.5 The Tribe hereby waives any rights which it may enjoy under  
20 paragraph 2 of the deed of easement described in paragraph C of  
21 Exhibit 1.2 to receive sewer service from the City without cost and  
22 make unlimited connections to the City sewer system.  
23

24 2.6 No existing main, line, pumping station or other  
25 installation on or across the Reservation, or any easement or right-  
26 of-way associated therewith, may be conveyed by the City to a third

1 party without the Tribe's written consent; provided, however, that the  
2 Tribe hereby grants its consent for such a conveyance from the City  
3 to a regional water authority or other public entity which has taxing  
4 and/or regulatory powers and has at least one Tribal nominee serving  
5 on its governing board; and provided further that any property so  
6 conveyed would be subject to the terms of this subparagraph and all  
7 other applicable terms of this Agreement and any granting instruments.  
8 No existing main, line, pumping station or other installation on or  
9 across the Reservation may be removed by the City without the Tribe's  
10 written consent; provided, however, that the Tribe shall not  
11 unreasonably withhold its consent to the City's removal of an  
12 installation that was not financed, constructed or acquired by the  
13 Tribe, Reservation users or a Federal agency or other party on behalf  
14 of the Tribe if removal of the installation would not adversely affect  
15 the delivery of water or sewer service to the Tribe or any users  
16 located on the Reservation. In the event of abandonment of any  
17 existing easement, right-of-way or installation on or across the  
18 Reservation, the provisions of subparagraph 3.4 shall apply. In the  
19 circumstances described in subparagraph 8.5, all existing  
20 installations on or across the Reservation designed or used to provide  
21 water, effluent or sewer service to Reservation users, and any  
22 easements and rights-of-way associated therewith, shall revert to the  
23 Tribe in the manner provided by subparagraph 3.5; provided, however,  
24 that existing installations and associated easements and rights-of-way  
25 which provide or were designed to provide service to both Reservation  
26 users and non-Reservation users shall, in such circumstances, be

1 jointly owned and operated by the Tribe and the City or its assignee.  
2 The provisions of this subparagraph shall also apply to all mains,  
3 lines, pumping stations and other installations, and all easements and  
4 rights-of-way associated therewith, which are located off the  
5 Reservation and were financed, constructed or acquired by the Tribe,  
6 Reservation users or a Federal agency or other party on behalf of the  
7 Tribe.

8  
9 2.7 Should the future residential, commercial, industrial or  
10 other economic development on the Reservation necessitate the upgrade  
11 or enlargement of an existing installation on or across the  
12 Reservation and, due to limitations in the original grant of easement,  
13 a new easement is required for the upgraded or enlarged installation,  
14 the provisions of subparagraph 3.7 shall apply. Should future  
15 development outside the Reservation necessitate the upgrade or  
16 enlargement of an existing installation on or across the Reservation  
17 and, due to limitations in the original grant of easement, a new  
18 easement is required for the upgraded or enlarged installation, the  
19 provisions of subparagraph 3.6(B) shall apply; provided, however,  
20 that, subject to the Secretary's discretion, the fair market value of  
21 the new easement shall be offset by the fair market value of the  
22 previous easement and by any direct benefits accruing to the Tribe by  
23 virtue of the upgrade or enlargement of the installation or by the  
24 Tribe's actual use of City easements pursuant to subparagraph 3.8(A).  
25 If the upgrade or enlargement of an existing installation does not  
26 require a new easement, the City shall not be required to pay any

1 additional amount to the Tribe for making the upgrade or enlargement  
2 within the original easement. If the upgraded or enlarged  
3 installation is situated at the same location as the previous  
4 installation, the new easement shall be considered "adjacent and  
5 parallel" to the previous easement for purposes of subparagraph  
6 3.6(B).

7  
8 3.0 WATER INSTALLATIONS AND EASEMENTS

9  
10 3.1 The Tribe agrees to pay for and install (or have paid for  
11 and installed by Reservation users) upon the Reservation all water and  
12 sewer mains, lines, pumping stations and other installations required  
13 in connection with the development of the Reservation and used solely  
14 by Reservation water or sewer users, in accordance with plans and  
15 specifications to be prepared by the Tribe's registered engineers (or  
16 the registered engineers of a Reservation user) pursuant to City  
17 standards and subject to approval by the City. Upon satisfactory  
18 completion of such installations, the City's Environmental Services  
19 Director or his designee shall notify the Tribe (or the Reservation  
20 user) in writing that such installations are thereby accepted. Should  
21 any disagreement arise between the Tribe (or the Reservation user) and  
22 the City with regard to the engineering, construction or installation  
23 of such installations, the Tribe's engineer (or the Reservation user's  
24 engineer) and the City Environmental Services Director shall agree  
25 upon a third engineer within ten (10) calendar days after such  
26 disagreement and the decision of such third engineer shall be final.

1 and shall be made within fifteen (15) calendar days after selectio  
2 of such third engineer. Should the Tribe's engineer (or th  
3 Reservation user's engineer) and the City Environmental Service  
4 Director fail to agree on the selection of a third engineer pursuan  
5 to this section, the matter in disagreement shall be subject to  
6 arbitration pursuant to paragraph 8.2.

7  
8 3.2 Following acceptance by the City Environmental Services  
9 Director, such installations shall become the property of the City,  
10 free and clear of any and all encumbrances, claims or liens whatsoever  
11 for use thereof by the City, and the Tribe (or the Reservation user)  
12 shall execute and deliver to the City a bill of sale evidencing the  
13 transfer of title to such installations, subject to the provisions of  
14 subparagraphs 3.3, 3.4 and 3.5. The Tribe also agrees to approve the  
15 grant by the Secretary to the City of any easement or right-of-way on  
16 or across the Reservation required for the extension of water and  
17 sewer installations to service the development of the Reservation, and  
18 hereby grants a license to the City to enter upon existing Reservation  
19 streets and roads to repair and maintain such installations.

20  
21 3.3 Upon acceptance by the City of mains, lines, pumping  
22 stations and other installations constructed by the Tribe (or the  
23 Reservation user), and easements and rights-of-way associated  
24 therewith, for residential, commercial or industrial development on  
25 the Reservation, the City agrees in connection therewith to:

26

1           A. Retain title to the installations, easements and  
2 rights-of-way for not less than ninety-nine (99) years, subject to the  
3 provisions of subparagraphs 3.4 and 3.5, and thereafter to not convey  
4 title to a third party without the written consent of the Tribe  
5 provided, however, that the City may convey the installations  
6 easements and rights-of-way to a regional water authority or other  
7 public entity which has taxing and/or regulatory powers and has at  
8 least one Tribal nominee serving on its governing board; and provide  
9 further that all installations, easements and rights-of-way so  
10 conveyed would be subject to the terms of this subparagraph 3.3  
11 subparagraphs 3.4 and 3.5, and all other applicable terms of this  
12 Agreement and any granting instruments.

13           B. Not remove said installations from the Reservation  
14 realty without the written consent of the Tribe.

15           C. At the expense of the City, to maintain the  
16 installations adequately to service residential, commercial and  
17 industrial enterprises on the Reservation.

18           D. Not encumber any such installations or related  
19 easements or rights-of-way.

20  
21           3.4 The City shall be deemed to have abandoned an easement if  
22 the mains, lines, pumping stations or other installations (the  
23 "installations") located within such easement are not used to provide  
24 water or sewer service for a continuous period of one year. Upon such  
25 abandonment, the following provisions shall apply:  
26

1           A.    The City, upon written request by the Tribe, shall  
2 execute and deliver to the Tribe an instrument in form and substance  
3 reasonably satisfactory to the Tribe terminating the easement. Such  
4 instrument shall be suitable for recording with the Yavapai County  
5 Recorder so as to give notice of such termination in the official  
6 records of Yavapai County.

7           B.    If the installations located within such easement were  
8 paid for by the Tribe, Reservation users or a Federal agency or other  
9 party on behalf of the Tribe, such installations shall become the  
10 property of the Tribe, free and clear of any and all encumbrances,  
11 claims or liens whatsoever, and the City, upon written request by the  
12 Tribe, shall execute and deliver to the Tribe a bill of sale or other  
13 instrument in form and substance reasonably satisfactory to the Tribe  
14 evidencing the transfer of title of such installations to the Tribe.

15           C.    If the installations located within such easement were  
16 not paid for by the Tribe, Reservation users or a Federal agency or  
17 other party on behalf of the Tribe, the City, subject to subparagraph  
18 3.4(D), shall have one year from the date of its receipt of the  
19 request referred to in subparagraph 3.4(A) to remove such  
20 installations and may enter upon the easement property to effect such  
21 removal. At the expiration of such one year period any such  
22 installations not removed shall become the property of the Tribe, free  
23 and clear of any and all encumbrances, claims or liens whatsoever, and  
24 the City, upon written request by the Tribe, shall execute and deliver  
25 to the Tribe a bill of sale or other instrument in form and substance

26

1 reasonably satisfactory to the Tribe evidencing the transfer of title  
2 of such unremoved installations to the Tribe.

3 D. Notwithstanding subparagraph 3.4(C), the City may not  
4 remove any installations if doing so would adversely affect the  
5 delivery of water or sewer service to the Tribe or any user located  
6 on the Reservation.

7  
8 3.5 In the circumstances described in subparagraph 8.5, all  
9 installations, easements and rights-of-way conveyed to the City  
10 pursuant to subparagraph 3.2 shall become the property of the Tribe,  
11 free and clear of any and all encumbrances, claims or liens  
12 whatsoever, and the City shall, upon written request by the Tribe,  
13 execute and deliver to the Tribe a bill of sale and/or deed evidencing  
14 the transfer of title to such installations, easements and rights-of-  
15 way.

16  
17 3.6 Nothing contained in this paragraph 3.0 or this Agreement  
18 shall be construed to require the Tribe, Reservation users or a  
19 Federal agency or other party on behalf of the Tribe to:

20 A. Pay for, install or upgrade any main, line, pumping  
21 station or other installation which serves any user outside the  
22 Reservation, or pay for, install or upgrade any off-Reservation main,  
23 line, pumping station or other installation.

24 B. Approve the grant of any easement or right-of-way on  
25 or across the Reservation for any main, line, pumping station or other  
26 installation which serves any user outside the Reservation; provided,

1 however, that the Tribe agrees to use its best efforts in assistin  
2 the City in obtaining such additional easements or rights-of-wa  
3 adjacent and parallel to existing easements or rights-of-way acros  
4 the Reservation for fair market value. Said fair market value is to  
5 be offset by any direct benefits accruing to the Tribe by virtue of  
6 the operation of the installation or by the Tribe's actual use of City  
7 easements pursuant to subparagraph 3.8(A). At the City's option,  
8 payment for additional easements and rights-of-way pursuant to this  
9 subparagraph may be made in one payment for the present value of the  
10 easement throughout the term thereof. All easements and rights of way  
11 remain subject to the Secretary's discretion in granting such  
12 easements or rights-of-way, the requirements of Federal law and such  
13 non-compensatory terms and conditions as are applicable to the  
14 adjacent easement or right-of-way. Nothing contained in this  
15 subparagraph or this Agreement shall be construed to require the Tribe  
16 to approve the grant of any easement which is not adjacent and  
17 parallel to any existing easement or right-of-way or is inconsistent  
18 with existing or planned Reservation use or occupancy. All easements  
19 granted pursuant to this subparagraph, and the installations  
20 associated therewith, shall be subject to the provisions of  
21 subparagraph 2.6.

22 C. Grant or convey to the City any water or sewer  
23 installations, or approve the grant by the Secretary to the City of  
24 any easements or rights-of-way associated therewith, which are not  
25 connected to the City's water or sewer systems.  
26

1           D.     Grant or convey to the City the right to use any mains  
2 lines, pumping stations or other installations, or any easements or  
3 rights-of-way associated therewith, which were financed, constructed  
4 or acquired by the Tribe or by a Federal agency or other party on  
5 behalf of the Tribe, to service any user outside the Reservation  
6 without the Tribe's written consent; provided, however, that if the  
7 Tribe and the Secretary approve of or grant such use by the City, and  
8 determine that such use would not adversely impact the Tribe, the  
9 Tribe hereby agrees that such use of such installations, easements or  
10 rights-of-way shall be without payment of compensation, subject to the  
11 Secretary's discretion; and provided further that nothing contained  
12 in this subparagraph 3.6(D) or this Agreement shall be construed to  
13 require the Tribe to approve the grant of any easement or extension  
14 of an easement which is not adjacent and parallel to any existing  
15 easement or right-of-way or is inconsistent with existing or planned  
16 Reservation use or occupancy. Unless the Tribe agrees otherwise in  
17 writing, City use of installations, easements or rights-of-way  
18 pursuant to this subparagraph shall in no manner affect the reversion  
19 of such installations, easements or rights-of-way to sole Tribal  
20 ownership pursuant to subparagraphs 2.6, 3.4 and 3.5 in the  
21 circumstances described in those subparagraphs.

22           E.     Grant or convey to the City any water or sewer  
23 installations, or approve the grant by the Secretary to the City of  
24 any easements or rights-of-way, after City water and sewer service to  
25 the Tribe and Reservation users has terminated pursuant to  
26 subparagraph 8.5.

1 3.7 Should the future residential, commercial, industrial  
2 other economic development on the Reservation necessitate, in whole  
3 or in part, an expansion of the City's water or sewer installation  
4 or water or sewer plant capacity, the Tribe agrees to approve the  
5 grant by the Secretary to the City of any future easements or rights  
6 of-way across the Reservation for such required installations without  
7 payment of compensation, subject to the Secretary's discretion in  
8 granting such easements or rights-of-way, the requirements of Federal  
9 law and such non-compensatory terms and conditions as are applicable  
10 to an adjacent easement or right-of-way; provided, however, that  
11 nothing contained in this subparagraph or this Agreement shall be  
12 construed to require the Tribe to approve the grant of any easement  
13 which is not adjacent and parallel to any existing easement or right  
14 of-way or is inconsistent with existing or planned Reservation use or  
15 occupancy. All easements granted pursuant to this subparagraph, and  
16 the installations associated therewith, shall be subject to the  
17 provisions of subparagraph 2.6.

18  
19 3.8 To the extent it is necessary or desirable to the Tribe to  
20 construct, operate and maintain off-Reservation mains, lines, pumping  
21 stations or other installations to enjoy its rights pursuant to  
22 paragraph 7.0 or, in the circumstances described in subparagraph 8.5  
23 pursuant to the Type 2 Grandfathered Groundwater Rights or equivalent  
24 thereof, as set forth in subparagraph 8.4(C) of this Agreement and  
25 subparagraph 5.4 of the Settlement Agreement, the City agrees:  
26

1           A. To grant the Tribe the right to the non-exclusive use  
2 of new or existing City easements or rights-of-way for Tribe  
3 installations without payment of compensation, where such joint use  
4 is not inconsistent with the terms of such easements or rights-of-way  
5 and is not inconsistent with existing or planned use of the easement  
6 or rights-of-way. In the event the City grants the Tribe such  
7 right, the City shall receive a credit against any payment obligation  
8 the City may owe to the Tribe for new or existing easements or rights  
9 of-way across the Reservation in an amount equal to the adjusted value  
10 of any such right granted to the Tribe pursuant to the preceding  
11 sentence. In determining such adjusted value, the value of the  
12 Tribe's actual use of City easements or rights-of-way pursuant to this  
13 subparagraph 3.8(A) shall be determined and then shall be adjusted  
14 downward by the value of the City's actual use of installations which  
15 do not serve Reservation users exclusively and which were financed,  
16 constructed or acquired by the Tribe or by a Federal agency or other  
17 party on behalf of the Tribe, or easements or rights-of-way on the  
18 Reservation, pursuant to subparagraph 3.6(D).

19           B. When joint use of City easements or rights-of-way  
20 pursuant to subparagraph 3.8(A) is not possible, to use its best  
21 efforts in assisting the Tribe in obtaining additional easements or  
22 rights-of-way adjacent and parallel to existing City easements or  
23 rights-of-way for fair market value.

24  
25       4.0           WATER SERVICE

1        4.0            WATER SERVICE

2        4.1            The City agrees to allow the Tribe (and Reservation water  
3 users) to make such connections, extensions or additions to water  
4 installations which presently exist upon or adjacent to the  
5 Reservation or are hereafter constructed upon or adjacent to the  
6 Reservation as may be deemed necessary or desirable by the Tribe for  
7 the purpose of providing water service to the Tribe and existing and  
8 future Reservation water users.

9        4.2            Subject to the granting of any necessary easement or right-  
10 of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide  
11 and furnish water for all residential uses on the Reservation through  
12 distribution facilities which are of sufficient capacity to provide,  
13 and do provide, such minimum demand flows, flow durations, residual  
14 pressures at each fire-fighting point of service, static pressure  
15 ranges and regulated maximum pressures under normal operating  
16 conditions as are required for the residential uses and associated  
17 water uses (including fire-fighting) and are consistent with the  
18 standards of the City for service within city limits and the  
19 professional standards of the Insurance Service Organization or  
20 comparable entity; provided, however, that the City distribution  
21 facilities shall be of sufficient capacity to provide, and do provide,  
22 a minimum demand flow for residential uses of at least one thousand  
23 (1000) gallons per minute with a residual pressure of twenty (20)  
24 pounds per square inch at each fire-fighting point of service and a  
25 static pressure range of fifty (50) pounds of pressure per square inch  
26 to one hundred (100) pounds of pressure per square inch at each point

1 of consumption, with the highest pressure regulated to a maximum of  
2 one hundred (100) pounds of pressure per square inch at each point of  
3 consumption under normal operating conditions; and provided further  
4 that nothing contained herein shall be construed to create any City  
5 liability for inability to provide the capacities, flows, flow  
6 durations or pressures set forth herein for Reservation water uses due  
7 solely and proximately to a design or construction defect in  
8 installations constructed by the Tribe or Reservation water user  
9 pursuant to paragraph 3.1.

10 4.3 Subject to the granting of any necessary easement or right-  
11 of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide  
12 and furnish water for all industrial or commercial uses on the  
13 Reservation (including multi-family residential structures) through  
14 distribution facilities which are of sufficient capacity to provide,  
15 and do provide, such minimum demand flows, flow durations, residual  
16 pressures at each fire-fighting point of service, static pressure  
17 ranges and regulated maximum pressures under normal operating  
18 conditions as are required for the industrial and commercial uses and  
19 associated water uses (including fire-fighting) and are consistent  
20 with the standards of the City for service within city limits and the  
21 professional standards of the Insurance Service Organization or  
22 comparable entity; provided, however, that the City distribution  
23 facilities shall be of sufficient capacity to provide, and do provide,  
24 a minimum demand flow for industrial and commercial uses of at least  
25 two thousand five hundred (2500) gallons per minute with a residual  
26 pressure of fifty (50) pounds per square inch at each fire-fighting

1 point of service and a static pressure range of fifty (50) pounds of  
2 pressure per square inch to one hundred (100) pounds of pressure per  
3 square inch at each point of consumption, with the highest pressure  
4 regulated to a maximum of one hundred (100) pounds of pressure per  
5 square inch at each point of consumption under normal operating  
6 conditions; and provided further that nothing contained herein shall  
7 be construed to create any City liability for inability to provide the  
8 capacities, flows, flow durations or pressures set forth herein for  
9 Reservation water uses due solely and proximately to a design or  
10 construction defect in installations constructed by the Tribe or  
11 Reservation water user pursuant to paragraph 3.1.

12 4.4 If the Tribe determines in good faith that the residential,  
13 industrial or commercial development within the Reservation results  
14 in the need for expanded water plant or distribution facilities to  
15 provide surplus water flows (i.e., unusual capacity, flow or pressure  
16 demands which are in excess of the standard residential, industrial  
17 and commercial water requirements referenced in subparagraphs 4.2 and  
18 4.3), the City shall use all diligent efforts to enlarge or expand  
19 such plant and distribution facilities within the City's service area  
20 in order to provide such surplus flows; provided, however, that the  
21 City may require the Reservation water user or users requiring the  
22 surplus flows to pay the costs of providing such surplus flows.

23 4.5 All water delivered by the City pursuant to this paragraph  
24 4.0 shall meet or exceed all applicable water quality standards  
25 established by the Arizona Department of Environmental Quality and all  
26 other agencies having jurisdiction.

1 4.6 Nothing contained in this paragraph 4.0 or this Agreement  
2 shall be construed to:

3 A. Prohibit the Tribe from owning, constructing, operating  
4 or maintaining a separate Reservation water system which is not  
5 connected to the City's water system.

6 B. Prohibit the City and Tribe from jointly owning,  
7 constructing, operating or maintaining water service installations or  
8 systems for Reservation water use or for integrated on-Reservation and  
9 off-Reservation water use.

10 C. Prohibit the Tribe from withdrawing and using  
11 groundwater pursuant to the Settlement Agreement, or diverting and  
12 using surface water pursuant to the Settlement Agreement.

13 D. Except with respect to on-Reservation facilities  
14 exclusively serving Reservation water users, require the Tribe (or  
15 Reservation water users) to pay for, install or upgrade any City  
16 facilities needed to provide the standard capacities, flows, flow  
17 durations or pressures provided for in subparagraphs 4.2 and 4.3.

18 5.0 SHORTAGE PRIORITY

19 5.1 The City agrees that, in the event of a water shortage which  
20 would otherwise result in the reduction or curtailment of water  
21 deliveries to Reservation users pursuant to subparagraph 5.2,  
22 residential, commercial and industrial users located upon the  
23 Reservation shall have an absolute prior right, during any year in  
24 which there is such a shortage, over any other user of water supplied  
25 by the City, either inside or outside the corporate limits of the  
26 City, to the first five hundred and fifty (550) acre-feet per annum

1 4.5 All water delivered by the City pursuant to this paragraph  
2 4.0 shall meet or exceed all applicable water quality standards  
3 established by the Arizona Department of Environmental Quality and all  
4 other agencies having jurisdiction.

5  
6 4.6 Nothing contained in this paragraph 4.0 or this Agreement  
7 shall be construed to:

8 A. Prohibit the Tribe from owning, constructing, operating  
9 or maintaining a separate Reservation water system which is not  
10 connected to the City's water system.

11 B. Prohibit the City and Tribe from jointly owning  
12 constructing, operating or maintaining water service installations or  
13 systems for Reservation water use or for integrated on-Reservation and  
14 off-Reservation water use.

15 C. Prohibit the Tribe from withdrawing and using  
16 groundwater pursuant to the Settlement Agreement, or diverting and  
17 using surface water pursuant to the Settlement Agreement.

18 D. Except with respect to on-Reservation facilities  
19 exclusively serving Reservation water users, require the Tribe (on  
20 Reservation water users) to pay for, install or upgrade any City  
21 facilities needed to provide the standard capacities, flows, flow  
22 durations or pressures provided for in subparagraphs 4.2 and 4.3.

23  
24 5.0 SHORTAGE PRIORITY

25  
26

1 5.1 The City agrees that, in the event of a water shortage which  
2 would otherwise result in the reduction or curtailment of water  
3 deliveries to Reservation users pursuant to subparagraph 5.2  
4 residential, commercial and industrial users located upon the  
5 Reservation shall have an absolute prior right, during any year in  
6 which there is such a shortage, over any other user of water supplied  
7 by the City, either inside or outside the corporate limits of the  
8 City, to the first five hundred and fifty (550) acre-feet per annum  
9 of water supplied by the City. During such times as this absolute  
10 priority is exercised by the Tribe to prevent reduced or curtailed  
11 water deliveries pursuant to subparagraph 5.2, the City may elect  
12 after receiving the Tribe's permission, to divert from Granite Creek  
13 a quantity of water equivalent to the absolute priority water  
14 delivered to the Reservation, said diversions being in lieu of  
15 diversion by the Tribe of a corresponding portion of the Tribe's  
16 Granite Creek rights as described in the Settlement Agreement and  
17 subject to the same restrictions applicable to diversions by the Tribe  
18 under Subparagraph 6.2 thereof. Among Reservation users, the Tribe  
19 shall determine delivery priorities of this water and so notify the  
20 City.

21  
22 5.2 With the exception of the Tribe's absolute priority water  
23 described in subparagraph 5.1, during times of shortage, the remainder  
24 of the water delivered through the City's water distribution system  
25 may be reduced or curtailed to such classes of users as the City may  
26 determine from time to time, subject to the following restrictions.

1 The next to last class of users to which water deliveries may b  
2 reduced or curtailed shall consist of all commercial or industria  
3 users located within the boundaries of the City and the Reservation  
4 The last class of users to which water deliveries may be reduced o  
5 curtailed shall consist of all residential or domestic users locate  
6 within the boundaries of the City and the Reservation, on the same  
7 basis. For purposes of this paragraph, the Tribe's governmental  
8 offices shall be considered a residential or domestic user. Within  
9 each user class as set forth in this paragraph, the reductions in  
10 water delivery shall be on a proportional basis, based upon each  
11 user's average water consumption over the prior twelve (12) months,  
12 as it relates to the total amount of water delivered to members of the  
13 class through the City's water delivery system during the same time  
14 period.

15  
16 5.3 The Tribe shall adopt a water conservation code designed to  
17 limit per capita residential water use on the Reservation during times  
18 of shortage which are comparable to the average per capita residential  
19 water use during times of shortage within that portion of the City's  
20 water service area which lies outside the boundaries of the  
21 Reservation. The Tribal water conservation code shall also implement  
22 conservation measures during times of shortage for Reservation  
23 commercial and industrial water users which are comparable to the  
24 conservation measures applicable during times of shortage to  
25 commercial and industrial water users within that portion of the  
26 City's water service area which lies outside the boundaries of the

1 Reservation. Nothing in this subparagraph 5.3 shall be deemed to  
2 limit or otherwise affect in any manner the rights of Reservatic  
3 water users under subparagraphs 5.1 and 5.2 or any other applicabl  
4 provision of this Agreement.

5  
6 6.0 SEWER SERVICE

7  
8 6.1 Subject to any total or partial moratorium on new sewe  
9 connections as set forth in subparagraph 6.2, the City agrees to allo  
10 the Tribe (and Reservation sewer users) to make such connections  
11 extensions or additions to sewer installations which presently exist  
12 upon or adjacent to the Reservation or are hereafter constructed upon  
13 or adjacent to the Reservation as may be deemed necessary or desirabl  
14 by the Tribe for the purpose of providing sewer service to existing  
15 and future Reservation sewer users.

16  
17 6.2 If the rate of development upon the Reservation or within  
18 the service area of the City, as the term is defined in subparagraph  
19 6.3, results in the need for expanded sewer treatment or collection  
20 and outfall facilities, the City shall use all diligent efforts to  
21 obtain the necessary financing for such expansion, so as to expedite  
22 development on the Reservation; provided, however, that if the City  
23 is temporarily unable to construct such expanded sewer treatment or  
24 collection or outfall facilities because of (a) fiscal restraints  
25 during the first fiscal year in which construction of expanded  
26 facilities is required or (b) refusal of participating agencies, such

1 as the Environmental Protection Agency, to grant necessary financing  
2 and should the City be required to impose a moratorium on future sewer  
3 connections or collection and outfall facilities by the Environmental  
4 Protection Agency, the Arizona Department of Environmental Quality  
5 or any other appropriate agency with jurisdiction, such moratorium  
6 shall apply equally to all future sewer connections or collection and  
7 outfall facilities, without regard to whether the proposed development  
8 is located within that portion of the City's sewer service area which  
9 lies outside the boundaries of the Reservation, or that portion of the  
10 City's sewer service area which encompasses the Reservation. If the  
11 imposition of a moratorium does not result in outright prohibition of  
12 future sewer connections, but imposes a limitation on the number  
13 thereof, the permitted number of future sewer connections shall be  
14 allocated equitably between development on the Reservation and  
15 development within that portion of the City's service area outside the  
16 Reservation.

17  
18 6.3 With respect to the need for construction of expanded sewer  
19 treatment or collection and outfall facilities, or the use of existing  
20 sewer treatment, collection or outfall facilities, the City shall not  
21 establish any development priorities, whether fiscal or otherwise  
22 between development within that portion of the City's service area  
23 which lies outside the boundaries of the Reservation and development  
24 within that portion of the City's sewer service area which encompasses  
25 the Reservation, and the City shall not discriminate in any manner  
26 between sewer connections on the Reservation and those outside the

1 Reservation; provided, however, that nothing contained in this  
2 subparagraph 6.3 shall prohibit the City from establishing developer  
3 priorities (including, but not limited to, priorities for sewer  
4 connections) that favor development on the Reservation and within the  
5 incorporated limits of the City over development in other areas to  
6 which the City provides water or sewer service. For purposes of this  
7 subparagraph and subparagraph 6.2, the service area of the City shall  
8 include (1) the area within the territorial boundaries of the City and  
9 (2) any additional area in which the City serves domestic, commercial  
10 and industrial users or owns water or sewer mains, lines and booster  
11 facilities with which to provide such service.

12  
13 6.4 Subject to any total or partial moratorium on sewer  
14 connections as set forth in subparagraph 6.2, and subject to the  
15 granting of any necessary easement or right-of-way pursuant to  
16 subparagraph 3.2 or 3.7, the City agrees to allow connection of all  
17 future residential, commercial or industrial development on the  
18 Reservation to the City sewer system and to accept and treat to the  
19 extent required by law all domestic, commercial and industrial sewage  
20 and wastewater arising from all existing development on the  
21 Reservation and any and all future development on the Reservation  
22 delivered to the City sewer system from the Reservation. All  
23 Reservation discharges to the City sewer system shall conform to the  
24 pretreatment standards applicable to similar non-Reservation  
25 discharges into the City sewer system.

26

1 6.5 Except with respect to on-Reservation facilities exclusive  
2 serving Reservation sewer users, nothing in this paragraph 6.0 or the  
3 Agreement shall be construed to require the Tribe (or Reservatio  
4 sewer users) to pay for, install or upgrade any City facilities neede  
5 to provide the sewer service provided for in this paragraph 6.0.

6  
7 7.0 EFFLUENT SERVICE

8  
9 7.1 All effluent generated on the Reservation shall be  
10 considered the property of the Tribe until such time as it leaves th  
11 Reservation in City installations and is excess to Tribe'  
12 requirements for effluent use or conveyance pursuant to subparagraph  
13 7.2, has been conveyed by the Tribe or City to a third party user, o  
14 loses its character as effluent. At the Tribe's option, Reservatio  
15 effluent may be delivered to the City for treatment and subsequent us  
16 or sale by the Tribe pursuant to subparagraph 7.2 or captured and use  
17 or sold by the Tribe pursuant to subparagraph 7.3. If neither use  
18 nor sold by the Tribe pursuant to subparagraphs 7.2 or 7.3, effluen  
19 generated on the Reservation shall be the City's property fo  
20 disposition as it pleases.

21  
22 7.2 The City agrees to allow the Tribe and/or its agents to mak  
23 such connections, extensions or additions to effluent installation  
24 which presently exist or are hereafter constructed as may be deeme  
25 necessary or desirable by the Tribe for the purpose of using th  
26 effluent generated on the Reservation; provided, however, that suc.

1 connections, extensions or additions to effluent installations will  
2 not adversely affect such installations and will be subject to the  
3 City's approval, such approval to not be unreasonably withheld; and  
4 provided further that the cost of constructing, operating and  
5 maintaining such connections, extensions or additions shall be borne  
6 solely by the Tribe and/or its agents. The Tribe shall have a  
7 absolute first priority for all effluent produced from the treatment  
8 of Reservation sewage or wastewater at City treatment facilities, and  
9 may direct the delivery of such effluent through such connections  
10 extensions or additions to Reservation effluent users, third-party  
11 purchasers of Reservation effluent, or a combination thereof. Unless  
12 agreed otherwise by the City, such deliveries may not exceed the rate  
13 at which Reservation sewage is generated and treated at City treatment  
14 facilities, said rate to be determined by multiplying the average  
15 daily gallon quantity of water delivered to Reservation users during  
16 the previous month by the system-wide percentage of sewage generation  
17 to water deliveries or, at the Tribe's option, by the Tribe and/or its  
18 agents installing, operating and maintaining at their cost adequate  
19 measuring devices for determining the actual rate of sewage generation  
20 by Reservation users. The Tribe and/or its agents shall be solely  
21 responsible for obtaining and paying the costs for any necessary  
22 regulatory permits or approvals for use of the effluent; provided  
23 however, that the City shall cooperate with and support the Tribe  
24 and/or its agents in obtaining any such permits and approvals. Use  
25 of effluent pursuant to this subparagraph 7.2 and this Agreement shall  
26

1 not require a more stringent level of sewage or wastewater treatment  
2 by the City than is otherwise effected by City treatment facilities  
3

4 7.3 The Tribe may, at its option, construct, operate an  
5 maintain a separate effluent collection, treatment and distributio  
6 system for the use and/or sale of Reservation effluent. To the exten  
7 that existing sewer or effluent installations were constructed wit  
8 Tribal funds (or with federal or private funds where the federa  
9 agency or private party involved does not object to a reconveyanc  
10 pursuant to this subparagraph and the installations were built to  
11 provide sewer or effluent service only to Reservation users or off  
12 Reservation purchasers of Tribal effluent), the Tribe may request an  
13 the City shall execute a reconveyance or deed to the Tribe of such  
14 installations and associated easements and rights-of-way free and  
15 clear of any and all encumbrances, claims or liens whatsoever in the  
16 manner provided by subparagraphs 3.4 and 3.5; provided, however, that  
17 the Tribe shall at its expense perform all acts necessary to  
18 disconnect such installations from the City's installations, subject  
19 to the approval of the City Environmental Services Director to prevent  
20 damage to the City's mains and lines, with review by a third engineer  
21 as provided in subparagraph 3.1 in case of dispute; and provided  
22 further that the City shall not be required to reconvey to the Tribe  
23 any easements or rights-of-way which are necessary for City  
24 installations which are not the subject of the reconveyance.

25

26

1 7.4 All effluent delivered by the City pursuant to this  
2 paragraph 7.0 shall meet or exceed all applicable quality standards  
3 established by the Arizona Department of Environmental Quality and all  
4 other agencies having jurisdiction.

5  
6 7.5 Nothing contained in this paragraph 7.0 or this Agreement  
7 shall be construed to prohibit the City and Tribe from jointly owning,  
8 constructing, operating or maintaining effluent installations or  
9 systems for Reservation effluent use or for integrated on-Reservation  
10 and off-Reservation effluent use.

11  
12 7.6 Except with respect to on-Reservation facilities exclusively  
13 serving Reservation effluent users and off-Reservation facilities  
14 exclusively serving users of Reservation effluent designated by the  
15 Tribe pursuant to subparagraph 7.2, and except as provided in  
16 paragraph 9.0, nothing in this paragraph 7.0 or this Agreement shall  
17 be construed to require the Tribe (or users of Reservation effluent)  
18 to pay for, install or upgrade any City facilities needed to provide  
19 the effluent service provided for in this paragraph 7.0.

20  
21 8.0 PERFORMANCE AND DEFAULT

22  
23 8.1 Should either the Tribe or the City determine that the other  
24 party has breached or defaulted in the timely performance of any  
25 obligation under this Agreement, the aggrieved party shall provide  
26 written notice to that effect and the breaching or defaulting party

1 shall have thirty (30) calendar days from the receipt of notice to  
2 cure the breach or default, unless the aggrieved party provides  
3 written extension of this cure period; provided, however, that failure  
4 to deliver water at the flows and pressures provided in subparagraph  
5 4.2 and 4.3 or in accordance with the schedule of priorities provided  
6 in paragraph 5.0 must be cured within twenty-four (24) hours of  
7 notice, unless the Tribe provides a written extension of this cure  
8 period or the City is physically unable to comply with subparagraphs  
9 4.2 and 4.3 or paragraph 5.0 due solely and proximately to an Act of  
10 God which the City could not reasonably have prevented, avoided or  
11 relieved through foresight or prudence.

12  
13 8.2 Disputes under this Agreement are subject to arbitration  
14 under the rules, regulations and standards of the American Arbitration  
15 Association, with review by the United States District Court for the  
16 District of Arizona, as provided in Section 10(e) of the Act;  
17 provided, however, that the Tribe may, following the cure period  
18 provided in subparagraph 8.1, immediately seek equitable relief in  
19 United States District Court for the District of Arizona to enforce  
20 the provisions of subparagraphs 4.2 and 4.3 or paragraph 5.0; and  
21 provided further that the Tribe may commence an action in United  
22 States District Court for the District of Arizona seeking a  
23 determination pursuant to subparagraph 8.5.1 or 8.5.2 without first  
24 submitting the matter to arbitration.

25  
26

1 8.3 If the Tribe or the City breaches or defaults in the timely  
2 performance of any obligation under this Agreement, the party not in  
3 default, to the extent permitted by applicable law, shall be entitled  
4 to all damages incurred arising from the breach or default, including  
5 reasonable attorneys' fees and cost of suit, as set by the arbitrator  
6 hearing examiner or court. The parties expressly agree that the  
7 rights conferred by this Agreement may be enforced through specific  
8 performance. The foregoing shall not in any way limit or restrict any  
9 right or remedy at law or equity which would otherwise be available  
10 to the party not in breach or default.

11  
12 8.4 As security for its performance under this Agreement, the  
13 City agrees:

14 A. That it may not assign its obligations under this  
15 Agreement without the written consent of the Tribe, and may not sell,  
16 lease, create a security interest in, or otherwise dispose of more  
17 than fifty (50%) percent of its water-related assets without the  
18 written consent of the Tribe; provided, however, that the Tribe hereby  
19 grants its consent for such an assignment or disposition from the City  
20 to a regional water authority or other public entity which has taxing  
21 and/or regulatory powers and has at least one Tribal nominee serving  
22 on its governing board; and provided further any property so conveyed  
23 would be subject to all applicable terms of this Agreement.

24 B. That it shall not merge or consolidate with any other  
25 entity unless the successor entity assumes all obligations of the City  
26 under this Agreement.

1           C.     That it shall hold 3169 acre-feet per annum of Type  
2 Grandfathered Groundwater Rights in trust for the Tribe as securi  
3 for the performance of this Agreement until such time, if ever, th  
4 it shall convey such Type 2 Grandfathered Groundwater Rights to t  
5 Tribe in the circumstances described in subparagraph 8.5; provide  
6 however, that, upon any conveyance of the Type 2 Grandfather  
7 Groundwater Rights to the Tribe pursuant to this Agreement, sa  
8 rights may only be utilized by the Tribe to provide water service  
9 Reservation water users; and provided further that, following any suc  
10 conveyance, the Tribe shall employ all reasonable efforts to establis  
11 a separate entitlement under state law to withdraw groundwater in th  
12 Prescott Active Management Area for delivery to and use on th  
13 Reservation under equivalent or more favorable terms and condition  
14 (including quantity) as the Type 2 Grandfathered Groundwater Rights  
15 as determined by the Arizona Department of Water Resources c  
16 successor agency in consultation with the Secretary, and the Type  
17 Grandfathered Groundwater Rights shall be subject to reversion to th  
18 City if and when the Tribe establishes such an equivalent, separat  
19 entitlement.

20  
21           8.5       In the following circumstances, the City shall, at th  
22 Tribe's option, execute the conveyances of installations, easements  
23 rights-of-way and Type 2 Grandfathered Groundwater Rights provided fo  
24 in subparagraphs 2.6, 3.5 and 8.4:

25  
26

1 8.5.1 Upon a judicial determination that any one of the following  
2 circumstances exists or has occurred:

3 A. Inability of the City to provide the capacities, flows  
4 flow durations or pressures for Reservation water uses provided for  
5 in subparagraph 4.2 and 4.3 such that the reasonable use and enjoyment  
6 of the Reservation is adversely impacted.

7 B. Failure of the City to act diligently or in good faith  
8 to provide surplus flows as provided in paragraph 4.4.

9 C. Inability of the City to provide the Reservation water  
10 users with the absolute priority water provided for in subparagraph  
11 5.1, or failure to act in good faith in exercising the schedule of  
12 priorities provided for in paragraph 5.0.

13  
14 8.5.2 With respect to a conveyance of sewer easements and  
15 installations only, upon a judicial determination that the City has  
16 failed to act diligently or in good faith in expanding sewer system  
17 capacity to prevent a total or partial moratorium on Reservation sewer  
18 system connections.

19  
20 8.5.3 Automatically upon cessation or termination of the City's  
21 corporate existence, unless the Tribe has agreed in writing otherwise  
22 or unless this Agreement has been assumed by a regional water  
23 authority or other public entity pursuant to subparagraph 8.4(A).

24  
25 8.5.4 As a condition to Tribal consent to the City's disposition  
26 of water-related assets pursuant to subparagraph 8.4(A) to any entity

1 other than a regional water authority or other public entity  
2 described in that subparagraph.

3  
4 9.0 FINANCIAL PROVISIONS

5  
6 9.1 Except as provided in subparagraphs 9.2 and 9.3, hook up  
7 to City water, sewer and/or effluent installations, by Reservatic  
8 water, sewage and effluent users (and any off-Reservation users c  
9 Reservation effluent pursuant to subparagraph 7.2), and water, sewe  
10 and effluent service to such users pursuant to paragraphs 4.0, 5.0  
11 6.0 and 7.0, shall be at the same rate and subject to the sam  
12 conditions as the rate and conditions imposed upon users who resid  
13 within or use water within the corporate limits of the City; provided  
14 however, that no conditions imposed on Reservation water, sewer an  
15 effluent users or off-Reservation users of Reservation effluent shal  
16 be inconsistent with the terms of this Agreement.

17  
18 9.2 Reservation water, sewer and effluent users, and any off  
19 Reservation users of Reservation effluent pursuant to subparagraph  
20 7.2, shall not pay or be liable for any City sales tax, or other for  
21 of City tax, for the hook-ups and water, sewer and effluent servic  
22 set forth in this agreement, and the City hereby agrees to not asses  
23 or attempt to collect any taxes from such entities or persons  
24 provided, however, that the City may assess, and the Reservatio  
25 water, sewer and effluent users and off-Reservation users o  
26 Reservation effluent shall pay, a special user fee for hook-ups and

1 water, sewer and effluent service which is hereby agreed to be equal  
2 in rate and amount to the taxes prohibited by this subparagraph. The  
3 City hereby waives all claims, if any, it may have to assess or  
4 collect a City sales tax or equivalent thereof on hook-ups by, or  
5 water or sewer service to, Reservation water and sewer users prior to  
6 the effective date hereof; provided, however, that nothing contained  
7 herein shall obligate the City to refund any sales tax actually paid  
8 by Reservation water and sewer users prior to the effective date  
9 hereof.

10  
11 9.3 If the amounts charged by the City (including all charges  
12 hook-up fees, other fees, taxes, assessments and other amounts  
13 throughout its service area for water, sewer or effluent service  
14 exceed the City's costs in providing such service, the amounts charged  
15 by the City (including all charges, hook-up fees, special user fees,  
16 other fees, assessments and other amounts) for Reservation water,  
17 sewer and effluent service (and service to off-Reservation users of  
18 Reservation effluent) shall be limited to the amounts necessary to  
19 offset that portion of the City's costs attributable to providing such  
20 service. For the purposes of this subparagraph, the "portion of the  
21 City's costs attributable to providing such service" shall mean, with  
22 respect to each category of water, sewer or effluent service, that  
23 percent of the City's total system-wide costs in providing the service  
24 (including, but not limited to, City costs in acquiring, constructing,  
25 operating, maintaining or expanding the facilities to provide the  
26 service) as is determined by the following computation:

|   |                |   |             |   |                       |
|---|----------------|---|-------------|---|-----------------------|
| 1 | Gallon         |   |             |   |                       |
| 2 | Quantity of    |   | City's      |   | Total Permissible     |
|   | Reservation    |   | System-Wide |   | Charge to             |
| 3 | <u>Service</u> | X | Costs in    | = | Reservation (or       |
|   | Gallon         |   | Providing   |   | Reservation Effluent) |
| 4 | Quantity of    |   | Service     |   | Users for Service     |
|   | System-Wide    |   |             |   |                       |
| 5 | Service        |   |             |   |                       |

6 Where a City cost is attributable to more than one category of  
7 service, it may be allocated in its entirety to one category or  
8 allocated in part to more than one category, as desired by the City,  
9 but may not be allocated among categories in a manner such that more  
10 than one hundred percent of the cost has been allocated among all  
11 categories. Upon request, the City shall provide the Tribe with  
12 sufficient information to enable the Tribe to determine whether the  
13 provisions of this subparagraph are applicable and, if so, whether the  
14 cost limitations of this subparagraph have been implemented.

15 10.0 MISCELLANEOUS

17 10.1 The term of this Agreement shall be in perpetuity; provided,  
18 however, that the City's service obligations shall terminate:

19 A. With respect to water service, upon a conveyance of  
20 water installations and Type 2 Grandfathered Groundwater Rights  
21 pursuant to subparagraph 8.5.

22 B. With respect to sewer service or effluent service, upon  
23 a conveyance of sewer or effluent installations pursuant to  
24 subparagraphs 7.3 or 8.5. In the case of a partial conveyance of such  
25 installations, a termination of service obligations pursuant to this  
26

1 subparagraph shall be effective only with respect to those areas of  
2 the Reservation served by the conveyed installations.

3  
4 10.2 Unless expressly stated otherwise, the terms employed in  
5 this Agreement shall have the same meaning as is provided by the  
6 Settlement Agreement.

7  
8 10.3 To the extent consistent with the terms of this Agreement  
9 and the Settlement Agreement, all Tribal and City laws, rules, rates  
10 regulations and policies which are now in effect or may hereafter be  
11 adopted by the City or Tribe shall apply to this Agreement.

12  
13 10.4 The provisions of this Agreement shall inure to the benefit  
14 of, and shall be binding upon, the respective successors and assigns  
15 of the parties hereto.

16  
17 10.5 Each party agrees in good faith to execute such further or  
18 additional documents as may be necessary or appropriate to fully carry  
19 out the intent and purpose of this Agreement.

20  
21 10.6 This Agreement shall become effective on the effective date  
22 of the Settlement Agreement.

23  
24 10.7 This Agreement shall be construed in accordance with all  
25 applicable laws of the United States of America and the State of  
26 Arizona. Nothing contained herein waives the right of the Tribe to

1 object to the jurisdiction of the courts of the State of Arizona  
2 adjudicate any disputes arising under this Agreement.

3  
4 10.8 The headings of this Agreement are for reference only and  
5 shall not limit or define the meaning of any provision of this  
6 Agreement.

7  
8 10.9 This Agreement may be executed in duplicate originals, each  
9 of which shall constitute an original Agreement.

10  
11 10.10 To the extent Section 38-511, Arizona Revised Statutes, is  
12 applicable to this Agreement, the City hereby represents that the  
13 persons significantly involved in the initiating, negotiating  
14 securing, drafting and creating of this Agreement on behalf of the  
15 City are John R. Moffitt, City Attorney, and Brad Huza, Environmental  
16 Services Director, and the Tribe hereby represents that neither Mr.  
17 Moffitt nor Mr. Huza is or has been, as of the date of execution  
18 hereof, an employee or agent of or consultant to the Tribe. The Tribe  
19 also hereby covenants to not employ either Mr. Moffitt or Mr. Huza as  
20 an employee, agent or consultant for a term of at least three years  
21 following the execution hereof.

22  
23 10.11 Any notice to be given hereunder shall have been properly  
24 given or made when received by the office or manager designated  
25 herein, or two (2) days after deposit with the United States Postal  
26

1 Service, certified or registered mail, postage prepaid, addressed  
2 follows:

3 If to the Tribe:

4 Yavapai-Prescott Indian Tribe  
5 530 East Merritt Avenue  
6 Prescott, Arizona 86301  
7 Attn: Tribal President

8 With a copy to:

9 Steptoe & Johnson  
10 40 North Central Avenue, 24th Floor  
11 Phoenix, Arizona 85004  
12 Attn: David J. Bodney, Esq.

13 If to the City:

14 Prescott City Manager  
15 P.O. Box 2059  
16 Prescott, Arizona 86302

17 With copies to:

18 Prescott City Attorney  
19 P.O. Box 2059  
20 Prescott, Arizona 86302

21 City of Prescott  
22 Environmental Services Director  
23 P.O. Box 2059  
24 Prescott, Arizona 86302

25 or addressed to such other address as the party to receive such notice  
26 shall have designated by written notice given as required by this  
paragraph.

10.12 This Agreement constitutes the entire agreement between the  
parties and no understandings or obligations not herein expressly set  
forth shall be binding upon them. This Agreement may not be modified  
or amended in any manner unless in writing and signed by the parties

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement herein the day and year first above written.

YAVAPAI-PRESCOTT INDIAN TRIBE

CITY OF PRESCOTT, a municipal corporation

By: \_\_\_\_\_  
ROBERT OGO, President

By: \_\_\_\_\_  
DAITON RUTKOWSKI, Mayor

Approved:

SECRETARY OF THE INTERIOR  
UNITED STATES OF AMERICA

Approved as to Form:

By: \_\_\_\_\_  
Area Director

\_\_\_\_\_  
JOHN R. MOFFITT, City Attorney

Attest:

\_\_\_\_\_  
MARIE L. WATSON, City Clerk

1  
2  
3 EXHIBIT 1.1  
4 TO  
5 WATER SERVICE AGREEMENT:  
6 PREVIOUS TRIBE-CITY AGREEMENTS

- 7 A. Water Service Agreement dated February 16, 1972, recorded  
8 in Book 739, pages 385 through 389, Yavapai County  
9 Recorder's Office, Yavapai County, Arizona, for the  
10 extension of a water main and water service for commercial  
11 and industrial purposes along approximately 5,600 feet of  
12 Yavapai-Prescott Tribal Reservation highway frontage  
13 adjacent to Highway 69.
- 14 B. Sewer Service Agreement dated March 17, 1972, for the  
15 extension of a sewer main and sewage disposal service for  
16 commercial and industrial purposes along approximately  
17 5,600 feet of Yavapai-Prescott Tribal Reservation highway  
18 frontage adjacent to Highway 69.
- 19 C. Supplemental Water and Sewer Service Agreement, dated  
20 October 28, 1975, covering the extension of sewer and water  
21 distribution lines for commercial and industrial purposes  
22 in connection with EDA grant funds Project No. 07-01-01510  
23 to the Yavapai-Prescott Indian Tribe (Jimullah Park).
- 24 D. Agreement for Connection to 8" City Water Main on Yavapai-  
25 Prescott Indian Reservation and Agreement to Grant Easement  
26 for Extension of Main to Highway 69 Right of Way, dated May  
16, 1974, between the Yavapai-Prescott Indian Tribe,  
Yavapai Hills, Inc. and the City of Prescott, recorded in  
Book 1206, pages 307 through 317, providing for commercial  
and industrial water service by the City of Prescott to the  
Yavapai-Prescott Tribal Reservation frontage adjacent to  
Highway 69.
- E. Agreement for Connection to 6" Water Main on Yavapai-  
Prescott Indian Reservation and Agreement to Grant Easement  
for Extension of 6" Main Across the Yavapai-Prescott Indian  
Reservation to the Eastern Boundary of said Reservation,  
dated December 31, 1974, between the Yavapai-Prescott  
Indian Tribe, Richard Kruger and the City of Prescott,  
recorded January 24, 1975, in Book 949, Official Records,  
pages 33 through 38, Yavapai County Recorder's Office,  
Yavapai County, Arizona, providing for water service by the  
City of Prescott to the Yavapai-Prescott Tribe through the  
water lines described in such agreement.

- 1 F. Memorandum of Agreement Between the United States of  
2 America, Yavapai-Prescott Indian Tribe and the City of  
3 Prescott, dated March 28, 1975, providing for domestic  
4 water service and sewage disposal service for residential  
5 homes on the Yavapai-Prescott Indian Reservation.
- 6 G. Agreement dated November 20, 1980, between the Yavapai-  
7 Prescott Indian Tribe and the City of Prescott, providing  
8 for water service and sewage disposal service for the  
9 Yavapai-Prescott Indian Reservation and an easement across  
10 that Reservation.
- 11 H. Memorandum of Agreement Among the United States of America  
12 and the Yavapai-Prescott Indian Tribe and the City of  
13 Prescott, Arizona, Yavapai County, Arizona pursuant to  
14 Public Law 86-121, Project Number PH 84-553, dated August,  
15 1985, providing for the financing, construction and  
16 ownership of certain Reservation water and sewer  
17 facilities.
- 18 I. First Amendment to the 1980 Water and Sewer Agreement dated  
19 August 16, 1990, between the Yavapai-Prescott Indian Tribe  
20 and the City of Prescott, providing for the valuation of  
21 the easement granted in the 1980 Agreement and rental  
22 payments on that easement.
- 23 J. Memorandum of Agreement dated April 1993 among the Indian  
24 Health Service, the Yavapai-Prescott Indian Tribe and the  
25 City of Prescott, regarding Project #PH 93-886.  
26

1 EXHIBIT 1.2  
2 TO  
3 WATER SERVICE AGREEMENT:  
4 INSTRUMENTS CONCERNING  
5 RESERVATION WATER AND SEWER LINES

- 6 A. That certain license from the United States of America to  
7 the City of Prescott, for the installation, maintenance,  
8 repair and replacement of a sewer line across a portion of  
9 the Veterans Administration Center Reservation at Whipple,  
10 Arizona, dated February, 1947.
- 11 B. A Deed of Easement from the Administrator of Veterans  
12 Affairs acting for and on behalf of the United States of  
13 America to the city of Prescott for the installation,  
14 maintenance, repair and replacement of a 12" outfall sewer  
15 line across a portion of the land of the Veterans  
16 Administration Center Reservation at Whipple, Arizona,  
17 dated May 17, 1955, recorded June 10, 1955, at Book 51,  
18 Official Records, pages 409 through 411, Yavapai County  
19 Recorder's Office, Yavapai County, Arizona.
- 20 C. Deed of Easement from the Administrator of Veterans Affairs  
21 acting for and on behalf of the United States of America to  
22 the City of Prescott for the installation, maintenance,  
23 repair and replacement of an 8" water line across a portion  
24 of the land of the Veterans Administration Center  
25 Reservation at Whipple, Arizona, dated February 26, 1953,  
26 recorded March 19, 1953, at Book 13, pages 125 though 126,  
Yavapai County Recorder's Office, Yavapai County, Arizona.
- D. Grant of Easement for Right of Way from the United States  
of America, acting by and through Charles Pitrat,  
Superintendent, Truxton Canyon Agency, Bureau of Indian  
Affairs, Department of the Interior, the Yavapai-Prescott  
Community Association, the City of Prescott, Arizona, and  
Yavapai Hills, Inc., for a right of way for the  
construction, maintenance, operation and inspection of an  
8" water line on the Yavapai-Prescott Reservation frontage  
adjacent to Highway 69, dated June 19, 1974, recorded June  
26, 1974, at Book 918 of Official Records, pages 551  
through 567, Yavapai County Recorder's Office, Yavapai  
County, Arizona.
- E. Grant of Easement for Right of Way between the United  
States of America, acting by and through Charles Pitrat,  
Superintendent, Truxton Canyon Agency, Bureau of Indian  
Affairs, Department of the Interior, the Yavapai-Prescott  
Community Association, the City of Prescott, Arizona, and  
Richard Kruger for an easement to the City of Prescott for

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the construction, maintenance, operation and repair of a 6" water line across the Yavapai-Prescott Indian Reservation.

F. That certain application for right of way by the City of Prescott for construction of Ruth Street, dated February 14, 1966, and that certain Resolution No. 2-66 of the Yavapai-Prescott Community Association dated May 6, 1966, providing for domestic water service to the Yavapai-Prescott Indian Community through one meter, approved by Charles Pitrat on April 7, 1966, subject to the conditions set forth in Resolution No. 2-66 of the Yavapai-Prescott Community Association.

G. Grant of Easement for Right-of-Way dated December 5, 1980, between the United States of America, acting by and through James A. Barber, Superintendent, Truxton Canyon Agency, and the City of Prescott.



*City  
Folder*

THIS IS A CONFORMED COPY OF INSTRUMENT  
RECORDED IN BOOK 3022  
PAGE 213 DATE 5-31-18 TIME 13:16  
MARGO W. CARSON, RECORDER  
C. Kuman DEPUTY

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Caption: *Intergovernmental Agreement - COVID*  
DO NOT REMOVE  
THIS IS PART OF THE OFFICIAL DOCUMENT

INTERGOVERNMENTAL AGREEMENT

WHEREAS the City of Prescott (hereinafter referred to as "Prescott") is a municipal corporation of the State of Arizona; and

WHEREAS the Chino Valley Irrigation District (hereinafter referred to as "CVID") is a political subdivision, existing under and by virtue of Title 48, Arizona Revised Statutes; and

WHEREAS Prescott has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe (hereinafter referred to as the "Tribe"); and

WHEREAS CVID has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe, conditioned upon an additional agreement being entered into between Prescott and CVID regarding a partial replacement of water which may be diverted by the Tribe from Granite Creek; and

WHEREAS the parties hereto acknowledge that implementation of the Water Rights Settlement Agreement among the parties would be in the best interests of the parties and their constituents; and

WHEREAS the parties are empowered to enter into this Agreement pursuant to ARS § 11-952.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. (A) That Prescott shall replace and deliver to CVID fifty percent (50%) of any water actually diverted by the Tribe or the City from Granite Creek in accordance with the Water Rights Settlement Agreement; provided, however, that the City's obligation hereunder shall not exceed a total of two hundred seventy-five (275) acre feet per year; and further provided that the water so replaced shall be either recovered recharged water, if available, or effluent, at Prescott's option.

(B) That the foregoing water or effluent will be subject to the following terms and conditions:

i. That CVID shall provide Prescott with a minimum of two (2) business days' notice for its need for said replacement water or effluent; and

ii. That in no event shall Prescott be obligated to delivery more than 1200 gallons per minute at any one time during the months of April, May and June, nor to deliver more than 600 gallons per minute at any one time during the months of July through October; and

iii. That the obligations of Prescott as set forth

4. That in exercising the rights granted under Paragraph 2, Prescott shall also be entitled to divert the flows in Granite Creek (downstream from the confluence of Granite Creek and Willow Creek) for recharge purposes, and CVID shall not object to said diversion.

5. That notwithstanding anything to the contrary, CVID shall retain all rights to use, maintain and store within both Watson Lake and Willow Lake at their full capacities as provided by law and subject to the terms and conditions as set forth in that certain judgment entered in Salt River Valley Water Users' Association vs. Chino Valley Irrigation District on November 22, 1971, Yavapai County Superior Court Cause Number 22088.

6. That it is expressly understood and agreed between the parties that any rights granted to Prescott pursuant to this Agreement are subject to applicable regulatory approval (including but not limited to the Department of Water Resources), and further subject to any restrictions regarding the use of said waters as more particularly set forth in that certain judgment entered in Salt River Valley Water Users' Association v. Chino Valley Irrigation District on November 22, 1971, Yavapai County Superior Court Cause Number 22088.

7. That Prescott shall be solely responsible for any and all costs associated with the construction of any diversion lines or canals to Prescott's recharge facility, which may be required to implement this Agreement.

8. That Prescott shall be solely responsible for any and all costs associated with the actual recharging of water pursuant to this Agreement.

9. That Prescott shall be responsible for maintenance of the CVID canal system being used by Prescott and the CVID earthen diversion dam solely during those periods when Prescott is preparing to use or making actual use of the foregoing; provided, however, that this paragraph shall not obligate Prescott to undertake any major repairs or capital improvements or repairs to CVID property or facilities.

10. That Prescott shall be responsible for obtaining any recharge or other permits which may be required by any governmental or regulatory agency to implement this Agreement.

11. That CVID shall be solely responsible for any and all power and other costs associated with recovering recharged water which may be required to implement this Agreement, but this paragraph shall not obligate CVID to undertake any major repairs or capital improvements or repairs to prescott property or facilities.

12. That in the event that the events set forth in Paragraph 2 above occur, and CVID prohibits or otherwise intentionally frustrates or hinders Prescott's ability to utilize water for

recharge purposes, then and in that event Prescott's obligations as set forth in Paragraph 1 above shall be reduced accordingly: for every acre foot of water not recharged, Prescott's obligation shall be reduced by one acre foot; provided, however, that in the event that Prescott is unable to divert water pursuant to this Agreement due to no fault of CVID, CVID shall not be deemed in breach of this Agreement, provided that CVID undertakes diligent efforts to complete any necessary repairs or maintenance in a timely fashion to enable Prescott the rights granted herein.

13. That Prescott shall be solely responsible for any and all costs associated with the construction, placement and maintenance of a gauging device in order to determine the offsets to which Prescott may be entitled under Paragraph 12 above; and further provided that CVID shall allow Prescott access to CVID property for construction, placement and maintenance of said gauging device.

14. That this Agreement is subject to CVID approving the Water Rights Settlement Agreement among CVID, Prescott and the Tribe, and approval of the Water Rights Settlement Agreement by the Adjudication Court.

15. That the cancellation provisions of ARS § 38-511 apply to this Agreement.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 30 day of MAY, 1995.

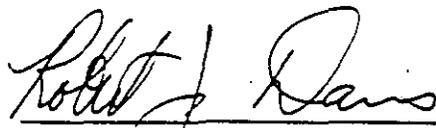
  
\_\_\_\_\_  
DAITON RUTKOWSKI, Mayor

ATTEST:

  
\_\_\_\_\_  
MARIE L WATSON  
City Clerk

**APPROVED**  
BY THE COUNCIL  
City Clerk MKW  
Date 5/30/95  
Res. No. 2781

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Chino Valley Irrigation District this 30 day of MAY, 1995.

  
BOB DAVIS, Chairman of the Board

ATTEST:

  
Clerk of the Board

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Prescott.

  
JOHN R MOFFITT  
City Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Chino Valley Irrigation District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the District.

  
THELTON D. BECK  
Board Attorney

RESOLUTION NO. 2781

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CHINO VALLEY IRRIGATION DISTRICT REGARDING THE RECHARGE OF EXCESS WATERS AND PARTIAL REPLACEMENT OF CVID WATER TO BE PROVIDED TO THE YAVAPAI-PRESCOTT INDIAN TRIBE, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.

WHEREAS, the City of Prescott has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe (hereinafter referred to as the "Tribe"); and

WHEREAS, CVID has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe, conditioned upon an additional agreement being entered into between Prescott and CVID regarding a partial replacement of water which may be diverted by the Tribe from Granite Creek; and

WHEREAS, the parties hereto acknowledge that implementation of the Water Rights Settlement Agreement among the parties would be in the best interests of the parties and their constituents; and

WHEREAS, from time to time the Chino Valley Irrigation District has water available to it which is not needed by said District; and

WHEREAS, the City of Prescott operates a recharge facility, which may utilize a portion of the foregoing waters; and

WHEREAS, it would be to the benefit of the citizens of Prescott and the users of the Chino Valley Irrigation District for the City of Prescott to be able to utilize waters not otherwise needed for recharge purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT, the City of Prescott hereby approves the Intergovernmental Agreement with the Chino Valley Irrigation District for the recharge of excess waters and partial replacement of CVID water to be provided to the Yavapai-Prescott Indian Tribe, attached hereto as Exhibit "A"/

Resolution No. 2781 - continued:

SECTION 2. THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this 30<sup>th</sup> day of MAY, 1995.



\_\_\_\_\_  
DALTON RUTKOWSKI, Mayor

ATTEST:



\_\_\_\_\_  
MARIE L. WATSON, City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
JOHN R. MOFFATT, City Attorney



**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
YAVAPAI-PRESCOTT INDIAN TRIBE  
AND THE  
ARIZONA DEPARTMENT OF WATER RESOURCES  
IN RE: WATER MANAGEMENT**

**SECTION 1: PREAMBLE AND GENERAL PROVISIONS**

**A. PARTIES**

The parties to this Memorandum of Understanding are the Yavapai-Prescott Indian Tribe (Tribe), a federally recognized Indian tribe, and the Arizona Department of Water Resources (ADWR), a state agency established pursuant to A.R.S. Section 45-102.

**B. FINDINGS**

1. The Reservation, established by the Act of June 7, 1935, 49 Stat. 332, and the Act of May 18, 1956, 70 Stat. 157, for the Yavapai-Prescott Indian Tribe, is located in the Little Chino and Upper Agua Fria sub-basins of Arizona, in the Prescott Active Management Area, established by A.R.S. Section 45-411(A)(3).
2. The management goal of the Prescott Active Management Area (AMA), is to achieve balance between annual groundwater withdrawals and natural and artificial recharge (safeyield) by the year 2025. Under the Arizona Groundwater Code of 1980, the Director of the Department of Water Resources is responsible for management of groundwater in the Prescott AMA and implementation of programs to achieve the safeyield goal.
3. The Yavapai-Prescott Indian Tribe Water Rights Settlement Act authorizes the establishment of groundwater management plan for the Reservation which, except as is necessary to be consistent with the Water Service Agreement between the Tribe and the City of Prescott, the Settlement Agreement, and the Settlement Act, will be compatible with the groundwater management plan in effect for the Prescott AMA. The Settlement Act also approves, ratifies, and confirms the Settlement Agreement.
4. Under terms of the Settlement Agreement, the Tribe is to establish a groundwater management plan for the Reservation, as set forth in the Settlement Act, and is to provide for an annual information exchange with the Arizona Department of Water Resources. Also, the Tribe is to enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation; and the Tribe may establish a water code, consistent with the Reservation groundwater management plan, under which

the Tribe will manage, regulate, and control the water resources granted it under the Settlement Act, the Settlement Agreement, and the Water Service Agreement.

**C. PURPOSE**

The purpose of this Memorandum of Understanding is to fulfill relevant requirements of the Settlement Agreement and set forth the principles that will guide the parties in consultation and communication regarding groundwater management and groundwater pumping in the Prescott AMA.

**SECTION 2: PRINCIPLES OF AGREEMENT**

**A. CONSULTATION**

During development of a groundwater plan, for the Reservation, and the Tribal water code, or amendments thereto, the Tribe agrees to contact ADWR in a timely fashion to invite ADWR's consultation and comment. ADWR agrees to meet with the Tribe, as may be requested, to explain ADWR's management plan, conservation efforts, and regulatory program for the Prescott AMA. ADWR agrees to make available to the Tribe a copy of the ADWR hydrologic model of the Prescott AMA.

**B. COMMUNICATION**

The parties agree to share, upon request and without charge, any information not protected from public disclosure, regarding groundwater pumping, recharge, surface water diversions, effluent sale and re-use, and effluent discharge. The parties will meet on an annual basis to discuss the format in which information can be exchanged, and the schedule for an annual exchange of such information.

**C. DESIGNATED OFFICER**

All communication between the parties will, at a minimum, be addressed to the following persons:

**ADWR:** Director, Department of Water Resources, 500 North Third Street,  
Phoenix, Arizona 85004-3903

Director, Prescott Active Management Area, 2200 E. Hillsdale,  
Suite A, Prescott, Arizona 86301

**Tribe:** President, Yavapai-Prescott Indian Tribe, 530 E. Merritt  
Avenue, Prescott, Arizona 86301

**D. EFFECTIVE DATE AND DURATION**

This Memorandum of Understanding shall become effective on the date it is executed by both parties and will remain in effect until terminated, either unilaterally or bilaterally, in writing.

**E. AMENDMENT**

This Agreement may be amended at any time upon a mutual agreement of both parties. All amendments shall be in writing.

**SECTION 3: EXECUTION**

Yavapai-Prescott Indian Tribe

By:   
STAN RICE, JR, PRESIDENT

4/18/95  
Date

Arizona Department of Water Resources

By:   
RITA P. PEARSON, DIRECTOR

March 23, 1995  
Date



WAIVER AND RELEASE OF CLAIMS

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(a) Except as provided in paragraph (b) herein, the Yavapai-Prescott Indian Tribe ("Tribe") on behalf of itself and its members and the Secretary of the Interior on behalf of the United States, in consideration of benefits realized under the Yavapai-Prescott Indian Tribe Water Rights Settlement Agreement dated as of \_\_\_\_\_, \_\_\_\_ (hereinafter referred to as the "Settlement Agreement"), and the Water Service Agreement between the Tribe and the City of Prescott (hereinafter referred to as the "Water Service Agreement"), which is incorporated into and made a part of the Settlement Agreement, and in accordance with the commitment under Subparagraph 9.1 of the Settlement Agreement and pursuant to the authorization granted in Section 10(b) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, hereby waives and releases:

- (1) Any and all past and present claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands within the Tribe's Reservation, from time immemorial to the date of execution of this Waiver and Release of Claims, which the Tribe and/or its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona;

1           (2) Any and all future claims of rights to water  
2           (including water rights in groundwater, surface water and  
3           effluent) for lands within the Tribe's Reservation, from  
4           and after the date of execution of this Waiver and Release  
5           of Claims, which the Tribe and/or its members may have,  
6           against the United States, the State of Arizona or any  
7           agency or political subdivision thereof, or any other  
8           person, corporation or municipal corporation, arising under  
9           the laws of the United States or the State of Arizona; and

10           (3) Any and all past, present and future claims of  
11           water rights or injuries to water rights (including water  
12           rights in groundwater, surface water and effluent) for  
13           lands outside of the exterior boundaries of the Tribe's  
14           Reservation for claims based upon aboriginal occupancy,  
15           which the Tribe and/or its members may have, against the  
16           United States, the State of Arizona or any agency or  
17           political subdivision thereof, or any other person,  
18           corporation or municipal corporation, arising under the  
19           laws of the United States or the State of Arizona.

20           Nothing herein shall prevent the Tribe from participating with other  
21           entities in further activities to augment the water supply available  
22           to the Prescott Active Management Area and Granite Creek watershed,  
23           or shall prevent the Tribe, its members and the United States on their  
24           behalf from supporting any claim of any party to the Settlement  
25           Agreement filed in the Gila River Adjudication from which the Tribe's  
26           water rights under the Settlement Agreement are satisfied. Nothing

1 herein shall affect the water rights or claims related to any trust  
2 allotment located outside the exterior boundaries of the Tribe's  
3 Reservation of any member of the Tribe; provided, however, that any  
4 water rights determined to exist for such allotments shall not be  
5 exercised for use on the Tribe's Reservation.

6 (b) Notwithstanding the execution by the Tribe of the  
7 Waiver and Release of Claims herein, the Tribe, its members, and the  
8 United States on their behalf shall retain the right to assert the  
9 following claims for lands within the Tribe's Reservation:

10 (1) Claims for protection and/or enforcement of the  
11 Tribe's surface water, groundwater and effluent rights and  
12 entitlements as provided for in the Settlement Agreement  
13 and Water Service Agreement under the continuing  
14 jurisdiction of the Court in the Gila River Adjudication or  
15 otherwise.

16 (2) Claims for the breach or enforcement of the terms  
17 of the Settlement Agreement or rights or entitlements  
18 recognized in the Settlement Agreement, or for the breach  
19 or enforcement of the Water Service Agreement, or rights or  
20 entitlements recognized the Water Service Agreement,  
21 including claims for future injuries to such rights and  
22 entitlements.

23 (c) Except as provided in Paragraph (2) of this Waiver and  
24 Release of Claims, the United States shall not assert any claim  
25 against the State of Arizona and any agency or political subdivision  
26 thereof or any other person, corporation, or municipal corporation,

1 in its own right or on behalf of the Tribe and its members based upon  
2 (1) water rights or injuries to water rights of the Tribe and its  
3 members; or (2) water rights or injuries to water rights held by the  
4 United States on behalf of the Tribe and its members.

5 . . . .  
6 . . . .  
7 . . . .

8 YAVAPAI-PRESCOTT INDIAN TRIBE

9  
10 By: \_\_\_\_\_  
President

11 THE UNITED STATES OF AMERICA

12  
13 By: \_\_\_\_\_  
Secretary of the Interior

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15 By: \_\_\_\_\_  
Attorney General of the United States

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

|                               |   |                            |
|-------------------------------|---|----------------------------|
| IN THE GENERAL ADJUDICATION   | ) | W-1 (Salt)                 |
| OF ALL RIGHTS TO USE WATER IN | ) | W-2 (Verde)                |
| THE GILA RIVER SYSTEM AND     | ) | W-3 (Upper Gila)           |
| SOURCE                        | ) | W-4 (San Pedro)            |
|                               | ) |                            |
|                               | ) | STIPULATION                |
|                               | ) |                            |
|                               | ) | (Assigned to the Honorable |
|                               | ) | Susan R. Bolton)           |
|                               | ) |                            |

THIS STIPULATION, which shall become effective on \_\_\_\_\_, 1995, is entered into among the United States of America, the Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino Valley Irrigation District.

WHEREAS, the representatives of the United States of America, the State of Arizona, the Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino Valley Irrigation District have agreed to settle the water rights of the Yavapai-Prescott Indian Tribe and its members, and to resolve certain pending litigation on water rights; and

1           WHEREAS, the Yavapai-Prescott Indian Tribe Water Rights  
2 Settlement Agreement (the "Settlement Agreement") (attached hereto as  
3 Exhibit A), has been ratified and confirmed by the United States  
4 Congress, and

5           WHEREAS, This Stipulation and the Judgment entered pursuant  
6 hereto are intended to ratify and confirm the Settlement Agreement;

7           NOW, THEREFORE, in consideration of the premises set forth  
8 herein, the parties hereto stipulate as follows:

9           The parties hereby stipulate to entry of judgment in the  
10 form attached hereto.

11           If for any reason this Court fails to approve this  
12 Stipulation, this Stipulation shall not bind any of the undersigned  
13 parties. If the Court approves this Stipulation and the judgment of  
14 this Court is reversed on appeal and no further appeal may be taken,  
15 the rights and obligations of the parties shall be as stated in the  
16 Settlement Agreement and the Water Service Agreement.

17           Neither this Stipulation nor the Judgment entered pursuant  
18 hereto shall be construed to supersede or otherwise alter any term of  
19 the Settlement Agreement. The Settlement Agreement is intended to be  
20 fully enforceable among the undersigned parties in pursuing their  
21 claims in these proceedings.

22           Upon approval of this Stipulation, the Court shall direct  
23 the entry of final judgment in the form attached hereto because there  
24 is no just reason for delay and the partial judgment is properly final  
25 judgment pursuant to Rule 54(b), Arizona Rules of Civil Procedure.

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IN WITNESS WHEREOF, the parties have executed this  
Stipulation as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_

YAVAPAI-PRESCOTT INDIAN TRIBE

By: \_\_\_\_\_

CITY OF PRESCOTT

By: \_\_\_\_\_

CHINO VALLEY IRRIGATION DISTRICT

By: \_\_\_\_\_

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

|                               |   |                  |
|-------------------------------|---|------------------|
| IN THE GENERAL ADJUDICATION   | ) | W-1 (Salt)       |
| OF ALL RIGHTS TO USE WATER IN | ) | W-2 (Verde)      |
| THE GILA RIVER SYSTEM AND     | ) | W-3 (Upper Gila) |
| SOURCE                        | ) | W-4 (San Pedro)  |
|                               | ) |                  |
|                               | ) |                  |
|                               | ) | <b>JUDGMENT</b>  |
| <hr/>                         |   |                  |

The Yavapai-Prescott Indian Tribe (the "Tribe"), the United States of America, the State of Arizona, the City of Prescott and the Chino Valley Irrigation District ("CVID") having reached a Settlement Agreement approved, ratified and confirmed by the United States Congress, see Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994), and the parties to the claims at issue having stipulated to entry of this Judgment, this Court having reviewed and considered the substance of said Stipulation and Settlement Agreement, and other parties to this action having been given an opportunity to be heard on this matter,

IT IS ORDERED AND ADJUDGED:

The Tribe's rights and entitlements to water are as follows:

1           1.    The Tribe shall have the perpetual right to divert,  
2 store and use a portion of CVID's entitlement to Granite Creek surface  
3 water as provided in the Settlement Agreement

4           CVID's right or entitlement to Granite Creek surface water  
5 is defined as that right or entitlement to be adjudicated in this  
6 proceeding and based on the various water claims identified in the  
7 Settlement Agreement.

8           Each year, the Tribe shall be entitled to store, divert and  
9 use: (a) as its Minimum Annual Entitlement, fifty (50) percent of the  
10 flow of Granite Creek, as measured at the State Highway 89 bridge  
11 across Granite Creek adjacent to the Reservation, until it has  
12 diverted five hundred and fifty (550) AFA; provided, however, that if  
13 the existing and customary beneficial uses of surface water by CVID  
14 pursuant to the rights to Granite Creek surface water are reduced to  
15 an annual entitlement of less than one thousand one hundred (1,100)  
16 AFA by a determination of the Court in the Gila River Adjudication  
17 which is not subject to further appeal, then the Tribe's Minimum  
18 Annual Entitlement shall be reduced by an amount equal to one-half the  
19 difference between one thousand one hundred (1,100) AFA and CVID's  
20 reduced entitlement; and (b) as its Maximum Annual Entitlement, an  
21 additional ten (10) percent of that portion of the flow of Granite  
22 Creek which exceeds 1100 AFA, as measured at the State Highway 89  
23 bridge across Granite Creek adjacent to the Reservation, up to a total  
24 combined diversion of one thousand (1,000) AFA; provided, however,  
25 that if CVID's existing and customary beneficial uses of Granite Creek  
26 surface water are reduced by virtue of a determination by the Court  
in the Gila River

1 Adjudication, which is not subject to further appeal, that one or more  
2 of such rights is or are invalid, the Tribe's total Maximum Annual  
3 Entitlement pursuant to this Subparagraph shall be reduced by the same  
4 percentage as the percentage reduction in CVID's use rights.

5 The priority of storage, diversion and use of surface water  
6 by the Tribe shall be the same as the priorities determined by the  
7 confirmation of CVID's right to Granite Creek water in the Gila River  
8 Adjudication. The Tribe's annual entitlement to Granite Creek surface  
9 water shall not be carried over from year to year; provided, however,  
10 that: (i) any water stored by the Tribe during a given year may be  
11 left in storage and/or consumptively used by the Tribe in subsequent  
12 years without such storage and/or use being counted against the  
13 Tribe's annual entitlements for such subsequent years; (ii) if the  
14 flow of Granite Creek is insufficient in any year to permit the Tribe  
15 and CVID each to divert five hundred and fifty (550) AFA, then an  
16 amount equal to the difference between the amount the Tribe actually  
17 diverts in that year and its five hundred and fifty (550) AFA Minimum  
18 Annual Entitlement shall be carried forward from year to year (but not  
19 to exceed four years) as a Deficiency until the Tribe is able to  
20 recover such Deficiency; and (iii) the Tribe's total Maximum Annual  
21 Entitlement shall be increased in any given year by an amount equal  
22 to the sum of the Deficiencies carried forward from the preceding four  
23 years. If the Tribe has the right to divert, and does divert, an  
24 amount in excess of one thousand (1,000) AFA to recover its  
25 accumulated Deficiencies, then the Tribe's accumulated Deficiencies  
26 shall be reduced by an amount equal to such excess. All such excess

1 diversions shall be applied to the earliest deficiency still being  
2 carried forward. Deficiencies older than four years shall lapse.

3 2. In addition to Tribe's right to surface water from  
4 Granite Creek, the Tribe shall have the permanent right to withdraw  
5 all groundwater beneath the Reservation for on-Reservation beneficial  
6 use in accordance with any groundwater management plan which may be  
7 developed by the Tribe pursuant to Section 11(c) of the Act.

8 3. In addition to its other entitlements to water, the  
9 Tribe shall have the right to use on the Reservation or sell to off-  
10 Reservation users, all effluent generated on the Reservation.

11 4. In addition to the entitlements to water established  
12 by this Judgment, the Tribe has contractual rights to receive water  
13 service from other sources. This Judgment in no way affects any  
14 contractual rights that the Tribe may have (or may acquire in the  
15 future) to receive additional water pursuant to contract.

16 The Court herein determines that there is no just reason for  
17 delay and this partial judgment is properly deemed final pursuant to  
18 Ariz. R. Civ. P. 54(b).

19 Wherefore, the Court directs the entry of judgment, pursuant  
20 to the provisions of Arizona Rules of Civil Procedure 54(b).

21  
22 Dated at Phoenix, Arizona, this \_\_\_\_ day of \_\_\_\_\_,  
23 199\_.

24 \_\_\_\_\_  
25 Judge, Superior Court  
26