

**NAVAJO-HOPI LITTLE COLORADO RIVER WATER RIGHTS SETTLEMENT
AGREEMENT**

TABLE OF CONTENTS

	Page
1.0 INTRODUCTION	1
2.0 PARTIES	1
3.0 GENERAL PROVISIONS	1
3.1 DEFINITIONS.....	1
3.2 EXHIBITS	16
4.0 NAVAJO NATION WATER RIGHTS.....	19
4.1 GENERALLY APPLICABLE PROVISIONS.....	19
4.2 UNDERGROUND WATER	20
4.3 EFFLUENT.....	20
4.4 LITTLE COLORADO RIVER TRIBUTARIES.....	20
4.5 MAINSTEM LITTLE COLORADO RIVER	20
4.6 NAVAJO NATION CAP WATER	22
4.7 RIGHTS OF ALLOTTEES	22
4.8 WATER RIGHTS AND USES OF WATER FOR LAND OWNED IN FEE BY THE NAVAJO NATION AS OF THE EXECUTION DATE— LCR WATERSHED	22
4.9 WATER RIGHTS AND USES OF WATER FOR LANDS HELD IN TRUST BY THE UNITED STATES ON BEHALF OF THE NAVAJO NATION AS OF THE EXECUTION DATE—LCR WATERSHED	23
4.10 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—LCR WATERSHED	25
4.11 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE LCR ENFORCEABILITY DATE—LCR WATERSHED.....	26
4.12 WATER RIGHTS AND USES OF WATER FOR LANDS OWNED IN FEE BY THE NAVAJO NATION AS OF THE EXECUTION DATE- GILA RIVER WATERSHED	27

TABLE OF CONTENTS
(continued)

	Page
4.13 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—GILA RIVER WATERSHED	28
4.14 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE LCR ENFORCEABILITY DATE—GILA RIVER WATERSHED	29
4.15 OTHER PROVISIONS.....	29
5.0 HOPI TRIBE WATER RIGHTS	31
5.1 GENERALLY APPLICABLE PROVISIONS.....	31
5.2 WATER RIGHTS WITHIN THE HOPI RESERVATION	31
5.3 HOPI INDUSTRIAL PARK	31
5.4 WATER RIGHTS AND USES OF WATER FOR LANDS OWNED IN FEE BY THE HOPI TRIBE, OR HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AS OF THE EXECUTION DATE—LCR WATERSHED.....	31
5.5 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE HOPI TRIBE IN FEE, OR TAKEN INTO TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—LCR WATERSHED	34
5.6 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE HOPI TRIBE IN FEE, OR TAKEN INTO TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AFTER THE LCR ENFORCEABILITY DATE—LCR WATERSHED.....	35
5.7 NEW SURFACE WATER USES	36
5.8 RIGHTS OF ALLOTTEES ON HOPI RESERVATION	36
5.9 WATER MARKETING	36
5.10 AGREEMENTS NOT TO OBJECT, DISPUTE OR CHALLENGE	36
5.11 EFFLUENT.....	36
6.0 INTER-TRIBAL ON RESERVATION ISSUES	37
6.1 TRIBAL WASH MANAGEMENT PLAN	37
6.2 MANAGEMENT OF THE N-AQUIFER	40

TABLE OF CONTENTS
(continued)

	Page
6.3 DISPUTE RESOLUTION	45
6.4 RESPONSIBILITIES OF THE UNITED STATES	46
7.0 OFF-RESERVATION USES OF SURFACE WATER	47
7.1 EXISTING SURFACE WATER USES	47
7.2 SURFACE WATER USES OF THE ZUNI TRIBE ABSTRACTED IN THE LCR ADJUDICATION	49
7.3 NEW SURFACE WATER USES	49
7.4 SUBFLOW	51
7.5 RESERVOIRS	52
8.0 UNDERGROUND WATER	53
8.1 EXPANDED DEFINITION OF TRIBES FOR SELECTED SUBPARAGRAPHS	53
8.2 WITHDRAWAL AND USE OF UNDERGROUND WATER BY ANY PERSON OUTSIDE THE PROTECTION AREAS	53
8.3 WITHDRAWAL AND USE OF UNDERGROUND WATER WITHIN THE PROTECTION AREAS	54
8.4 PROTECTION AREA 1	58
8.5 PROTECTION AREA 2	58
8.6 PROTECTION AREA 3	58
8.7 MINERAL ESTATES	58
8.8 OBJECTIONS TO EXEMPT, EXISTING AND NEW WELLS	59
9.0 NAVAJO NATION WATER DELIVERY CONTRACT AND RELATED PROVISIONS	59
9.1 NAVAJO NATION CAP WATER AVAILABLE FOR DELIVERY	59
9.2 WATER DELIVERY CONTRACT	59
9.3 CONDITIONS OF DELIVERY	59
9.4 LEASES AND EXCHANGES	60
9.5 NO USE OUTSIDE OF ARIZONA	61
9.6 ENTITLEMENT TO LEASE AND EXCHANGE MONIES; LESSEE RESPONSIBILITY FOR CHARGES	61
9.7 SCHEDULING WATER DELIVERY	62
9.8 CAP REPAYMENT	62

TABLE OF CONTENTS
(continued)

	Page
9.9	NON-REIMBURSABLE CAP CONSTRUCTION COSTS..... 62
9.10	SHORTAGES AND FIRING OF NAVAJO NATION CAP WATER 62
9.11	OTHER AGREEMENTS TO FIRM WATER..... 63
9.12	WATER USE ON NAVAJO LAND..... 63
10.0	INFRASTRUCTURE 63
10.1	NAVAJO GROUNDWATER PROJECTS 63
10.2	HOPI GROUNDWATER PROJECT 66
10.3	RIGHTS-OF-WAY..... 68
11.0	WAIVERS, RELEASES AND RETENTIONS OF CLAIMS 68
11.1	NAVAJO NATION WAIVERS, RELEASES AND RETENTIONS OF CLAIMS 68
11.2	HOPI TRIBE WAIVERS, RELEASES AND RETENTIONS OF CLAIMS 74
11.3	WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES ACTING AS TRUSTEE FOR ALLOTTEES 79
11.4	WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES AGAINST THE NAVAJO NATION AND THE HOPI TRIBE..... 81
11.5	WAIVERS AND RELEASES OF CLAIMS BY THE PARTIES, EXCEPT THE UNITED STATES, THE NAVAJO NATION AND THE HOPI TRIBE..... 82
11.6	SATISFACTION OF WATER RIGHTS AND OTHER BENEFITS..... 86
11.7	EFFECT ON MEMBERS AND ALLOTTEES 88
11.8	NO EFFECT ON ENFORCEMENT OF ENVIRONMENTAL LAWS 88
11.9	DISMISSAL OF PENDING COURT CASE..... 88
11.10	PENDING STATE COURT CASE..... 88
12.0	LCR ENFORCEABILITY DATE..... 90
12.1	CONDITIONS TO THE LCR ENFORCEABILITY DATE 90
12.2	FAILURE TO SATISFY CONDITIONS..... 91
12.3	CONSTRUCTION..... 91
13.0	OTHER PROVISIONS..... 92
13.1	NO IMPAIRMENT OF EXISTING RIGHTS 92
13.2	ENTIRE UNDERSTANDING 92

TABLE OF CONTENTS
(continued)

	Page
13.3 MODIFICATIONS TO AGREEMENT AND AMENDMENTS TO EXHIBITS	92
13.4 STATE CAPACITY	92
13.5 PARTIES BOUND ON EXECUTION DATE; OBLIGATION TO WORK IN GOOD FAITH.....	93
13.6 STAY OF LITIGATION	93
13.7 AUTHORITY TO EXECUTE.....	93
13.8 RIGHT TO PETITION ANY COURT OF COMPETENT JURISDICTION	93
13.9 GOVERNING LAW.....	94
13.10 SUCCESSORS AND ASSIGNS	94
13.11 STATE CONFLICT OF INTEREST.....	94
13.12 ANTI-DEFICIENCY	94
13.13 NO BENEFIT TO MEMBERS OF CONGRESS OR RESIDENT COMMISSIONERS.....	94
13.14 NGS WATER PROVISIONS.....	94
13.15 DUPLICATE ORIGINALS AND COUNTERPARTS.....	95
13.16 NO QUANTIFICATION OR EFFECT ON RIGHTS OF OTHER TRIBES OR THE UNITED STATES ON THEIR BEHALF.....	95
13.17 EFFECT OF AGREEMENT ON PEABODY.....	95
13.18 CONSTRUCTION AND EFFECT.....	96
13.19 NOTICES.....	96
13.20 INTENDED THIRD-PARTY BENEFICIARIES	96
13.21 INHOLDINGS ON THE NAVAJO RESERVATION.....	96
13.22 STATE CONTRIBUTION	96
13.23 STATE LEGISLATION.....	96
14.0 RETENTION OF LOWER COLORADO RIVER WATER FOR FUTURE LOWER COLORADO RIVER SETTLEMENT	98
14.1 RETENTION OF CAP NIA PRIORITY WATER	98
14.2 RETENTION OF FOURTH PRIORITY COLORADO RIVER WATER	98
14.3 CONDITIONS ON RETENTION OF LOWER COLORADO RIVER WATER	98

TABLE OF CONTENTS
(continued)

	Page
15.0 SIGNATURES.....	100

1.0 INTRODUCTION

The purpose of this Agreement is to resolve, fully and finally, any and all claims that the Navajo Nation on behalf of itself and its members; the Hopi Tribe on behalf of itself and its members; and the United States acting in its capacity as trustee for the Navajo Nation, the Hopi Tribe, and their members, and allottees, may have to the Little Colorado River system and source in Arizona; and any and all claims that the Navajo Nation on behalf of itself and its members, and the United States acting in its capacity as trustee for the Navajo Nation and its members, may have to the Gila River system and source in Arizona.

2.0 PARTIES

This Agreement dated as of this ___ day of _____, 2012, is entered into among the United States of America; the State of Arizona; the Navajo Nation; the Hopi Tribe; the Central Arizona Water Conservation District; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Arizona cities and towns of Flagstaff, Winslow, Holbrook, Taylor, Snowflake, Show Low, Eagar, and Springerville; Catalyst Paper (Snowflake) Inc.; Arizona Public Service Co.; Bar T Bar Ranch Inc.; Crater Ranch, L.L.C.; Flying M Ranch Inc.; Aztec Land and Cattle Company, Limited; Aztec Land Company, LLC; Arizona State Land Department; Arizona Game and Fish Commission; Arizona Department of Transportation; Lyman Irrigation Company; Pioneer Irrigation Company; Show Low/Pinetop-Woodland Irrigation Company; Silver Creek Irrigation District; Lakeside Irrigation Company; Forest Lakes Domestic Water Improvement District; Pinetop-Lakeside Sanitary District; Euell Lyle Barnes; and Navapache Hospital District.

3.0 GENERAL PROVISIONS

3.1 DEFINITIONS

For purposes of this Agreement, the terms set forth below shall have the meanings ascribed to them in this Subparagraph.

- 3.1.1 "1934 Act Case" shall mean that litigation styled *Honyoama v. Shirley, Jr.*, Case No. CIV 74-842-PHX-EHC (D. Ariz. 2006).
- 3.1.2 "AFY" shall mean acre-feet per Year.
- 3.1.3 "AWSA" shall mean the Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, 118 Stat. 3478 (2004).
- 3.1.4 "Abstract" shall mean a summary of Water Rights or uses held or owned by any Person, as represented in a form substantially similar to the one attached as Exhibit 3.1.4.
- 3.1.5 "Act" shall mean the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012.

- 3.1.6 “Agreement” shall mean this Navajo-Hopi Little Colorado River Water Rights Settlement Agreement and the Exhibits attached hereto.
- 3.1.7 “Allotment” or “Allotments” shall mean an allotment or allotments: (1) originally allotted to an individual identified in the allotting document as a Navajo Indian or Hopi Indian; (2) located within the exterior boundaries of the Navajo Reservation, Hopi Reservation or on Off-Reservation lands, within Apache, Coconino or Navajo counties, Arizona; and (3) held in trust by the United States for the benefit of an allottee.
- 3.1.8 “Allottee” or “Allottees” shall mean a person or persons holding a beneficial real property interest in an allotment.
- 3.1.9 “Allowable Economic Drawdown” shall mean, in the absence of data to the contrary, a value of 70 percent of the static water column in a Well.
- 3.1.10 “Allowable Physical Drawdown” shall mean the difference between the static water level and the lowest practical pumping water level in the Well. The lowest practical pumping water level depends on the Well discharge rate, depth at which the pump is set, pump and Well characteristics and other factors.
- 3.1.11 “Arizona Department of Water Resources” or “ADWR” shall mean the agency of the State established pursuant to Title 45 of the Arizona Revised Statutes, or its successor agency or entity.
- 3.1.12 “Arizona Water Banking Authority” shall mean the agency of the State established pursuant to A.R.S. § 45-2401, *et seq.*, or its successor agency or entity.
- 3.1.13 “Available CAP Supply” shall mean, for any given Year, all Fourth Priority Colorado River Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.
- 3.1.14 “Betterment” shall mean any water control measures or practices to optimize Water use, including project reconfiguration, as long as the Diversion capacity, surface storage capacity, or irrigated acreage is not increased.
- 3.1.15 “Central Arizona Project” or “CAP” shall mean the federal reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act, 43 U.S.C. § 1521, *et seq.*

- 3.1.16 “CAP Contract” shall mean a long-term contract or subcontract (as those terms are used in the CAP Repayment Stipulation) for delivery of CAP Water.
- 3.1.17 “CAP Contractor” shall mean a person or entity that has entered into a long-term contract or subcontract (as those terms are used in the CAP Repayment Stipulation) with the United States or the United States and CAWCD for delivery of water through the CAP System.
- 3.1.18 “CAP Fixed OM&R Charge” shall mean ‘Fixed OM&R Charge’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.19 “CAP M&I Priority Water” shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.
- 3.1.20 “CAP NIA Priority Water” shall mean that CAP Water deliverable under a CAP Contract providing for the delivery of non-Indian agricultural priority water.
- 3.1.21 “CAP Operating Agency” shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the Execution Date, CAWCD is the CAP Operating Agency.
- 3.1.22 “CAP Pumping Energy Charge” shall mean ‘Pumping Energy Charge’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.23 “CAP Repayment Contract” shall mean the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project, including all amendments and revisions thereto.
- 3.1.24 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment, and Exhibits thereto, entered on November 21, 2007, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, including any amendments or revisions thereto.
- 3.1.25 “CAP System” shall mean: (1) the Mark Wilmer Pumping Plant; (2) the Hayden-Rhodes Aqueduct; (3) the Fannin-McFarland Aqueduct; (4) the Tucson Aqueduct; (5) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are described in (1) through (4); and (6) any extensions of, additions to, or replacements for the features described in (1) through (5).

- 3.1.26 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.27 “Central Arizona Water Conservation District” or “CAWCD” shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.
- 3.1.28 “Claimant” shall mean a Person who has filed a Statement of Claimant in the LCR Adjudication.
- 3.1.29 “Closed Basin” shall mean those Surface Water subwatersheds within the LCR Watershed depicted on the maps attached as Exhibit 3.1.29.
- 3.1.30 “Colorado River Compact” shall mean the Colorado River Compact of 1922, as ratified and reprinted at Title 45, Chapter 7, Article 2 of the Arizona Revised Statutes.
- 3.1.31 “Confined Aquifer” shall mean any location at which the static water level in a Well completed in the N-Aquifer rises 10 feet or more above the top of the geologic formation known as the Navajo Sandstone at the time the Well is drilled; the area generally depicted on Exhibit 3.1.31. In the case of a conflict between this definition and Exhibit 3.1.31, Exhibit 3.1.31 shall control.
- 3.1.32 “Decree,” when used without a modifying adjective, shall mean collectively the decree of the Supreme Court of the United States in *Arizona v. California*, 376 U.S. 340 (1964), the Consolidated Decree entered on March 27, 2006, in that case (547 U.S. 150), and any modifications thereof.
- 3.1.33 “De Minimis Use” shall mean a Surface Water use for: (1) domestic purposes not to exceed one AFY; (2) stockwatering purposes; (3) wildlife purposes; or (4) an Impoundment having a storage capacity of not more than fifteen acre-feet that is used primarily for watering livestock or wildlife.
- 3.1.34 “Director” shall mean the Director of the Arizona Department of Water Resources.
- 3.1.35 “Diversion” shall mean the act of Diverting.
- 3.1.36 “Divert,” “Diverting,” and “Diverted” shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, Navajo Nation CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, Well, pump, turnout, or other mechanical device, or any other human act, including the initial impoundment of such water.

- 3.1.37 “Domestic Use” shall mean the Diversion of water by one or more individuals or households for purposes of: (1) drinking, cooking, laundering, and other personal comforts or necessities; (2) the irrigation of a family garden, orchard or yard, less than two acres in size per family unit or household; (3) livestock watering using tanks with a storage capacity of not to exceed 5,000 gallons; or (4) the crafting of articles such as jewelry, pottery or other traditional items by a household resident for personal use or sale.
- 3.1.38 “Effective Date” shall mean the date on which the State Implementing Legislation becomes State law.
- 3.1.39 “Effluent” shall mean water that has been used in Arizona for domestic, municipal or industrial purposes and that is available for use for any purpose, but water shall not become Effluent solely as a result of having been used for hydropower generation.
- 3.1.40 “Execution Date” shall mean the date as of which this Agreement has been executed by no less than twenty-two (22) of the Parties including all of the following: the Navajo Nation, the Hopi Tribe, the State of Arizona, the Arizona State Land Department, the Central Arizona Water Conservation District, the Salt River Project Agricultural Improvement and Power District, and the Salt River Valley Water Users’ Association.
- 3.1.41 “Exempt Well” shall mean a Well having a pump with a maximum capacity of not more than 35 GPM used to withdraw Underground Water. For purposes of determining whether a Well is an Exempt Well, a series of Wells serving the same facility shall be considered a single Well.
- 3.1.42 “Exhibit” shall mean an exhibit to this Agreement as enumerated in Subparagraph 3.2.
- 3.1.43 “Existing Surface Water Use” shall mean any use of Surface Water existing as of the Effective Date, which is the subject of a Statement of Claimant.
- 3.1.44 “Existing Well” shall mean a Non-Exempt Well that was completed or substantially completed for the purpose of withdrawing Underground Water, and that has not been abandoned by filling or sealing the Well so as to prevent the Well, including the annular space outside the casing, from being a channel allowing the vertical movement of Underground Water, on or before the Effective Date.
- 3.1.45 “Fourth Priority Colorado River Water” shall mean Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users

in the State entered into or established subsequent to September 30, 1968, for use on federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for the delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Repayment Contract for the delivery of Colorado River water for the CAP including use of Colorado River water on Indian lands.

- 3.1.46 “GPM” shall mean gallons per minute.
- 3.1.47 “Gila River Adjudication” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water in The Gila River System and Source*, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).
- 3.1.48 “Gila River Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Maricopa exercising jurisdiction over the Gila River Adjudication.
- 3.1.49 “Gila River Adjudication Decree” shall mean the judgment or decree entered by the Gila River Adjudication Court in substantially the same form as the form of judgment attached hereto as Exhibit 3.1.49.
- 3.1.50 “Groundwater” shall mean all water beneath the surface of the earth within Arizona that is not: (1) Surface Water; (2) Underground Water within the Upper Basin; (3) Lower Colorado River Water; or (4) Effluent.
- 3.1.51 “Hopi Fee Land” shall mean land, other than Hopi Trust Land, that: (1) is located outside the exterior boundaries of the Hopi Reservation; and (2) as of the LCR Enforceability Date, is owned by the Hopi Tribe, whether in its own name or through a related entity.
- 3.1.52 “Hopi Groundwater Project” shall mean the project described in section 103(b) of the Act.
- 3.1.53 “Hopi Groundwater Project Account” shall mean the account created in the Treasury of the United States pursuant to section 104(c) of the Act to receive monies for the planning, design, and construction of the Hopi Groundwater Project described in Subparagraph 10.2.
- 3.1.54 “Hopi Industrial Park” shall mean those lands held in trust by the United States for the Hopi Tribe as provided in the Act of May 22, 1970, Pub. L. No. 91-264, § 1, 84 Stat. 260 (1970).
- 3.1.55 “Hopi Land” shall mean, collectively, the Hopi Reservation, Hopi Trust Land and Hopi Fee Land.

- 3.1.56 “Hopi OM&R Trust Account” shall mean the account created in the Treasury of the United States pursuant to section 104(d) of the Act.
- 3.1.57 “Hopi Reservation” shall mean those lands within the exterior boundaries of the “Hopi Indian Reservation,” defined as District 6, and all lands withdrawn by the Executive Order of Dec. 16, 1882 and partitioned to the Hopi Tribe in accordance with the Act of Dec. 22, 1974, Pub. L. 93-531, § 4, 88 Stat. 1713 (codified as amended at 25 U.S.C. § 640d-3), by Judgment of Partition, Feb. 10, 1977, *Sekaquaptewa v. MacDonald*, Case No. CIV-579-PCT-JAW (D. Ariz.), affirmed 626 F.2d 113 (9th Cir. 1980); all lands recognized as part of the Hopi Reservation in the 1934 Act Case; and individual Allotments made to members of the Hopi Tribe within those lands, all as more particularly set forth on the map attached as Exhibit 3.1.100. In case of a conflict between this definition and Exhibit 3.1.100, this definition shall control.
- 3.1.58 “Hopi Tribe” shall mean the Hopi Tribe, a Tribe of Hopi Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. § 476), and duly recognized by the Secretary.
- 3.1.59 “Hopi Trust Land” shall mean land that: (1) is located outside the exterior boundaries of the Hopi Reservation; and (2) as of the LCR Enforceability Date, is held in trust by the United States for the benefit of the Hopi Tribe.
- 3.1.60 “Impoundment” shall mean a man-made structure used to store Water.
- 3.1.61 “Industrial Use” shall mean the use of Underground Water by any Person engaged in generating electrical energy, or making, converting or extracting objects or materials into commercially valuable products by machinery or any other mechanical process, including but not limited to the extraction, conversion or transportation of any materials.
- 3.1.62 “Injury to Quality of Lower Colorado River Water” shall mean any diminution or degradation of the quality of Lower Colorado River Water due to a change in the salinity or concentration of naturally occurring chemical constituents of Lower Colorado River Water and any effect of such a change where the change in salinity or concentration and the effect of such a change are due to the withdrawal, Diversion or use of Lower Colorado River Water.
- 3.1.63 “Injury to Rights to Lower Colorado River Water” shall mean an interference with, diminution of, or deprivation of, Rights to Lower Colorado River Water under applicable law.
- 3.1.64 “Injury to Water Quality” shall mean any diminution or degradation of the quality of Water due to a change in the salinity or concentration of

naturally occurring chemical constituents of Water and any effect of such a change where the change in salinity or concentration and the effect of such a change are due to the withdrawal, Diversion or use of Water.

- 3.1.65 “Injury to Water Rights” shall mean an interference with, diminution of, or deprivation of, Water Rights under federal, State or other law.
- 3.1.66 “Irrigation” shall mean the use of Water on two (2) or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry.
- 3.1.67 “LCR” shall mean the Little Colorado River.
- 3.1.68 “LCR Adjudication” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re: the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, CIV No. 6417.
- 3.1.69 “LCR Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Apache exercising jurisdiction over the LCR Adjudication.
- 3.1.70 “LCR Decree” shall mean the judgment or decree entered by the LCR Adjudication Court in substantially the same form as the form of judgment attached hereto as Exhibit 3.1.70.
- 3.1.71 “LCR Enforceability Date” shall mean the date on which the Secretary publishes in the Federal Register the statement of findings described in section 108(a) of the Act.
- 3.1.72 “LCR Watershed” shall mean, for purposes of this Agreement only, all lands located within the Surface Water drainage of the Little Colorado River and its tributaries in Arizona.
- 3.1.73 “Lee Ferry” shall mean ‘Lee Ferry’ as defined in Article II(e) of the Colorado River Compact.
- 3.1.74 “Little Colorado River Plateau Groundwater Basin” shall mean ‘Little Colorado River plateau groundwater basin’ as that term is used in A.R.S. § 45-544.
- 3.1.75 “Lower Basin” shall mean the ‘Lower Basin’ as defined in Article II(g) of the Colorado River Compact.
- 3.1.76 “Lower Colorado River” shall mean the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon.

- 3.1.77 “Lower Colorado River Basin Development Fund” shall mean the fund established by Section 403 of the Colorado River Basin Project Act (43 U.S.C. § 1543).
- 3.1.78 “Lower Colorado River Water” shall mean the waters of the Colorado River downstream from Lee Ferry within the United States, including: (1) the waters of the reservoirs thereon; (2) the waters of all tributaries to the Colorado River at or below Lee Ferry within the United States, other than tributaries located within Arizona, tributaries located within the Western Navajo Colorado River Basin, and tributaries of the Little Colorado River located in New Mexico; (3) all Underground Water that is hydraulically connected to the Colorado River at or below Lee Ferry within the United States; and (4) all Underground Water that is hydraulically connected to tributaries to the Colorado River at or below Lee Ferry within the United States, other than tributaries located within Arizona, tributaries located within the Western Navajo Colorado River Basin, and tributaries of the Little Colorado River located in New Mexico. The definition of Lower Colorado River Water in this Agreement and the Act shall not be used for any interpretation of the Colorado River Compact, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, the Colorado River Basin Project Act, 43 U.S.C. § 1501, or any contracts or agreements entered into pursuant thereto.
- 3.1.79 “Lower LCR Watershed” shall mean that portion of the LCR Watershed downstream from the mouth of Chevelon Canyon located outside of the Three-Canyon Area. The Lower LCR Watershed is shown on the map attached hereto as Exhibit 3.1.79.
- 3.1.80 “Main Washes” shall mean the mainstem of the five washes north of, and tributary to, the Little Colorado River, which flow across both the Navajo Reservation and the Hopi Reservation: Moenkopi, Dinnebito, Oraibi, Polacca, and Jeddito (also known as Jadito per the United States Geological Survey) washes.
- 3.1.81 “Major Tributary Washes” shall mean the mainstem of Shonto, Begashibito and Wepo washes, which are tributary to the Main Washes.
- 3.1.82 “Managed Washes” shall mean the mainstems of the Main Washes and the Major Tributary Washes. These Managed Washes are shown on the map attached hereto as Exhibit 3.1.82.
- 3.1.83 “Member” or “Members” shall mean any person or persons duly enrolled as a member or members of the Navajo Nation or the Hopi Tribe.
- 3.1.84 “Minor Tributary Washes” shall mean all washes tributary to the Managed Washes, other than the Major Tributary Washes.

- 3.1.85 “Municipal Water Provider” shall mean a city, town, private water company, specially designated homeowners association, or any special taxing district established pursuant to Title 48 of the Arizona Revised Statutes that supplies water for non-Irrigation use.
- 3.1.86 “Municipal Use” shall mean all non-Irrigation uses of water supplied by a Municipal Water Provider or a Tribe or any of its entities or enterprises.
- 3.1.87 “N-Aquifer” shall mean the Navajo Aquifer depicted on Exhibit 3.1.31.
- 3.1.88 “Navajo Fee Land” shall mean land, other than Navajo Trust Land, that: (1) is located in Arizona; (2) is located outside the exterior boundaries of the Navajo Reservation; and (3) as of the LCR Enforceability Date, is owned by the Navajo Nation, whether in its own name or through a related entity.
- 3.1.89 “Navajo-Gallup Water Supply Project” shall mean the project authorized, constructed and operated pursuant to the Northwestern New Mexico Rural Water Projects Act.
- 3.1.90 “Navajo Generating Station” or “NGS” shall mean the Navajo Generating Station, a steam electric generating station on the Navajo Reservation near Page, Arizona, consisting of Units 1, 2, and 3, the switchyard facilities, and all facilities and structures used or related thereto.
- 3.1.91 “Navajo Groundwater Projects” shall mean the projects described in section 103(a) of the Act.
- 3.1.92 “Navajo Groundwater Projects Account” shall mean the account created in the Treasury of the United States pursuant to section 104(a) of the Act to receive monies for the planning, design, and construction of the Navajo Groundwater Projects described in Subparagraph 10.1.
- 3.1.93 “Navajo Land” shall mean, collectively, the Navajo Reservation, Navajo Trust Land and Navajo Fee Land.
- 3.1.94 “Navajo Nation” shall mean the Navajo Nation, a body politic and federally-recognized Indian nation, 60 Fed. Reg. 9249, 9252 (Feb. 16, 1995), also known variously as the ‘Navajo Tribe,’ the ‘Navajo Tribe of Arizona, New Mexico & Utah’ and the ‘Navajo Tribe of Indians’ and other similar names, and includes all bands of Navajo Indians, and chapters of the Navajo Nation.
- 3.1.95 “Navajo Nation CAP Water” shall mean the 6,411 AFY of the CAP NIA Priority Water retained by the Secretary pursuant to Section

104(a)(1)(B)(ii) of the AWSA and reallocated to the Navajo Nation pursuant to section 202(a) of the Act.

- 3.1.96 “Navajo Nation Water Delivery Contract” shall mean the contract entered into pursuant to this Agreement for the delivery of Navajo Nation CAP Water, a copy of which is attached hereto as Exhibit 9.2.
- 3.1.97 “Navajo OM&R Trust Account” shall mean the account created in the Treasury of the United States pursuant to section 104(b) of the Act.
- 3.1.98 “Navajo Project Lease” shall mean the Indenture of Lease made and entered into as of September 29, 1969, between the Navajo Tribe of Indians, as lessor, and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement and Power District and Tucson Gas & Electric Company, together with their successor and assigns, and lessees.
- 3.1.99 “Navajo Project Lessees” shall mean, collectively, the lessees as set forth in the Navajo Project Lease and Subparagraph 3.1.98.
- 3.1.100 “Navajo Reservation” shall mean those lands within the exterior boundaries of the “Navajo Indian Reservation” in Arizona, defined by the Act of June 14, 1934, ch. 521, 48 Stat. 960; all lands withdrawn by the Executive Order of Dec. 16, 1882 and partitioned to the Navajo Nation in accordance with the Act of Dec. 22, 1974, Pub. L. 93-531, § 4, 88 Stat. 1713 (codified as amended at 25 U.S.C. § 640d-3), by Judgment of Partition, Feb. 10, 1977, *Sekaquaptewa v. MacDonald*, Case No. CIV-579-PCT-JAW (D. Ariz.), affirmed 626 F.2d 113 (9th Cir. 1980); all lands taken into trust as a part of the Navajo Reservation pursuant to section 11 of the Act of Dec. 22, 1974 (codified as amended at 25 U.S.C. § 640d-10); and excepting all lands within the Hopi Reservation as defined in Subparagraph 3.1.57 hereof, all as more particularly set forth on the map attached to as Exhibit 3.1.100. In the case of a conflict between this definition and Exhibit 3.1.100, Exhibit 3.1.100 shall control.
- 3.1.101 “Navajo Trust Land” shall mean land that: (1) is located in Arizona; (2) is located outside the exterior boundaries of the Navajo Reservation; and (3) as of the LCR Enforceability Date, is held in trust by the United States for the benefit of the Navajo Nation.
- 3.1.102 “New Reservoir” means a Reservoir that is constructed after the Effective Date, including any additional conservation capacity constructed in a Reservoir after the Effective Date.

- 3.1.103 “New Well” shall mean a Non-Exempt Well that is completed after the Effective Date for the purpose of withdrawing Underground Water, excluding a replacement Well drilled pursuant to Subparagraph 8.3.3.
- 3.1.104 “Non-Abstracted Existing Surface Water Use” shall mean any Surface Water use, including De Minimis Uses, for which an Abstract has not been prepared pursuant to Subparagraph 7.1.2.
- 3.1.105 “Non-Exempt Well” shall mean a Well, with a casing, having a maximum capacity greater than 35 GPM.
- 3.1.106 “Northwestern New Mexico Rural Water Projects Act” shall mean Title X.B of the Omnibus Public Land Management Act of 2009, Public Law 111-11, as amended.
- 3.1.107 “Norviel Decree” shall mean the final decree of the State of Arizona Superior Court in and for the County of Apache in *The St. John's Irrigation Company and the Meadows Reservoir Irrigation Company, et al. v. Round Valley Water Storage & Ditch Company, Eagar Irrigation Company, Springerville Water Right and Ditch Company, et al.*, Case No. 569 (Apr. 29, 1918), and any modifications thereof.
- 3.1.108 “Off-Reservation” shall mean lands located in Arizona outside the exterior boundaries of both the Navajo Reservation and the Hopi Reservation.
- 3.1.109 “OM&R” shall mean operation, maintenance, and replacement.
- 3.1.110 “Paragraph” shall mean a numbered paragraph of this Agreement, including all Subparagraphs in such Paragraph.
- 3.1.111 “Party” or “Parties” shall mean a Person who is a signatory to this Agreement, including but not limited to those identified in Paragraph 2.0.
- 3.1.112 “Peabody” shall mean Peabody Western Coal Company, and any affiliates or successor thereof.
- 3.1.113 “Permanent Surface Water Control Structure” shall mean any water control structure over fifteen feet in height, as measured from the lowest elevation of the downstream toe at its intersection with the natural ground surface to the spillway crest or the crest of dam if a spillway is not present, or with active storage of more than seventy-five acre-feet.
- 3.1.114 “Person” shall mean an individual; public or private corporation; company; partnership; joint venture; firm; association; society; estate or trust; any other private organization or enterprise; the United States; any Indian tribe; any state, territory, or country; any governmental entity; and

any political subdivision or municipal corporation organized under or subject to the constitution and laws of Arizona, including the officers, directors, agents, insurers, representatives, employees, attorneys, assigns, subsidiaries, affiliates, enterprises, legal representatives, assigns, predecessors and successors in interest and their heirs, of any Person.

3.1.115 “Pre-Construction Activities” shall mean work associated with the pre-planning phase, planning phase, and design phase, all as defined at 25 CFR § 900.112(a)(1), (a)(2) and (a)(3) (2010), including activities described in 25 CFR § 900.112(b)(1) and (b)(2) (2010).

3.1.116 “Protection Area 1” shall mean the lands bound on the east by the Arizona-New Mexico state line and extending west, and generally within two sections of the southern boundary of the Navajo Reservation; thence extending north generally within two sections of the western and southern boundary of the Navajo Reservation. Protection Area 1 is depicted on the map attached hereto as Exhibit 3.1.116. Protection Area 1 does not include any portion of the Navajo Reservation or lands held in trust by the United States for the Navajo Nation within the area identified as Protection Area 1 in Exhibit 3.1.116. Notwithstanding the above description of Protection Area 1, only those portions of the Hopi Trust Lands in sections 7, 9, 11, and 12, T20N R11E; sections 7, 9, and 11, T20N R12E; and section 11, T20N R12.5E within 2 miles of the southern boundary of the Navajo Reservation shall be included within Protection Area 1. The remaining portions of such Hopi Trust Lands in said sections shall be included in Protection Area 2, and are depicted on the map attached hereto as Exhibit 3.1.116. In the case of a conflict between this definition and Exhibit 3.1.116, Exhibit 3.1.116 shall control.

3.1.117 “Protection Area 2” shall mean the lands bound on the east by the Arizona-New Mexico state line and extending west, and generally within six sections of the southern boundary of the Navajo Reservation; thence extending north generally within not more than six sections of the western and southern boundary of the Navajo Reservation, but excluding all lands within Protection Area 1. Protection Area 2 is depicted on the map attached hereto as Exhibit 3.1.116. Protection Area 2 does not include any portion of the Navajo Reservation or lands held in trust by the United States for the Navajo Nation within the area identified as Protection Area 2 in Exhibit 3.1.116. In the case of a conflict between this definition and Exhibit 3.1.116, Exhibit 3.1.116 shall control.

3.1.118 “Protection Area 3” shall mean the lands within 12 sections south of the southern boundary of the Navajo Reservation, bound on the east by the line between Coconino County and Navajo County and on the west by the U.S. Forest Service boundary, but excluding all lands within Protection Areas 1 and 2. Protection Area 3 is depicted on the map

attached hereto as Exhibit 3.1.116. Protection Area 3 does not include any portion of the Navajo Reservation or lands held in trust by the United States for the Navajo Nation within the area identified as Protection Area 3 in Exhibit 3.1.116. In the case of a conflict between this definition and Exhibit 3.1.116, Exhibit 3.1.116 shall control.

- 3.1.119 “Protection Areas” shall mean Protection Area 1, Protection Area 2, and Protection Area 3, collectively. Protection Area 1, Protection Area 2, and Protection Area 3 are each sometimes referred to individually herein as “Protection Area.”
- 3.1.120 “Reclamation” shall mean the United States Bureau of Reclamation.
- 3.1.121 “Rehabilitation” shall mean the replacement in kind with comparable works (including limited on-farm or system water conservation measures), which may include technologically improved components, so long as the Diversion capacity, surface storage capacity or irrigated acreage is not increased.
- 3.1.122 “Reservoir” shall mean a Surface Water Impoundment that is not a De Minimis Use.
- 3.1.123 “Rights to Lower Colorado River Water” shall mean any and all rights in or to Lower Colorado River Water under applicable law.
- 3.1.124 “Rights to Upper Basin Water” shall mean any and all rights in or to Upper Basin Water under applicable law.
- 3.1.125 “San Juan Southern Paiute Tribe” shall mean the body politic and federally-recognized Indian nation of that name.
- 3.1.126 “Secretary” shall mean the Secretary of the United States Department of the Interior or the Secretary’s authorized designee.
- 3.1.127 “State” shall mean the State of Arizona.
- 3.1.128 “State Implementing Legislation” shall mean legislation enacted by the State that includes terms substantially similar to those set forth in Exhibit 3.1.128.
- 3.1.129 “Statement of Claimant” shall mean a domestic use statement of claimant, stockpond use statement of claimant, other uses statement of claimant or irrigation use statement of claimant filed in the LCR Adjudication and bearing a file number beginning with the number ‘39.’
- 3.1.130 “Subparagraph” shall mean a numbered subparagraph of this Agreement.

- 3.1.131 “Surface Water” shall mean all water in Arizona that is appropriable under State law, other than appropriable water that is located within the Upper Basin. “Surface Water” shall not include Lower Colorado River Water.
- 3.1.132 “Three-Canyon Area” shall mean the Clear Creek, Chevelon Creek and Jacks Canyon subwatersheds of the LCR Watershed as depicted on the map attached hereto as Exhibit 3.1.132. In the case of a conflict between this definition and Exhibit 3.1.132, Exhibit 3.1.132 shall control.
- 3.1.133 “Tribe” shall mean either the Navajo Nation or the Hopi Tribe.
- 3.1.134 “Tribes” shall mean both the Navajo Nation and the Hopi Tribe.
- 3.1.135 “Underground Water” shall mean all water beneath the surface of the earth, within Arizona, other than Effluent, regardless of its legal characterization as appropriable or non-appropriable under federal, State or other law.
- 3.1.136 “United States” or “United States of America” in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term ‘United States’ or ‘United States of America’ is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.
- 3.1.137 “Upper Basin” shall mean ‘Upper Basin’ as defined in article II(f) of the Colorado River Compact.
- 3.1.138 “Upper Basin Water” shall mean the waters of the Upper Basin.
- 3.1.139 “Upper LCR Watershed” shall mean that portion of the LCR Watershed upstream from the mouth of Chevelon Creek which is located outside of the Three-Canyon Area. The Upper LCR Watershed is shown on the map attached hereto as Exhibit 3.1.139. In the case of a conflict between this definition and Exhibit 3.1.139, Exhibit 3.1.139 shall control.
- 3.1.140 “Water,” when used without a modifying adjective, shall mean Groundwater, Surface Water, and Effluent.
- 3.1.141 “Water Right” shall mean any right in or to Groundwater, Surface Water and Effluent under federal, State or other law.
- 3.1.142 “Well” shall mean a man-made opening in the earth through which Underground Water may be withdrawn or obtained, except for wells drilled for oil, gas, or helium, or geothermal wells when the Director finds that the rules and regulations of the Arizona Oil and Gas

Conservation Commission require the reinjection of all waters associated with the geothermal resource to the producing strata.

- 3.1.143 “Western Navajo Colorado River Basin” shall mean those portions of the Navajo Reservation located in the Lower Basin outside of the LCR Watershed.
- 3.1.144 “Window Rock” shall mean the geographic area in Arizona, including Window Rock, Arizona, to be served by the Navajo-Gallup Water Supply Project.
- 3.1.145 “Year” shall mean a calendar year.
- 3.1.146 “Zuni Indian Tribe” or “Zuni Tribe” shall mean the body politic and federally-recognized Indian nation of that name.

3.2 EXHIBITS

The following is a list of Exhibits to this Agreement. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraph 13.3.2. No Party shall have, by reason of this Agreement, any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit or except with respect to Exhibits 3.1.49, 3.1.70, 8.3.7, 11.1.1, 11.1.2, 11.2.1, 11.2.2, 11.3, 11.4, 11.5.1, and 11.5.2 and 11.5.3.

Paragraph No./ Exhibit No.	Description
3.1.4	Form of Abstract [All parties]
3.1.29	Map of Closed Basins [ADWR]
3.1.31	Map of Confined Aquifer and N-Aquifer [Tribes]
3.1.49	Form of judgment and decree entered by the Gila River Adjudication Court in the Gila River Adjudication [All]
3.1.70	Form of judgment and decree entered by the LCR Adjudication Court in the LCR Adjudication [All]
3.1.79	Map of Lower LCR Watershed [ADWR]
3.1.82	Map of Managed Washes [Tribes]
3.1.100	Map of Navajo Reservation and Hopi Reservation [Navajo]
3.1.116	Map of Protection Areas 1, 2, and 3
3.1.128	State Implementing Legislation [All]
3.1.132	Map of Three-Canyon Area [ADWR]
3.1.139	Map of Upper LCR Watershed [ADWR]
4.7.3	Abstracts of Off-Reservation Navajo Nation Allotments [US]
4.8.1A	Navajo Nation Off-Reservation Land within the LCR Watershed [Navajo]

Paragraph No./ Exhibit No.	Description
4.8.1B	Navajo Nation Off-Reservation Surface Water Abstract [Navajo]
4.8.1C	Navajo Nation Off-Reservation Underground Water Abstract [Navajo]
4.9.1A	Off-Reservation land within the LCR Watershed held in trust by the United States for the benefit of the Navajo Nation [Navajo]
4.9.1B	Surface Water Abstract for Off-Reservation land within the LCR Watershed held in trust by the United States for the benefit of the Navajo Nation [Navajo]
4.9.1C	Underground Water Abstract for Off-Reservation land within the LCR Watershed held in trust by the United States for the benefit of the Navajo Nation [Navajo]
4.12.1A	Navajo Nation Off-Reservation Land within the Gila River Watershed [Navajo]
4.12.1B	Navajo Nation Off-Reservation Surface Water Abstract [Navajo]
4.12.1C	Navajo Nation Off-Reservation Underground Water Abstract [Navajo]
5.3	Hopi Industrial Park Water Rights
5.4A	Map of Aja Ranch
5.4B	Map of Clear Creek Ranch
5.4C	Map of Drye Ranch [Hopi]
5.4D	Map of Hart Ranch [Hopi]
5.4E	Map of 26 Bar Ranch [Hopi]
5.4F	Map of Off-Reservation Lands held in trust by the United States for the benefit of the Hopi Tribe—LCR Watershed [Hopi]
5.4.1A	Hopi Tribe Off-Reservation Water Abstracts
5.4.1B	Hopi Tribe Off-Reservation Water Abstracts
5.4.1C	Hopi Tribe Off-Reservation Water Abstracts
6.1.1.2A	Table of All Navajo Nation Designated Historic Irrigation Projects [Tribes]
6.1.1.2B	Table of All Hopi Tribe Designated Irrigation Projects [Tribes]
6.1.1.2C	Table of All Joint Navajo Nation and Hopi Tribe Historic Irrigation Projects [Tribes]
6.1.1.2D	Map of Designated Historic Irrigation Projects [Tribes]
6.1.2.3	Table of Aggregate Capacity of Surface Water Impoundments by Main Wash Drainage [Tribes]
6.2.1.1	Navajo Communities for N-Aquifer Management Plan [Navajo]
6.2.2.7	List of Boundary Springs (filed under seal with the LCR Adjudication Court) [Tribes]
6.2.2.8	Pasture Canyon Springs Buffer Zone Map
7.1.2.1A	Abstract of _____ Surface Water Uses [All N/I parties]
7.1.2.1B	Abstract of _____ Surface Water Uses [All N/I parties]
7.1.2.1C	Abstract of _____ Surface Water Uses [All N/I parties]

Paragraph No./ Exhibit No.	Description
7.2A	Abstracts of Surface Water Uses for Zuni Lands, set forth in Exhibit 4.1.A(1) <i>et seq.</i> to the Zuni Indian Tribe Water Rights Settlement Agreement of 2002, as amended [SRP]
7.2B	Zuni Indian Tribe Water Rights Settlement Judgment and Decree [SRP]
8.2.2A	Abstract for Wells Outside the Protection Areas [All N/I claimants]
8.2.2B	Abstract for Wells Outside the Protection Areas [All N/I claimants]
8.2.2C	Abstract for Wells Outside the Protection Areas [All N/I claimants]
8.3.6A	Abstract of Uses of Underground Water from Existing Wells within the Protection Areas [All N/I parties]
8.3.6B	Abstract of Uses of Underground Water from Existing Wells within the Protection Areas [All N/I parties]
8.3.6C	Abstract of Uses of Underground Water from Existing Wells within the Protection Areas [All N/I parties]
8.3.7	Stipulation Between the Navajo Nation and the City of Flagstaff Concerning the Drilling of Wells and Pumping of Underground Water at Red Gap Ranch.
9.2	Navajo Nation CAP Water Delivery Contract [CAWCD, Tribes, and US]
9.4	Provisions for CAP Water leases [CAWCD]
11.1.1	Form of waiver and release of claims for Water Rights and waiver and release of claims for Injury to Water Rights and Injury to Water Quality, by the Navajo Nation on behalf of itself and its Members (but not Members in their capacity as Allottees) and by the United States acting in its capacity as trustee for the Navajo Nation and its Members (but not Members in their capacity as Allottees) [All]
11.1.2	Form of waiver and release of claims for Water Rights and waiver and release of claims for Injury to Water Rights and Injury to Water Quality by the Navajo Nation on behalf of itself and its Members (but not Members in their capacity as Allottees) against the United States [All]
11.2.1	Form of waiver and release of claims for Water Rights and waiver and release of claims for Injury to Water Rights and Injury to Water Quality, by the Hopi Tribe on behalf of itself and its Members (but not Members in their capacity as Allottees) and by the United States acting in its capacity as trustee for the Hopi Tribe and its Members (but not Members in their capacity as Allottees) [All]

Paragraph No./ Exhibit No.	Description
11.2.2	Form of waiver and release of claims for Water Rights and waiver and release of claims for Injury to Water Rights and Injury to Water Quality by the Hopi Tribe on behalf of itself and its Members (but not Members in their capacity as Allottees) against the United States [All]
11.3	Form of waiver and release of claims for Water Rights and Injuries to Water Rights by the United States acting in its capacity as trustee for Allottees [All]
11.4	Form of waiver and release of claims by the United States against the Navajo Nation and the Hopi Tribe [All]
11.5.1	Waiver and release of claims by the Parties other than the United States and the Navajo Nation as against the Navajo Nation [All]
11.5.2	Waiver and release of claims by the Parties other than the United States and the Hopi Tribe as against the Hopi Tribe [All]
11.5.3	Waiver and release of claims by the Parties other than the United States, the Navajo Nation, and the Hopi Tribe as against the United States Acting in its Capacity as Trustee for Allottees [All]
11.9	Form of Dismissal of Pending Court Case [All]
11.10	Form of Stipulation and Order in Pending State Court Case [Flagstaff and Hopi]
13.17.1	List of Peabody Permanent Mining Structures [Tribes]
13.19	Party Contact Information for Future Notices [All]

4.0 NAVAJO NATION WATER RIGHTS

The Navajo Nation, Allottees and the United States acting in its capacity as trustee for the Navajo Nation and Allottees, shall have the following rights to use Water and CAP Water in the following amounts and priorities:

4.1 GENERALLY APPLICABLE PROVISIONS

4.1.1 The Water Rights and Navajo Nation CAP Water described in this Paragraph 4.0 may be used for any purpose, consistent with this Agreement and the LCR Decree.

4.1.2 Water Rights Held in Trust.

4.1.2.1 All Water Rights for lands held in trust for the Navajo Nation shall be held in trust by the United States for the benefit of the Navajo Nation. These Water Rights shall not be subject to loss through non-use, forfeiture, abandonment or other operation of law. All Navajo Nation CAP Water

shall be held in trust by the United States for the benefit of the Navajo Nation.

4.1.2.2 All Water Rights for Off-Reservation Allotments held in trust for the Allottees shall be held in trust by the United States for the benefit of Allottees.

4.1.3 Notwithstanding the provisions of Subparagraph 7.5.1 and except as provided in Subparagraph 6.1, the Navajo Nation shall have the right to impound, on or off of Navajo Land, any Water supply that it has a right to use, pursuant to applicable laws, so long as such Impoundment does not conflict with then-existing Water Rights. Nothing herein shall create any right of access or easement to impound Water on lands not owned by the Navajo Nation.

4.2 UNDERGROUND WATER

The Navajo Nation shall have the right to make use of the Underground Water pumped on the Navajo Reservation, subject to the provisions on the use of the N-Aquifer described in Subparagraph 6.2.

4.3 EFFLUENT

The Navajo Nation shall have the right to Effluent developed on the Navajo Reservation or on lands held in trust by the United States for the benefit of the Navajo Nation which may be used for such purposes as the Navajo Nation may determine.

4.4 LITTLE COLORADO RIVER TRIBUTARIES

4.4.1 Subject to the provisions of Subparagraph 6.1, the Navajo Nation shall have the right to make use of all Surface Water that: (1) flows within the Navajo Reservation in water courses north of and tributary to the Little Colorado River, and (2) remains unappropriated as of the Effective Date.

4.4.2 The Navajo Nation shall have the right to make use of all Surface Water that: (1) reaches the Navajo Reservation in water courses south or west of and tributary to the Little Colorado River, and (2) remains unappropriated as of the Effective Date.

4.5 MAINSTEM LITTLE COLORADO RIVER

4.5.1 The Navajo Nation shall have the right to Divert and use any Surface Water from the Little Colorado River that reaches the Navajo Reservation unless the Surface Water is attributable to changes of use of decreed rights with respect to which a change of place and/or type of use has been approved and the bed of the stream is being used as a means of conveyance. The physical withdrawal of Water from the alluvium of the

Little Colorado River on the Navajo Reservation by the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, shall be considered to be a Diversion of Surface Water.

4.5.2 The Navajo Nation shall have the right to Divert Surface Water from the Little Colorado River in the quantities and with the priorities described below:

HISTORIC PROJECT (Locations described on attached maps)	ACREAGE (acres)	QUANTITY (AFY)	PRIORITY
Beaver Farms	99	495	Nov. 14, 1901
Bird Springs	1673	8365	Nov. 14, 1901
Black Falls	1460	7300	Jan. 8, 1900
Cameron Farms	154	770	Jan. 8, 1900
	20	100	May 7, 1917
	5	20	July 14, 1934
Grand Falls	191	955	Nov. 14, 1901
Leupp Farms	1900	9500	Nov. 14, 1901
North Leupp	69	345	Nov. 14, 1901
Sunrise Fields	407	2035	Nov. 14, 1901
	1019	5095	July 14, 1934
Tolchico	359	1795	Nov. 14, 1901
Scattered Fields	318	1590	Jan. 8, 1900
	370	1850	Nov. 14, 1901
	113	565	July 14, 1934

4.5.3 Notwithstanding Subparagraphs 4.5.1 and 4.5.2, neither the Navajo Nation, nor the United States acting in its capacity as trustee for the Navajo Nation or Allottees, shall make calls or exercise rights of priority in the LCR Adjudication or in any other judicial or administrative proceeding against upstream or downstream Off-Reservation Water uses in the LCR Basin with priority dates earlier than the Effective Date to

satisfy its historic, existing or future uses. Neither the Navajo Nation, nor the United States acting in its capacity as trustee for the Navajo Nation or Allottees, shall make calls or exercise rights of priority for instream flow uses made by the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation or Allottees, on the Navajo Reservation or for any other use of Water on the Navajo Reservation which is not accompanied by the Diversion of Water.

4.6 NAVAJO NATION CAP WATER

The Navajo Nation's rights to delivery of Navajo Nation CAP Water are set forth in Paragraph 9.0 and in the Navajo Nation Water Delivery Contract attached as Exhibit 9.2.

4.7 RIGHTS OF ALLOTTEES

- 4.7.1 The rights of Allottees, and the United States acting in its capacity as trustee for Allottees, to use Water on Allotments located on the Navajo Reservation shall (a) be satisfied solely from the Water secured to the Navajo Nation, and the United States acting in its capacity as trustee for the Navajo Nation, by the LCR Decree and (b) be subject to the terms thereof. Such rights shall be enforceable only pursuant to the Navajo Nation Water Code. The Navajo Nation Water Code shall provide Allottees a process to enforce these rights against the Navajo Nation.
- 4.7.2 The rights, if any, of Allottees, and the United States acting in its capacity as trustee for Allottees, to use Navajo Nation CAP Water on Allotments located on the Navajo Reservation shall (a) be satisfied solely from the Navajo Nation CAP Water secured to the Navajo Nation, and the United States acting in its capacity as trustee for the Navajo Nation, by this Agreement and the Navajo Nation Water Delivery Contract and (b) be subject to the terms thereof.
- 4.7.3 The rights of Allottees, and the United States acting in its capacity as trustee for Allottees, to use Water on Allotments located outside the exterior boundaries of the Navajo Reservation shall be as described in the Abstracts attached as Exhibit 4.7.3.

4.8 WATER RIGHTS AND USES OF WATER FOR LAND OWNED IN FEE BY THE NAVAJO NATION AS OF THE EXECUTION DATE—LCR WATERSHED

- 4.8.1 As of the Execution Date, the Navajo Nation owns land in fee that is located outside the exterior boundaries of the Navajo Reservation within the LCR Watershed, as set forth in Exhibit 4.8.1A. Subject to the terms of this Agreement, the Navajo Nation shall continue to have all Water Rights and uses of Water existing as of the Execution Date that are appurtenant to or associated with such lands, as described in the

Abstracts attached as Exhibits 4.8.1B and 4.8.1C. Such rights and uses shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding, and after incorporation in the LCR Decree, shall be binding on all parties to the LCR Adjudication.

4.8.2 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 4.8.1 and Exhibit 4.8.1A, after the Execution Date but before the LCR Enforceability Date, the Navajo Nation may obtain new Water Rights or initiate new uses of Water for such lands as permitted by State law, subject to the terms of this Agreement. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the Execution Date but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.

4.8.3 After the LCR Enforceability Date, the Navajo Nation may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.8.1 and Exhibit 4.8.1A as permitted by State law, subject to the terms of this Agreement. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water obtained or initiated for such lands by the Navajo Nation after the LCR Enforceability Date and shall promptly move to supplement the LCR Decree to include the Abstracts of such additional Water Rights and uses of Water.

4.8.4 If the Abstracts described in Subparagraphs 4.8.2 and 4.8.3 are agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.8.2 and 4.8.3 are not agreed to by all of the Parties before their submission to the LCR Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs 4.8.2 and 4.8.3 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

4.9 WATER RIGHTS AND USES OF WATER FOR LANDS HELD IN TRUST BY THE UNITED STATES ON BEHALF OF THE NAVAJO NATION AS OF THE EXECUTION DATE—LCR WATERSHED

4.9.1 As of the Execution Date, the United States holds land in trust for the benefit of the Navajo Nation that is located outside the exterior boundaries of the Navajo Reservation within the LCR Watershed, as set

forth in Exhibit 4.9.1.A. Subject to the terms of this Agreement, the Navajo Nation and the United States acting in its capacity as trustee for the Navajo Nation, shall continue to have all Water Rights and uses of Water existing as of the Execution Date that are appurtenant to or associated with such lands, as described in the Abstracts attached as Exhibits 4.9.1B and 4.9.1C. Such rights and uses shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding, and after incorporation in the LCR Decree, shall be binding on all parties to the LCR Adjudication.

- 4.9.2 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 4.9.1 and Exhibit 4.9.1A, after the Execution Date but before the LCR Enforceability Date, the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for such lands as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the Execution Date but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.
- 4.9.3 After the LCR Enforceability Date, the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.9.1 and Exhibit 4.9.1.A as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the LCR Enforceability Date and shall promptly move to supplement the LCR Decree to include such Abstracts therein.
- 4.9.4 If the Abstracts described in Subparagraphs 4.9.2 and 4.9.3 are agreed to by all of the Parties before being submitted by the Navajo Nation to the LCR Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.9.2 and 4.9.3 are not agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs 4.9.2 and 4.9.3 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

4.10 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—LCR WATERSHED

- 4.10.1 Lands within the LCR Watershed acquired by the Navajo Nation in fee, or by the United States acting in its capacity as trustee for the Navajo Nation, after the Execution Date but before the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water, appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.
- 4.10.2 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.10.1 after the date of their acquisition but before the LCR Enforceability Date as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the date of their acquisition but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.
- 4.10.3 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water after the LCR Enforceability Date for the lands described in Subparagraph 4.10.1 as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water obtained or initiated for such lands after the LCR Enforceability Date and shall promptly move to supplement the LCR Decree to include such Abstracts therein.
- 4.10.4 If the Abstracts described in Subparagraphs 4.10.1, 4.10.2 and 4.10.3 are agreed to by all of the Parties before being submitted by the Navajo Nation to the LCR Adjudication Court for approval, the Water Rights and uses described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in

Subparagraphs 4.10.1, 4.10.2 and 4.10.3 are not agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs 4.10.1, 4.10.2 and 4.10.3 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

4.11 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE LCR ENFORCEABILITY DATE—LCR WATERSHED

- 4.11.1 Lands within the LCR Watershed acquired by the Navajo Nation in fee, or by the United States acting in its capacity as trustee for the Navajo Nation, after the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement, and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition. The Navajo Nation shall promptly move to supplement the LCR Decree to include the Abstracts of such additional Water Rights and uses of Water unless previously decreed by the LCR Adjudication Court.
- 4.11.2 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.11.1 as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water obtained or initiated for such lands and shall promptly move to supplement the LCR Decree to include such Abstracts therein.
- 4.11.3 If the Abstracts described in Subparagraphs 4.11.1 and 4.11.2 are agreed to by all of the Parties before being submitted by the Navajo Nation to the LCR Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.11.1 and 4.11.2 are not agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs

4.11.1 and 4.11.2 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

4.12 WATER RIGHTS AND USES OF WATER FOR LANDS OWNED IN FEE BY THE NAVAJO NATION AS OF THE EXECUTION DATE-GILA RIVER WATERSHED

- 4.12.1 As of the Execution Date, the Navajo Nation owns lands in fee that is located outside the boundaries of the Navajo Reservation within the Gila River watershed, as set forth in Exhibit 4.12.1.A. Such lands shall be subject to any limitations imposed by this Agreement and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition, as described in the Abstracts attached as Exhibits 4.12.1B and 4.12.1C. Such Water Rights and uses of Water shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or any other judicial or administrative proceeding, and after incorporation in the Gila River Adjudication Decree, shall be binding on all parties to the Gila River Adjudication.
- 4.12.2 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 4.12.1 and Exhibit 4.12.1A, after the Execution Date but before the LCR Enforceability Date, the Navajo Nation may obtain new Water Rights or initiate new uses of Water for such lands as permitted by State law. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the Execution Date but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the Gila River Adjudication Decree to include the Abstracts of any such additional Water Rights and uses of Water.
- 4.12.3 After the LCR Enforceability Date, the Navajo Nation may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.12.1 and Exhibit 4.12.1.A as permitted by State law, subject to the terms of this Agreement. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water obtained or initiated for such lands by the Navajo Nation after the LCR Enforceability Date and shall promptly move to supplement the Gila River Adjudication Decree to include the Abstracts of such additional Water Rights and uses of Water.
- 4.12.4 If the Abstracts described in Subparagraphs 4.12.2 and 4.12.3 are agreed to by all of the Parties having asserted claims in the Gila River Adjudication before being submitted to the Gila River Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the

Parties in the Gila River Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.12.2 and 4.12.3 are not agreed to by all of the Parties before their submission to the Gila River Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the Gila River Adjudication Decree. After the incorporation of the Abstracts described in Subparagraphs 4.12.2 and 4.12.3 in the Gila River Adjudication Decree, such Abstracts shall be binding on all parties to the Gila River Adjudication.

4.13 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—GILA RIVER WATERSHED

4.13.1 Lands within the Gila River Watershed acquired by the Navajo Nation in fee, or by the United States acting in its capacity as trustee for the Navajo Nation, after the Execution Date but before the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction. The Navajo Nation shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the Gila River Adjudication Decree to include the Abstracts of any such additional Water Rights and uses of Water.

4.13.2 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.13.1 after the date of their acquisition but before the LCR Enforceability Date as permitted by State law, if applicable, and this Agreement. The Navajo Nation shall complete Abstracts for all Water Rights and uses of Water obtained or initiated for such lands after the date of their acquisition but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Navajo Nation shall promptly move to supplement the Gila River Adjudication Decree to include the Abstracts of any such additional Water Rights and uses of Water.

4.13.3 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water after the LCR Enforceability Date for the lands described in

Subparagraph 4.13.1 as permitted by State law, if applicable, and this Agreement.

4.13.4 If the Abstracts described in Subparagraphs 4.13.1 and 4.13.2 are agreed to by all of the Parties having asserted claims in the Gila River Adjudication before being submitted by the Navajo Nation to the Gila River Adjudication Court for approval, the Water Rights and uses described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.13.1 and 4.13.2 are not agreed to by all of the Parties before being submitted to the Gila River Adjudication Court for approval, the Parties, other than the Navajo Nation, reserve the right to object to the incorporation of all or portions of such Abstracts in the Gila River Adjudication Decree. After the incorporation of the Abstracts described in Subparagraphs 4.13.1 and 4.13.2 in the Gila River Adjudication Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

4.14 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE NAVAJO NATION IN FEE, OR BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NAVAJO NATION, AFTER THE LCR ENFORCEABILITY DATE—GILA RIVER WATERSHED

4.14.1 Lands within the Gila River Watershed acquired by the Navajo Nation in fee, or by the United States acting in its capacity as trustee for the Navajo Nation, after the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement, and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction.

4.14.2 The Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.14.1 as permitted by State law, if applicable, and this Agreement.

4.15 OTHER PROVISIONS

4.15.1 Except as provided in Subparagraphs 4.8, 4.10, 4.11, 4.12, 4.13, 4.14, and 4.15.4, the rights of the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation, to Water described in this Paragraph 4.0 may not be sold, leased, transferred or in any way used off of the Navajo Reservation or off of Navajo Trust Land; provided, however, the Navajo Nation may transport Water described in this Paragraph 4.0 between lands held in trust for the Navajo Nation. Any

lease, transfer or use of Navajo Nation CAP Water is subject to the provisions and restrictions of Paragraph 9.0.

- 4.15.2 The rights of an Allottee, or the United States acting in its capacity as trustee for an Allottee, to use Water described in Subparagraph 4.7.1 on an Allotment located on the Navajo Reservation may not be sold, leased, transferred or in any way used off of the Navajo Reservation in Arizona or off of Navajo Trust Land in Arizona.
- 4.15.3 The rights of an Allottee, or the United States acting in its capacity as trustee for an Allottee, to use Water described in Subparagraph 4.7.3 on an Off-Reservation Allotment may not be sold, leased, transferred or in any way used off of the Off-Reservation Allotment.
- 4.15.4 Notwithstanding Subparagraph 4.15.1 and except as provided in Subparagraph 6.2, the Navajo Nation may provide water for Municipal Use Off-Reservation from facilities owned by the Navajo Nation or its entities or enterprises which are physically connected to their facilities on the Navajo Reservation or lands held in trust for the Navajo Nation and which have their source of supply on the Navajo Reservation or lands held in trust for the Navajo Nation.
- 4.15.5 The Navajo Nation may move the Water described in this Paragraph 4.0 out of the Little Colorado River Basin provided it remains on the Navajo Reservation in Arizona.
- 4.15.6 The Navajo Nation may subordinate its senior priority to junior users.

5.0 HOPI TRIBE WATER RIGHTS

The Hopi Tribe, and the United States acting in its capacity as trustee for the Hopi Tribe and Allottees, shall have the following rights to use Water in the following amounts and priorities:

5.1 GENERALLY APPLICABLE PROVISIONS

- 5.1.1 The Water Rights described in this Paragraph 5.0 may be used for any purpose, consistent with this Agreement and the LCR Decree.
- 5.1.2 All Water Rights for lands held in trust for the Hopi Tribe shall be held in trust by the United States for the benefit of the Hopi Tribe or, in the case of Allotments, in trust for the Allottees. These Water Rights shall not be subject to loss through non-use, forfeiture, abandonment or other operation of law.

5.2 WATER RIGHTS WITHIN THE HOPI RESERVATION

- 5.2.1 Subject to the provisions on the use of the N-Aquifer described in Subparagraph 6.2, the Hopi Tribe shall have the right to use Underground Water within the Hopi Reservation according to Hopi tribal laws.
- 5.2.2 Subject to the provisions of Subparagraph 6.1, the Hopi Tribe shall have the right to use all Surface Water which reaches the Hopi Reservation.

5.3 HOPI INDUSTRIAL PARK

The Hopi Tribe, and the United States acting in its capacity as trustee for the Hopi Tribe, shall have such Water Rights on the Hopi Industrial Park as provided in Exhibit 5.3.

5.4 WATER RIGHTS AND USES OF WATER FOR LANDS OWNED IN FEE BY THE HOPI TRIBE, OR HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AS OF THE EXECUTION DATE—LCR WATERSHED

- 5.4.1 As of the Execution Date: (1) the Hopi Tribe owns lands in fee that are located outside the exterior boundaries of the Hopi Reservation within the LCR Watershed, as set forth in Exhibits 5.4A, 5.4.B, 5.4C, 5.4D, and 5.4E; and (2) the United States holds lands in trust for the benefit of the Hopi Tribe that are located outside the exterior boundaries of the Hopi Reservation within the Little Colorado River watershed, as set forth in Exhibit 5.4F. Subject to the terms of this Agreement, the Hopi Tribe, and the United States acting in its capacity as trustee for the Hopi Tribe, shall continue to have all Water Rights and uses of Water existing as of the Execution Date that are appurtenant to or associated with such lands,

as described in the Abstracts attached as Exhibit 5.4.1A, et seq. Such rights and uses shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding, and, after incorporation in the LCR Decree, shall be binding on all parties to the LCR Adjudication. For Existing Wells of the Hopi Tribe located within the Protection Areas, the Abstracts shall include the larger of the equipped well capacity (if equipped) or the casing diameter well capacity set forth in the chart below. For unequipped Existing Wells, the following capacities shall be assigned:

Casing Diameter (inches)	Capacity (AFY)
4	87
5	136
6	196
8	348
10	544
12	784
14	1067
16 or larger	1400

5.4.2 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 5.4.1 and Exhibits 5.4A, 5.4B, 5.4C, 5.4D, 5.4E and 5.4F, new uses of Groundwater may be initiated for such lands after the Execution Date but before the LCR Enforceability Date:

- (a) for so long as the lands are not in trust status, by the Hopi Tribe, as permitted by State law, subject to the terms of this Agreement; and
- (b) for lands that are held in trust as of the Execution Date, or are taken into trust after the Execution Date, by the Hopi Tribe or the United States for the benefit of the Hopi Tribe, as set forth in Pub. L. No. 104-301, 110 Stat. 3649, subject to the terms of this Agreement.

The Hopi Tribe shall complete Abstracts for all uses of Groundwater initiated after the Execution Date but before the LCR Enforceability Date for the lands described in Exhibits 5.4A, 5.4B, 5.4C, 5.4D, 5.4E and 5.4F. All such Abstracts must be completed on or before the LCR Enforceability Date. The Hopi Tribe shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.

5.4.3 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 5.4.1 and Exhibits 5.4A, 5.4B, 5.4C, 5.4D, 5.4E and

5.4F, new uses of Groundwater may be initiated for such lands after the LCR Enforceability Date:

- (a) for so long as such lands are not in trust status, by the Hopi Tribe, as permitted by State law, subject to the terms of this Agreement; and
- (b) for lands that are held in trust as of the Execution Date, or are taken into trust after the Execution Date, by the Hopi Tribe or the United States for the benefit of the Hopi Tribe, as set forth in Pub. L. No. 104-301, 110 Stat. 3649, subject to the terms of this Agreement.

The Hopi Tribe shall complete Abstracts of all uses of Groundwater initiated after the LCR Enforceability Date for the lands described in Exhibits 5.4A, 5.4B, 5.4C, 5.4D, 5.4E and 5.4F, and shall promptly move to supplement the LCR Decree to include the Abstracts of such additional Water Rights and uses of Water.

- 5.4.4 If the Abstracts described in Subparagraphs 5.4.2 and 5.4.3 are agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the uses of Groundwater described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 5.4.2 and 5.4.3 are not agreed to by all of the Parties before their submission to the LCR Adjudication Court for approval, the Parties, other than the Hopi Tribe, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs 5.4.2 and 5.4.3 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

5.5 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE HOPI TRIBE IN FEE, OR TAKEN INTO TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AFTER THE EXECUTION DATE BUT BEFORE THE LCR ENFORCEABILITY DATE—LCR WATERSHED

- 5.5.1 Lands within the LCR Watershed acquired by the Hopi Tribe in fee, or taken into trust by the United States for the benefit of the Hopi Tribe, after the Execution Date but before the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water, appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction. The Hopi Tribe shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition. All such Abstracts must be completed on or before the LCR Enforceability Date. The Hopi Tribe shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional Water Rights and uses of Water.
- 5.5.2 Subject to the terms of this Agreement, the Hopi Tribe, or the United States acting in its capacity as trustee for the Hopi Tribe, may initiate new uses of Groundwater for the lands described in Subparagraph 5.5.1 after the date of their acquisition but before the LCR Enforceability Date as permitted by State law or Public Law No. 104-301, 110 Stat. 3649, whichever is applicable. The Hopi Tribe shall complete Abstracts for all uses of Groundwater initiated for such lands after the date of their acquisition but before the LCR Enforceability Date. All such Abstracts must be completed on or before the LCR Enforceability Date. The Hopi Tribe shall promptly move to supplement the LCR Decree to include the Abstracts of any such additional uses of Groundwater.
- 5.5.3 Subject to the terms of this Agreement, the Hopi Tribe, or the United States acting in its capacity as trustee for the Hopi Tribe, may initiate new uses of Groundwater after the LCR Enforceability Date for the lands described in Subparagraph 5.5.1 as permitted by State law or Public Law No. 104-301, 110 Stat. 3649, whichever is applicable. The Hopi Tribe shall complete Abstracts of all uses of Groundwater initiated for such lands after the LCR Enforceability Date and shall promptly move to supplement the LCR Decree to include such Abstracts therein.
- 5.5.4 If the Abstracts described in Subparagraphs 5.5.1, 5.5.2 and 5.5.3 are agreed to by all of the Parties before being submitted by the Hopi Tribe to the LCR Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in

Subparagraphs 5.5.1, 5.5.2 and 5.5.3 are not agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Parties, other than the Hopi Tribe, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation of the Abstracts described in Subparagraphs 5.5.1, 5.5.2 and 5.5.3 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

5.6 WATER RIGHTS AND USES OF WATER FOR LANDS ACQUIRED BY THE HOPI TRIBE IN FEE, OR TAKEN INTO TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE HOPI TRIBE, AFTER THE LCR ENFORCEABILITY DATE—LCR WATERSHED

5.6.1 Lands within the LCR Watershed acquired by the Hopi Tribe in fee, or taken into trust by the United States for the benefit of the Hopi Tribe, after the LCR Enforceability Date shall be subject to any limitations imposed by this Agreement, and are entitled to any benefits provided by this Agreement, including Water Rights and uses of Water appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction. The Hopi Tribe shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition, unless previously decreed by the LCR Adjudication Court. The Hopi Tribe shall promptly move to supplement the LCR Decree to include the Abstracts of such additional Water Rights and uses of Water, including Underground Water Allocations, unless previously decreed by the LCR Adjudication Court.

5.6.2 Subject to the terms of this Agreement, the Hopi Tribe, or the United States acting in its capacity as trustee for the Hopi Tribe, may initiate new uses of Groundwater for the lands described in Subparagraph 5.6.1 as permitted by State law or Public Law No. 104-301, 110 Stat. 3649, whichever is applicable. The Hopi Tribe shall complete Abstracts of all Water Rights and uses of Groundwater obtained or initiated for such lands and shall promptly move to supplement the LCR Decree to include such Abstracts therein.

5.6.3 If the Abstracts described in Subparagraphs 5.6.1 and 5.6.2 are agreed to by all of the Parties before being submitted by the Hopi Tribe to the LCR Adjudication Court for approval, the Water Rights and uses of Water described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the LCR Adjudication or any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 5.6.1 and 5.6.2 are not agreed to by all of the Parties before being submitted to the LCR Adjudication Court for approval, the Parties, other than the Hopi Tribe, reserve the right to object to the incorporation of all or portions of such Abstracts in the LCR Decree. After the incorporation

of the Abstracts described in Subparagraphs 5.6.1 and 5.6.2 in the LCR Decree, such Abstracts shall be binding on all parties to the LCR Adjudication.

5.7 NEW SURFACE WATER USES

The Hopi Tribe, and the United States acting in its capacity as trustee for the Hopi Tribe and Allottees, shall not initiate Surface Water uses in the LCR Watershed outside its Reservation unless those Surface Water uses are described in the Abstracts attached to this Agreement as Exhibit 5.4.1A, *et seq.*

5.8 RIGHTS OF ALLOTTEES ON HOPI RESERVATION

The right of an Allottee, or the United States acting in its capacity as trustee for an Allottee, to use Water on the Hopi Reservation shall be satisfied solely from the Water secured to the Hopi Tribe by this Agreement and shall be subject to the terms thereof; provided, however, that such rights are enforceable only pursuant to the Hopi Tribe Water Code. The Hopi Tribe Water Code shall provide Allottees a process to enforce these rights against the Hopi Tribe.

5.9 WATER MARKETING

Except as provided in Subparagraphs 5.4, 5.5, and 5.6, the rights of the Hopi Tribe, Allottees, or the United States acting in its capacity as trustee for the Hopi Tribe, and Allottees, to Water described in this Paragraph 5.0 may not be sold, leased, transferred or in any way used off of the Hopi Reservation or Hopi Trust Land; provided, however, the Hopi Tribe may transport Water described in this Paragraph 5.0 between lands held in trust for the Hopi Tribe and as described in Exhibit 5.3.

5.10 AGREEMENTS NOT TO OBJECT, DISPUTE OR CHALLENGE

The Parties shall not object to, dispute, or challenge in the LCR Adjudication or any other judicial or administrative proceeding the withdrawal and use of Groundwater by the Hopi Tribe, or the United States acting in its capacity as trustee for the Hopi Tribe, from any Off-Reservation Well located outside the Protection Areas on land owned by the Hopi Tribe as of the Execution Date. The Parties also shall not object to, dispute, or challenge in the LCR Adjudication or any other judicial or administrative proceeding the withdrawal and use of Groundwater by the Hopi Tribe in a manner described in the Abstracts attached as Exhibit 5.4.1A, *et seq.*

5.11 EFFLUENT

The Hopi Tribe shall have the right to Effluent developed on the Hopi Reservation or on lands held in trust by the United States for the benefit of the Hopi Tribe which may be used for such purposes as the Hopi Tribe may determine.

6.0 INTER-TRIBAL ON RESERVATION ISSUES

6.1 TRIBAL WASH MANAGEMENT PLAN

Pursuant to Paragraphs 4.0 and 5.0, and subject to the terms of this Paragraph 6.0, the Navajo Nation and the Hopi Tribe, or the United States acting in its capacity as trustee for either of the Tribes, shall each have the right to utilize all Surface Water flowing through the Managed Washes and their tributaries for all historic and existing uses, but neither the Tribes nor the United States acting in its capacity as trustee for either of the Tribes shall modify those uses except as provided in this Subparagraph 6.1. This Paragraph 6.0 shall not apply to any Water use downstream of the southern boundary of the Hopi Reservation.

6.1.1 Historic and Existing Irrigation Uses.

6.1.1.1 All irrigation uses of Water in the Managed Washes and Minor Tributary Washes that occurred prior to or are existing on the Execution Date may resume or continue and the Parties shall not object to, dispute, or challenge such uses, in the LCR Adjudication or any other judicial or administrative proceeding, provided that should a dispute between the Tribes arise as to whether a particular use occurred prior to or existed on the Execution Date, the dispute resolution procedures in Subparagraph 6.3 shall apply.

6.1.1.2 The historic irrigation projects that Divert Surface Water directly out of the Managed Washes have been designated and assigned acreages; they are listed in Exhibits 6.1.1.2A, 6.1.1.2B, and 6.1.1.2C. The general locations of the designated historic irrigation projects are shown on Exhibit 6.1.1.2D.

6.1.1.3 Rehabilitation and Betterment is permitted for historic and existing uses subject to the limitations in this Subparagraph 6.1. Historic Diversion capacity shall be determined from historic records or evidence. If the historic Diversion capacity cannot be substantiated from historic records or evidence, an on-farm water duty of one cubic foot per second per ninety acres will be used as the design criteria.

6.1.1.3.1 Rehabilitation and Betterment are permitted for the designated historic irrigation projects listed in Exhibits 6.1.1.2A, 6.1.1.2B, and 6.1.1.2C.

6.1.1.3.2 Rehabilitation is permitted for historic and existing irrigation that is not within a designated historic irrigation project.

- 6.1.1.3.3 Rehabilitation and Betterment are permitted for a dike used for historic or existing irrigation that is not within a designated historic irrigation project, provided that the height and length of the dike is not increased. Historic and existing dike properties shall be determined from historic records or evidence such as Bureau of Indian Affairs aerial photographs.
- 6.1.1.3.4 Rehabilitation and Betterment are permitted for historic and existing irrigation that Diverts Surface Water from a Minor Tributary Wash, provided that the historic or existing irrigation acreage subject to the Rehabilitation and Betterment from any single Diversion structure does not exceed seventy-five acres.
- 6.1.1.3.5 The benefits from the Rehabilitation and Betterment of a joint designated historic irrigation project shall be shared by the Tribes in approximate proportion to their designated acreage as listed in Exhibit 6.1.1.2C.
- 6.1.1.3.6 Historic and existing irrigation may be relocated provided that an equivalent amount of acreage is retired (or idled) and no downstream historic or existing irrigation is impaired.

6.1.2 Other New Surface Water Impoundments.

- 6.1.2.1 The Navajo Nation and the Hopi Tribe agree not to construct new Permanent Surface Water Control Structures on the mainstem of the Managed Washes upstream of the other Tribe without consent of the other Tribe.
- 6.1.2.2 Each Tribe shall notify the other of construction of any new Impoundment capable of fifteen acre-feet or more of storage it proposes to undertake upstream of the other Tribe, subject to the provisions of Subparagraph 6.1.2.3.
- 6.1.2.3 Any Impoundment capacities may be moved within the same Managed Wash drainage without the consent of the other Tribe, except that capacities of Impoundments downstream of the Hopi Reservation, including those on Jeddito Island may not be moved upstream of the Hopi Reservation. However, the aggregate maximum storage capacity of all Impoundments (exclusive of the Peabody and Pasture Canyon Impoundments, sewage lagoons and those permitted pursuant to Subparagraph 6.1.2.4) within each of

the Main Wash drainages listed in Exhibit 6.1.2.3 may not be exceeded without the mutual consent of both Tribes.

- 6.1.2.4 New Surface Water Impoundments shall be allowed on Minor Tributary Washes on the lands awarded to the Hopi Tribe pursuant to the 1934 Act Case, up to an aggregate capacity for all such structures of three hundred (300) acre-feet.
- 6.1.3 Moenkopi Wash Alluvial Aquifer Storage. The Navajo Nation and the Hopi Tribe agree that the proposed Moenkopi Wash Alluvial Storage Project should be fully investigated. If such a project is determined to be feasible by the potential funding agencies, the Tribes shall cooperate in its implementation.
- 6.1.4 Additional Provisions for Moenkopi Wash.
 - 6.1.4.1 Use of the source waters of Pasture Canyon drainage, including springs, water storage facilities and direct runoff, shall be governed exclusively by this Subparagraph 6.1.4.1 and not by any other provisions of Subparagraph 6.1. All water yields of the Pasture Canyon irrigation complex are reserved for use by the Hopi Tribe, except for: (1) the rights of individual Members of the Navajo Nation recognized in the 1934 Act Case; and (2) any rights to use water, as of the Execution Date, upstream of the northern boundary of the Hopi Reservation in Pasture Canyon or which were previously served by the Pasture Canyon irrigation canal that the Tribes may jointly agree upon. Notwithstanding the foregoing, unused tailwater may be Diverted into the Kerley Valley Project for use by either Tribe. The Navajo Nation shall not be allowed to transfer its uses in Pasture Canyon permitted in this Subparagraph 6.1.4.1 to any other location or source.
 - 6.1.4.2 Each Tribe may Divert Water from Moenkopi Wash above the Kerley Valley Diversion Dam for historic and existing irrigation and for Peabody structures as permitted in Subparagraphs 6.1.1 and 13.17.
 - 6.1.4.3 After accounting for Diversions authorized by this Agreement, the direct flows within Moenkopi Wash at the Kerley Valley Diversion Dam and any Effluent available for use by the Kerley Valley Project are allocated to the Tribes in proportion to each Tribe's acreage within the Kerley Valley Project as stated in Exhibit 6.1.1.2C.

- 6.1.4.4 The Navajo Nation and the Hopi Tribe agree that the Rehabilitation and Betterment of the Kerley Valley Project should be fully investigated. If such a project is determined to be feasible by the potential funding agencies, the Tribes shall cooperate in its implementation.
- 6.1.5 Closed Basins. Water uses in a sub-basin located in a Managed Wash or a Minor Tributary Wash that does not contribute any surface flow outside of that sub-basin are not subject to the provisions of this Subparagraph 6.1.
- 6.1.6 Monitoring. The Hopi Tribe and the Navajo Nation agree to cooperate in seeking the continuation of the programs for the monitoring of stream flows on the Managed Washes to facilitate monitoring of the effects of this Subparagraph 6.1 concerning the use of Water from Managed Washes.
- 6.1.7 Watershed Restoration. The Navajo Nation and the Hopi Tribe agree to cooperate on efforts to restore the watersheds on their reservations, recognizing that such efforts may improve habitat, enhance streamflows and reduce sediment and floods to the benefit of both Tribes.

6.2 MANAGEMENT OF THE N-AQUIFER

The provisions of this Subparagraph 6.2 apply only to the use of Underground Water from the N-Aquifer by the Tribes or by the United States acting in its capacity as trustee for either of the Tribes. Exempt Wells, all Wells existing as of the Execution Date, existing Wells within the Peabody leaseholds as of the Execution Date, and Wells Peabody may drill in the future on leaseholds existing as of the Execution Date, may operate without regard to the provisions of this Subparagraph. Non-Exempt Wells developed after the Execution Date are subject to this Subparagraph.

6.2.1 General Purposes and Goals.

- 6.2.1.1 To provide for a permanent homeland for the Hopi Tribe and the Navajo Nation, the N-Aquifer shall be managed to provide a long-term reliable water supply to meet the domestic and municipal demands of Hopi communities and those Navajo communities set forth in Exhibit 6.2.1.1.
- 6.2.1.2 The N-Aquifer shall be managed to accomplish this general purpose in a manner that: (1) protects the underground environment of the N-Aquifer on a long-term basis for use by present and future generations; and (2) recognizes the significance of springs to both Tribes and include reasonable measures to protect spring flows, taking into

account natural variability, climate change and other ecological, meteorological and hydrological considerations.

6.2.2 N-Aquifer Management Plan. The initial plan for management of the N-Aquifer shall consist of the following:

6.2.2.1 N-Aquifer Monitoring and Modeling Project. The Secretary, acting through the United States Geological Survey, shall expand the scope of the Black Mesa Monitoring Program and develop an N-Aquifer model or update and revise an existing model of the N-Aquifer. Such updates and revisions shall include, but not be limited to: (1) a survey of N-Aquifer springs developed in coordination with the Tribes; and (2) monitoring and collection of hydrologic data (with focus on selected representative springs, which will include Pasture Canyon springs and other culturally significant springs).

6.2.2.1.1 Five years from the date funding authorized in Subsection 104(e) of the Act is made available for the N-Aquifer monitoring and modeling project and, subject to the availability of funding, every five years thereafter, the USGS shall prepare an assessment report on the N-Aquifer. Such report shall include an assessment regarding existing groundwater withdrawals and the effect of such withdrawals on flows from the selected springs, and predictions of future effects of anticipated withdrawals on flows of the selected springs.

6.2.2.1.2 The USGS and the Tribes shall meet periodically to discuss technical issues related to the N-Aquifer monitoring and modeling project.

6.2.2.2 Prohibition on Exports to Areas Outside Reservation. Neither Tribe may export Underground Water outside its reservation without the written consent of the other Tribe.

6.2.2.3 Priority for Domestic or Municipal Uses. The Navajo Nation and the Hopi Tribe agree to give priority to Domestic and Municipal Uses. There shall be no quantitative limit to such uses so long as they are consistent with this Subparagraph 6.2.

6.2.2.4 Industrial Uses. Except for existing or future Wells operated by Peabody for Peabody's use within the existing Peabody leaseholds, neither Tribe may use Underground

Water from the Confined Aquifer for Industrial Uses beyond a maximum aggregate of 2,000 AFY per Tribe, without the written consent of the other Tribe.

6.2.2.5 Development of New Non-Exempt Wells After the Execution Date.

6.2.2.5.1 All Well development will occur in a manner consistent with the applicable tribal Well construction code.

6.2.2.5.2 Neither Tribe may develop a new Non-Exempt Well that causes impairment to an existing Well.

6.2.2.5.3 Procedure for the development of New Non-Exempt Wells after the Execution Date:

(a) Each Tribe shall provide notice pursuant to Subparagraph 13.19 to the other Tribe 60 days in advance of the drilling of any Non-Exempt Well. The notice shall provide the location of the Well, the proposed depth of the Well, and the proposed Well capacity.

(b) The other Tribe may object to the Well proposed pursuant to Subparagraph 6.2.2.5.3(a) within 21 days after receiving the notice.

(i) The objection shall identify the Well or other water source which the objecting Tribe asserts will be impaired by the proposed Well.

(ii) The objection shall summarize the factual basis for the objection and shall provide the following information for the allegedly impaired Well: (1) the date when the Well was drilled; (2) the current depth to water table; (3) well depth; (4) the current water column; (5) the estimated annual water use; and (6) any other available information relative to the claimed impairment.

(iii) The objection shall identify any other Wells or water uses that may be affecting the Well that is allegedly being impaired and provide any information available as to the conditions of such Wells.

(iv) The objection shall be provided to the other Tribe pursuant to Subparagraph 13.19.

6.2.2.6 Determination of Impairment.

6.2.2.6.1 For purposes of this Subparagraph 6.2, impairment occurs when the total projected 40-Year Drawdown in

a Well exceeds either (1) the Allowable Economic Drawdown or (2) the Allowable Physical Drawdown.

- (a) Total 40-year projected drawdown is the sum of water level drawdown due to pumping at the current rate, projected drawdown due to the proposed Well(s) and drawdown due to other Wells within the area.
- (b) In determining impairment and any proposed remedy under Subparagraph 6.2.2.6.2 or Subparagraph 6.3, consideration shall be given to the age of the adversely affected Well and whether the completion and pump placement for the affected Well is reasonable in relation to average Well completions and hydrogeologic conditions in the area.

6.2.2.6.2 The Tribe proposing to develop a Non-Exempt Well may avoid a proceeding under Subparagraph 6.3 by agreeing to:

- (a) In the case of Allowable Economic Drawdown, either deepen or replace the affected Well so as to restore the Well capacity, or replace the lost water so that impairment does not occur.
 - (b) In the case of Allowable Physical Drawdown either deepen the pump so as to restore the Well capacity or replace the lost water so that impairment does not occur.
 - (c) Otherwise provide compensation, mitigation or accommodation acceptable to the Tribe alleging impairment.
- (i) In determining the appropriate remedy to avoid impairment, representatives of the Tribes with authority to resolve matters of impairment shall meet within 30 days after the notice of objection. Such representatives shall consider the nature of the alleged impairment, means for mitigating the alleged impairment, as well as the need for additional information to address the objection and the potential for mitigation.
 - (ii) In the event that the representatives of the Tribes cannot resolve the matter, the objecting Tribe may invoke Dispute Resolution under Subparagraph 6.3.

6.2.2.6.3 In any formal or informal proceeding pursuant to Subparagraph 6.3.2 claiming impairment:

- (a) The Tribe objecting to a Non-Exempt Well proposed by the other Tribe for Domestic or Municipal Uses shall have the

burden of demonstrating impairment to the affected Well from the proposed Well.

- (b) The Tribe proposing a Non-Exempt Well for Industrial Use shall have the burden of demonstrating that the proposed Well would not impair any Well used by the other Tribe.
- (c) Either Tribe may proceed with the development of a Well despite the filing of an objection; provided that in accordance with the Arizona Rules of Civil Procedure and the terms of this Agreement, the Tribe objecting to a Well may seek a preliminary injunction to halt the development of that Well.

6.2.2.7 Boundary Springs. Neither Tribe shall drill a Non-Exempt Well within one and one-half miles of any spring listed in Exhibit 6.2.2.7 filed under seal with the LCR Adjudication Court that is located on the property of the other Tribe, without the written consent of that Tribe.

6.2.2.8 Tuba City Wells. From the period beginning with the Execution Date and ending with either the LCR Enforceability Date or the date a revised N-Aquifer management plan becomes effective, whichever is later, neither Tribe shall drill a new Non-Exempt Wells within the Pasture Canyon Springs Buffer Zone specified in Exhibit 6.2.2.8 without the consent of the other Tribe.

6.2.3 Revisions to the N-Aquifer Management Plan.

6.2.3.1 Not later than the tenth anniversary of the date funding is made available for the N-Aquifer monitoring and modeling project, the Tribes and the United States shall meet to review the N-Aquifer management plan, any available assessment reports, and any other pertinent information to determine whether revisions are necessary to assure that the purposes and goals established in Subparagraph 6.2.1 are met. Any revised plan shall provide for periodic review of the N-aquifer management plan, any available assessment reports, and any other pertinent information, and shall include a provision permitting either Tribe to seek revisions to the plan prior to the agreed upon periodic review date to address a demonstrated significant hydrologic concern. All plan revisions shall be consistent with the general purposes and goals set forth in Subparagraph 6.2.1.

- 6.2.3.2 Any provisions in the N-Aquifer management plan requiring funding for implementation shall not be effective until the LCR Enforceability Date. The plan shall not require additional expenditures of money by either Tribe to implement provisions of the N-Aquifer management plan to protect and restore Pasture Canyon Springs beyond funds appropriated pursuant to Section 104(f) of the Act.
- 6.2.3.3 Both Tribes must agree on and approve all N-Aquifer management plan revisions. If agreement cannot be reached, either Tribe may invoke the dispute resolution procedures set forth in Subparagraph 6.3. Notwithstanding the provisions of Subparagraph 6.3.1, either Tribe may invoke dispute resolution following the LCR Enforceability Date of the Tribes are unable to agree on revisions to the N-Aquifer management plan.

6.3 DISPUTE RESOLUTION

- 6.3.1 Application. The following provisions shall apply following the LCR Enforceability Date or the date a revised N-Aquifer management plan becomes effective, whichever is later, whenever either Tribe notifies the other Tribe in writing if it believes the other Tribe is acting in violation of Subparagraphs 6.1 or 6.2 and the Tribes have first met in good faith and failed to resolve their dispute.
- 6.3.2 Special Master. In the event of a dispute under Subparagraphs 6.2.2 and 6.2.3, the Tribes shall request the LCR Adjudication Court appoint a special master pursuant to A.R.S. § 45-255.
 - 6.3.2.1 The special master's sole responsibilities shall be to resolve matters between the Tribes concerning compliance with Subparagraphs 6. 1 or 6.2, including actions to adopt, revise implement or enforce the N-Aquifer management plan in accordance and consistent with the general purposes and goals set forth in Subparagraph 6.2.1. The Tribes shall be responsible for the payment of the special master's fees and costs as provided in Subparagraph 6.3.3.
 - 6.3.2.2 A specific special master shall be appointed by the LCR Adjudication Court upon the joint recommendation of the Tribes.
 - 6.3.2.3 The special master may attempt to resolve the matter by formal and informal means and may communicate with the parties *ex parte*. The special master shall seek by informal means to obtain a mutually agreeable resolution of the

dispute, prior to any formal proceedings resulting in a report to the LCR Adjudication Court under Ariz. R. Civ. P. 53(h) or any successor provision.

6.3.3 Fees and Costs. The non-prevailing Tribe shall pay the fees and costs of the special master, provided that in extenuating circumstances, the special master at his or her sole discretion may allocate his or her fees and costs among the Tribes. Each Tribe shall be responsible for its own attorney fees and costs.

6.3.4 Appeal to the LCR Adjudication Court. The LCR Adjudication Court shall decide any objection to the special master's findings of fact on a clearly erroneous standard and any objection to a conclusion of law *de novo*.

6.4 RESPONSIBILITIES OF THE UNITED STATES.

6.4.1 The role of the United States under Subparagraph 6.2 shall be limited to technical assistance and the specific responsibilities as set forth in that Subparagraph.

6.4.2 The United States shall not be liable for any claims related to the N-Aquifer, including but not limited to the Pasture Canyon Springs, provided that it carries out its responsibilities as set forth in Subparagraph 6.2 and 6.4.1.

7.0 OFF-RESERVATION USES OF SURFACE WATER

7.1 EXISTING SURFACE WATER USES

7.1.1 Expanded Definition of Tribes for Selected Subparagraphs. For purposes of Subparagraphs 7.1.2, 7.3.2, 7.3.3, 7.3.6, 7.3.7, 7.4 and 7.5.5, “Tribes” shall mean the Navajo Nation, the Hopi Tribe, and their agents or any third-party acting on behalf thereof. This definition does not apply to the United States when acting in its capacity as trustee for the Navajo Nation or the Hopi Tribe.

7.1.2 Existing Surface Water Uses.

7.1.2.1 Existing Surface Water Uses of specific Claimants are described in Abstracts attached as Exhibits 7.1.2.1A, 7.1.2.1B, 7.1.2.1C, and 7.1.2.1, respectively. The Claimant identified in each of the Abstracts shall not claim attributes for the Existing Surface Water Uses described in the Abstracts that are more favorable to the Claimant than those described in the Abstracts. The Claimant, the Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, agree to the entry of a decree setting forth water rights with the attributes described in the Abstracts. The Claimant reserves the right to contest attributes less favorable to the Claimant than those described in the Abstracts. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall have the right to contest attributes more favorable to the Claimant than those described in the Abstracts. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, on any basis other than set forth in this Subparagraph 7.1, in the LCR Adjudication or in any other judicial or administrative proceeding, any Existing Surface Water Use described in the attached Abstracts.

7.1.2.2 The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge on any basis in the LCR Adjudication or in any other judicial or administrative proceeding any Existing Surface Water Use not described in the attached Abstracts; provided that the Non-Abstracted Existing Surface Water Use is the subject of a Statement of Claimant filed as of the Effective Date.

7.1.2.3 Claimants required to submit abstracts pursuant to Subparagraph 7.1.2.1 shall include:

Az. Game & Fish: Chevelon Cr. Wildlife Area Chevelon Canyon Lake
Bar T Bar Ranch
Flying M Ranch
Flagstaff, City of
SRP Cragin Reservoir
Show Low, City of
Show Low Irrigation Co.
Silver Creek Irrigation District
Winslow, City of

7.1.3 Change in Place or Type of Use, Change in Point of Diversion.

7.1.3.1 A change in place or type of Surface Water use, or a change in point of Diversion for a Surface Water use, in accordance with Subparagraph 7.1.3.2, shall not be considered a new use of Surface Water for purposes of Subparagraph 7.3.

7.1.3.2 After the LCR Enforceability Date, within the LCR watershed, an application to sever and transfer a Surface Water right, an application for a change in point of Diversion for a Surface Water use or an application for a change in type of use shall be filed with the LCR Adjudication Court. The LCR Adjudication Court shall give notice of any such applications to the Court-approved mailing list, and direct ADWR to publish notice of an application as ordered by the LCR Adjudication Court. The LCR Adjudication Court may request technical assistance from ADWR in connection with the processing of an application. The decision to grant or deny an application, in whole or in part, shall be made by the LCR Adjudication Court.

7.1.3.3 Any hearings associated with an application to sever and transfer a Surface Water right, an application for a change in point of Diversion for a Surface Water use or an application for a change in type of use, within the LCR watershed, shall be conducted in the county in which the existing point of Diversion is located.

7.1.4 Transportation of Surface Water Away from the LCR Watershed.

- 7.1.4.1 Except as provided in Subparagraph 7.1.4.2, after the Effective Date, Surface Water Diverted within the LCR Watershed in the State shall not be transported away from the LCR Watershed.
- 7.1.4.2 Existing transportations of Surface Water away from the LCR Watershed in Arizona to another watershed shall be identified in the decree entered by the LCR Adjudication Court. An owner of a certificate of water right in existence on the Effective Date, including an owner of an amendment of that certificate, may continue to transport Surface Water away from the LCR Watershed if the transportation was initiated before the Effective Date in accordance with State law and consistent with Subparagraph 7.1.3. The owner of such a certificate may also change the point of diversion or type of use, or sever and transfer all or any portion of that Surface Water right to a location away from the LCR Watershed in accordance with State law. This Agreement shall not affect the ability of the owner of Certificate of Water Right No. 3696.0001 for C.C. Cragin Reservoir, or any associated amended certificate, to change the point of Diversion or place or type of use for, or to sever and transfer, all or any portion of that Water Right. This Agreement also shall not affect the ability of a Municipal Water Provider with a service area located in the LCR Watershed in the State and an adjacent watershed as of the Execution Date, to transport and deliver Surface Water to the adjacent watershed for the benefit of the landowners, customers and residents within its municipal boundaries or service area, or, in the case of a private water company, within its certificated area.

7.2 SURFACE WATER USES OF THE ZUNI TRIBE ABSTRACTED IN THE LCR ADJUDICATION

The Abstracts of Surface Water uses for Zuni Lands set forth in Exhibit 4.1.A(1) *et seq.* to the Zuni Indian Tribe Water Rights Settlement Agreement of 2002, as amended, and the Zuni Indian Tribe Water Rights Settlement Judgment and Decree are attached as Exhibit 7.2A and Exhibit 7.2B to this Agreement. The Parties, including the Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, agree to be bound by the Zuni Indian Tribe Water Rights Settlement Judgment and Decree.

7.3 NEW SURFACE WATER USES

7.3.1 Generally Applicable Provisions.

- 7.3.1.1 After the LCR Enforceability Date, Surface Water uses within the LCR watershed, shall be initiated in accordance with State law and this Agreement.
- 7.3.1.2 After the LCR Enforceability Date, an application for a new Surface Water use within the LCR Watershed shall be filed with the LCR Adjudication Court. The LCR Adjudication Court shall give notice of any such application to the Court-approved mailing list, and direct ADWR to publish notice of an application. The LCR Adjudication Court may request technical assistance from ADWR in connection with the processing of an application. The decision to grant or deny an application, in whole or in part, shall be made by the LCR Adjudication Court.
- 7.3.1.3 Any hearings associated with an application for a permit to appropriate Surface Water within the LCR Watershed shall be conducted in the county in which the proposed point of Diversion is located.
- 7.3.2 New De Minimis Uses. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees shall not object to, dispute, or challenge, in the LCR Adjudication or in any other judicial or administrative proceeding, De Minimis Uses initiated after the Effective Date within the LCR Watershed in Arizona; nor shall the Tribes, or the United States acting in its capacity as trustee for the Tribes and Allottees, make calls or exercise rights of priority against such new De Minimis Uses.
- 7.3.3 New Surface Water Uses in Closed Basins. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, in the LCR Adjudication or in any other judicial or administrative proceeding, uses of Surface Water initiated in Closed Basins after the Effective Date, except that a Tribe, or the United States acting in its capacity as trustee for a Tribe, may object to a proposed non-De Minimis Use initiated after the Effective Date in a Closed Basin to the extent that the proposed use may harm a Water Right owned by the Tribe within that Closed Basin.
- 7.3.4 No New Surface Water Uses For Irrigation. After the Effective Date, new Surface Water uses within the Little Colorado River Watershed for Irrigation shall be prohibited.
- 7.3.5 No New Surface Water Uses in Three-Canyon Area by Means of Direct Stream Diversion. After the Effective Date, new non-De Minimis Uses by means of direct Diversion of Surface Water in the Three-Canyon Area shall be prohibited, except as provided in Subparagraph 7.5.2. As

used in this Subparagraph, Direct Diversion of Surface Water excludes the withdrawal of Underground Water from a Well.

7.3.6 Other New Surface Water Uses in Limited Areas. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative proceeding the following Surface Water uses initiated after the Effective Date:

7.3.6.1 Municipal Surface Water uses in the Lower LCR Watershed, except for direct Diversions from the mainstem of the Little Colorado River; and

7.3.6.2 Surface Water uses in the Upper LCR Watershed; provided that if the Navajo Nation, or the United States acting in its capacity as trustee for the Navajo Nation or Allottees, develops a downstream Surface Water use in the future that would be harmed by a subsequent Surface Water use described in this Subparagraph 7.3.6.2, the subsequent Surface Water use shall be administered under the decree entered by the LCR Adjudication Court so as to prevent harm to the Navajo Nation's or Allottees' Surface Water use.

7.3.7 Enforcement of Tribes' Water Rights Against New Use. Except as provided in Subparagraphs 7.3.2, 7.3.3, 7.3.6, 7.4, 8.2.1, 8.2.2, 8.3.5, and 8.8, the Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall have the right to enforce any Water Rights they may have under applicable law and this Agreement as against any Surface Water use initiated after the Effective Date.

7.4 SUBFLOW

The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, in the LCR Adjudication or in any other judicial or administrative proceeding, the withdrawal and use of Underground Water from a Well even if it is determined that the Well is capturing or will capture the subflow of any Surface Water source; nor shall the Tribes, or the United States acting in its capacity as trustee for the Tribes and Allottees, place a call against such a withdrawal and use even if the Well is determined to be capturing subflow or it is determined that the Well will capture subflow in the future. Nothing in this Subparagraph 7.4 shall prevent the Tribes, or the United States acting in its capacity as trustee for the Tribes and Allottees, from enforcing the prohibition contained in Subparagraph 7.3.4.

7.5 RESERVOIRS

7.5.1 New Reservoirs. No New Reservoir shall be constructed anywhere within the LCR Watershed outside of the Navajo Reservation or the Hopi Reservation except as provided in this Subparagraph 7.5.1. A New Reservoir may be constructed within the LCR Watershed outside of the Navajo Reservation or the Hopi Reservation provided that the New Reservoir:

7.5.1.1 is wholly contained within a Closed Basin; or

7.5.1.2 is located within the Lower LCR Watershed and the Surface Water stored is used primarily for Municipal Uses; or

7.5.1.3 stores Surface Water that became available for storage as a result of a change in place or type of use, or change in point of Diversion, and such change does not harm other Water Right holders; or

7.5.1.4 has no permanent water storage, and is operated solely for flood control purposes.

7.5.2 Future Navajo Nation Agreements on Storage of Surface Water. Nothing in this Agreement shall be construed to prevent the Navajo Nation, and the United States acting in its capacity as trustee for the Navajo Nation, from entering into agreements with other Persons for development of New Reservoirs, or additional conservation capacity in existing Reservoirs in the LCR Watershed, including new beneficial uses of the water stored; provided that such storage does not conflict with then-existing Water Rights.

7.5.3 Other Types of Impoundments Unaffected.

7.5.3.1 Impoundments containing Effluent shall not be subject to the restrictions or limitations imposed upon Reservoirs by this Agreement. Effluent Impoundments may be altered, enlarged, or constructed in accordance with State law, or, if located on lands held in trust for either Tribe, applicable tribal law.

7.5.3.2 Existing and new tailwater ponds shall not be subject to regulation under this Agreement so long as they are used to recover operational waste from an Irrigation use for reuse for any purpose not otherwise prohibited by this Agreement.

7.5.3.3 Impoundments containing Underground Water shall not be subject to the restrictions or limitations imposed upon Reservoirs by this Agreement. Impoundments containing

Underground Water may be altered, enlarged, or constructed in accordance with State law, or, if located on lands held in trust for either Tribe, applicable tribal law.

- 7.5.4 Modification or Maintenance of Reservoirs. Reservoirs may be de-silted, drained, dredged, or maintained, including lining to prevent seepage and any appropriate maintenance of or replacement of any dam, weir, or headgate, so long as the maintenance or replacement is consistent with the operating criteria, if any, specified in the decree entered by the LCR Adjudication Court. Such Reservoirs may be modified or reconstructed provided there is no increase in the storage entitlement.
- 7.5.5 Agreement Not to Object, Dispute, or Challenge. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, in the LCR Adjudication or in any other judicial or administrative proceeding any Reservoir or Impoundment that is constructed, modified, operated, or maintained as provided in this Subparagraph 7.5.

8.0 UNDERGROUND WATER

8.1 EXPANDED DEFINITION OF TRIBES FOR SELECTED SUBPARAGRAPHS

For purposes of Subparagraphs 8.2, 8.3.1.4, 8.3.5, 8.3.6, and 8.8, “Tribes” shall mean the Navajo Nation and the Hopi Tribe and their agents or any third-party acting on their behalf. This definition does not apply to the United States when acting in its capacity as trustee for the Navajo Nation or the Hopi Tribe.

8.2 WITHDRAWAL AND USE OF UNDERGROUND WATER BY ANY PERSON OUTSIDE THE PROTECTION AREAS

- 8.2.1 Withdrawals and Use of Underground Water; Objections. This Paragraph 8.0 does not regulate or restrict any Person from drilling or replacing any Off-Reservation Well located outside the Protection Areas, or withdrawing or using Underground Water from any Off-Reservation Well located outside the Protection Areas. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge the withdrawal or use of Underground Water from any Off-Reservation Well located outside the Protection Areas, or the drilling or replacement of any Well for the withdrawal and use of Underground Water located outside the Protection Areas, in the LCR Adjudication or in any other judicial or administrative proceeding. The Parties shall not object to, dispute, or challenge the withdrawal or use of Underground Water from any Well located on the Navajo Reservation or the Hopi Reservation, or the drilling or replacement of

any Well for the withdrawal and use of Underground Water on the Navajo Reservation or the Hopi Reservation, in the LCR Adjudication or in any other judicial or administrative proceeding.

8.2.2 Abstracted Wells Outside the Protection Areas. Existing and future uses of Underground Water outside of the Protection Areas by specific Claimants are described in Abstracts attached as Exhibits 8.2.2A, 8.2.2B, 8.2.2C, and 8.2.2 [redacted], respectively. The Tribes, the United States acting in its capacity as trustee for the Tribes and Allottees, and any Claimant who includes an Abstract as an Exhibit agree to the entry of a decree setting forth Water Rights with the attributes described in said Abstract. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, on any basis, in the LCR Adjudication or in any other judicial or administrative proceeding, any Underground Water use described in said Abstract.

8.2.2.1 Claimants required to submit abstracts shall include:

Catalyst Paper (Snowflake) Inc.
APS Cholla Generating Sta.
Aztec Land & Cattle Co.
Flagstaff, City of
SRP Coronado Generating Plant
Show Low, City of
Silver Creek Irrigation District
Tucson Electric Springerville Generating Plant
Winslow, City of

8.3 WITHDRAWAL AND USE OF UNDERGROUND WATER WITHIN THE PROTECTION AREAS

8.3.1 Cataloging Existing Wells Located Within The Protection Areas; Capacity. ADWR shall compile a catalog that identifies all Existing Wells within the Protection Areas, other than on lands held in trust by the United States for the benefit of a Tribe. The catalog shall identify each Existing Well by well registration number, location by legal description, and as determined through the use of global positioning system units; owner; casing diameter; the larger of the equipped well capacity (if equipped) or the casing diameter well capacity set forth in the chart below; and date of completion (if known). For unequipped Existing Wells, the following capacities shall be assigned:

Casing Diameter (inches)	Capacity (AFY)
4	87

5	136
6	196
8	348
10	544
12	784
14	1067
16 or larger	1400

- 8.3.1.1 Within eighteen months after the Effective Date, any Person that owns an Existing Well within the Protection Areas, other than lands held in trust by the United States for the benefit of a Tribe, that has not been previously registered in accordance with A.R.S. § 45-593 may register, or amend the existing registration of its Wells.
- 8.3.1.2 The catalog of Existing Wells shall be completed within three years after the Effective Date. Once the catalog is completed, ADWR shall submit the catalog to the LCR Adjudication Court, and provide notice to the LCR Adjudication Court approved mailing list, the Parties, all Persons that filed Statements of Claimant for water sources located in the Protection Areas, other than lands held in trust by the United States for the benefit of a Tribe, and all Persons who own Existing Wells identified in the catalog, and also to others by publication. The catalog may be supplemented upon application to the LCR Adjudication Court for good cause, to include Existing Wells that were omitted from the catalog.
- 8.3.1.3 Any Existing Well not included in the catalog approved by the LCR Adjudication Court or described in the Abstracts attached as Exhibits 4.8.1, 4.9.1, 5.4.1, and 8.3.6, shall be treated as a New Well.
- 8.3.1.4 Any Person, including the Tribes and the United States acting in its capacity as trustee for the Tribes and Allottees, who owns an Existing Well within the Protection Areas may only object to the catalog of Existing Wells in the same Protection Area on the basis that information concerning a Well or Wells in the catalog is inaccurate, or that an Existing Well was omitted from the catalog. The LCR Adjudication Court shall resolve any objections.
- 8.3.1.5 The Wells listed in the Existing Well catalog approved by the LCR Adjudication Court and the Wells described in the Abstracts attached as Exhibits 4.8.1, 4.9.1, 5.4.1, and

8.3.6, are not subject to the regulations set forth in Subparagraphs 8.4, 8.5, and 8.6.

- 8.3.2 New Non-Exempt Wells. The Parties to this Agreement other than the Navajo Nation shall not drill any new Non-Exempt Well in the Protection Areas after the Execution Date and until the Effective Date; provided that the Hopi Tribe shall be permitted to drill one or more Non-Exempt Wells within Protection Area 2 prior to the Effective Date, and such Wells shall be considered New Wells and be limited to a total cumulative pumping capacity not exceeding 500 GPM.
- 8.3.3 Relocation of Existing Wells. Any Existing Well within the Protection Areas may be replaced with a Well limited to the same capacity as the original Existing Well, as provided in Subparagraph 5.4.1 or Subparagraph 8.3.1, and located at a site no farther than 660 feet from the location of the Well to be replaced within the same Protection Area; provided, that the relocation complies with any State law or Hopi law on lands held in trust by the United States for the benefit of the Hopi Tribe, or Navajo law on lands held in trust by the United States for the benefit of the Navajo Nation. The original Existing Well may be operated in conjunction with the replacement Well as long as the combined Underground Water withdrawal from both Wells does not exceed the pumping capacity of the original Existing Well as of the Effective Date. Notwithstanding the provisions of this subparagraph 8.3.3, the productive capacity of the Well registered with ADWR as Well No. 55-614342 may be relocated subject to the following terms and conditions:
- 8.3.3.1 Well No. 55-614342 shall be permanently abandoned such that Underground Water may not be withdrawn or obtained therefrom. By this Agreement, the Arizona State Land Department consents to such abandonment.
- 8.3.3.2 The Hopi Tribe may replace Well No. 55-614342 with one or more Wells limited to an aggregate capacity of 544 AFY. Notwithstanding Subparagraph 8.4, such replacement Wells may be located in Protection Area 1 but shall not be located closer than one mile from the boundary of the Navajo Reservation, nor closer than three quarter miles from the Well registered with ADWR as Well No. 55-220247.
- 8.3.3.3 The Hopi Tribe shall maintain records of the amount of Underground Water pumped from the replacement Wells in any given Year and shall provide such records to the Navajo Nation not later than March 1st following the Year that Underground Water is pumped from such Wells.

- 8.3.4 Regulation of Non-Exempt Wells. ADWR shall regulate, to the extent required by State law and this Agreement, all Off-Reservation Non-Exempt Wells in the Protection Areas, but excluding Non-Exempt Wells located on Off-Reservation Allotments or on lands held in trust for the benefit of the Navajo Nation or the Hopi Tribe. The Navajo Nation shall regulate: (1) all Non-Exempt Wells located on Off-Reservation Allotments owned by Members of the Navajo Nation and (2) all Non-Exempt Wells located on land held in trust for the benefit of the Navajo Nation. The Hopi Tribe shall regulate all Non-Exempt Wells on land held in trust for the benefit of the Hopi Tribe. In every instance Non-Exempt Wells in the Protection Areas shall be regulated in a manner that conforms to this Agreement. To the extent not regulated by the Navajo Nation, Off-Reservation Allotments are subject to enforcement of the provisions of this Agreement by the LCR Adjudication Court.
- 8.3.5 Exempt Wells Within the Protection Areas. Exempt Wells within the Protection Areas regardless of when they are drilled or equipped, shall not be cataloged or regulated pursuant to this Agreement. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative proceeding the drilling or replacement of Exempt Wells or the withdrawal and use of Underground Water from Exempt Wells within the Protection Areas.
- 8.3.6 Abstracted Existing Wells Within the Protection Areas. Uses of Underground Water from Existing Wells within the Protection Areas by specific Persons are described in Abstracts attached hereto as Exhibits 8.3.6A, 8.3.6B, 8.3.6C, and 8.3.6 [redacted], respectively. The Tribes, the United States acting in its capacity as trustee for the Tribes and Allottees, and any Claimant who includes an Abstract as an Exhibit agree to the entry of a decree setting forth Water Rights with the attributes described in said Abstract. The Tribes, and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge, on any basis other than set forth in this Subparagraph 8.3, in the LCR Adjudication or in any other judicial or administrative proceeding, any Existing Underground Water use described in said Abstracts. The omission of Wells from the Abstracts referenced in this Subparagraph shall not preclude Persons from including such Wells in the catalog referred to in Subparagraph 8.3.1.
- 8.3.7 The rights and obligations of the City of Flagstaff to pump from Wells within the Protection Areas are set forth in Exhibit 8.3.7. The Parties to this Agreement are third party beneficiaries to Exhibit 8.3.7.

8.4 PROTECTION AREA 1

Except as provided in Subparagraph 8.7, no New Wells may be drilled within Protection Area 1.

8.5 PROTECTION AREA 2

Except as provided in Subparagraph 8.7, no New Well may be equipped with a pumping capacity exceeding 500 GPM for a single use within Protection Area 2. For purposes of this Subparagraph, a series of New Wells serving the same facility shall be considered a single New Well.

8.6 PROTECTION AREA 3

Except as provided in Subparagraph 8.7, no Person may use a New Well to withdraw more than 7,500 AFY for a single, non-Municipal Use. For purposes of this Subparagraph, a series of New Wells serving the same facility shall be considered a single New Well. A Municipal Water Provider shall not provide more than 7,500 AFY of Underground Water withdrawn from Wells within Protection Area 3 for a single Industrial Use.

8.7 MINERAL ESTATES

8.7.1 The right of a mineral estate owner to withdraw and use Underground Water for development and operation of the mineral estate shall not be subject to the restrictions applicable to the Protection Areas if one of the following applies:

8.7.1.1 The owner of the mineral estate withdraws the Underground Water for development and operation of the mineral estate within a Protection Area from land in which it owns the mineral estate and from within the section or sections of land in which it is developing and operating the mineral estate; or

8.7.1.2 The owner of the mineral estate withdraws the Underground Water from land other than that described in Subparagraph 8.7.1.1, and that is located in the same Protection Area and within two miles of the proposed use for mineral estate development and operation, and both of the following apply:

8.7.1.2.1 The owner of the mineral estate also owns or controls the mineral estate at the proposed location of withdrawal; and

8.7.1.2.2 The owner of the mineral estate obtained the prior consent of the surface estate owner of the land from which the Underground Water is to be withdrawn if the

surface estate is owned separately from the mineral estate, and of the Navajo Nation.

8.7.2 A mineral estate owner, its affiliates, lessees, licensees, permittees, operators, and co-venturers, and their successors and assigns, shall be entitled to withdraw Underground Water within the Protection Areas pursuant to this Paragraph. That right shall not be transferable to any other purpose of use or place of use.

8.8 OBJECTIONS TO EXEMPT, EXISTING AND NEW WELLS

The Parties, including the Tribes and the United States acting in its capacity as trustee for the Tribes and Allottees, shall not object to, dispute, or challenge the withdrawal or use of Underground Water from any Exempt, Existing or New Well within the Protection Areas, or the drilling or replacement of any Well for the withdrawal and use of Underground Water located within the Protection Areas, in the LCR Adjudication or in any other judicial or administrative proceeding, provided that the Exempt, Existing or New Well is in compliance with the provisions of Subparagraphs 8.3, 8.4, 8.5, 8.6, and 8.7.

9.0 NAVAJO NATION WATER DELIVERY CONTRACT AND RELATED PROVISIONS

9.1 NAVAJO NATION CAP WATER AVAILABLE FOR DELIVERY

Subject to Section 201 of the Act, the Secretary shall reallocate and deliver to the Navajo Nation, upon the terms and conditions set forth in the Navajo Nation Water Delivery Contract and in Subparagraph 9.3, 6,411 AFY of the CAP NIA Priority Water retained by the Secretary pursuant to Section 104(a)(1)(B)(ii) of the AWSA. This 6,411 AFY of CAP Water shall be available for Diversion and use from the San Juan River pursuant to and consistent with section 10603(b)(2)(D) of the Northwestern New Mexico Rural Water Projects Act.

9.2 WATER DELIVERY CONTRACT

The Navajo Nation Water Delivery Contract shall be as authorized by Section 202(c) of the Act, shall conform to the provisions of Subparagraphs 9.1 through 9.12 of this Agreement, shall be for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, and shall be without limit as to term. The Navajo Nation Water Delivery Contract for the delivery of Navajo Nation CAP Water shall be substantially in the form of Exhibit 9.2.

9.3 CONDITIONS OF DELIVERY

9.3.1 San Juan River Water. The Navajo Nation CAP Water may be delivered through the Navajo-Gallup Water Supply Project for use in Arizona. Subject to the physical availability of water from the San Juan River and

to the Navajo Nation's rights to use such water, such deliveries shall be effected by the Diversion and use of water from the San Juan River pursuant to section 10603(b)(2)(D) of the Northwestern New Mexico Rural Water Projects Act.

- 9.3.2 Accounting for the Water Delivered. In accordance with Section 203(a) of the Act, all deliveries of Navajo Nation CAP Water effected by the Diversion of water from the San Juan River shall be accounted for as deliveries of CAP Water.
- 9.3.3 Curtailment. Except to the extent that Navajo Nation CAP Water is firmed by the United States or the State as provided in this Agreement or is otherwise firmed by the Navajo Nation, deliveries of Navajo Nation CAP Water shall be curtailed during shortages of CAP NIA Priority Water to the same extent as other CAP NIA Priority Water supplies. The amount of such curtailment shall be determined as provided in Subparagraph 9.10.1.
- 9.3.4 Accounting Regardless of the Place of Use or Point of Diversion. In accordance with Section 203(b) of the Act, all Navajo Nation CAP water delivered to and consumptively used by the Navajo Nation or its lessees pursuant to this Agreement shall be: (i) accounted for as if such use had occurred in the Lower Basin, regardless of the point of diversion or place of use; (ii) credited as water reaching Lee Ferry pursuant to articles III(c) and III(d) of the Colorado River Compact; (iii) charged against the consumptive use apportionment made to the Lower Basin by article III(a) of the Colorado River Compact; and (iv) accounted for as part of and charged against the 2.8 million acre-feet of Colorado River water apportioned to Arizona in article II(B)(1) of the Decree.
- 9.3.5 Payment of CAP Fixed OM&R Charges. Except as provided in subparagraph 9.6.2, the Navajo Nation, or the United States on behalf of the Navajo Nation, shall be responsible for the payment to CAWCD of all CAP Fixed OM&R Charges associated with the delivery of Navajo Nation CAP Water through the Navajo-Gallup Water Supply Project. The United States shall pay such charges as provided in the AWSA as long as funds are available therefor in the Lower Colorado River Basin Development Fund. Thereafter, the Navajo Nation shall pay such charges. No Navajo Nation CAP Water shall be delivered through the Navajo-Gallup Water Supply Project unless all CAP Fixed OM&R Charges have been paid in advance.

9.4 LEASES AND EXCHANGES

The Navajo Nation may, with the approval of the Secretary, enter into contracts to lease, options to lease, contracts to exchange or options to exchange Navajo Nation CAP Water within Apache, Cochise, Coconino, Gila, Graham, Maricopa,

Navajo, Pima, Pinal, Santa Cruz and Yavapai counties, Arizona, providing for the temporary delivery to others of any portion of Navajo Nation CAP Water. Any such CAP Water lease shall contain provisions substantially similar to those set forth in Exhibit 9.4. Contracts to lease and options to lease shall be for a term not to exceed one hundred years. Contracts to exchange or options to exchange shall be for the term provided for in each such contract or option. The Navajo Nation may, with the approval of the Secretary, renegotiate any lease, at any time during the term of that lease provided the term of such renegotiated lease does not exceed one hundred years. No Navajo Nation CAP Water may be permanently alienated. The firming obligations set forth in Subparagraph 9.10.2 shall not apply to any Navajo Nation CAP Water leased by the Navajo Nation to others.

9.5 NO USE OUTSIDE OF ARIZONA

No Navajo Nation CAP Water may be used, leased, exchanged, forborne, or otherwise transferred in any way by the Navajo Nation for use directly or indirectly outside of Arizona. Nothing in this Agreement limits the right of the Navajo Nation to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

9.6 ENTITLEMENT TO LEASE AND EXCHANGE MONIES; LESSEE RESPONSIBILITY FOR CHARGES

9.6.1 Navajo Nation Rights to Consideration. The Navajo Nation, and not the United States in any capacity, shall be entitled to all consideration due to the Navajo Nation under any contracts to lease, options to lease, contracts to exchange or options to exchange Navajo Nation CAP Water entered into by the Navajo Nation. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner, any monies received by the Navajo Nation as consideration under any such contracts to lease, options to lease, contracts to exchange, or options to exchange Navajo Nation CAP Water entered into by the Navajo Nation, except where the Navajo Nation deposits the proceeds of any such lease, option to lease, exchange or option to exchange into an account or accounts held in trust for the Navajo Nation by the United States.

9.6.2 Lessee Responsibility for Charges. Any lease or option to lease providing for the temporary delivery to others of any Navajo Nation CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased water. Neither the Navajo Nation nor the United States in any capacity shall be responsible for the payment of any charges associated with the delivery of Navajo Nation CAP Water leased to others.

9.6.3 Advance Payment. No Navajo Nation CAP Water shall be delivered unless the CAP Fixed OM&R Charges and the CAP Pumping Energy Charges have been paid in advance. The charges for delivery of Navajo Nation CAP Water pursuant to the Navajo Nation Water Delivery Contract shall be calculated in accordance with the CAP Repayment Stipulation.

9.7 SCHEDULING WATER DELIVERY

The Navajo Nation shall schedule delivery of Navajo Nation CAP Water in accordance with the Navajo Nation Water Delivery Contract.

9.8 CAP REPAYMENT

For purposes of determining the allocation and repayment of costs of any stages of the CAP constructed after November 21, 2007, the costs associated with the delivery of Navajo Nation CAP Water, whether such water is delivered for use by the Navajo Nation or in accordance with any lease, option to lease, exchange or option to exchange providing for the delivery to others of Navajo Nation CAP Water, shall be non-reimbursable and shall be excluded from the repayment obligation of CAWCD.

9.9 NON-REIMBURSABLE CAP CONSTRUCTION COSTS

The costs associated with the construction of the CAP allocable to the Navajo Nation shall be non-reimbursable, and the Navajo Nation shall have no repayment obligation for such costs. No CAP water service capital charges shall be due or payable for Navajo Nation CAP Water, whether such water is delivered for use by the Navajo Nation or is delivered under any lease, option to lease, exchange or option to exchange Navajo Nation CAP Water entered into by the Navajo Nation.

9.10 SHORTAGES AND FIRMING OF NAVAJO NATION CAP WATER

9.10.1 Shortages of Navajo Nation CAP Water. If, in any Year, the Available CAP Supply is insufficient to meet all demands under CAP Contracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the available CAP NIA Priority Water among the CAP Contractors holding contractual entitlements to CAP NIA Priority Water on the basis of the quantity of CAP NIA Priority water used by each such CAP Contractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water.

9.10.2 Firming of Navajo Nation CAP Water. The Navajo Nation CAP Water shall be firming as provided in this Subparagraph 9.10.2. In accordance with section 105(b)(1)(B) of the AWSA and Section 202(b) of the Act, the United States shall firm 50 percent of the Navajo Nation CAP Water

for the benefit of the Navajo Nation, to the equivalent of CAP M&I Priority Water for the period of one hundred (100) Years after January 1, 2008. In addition, in accordance with section 105(b)(2)(B) of the AWSA and Section 202(b) of the Act, the State shall firm 50 percent of the Navajo Nation CAP Water for the benefit of the Navajo Nation, to the equivalent of CAP M&I Priority Water for the period of one hundred (100) Years after January 1, 2008.

9.11 OTHER AGREEMENTS TO FIRM WATER

The Navajo Nation may, at its own expense, take additional actions to firm or supplement Navajo Nation CAP Water, such as by entering into agreements for that purpose with the Arizona Water Banking Authority, or its successor agency or entity in accordance with State law.

9.12 WATER USE ON NAVAJO LAND

Except as provided in Subparagraph 9.4, Navajo Nation CAP Water may only be used on the Navajo Reservation, lands held in trust by the United States for the benefit of the Navajo Nation, or lands owned by the Navajo Nation in fee that are located within Arizona, including Upper Basin lands within Arizona. The Navajo Nation may also store Navajo Nation CAP Water at underground storage facilities or groundwater savings facilities located within the CAP service area, consisting of Pima, Pinal, and Maricopa Counties, in accordance with State law. The Navajo Nation may assign any long-term storage credits accrued as a result of such storage in accordance with State law.

10.0 INFRASTRUCTURE

10.1 NAVAJO GROUNDWATER PROJECTS

10.1.1 The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct the water diversion and delivery features of the Navajo Groundwater Projects, in accordance with one or more agreements between the Secretary and the Navajo Nation.

10.1.2 Reclamation shall serve as the lead agency with respect to any activity to design and construct the water diversion and delivery features of the Navajo Groundwater Projects.

10.1.3 Design and Construction.

10.1.3.1 The scope of the design and construction under Subparagraph 10.1 shall be as generally described in the documents entitled “Final Summary Report Leupp, Birdsprings, and Tolani Lake Water Distribution System Analysis (May 2008),” the “Final Summary Report Dilkon and Teestoh Water Distribution System Analysis (May

2008)”, and the “Raw Water Transmission Pipeline Alignment Alternative Evaluation Final Report (May 2008)”, and the “Ganado C-Aquifer Project Report (October 2008)”, all prepared by Brown & Caldwell, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed Navajo Groundwater Projects and perform value engineering analyses.

10.1.3.2 On the basis of the review described in Subparagraph 10.1.3.1, the Secretary shall negotiate with the Navajo Nation appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of water.

10.1.4 Nonreimbursability of costs. All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

10.1.5 Funding. The total amount of obligations incurred by the Secretary in carrying out Subparagraph 10.1 shall not exceed \$199,000,000, except that the total amount of \$199,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations from May 1, 2011, in construction cost indices applicable to the types of construction involved in the design and construction of the Navajo Groundwater Projects.

10.1.6 Applicability of the Indian Self-Determination Act.

10.1.6.1 At the request of the Navajo Nation, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 459 *et seq.*), the Secretary shall enter into one or more agreements with the Navajo Nation to carry out the activities authorized by Subparagraph 10.1.

10.1.6.2 Reclamation and the Navajo Nation shall negotiate the cost of any oversight activities carried out by Reclamation for each agreement under Subparagraph 10.1.6.1, provided that the total cost for that oversight shall not exceed **four percent** of the total project costs.

10.1.7 Conveyance of Title to Navajo Groundwater Projects.

10.1.7.1 In general. The Secretary shall convey title to the Navajo Groundwater Projects authorized under Subparagraph 10.1.1 to the Navajo Nation when construction of each project is complete and the project is operating and delivering potable water.

- 10.1.7.2 Liability. Effective on the date of the conveyance authorized by Subparagraph 10.1.7.1, the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the facilities conveyed under Subparagraph 10.1.7.1, other than damages caused by any intentional act or act of negligence committed by the United States, or by employees or agents of the United States, prior to the date of conveyance.
- 10.1.7.3 OM&R Obligation of the Federal Government After Conveyance. The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs of the Navajo Groundwater Projects beginning on the date on which—(i) title to the Navajo Groundwater Projects is conveyed to the Navajo Nation; and (ii) the amounts required to be deposited in the Navajo OM&R Trust Account pursuant to section 104(b) of the Act have been deposited in that account.
- 10.1.8 The Secretary shall provide technical assistance to prepare the Navajo Nation for operation of the Navajo Groundwater Projects, including operation and management training.
- 10.1.9 The Secretary shall facilitate the formation of a project management committee composed of representatives from Reclamation, the Bureau of Indian Affairs, and the Navajo Nation to review cost factors and budgets for construction, operation and maintenance activities for the Navajo Groundwater Projects; to improve management of inherently governmental activities through enhanced communication; and to seek additional ways to reduce overall costs for the Navajo Groundwater Projects.
- 10.1.10 The United States shall establish a trust account in the Treasury of the United States for the initial operation, maintenance, and replacement of the components of each of the two projects described in Subparagraph 10.1. The Secretary shall manage the account in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001 *et seq.*). Amounts in the trust account shall be available for expenditure or withdrawal only after the LCR enforceability date.
- 10.1.11 The Secretary is authorized to construct the Navajo Groundwater Projects at such time as the Secretary publishes in the Federal Register the statement of findings required by Subparagraph 12.1 and section 108(a) of the Act. Notwithstanding the forgoing, the Secretary is authorized to use amounts appropriated pursuant to section 104(a) of the Act to carry out Pre-Construction Activities for the Navajo Groundwater Projects, prior to the LCR Enforceability Date.

10.2 HOPI GROUNDWATER PROJECT

- 10.2.1 The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct the water diversion and delivery features of the Hopi Groundwater Project, in accordance with one or more agreements between the Secretary and the Hopi Tribe.
- 10.2.2 Reclamation shall serve as the lead agency with respect to any activity to design and construct the water diversion and delivery features of the Hopi Groundwater Project.
- 10.2.3 Design and Construction.
 - 10.2.3.1 The scope of the design and construction under this Subparagraph 10.2 shall be as generally described in the documents entitled “Hopi Tribe 2011 Little Colorado River Adjudication Settlement Domestic, Commercial, Municipal and Industrial Water System Memorandum (May 2011)” prepared by Dowl HKM, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed Hopi Groundwater Project and perform value engineering analyses. The Project shall include a turn-out to provide service capability to the Navajo Nation at Coalmine Canyon Chapter.
 - 10.2.3.2 On the basis of the review described in Subparagraph 10.2.3.1, the Secretary shall negotiate with the Hopi Tribe appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of water.
- 10.2.4 Nonreimbursability of Costs. All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.
- 10.2.5 Funding. The total amount of obligations incurred by the Secretary in carrying out this Subparagraph 10.2 shall not exceed \$113,000,000, except that the total amount of \$113,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations from May 1, 2011, in construction cost indices applicable to the types of construction involved in the design and construction of the Hopi Groundwater Project.
- 10.2.6 Applicability of the Indian Self-Determination Act.
 - 10.2.6.1 At the request of the Hopi Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 459 *et seq.*), the Secretary shall enter into one

or more agreements with the Hopi Tribe to carry out the activities authorized by this Subparagraph 10.2.

10.2.6.2 Reclamation and the Hopi Tribe shall negotiate the cost of any oversight activities carried out by Reclamation for each agreement under Subparagraph 10.2.6.1, provided that the total cost for that oversight shall not exceed four percent of the total project costs.

10.2.7 Conveyance of Title to Hopi Groundwater Project.

10.2.7.1 In general. The Secretary shall convey title to the Hopi Groundwater Project authorized under Subparagraph 10.2 to the Hopi Tribe after completion of construction of the project and the project is operating and delivering potable water.

10.2.7.2 Liability. Effective on the date of the conveyance authorized by Subparagraph 10.2.7.1, the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the facilities conveyed under Subparagraph 10.1.7.1, other than damages caused by any intentional act or act of negligence committed by the United States, or by employees or agents of the United States, prior to the date of conveyance.

10.2.7.3 OM&R Obligation of the Federal Government After Conveyance. The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs of the Hopi Groundwater Project beginning on the date on which—(i) title to the Hopi Groundwater Project is conveyed to the Hopi Tribe; and (ii) the amounts required to be deposited in the Hopi OM&R Trust Account pursuant to section 104(d) of the Act have been deposited in that account.

10.2.8 The Secretary shall provide technical assistance to prepare the Hopi Tribe for operation of the Hopi Groundwater Project, including operation and management training.

10.2.9 The Secretary shall facilitate the formation of a project management committee composed of representatives from Reclamation, the Bureau of Indian Affairs, and the Hopi Tribe to review cost factors and budgets for construction, operation and maintenance activities for the Hopi Groundwater Project; to improve management of inherently governmental activities through enhanced communication; and to seek

additional ways to reduce overall costs for the Hopi Groundwater Project.

- 10.2.10 The United States shall establish a trust account in the Treasury of the United States for the initial operation, maintenance, and replacement of the components of the Hopi Groundwater Project described in this Subparagraph 10.2. The Secretary shall manage the account in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001 *et seq.*). Amounts in the trust account shall be available for expenditure or withdrawal only after the LCR Enforceability Date.
- 10.2.11 The Secretary is authorized to construct the Hopi Groundwater Project described in this Subparagraph 10.2 at such time as the Secretary publishes in the Federal Register the statement of findings required by Subparagraph 12.1 and section 108(a) of the Act. Notwithstanding the forgoing, the Secretary is authorized to use amounts appropriated pursuant to section 104(c) of the Act to carry out Pre-Construction Activities for the Hopi Groundwater Project, prior to the LCR Enforceability Date.

10.3 RIGHTS-OF-WAY

The Hopi Tribe and the Navajo Nation shall each consent to the grant of rights-of-way to the other Tribe for purposes of constructing, operating and maintaining the Hopi and Navajo Groundwater Projects, without consideration from the other Tribe or the United States, excepting surface damages. Nothing in this Subparagraph shall be construed to affect or modify the rights or responsibilities of either Tribe with respect to claims to access or lack thereof across the reservation of the other Tribe for any purpose for which such right of access may exist under current law.

11.0 WAIVERS, RELEASES AND RETENTIONS OF CLAIMS

11.1 NAVAJO NATION WAIVERS, RELEASES, AND RETENTIONS OF CLAIMS

11.1.1 Claims against the State and others.

- 11.1.1.1 In general. Except as provided in Subparagraph 11.1.1.3, the Navajo Nation, on behalf of itself and the Members of the Navajo Nation (but not Members in their capacity as Allottees), and the United States, acting as trustee for the Navajo Nation and the Members of the Navajo Nation (but not Members in their capacity as Allottees), as part of the performance of the respective obligations of the Navajo Nation and the United States under this Agreement and section 105(a)(1) of the Act, shall execute a waiver and

release of any claims against the State (or any agency or political subdivision of the State), the Hopi Tribe, or any other person, entity, corporation or municipal corporation under federal, State or other law for all:

- 11.1.1.1.1 Past, present, and future claims for Water Rights for Navajo Land and land of the Navajo Nation outside the State whether held in fee or held in trust by the United States on behalf of the Navajo Nation, arising from time immemorial and, thereafter, forever;
 - 11.1.1.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land both within and outside of the State by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;
 - 11.1.1.1.3 Past and present claims for Injury to Water Rights and Injury to Water Quality for Navajo Land and land of the Navajo Nation outside of the State, whether held in fee or held in trust by the United States on behalf of the Navajo Nation, arising from time immemorial through the LCR Enforceability Date;
 - 11.1.1.1.4 Past, present, and future claims for Injury to Water Rights and Injury to Water Quality arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land both within and outside of the State by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;
 - 11.1.1.1.5 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date for Navajo Land and land of the Navajo Nation outside of the State, whether held in fee or held in trust by the United States on behalf of the Navajo Nation, resulting from the Diversion or use of Water in a manner not in violation of this Agreement; and
 - 11.1.1.1.6 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.
- 11.1.1.2 Effective date. The waiver and release of claims described in Subparagraph 11.1.1.1 shall be in the form set forth in

Exhibit 11.1.1 and shall be effective on the LCR Enforceability Date.

- 11.1.1.3 Retention of claims. The Navajo Nation, on behalf of itself and the Members of the Navajo Nation (but not Members in their capacity as Allottees), and the United States, acting as trustee for the Navajo Nation and the Members of the Navajo Nation (but not Members in their capacity as Allottees), shall retain all rights not expressly waived under Subparagraph 11.1.1.1, including any right:
- 11.1.1.3.1 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water for Navajo Land;
 - 11.1.1.3.2 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water that are based on aboriginal occupancy of land within the Upper Basin by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;
 - 11.1.1.3.3 Subject to Subparagraphs 6.3 and 13.8, to assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under this Agreement or the Act, in any federal or State court of competent jurisdiction;
 - 11.1.1.3.4 To assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;
 - 11.1.1.3.5 To assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under the Gila River Adjudication Decree, the form of which is attached to this Agreement as Exhibit 3.1.49;
 - 11.1.1.3.6 To participate in the LCR Adjudication to the extent provided in this Agreement;
 - 11.1.1.3.7 To participate in the Gila River Adjudication to the extent provided in Subparagraphs 4.12, 4.13, and 4.14;
 - 11.1.1.3.8 Except as provided in this Agreement, to object to any claims for Water Rights, Injury to Water Rights, or Injury to Water Quality by or for any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));

11.1.1.3.9 Except as provided in this Agreement, to assert past, present, or future claims for Injury to Water Rights, Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));

11.1.1.3.10 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water for Navajo Land; and

11.1.1.3.11 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water that are based on aboriginal occupancy of land by the Navajo Nation, the Members of the Navajo Nation, or their predecessors.

11.1.2 Claims against the United States.

11.1.2.1 In general. Except as provided in Subparagraph 11.1.2.3, the Navajo Nation, on behalf of itself and the Members of the Navajo Nation (but not Members in their capacity as Allottees), as part of the performance of the respective obligations of the Navajo Nation and the United States under this Agreement and section 105(a)(2) of the Act, shall execute a waiver and release of any claims against the United States (or agencies, officials or employees of the United States) under federal, State, or other law for all:

11.1.2.1.1 Past, present, and future claims for Water Rights for Navajo Land and land of the Navajo Nation outside of the State, whether held in fee or held in trust by the United States on behalf of the Navajo Nation, arising from time immemorial and, thereafter, forever;

11.1.2.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land both within and outside the State by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;

11.1.2.1.3 Past and present claims for Injury to Water Rights and Injury to Water Quality for Navajo Land and land of the Navajo Nation outside the State, whether held in fee or held in trust by the United States on behalf of

the Navajo Nation, arising from time immemorial through the LCR Enforceability Date;

- 11.1.2.1.4 Past, present, and future claims for Injury to Water Rights and Injury to Water Quality arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land both within and outside the State by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;
- 11.1.2.1.5 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date for Navajo Land and land of the Navajo Nation outside the State, whether held in fee or held in trust by the United States on behalf of the Navajo Nation, resulting from the Diversion or use of Water in a manner not in violation of this Agreement;
- 11.1.2.1.6 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act;
- 11.1.2.1.7 Past, present, and future claims for failure to protect, acquire, or develop Water Rights for or on behalf of the Navajo Nation and the Members of the Navajo Nation arising from time immemorial and, thereafter, forever;
- 11.1.2.1.8 Past, present, and future claims relating to failure to assert any claims described in this Subparagraph 11.1.2.1;
- 11.1.2.1.9 Claims for OM&R costs of the Navajo Groundwater Projects, which shall be effective on the date the Secretary transfers title to, and OM&R responsibility for, the Navajo Groundwater Projects to the Navajo Nation;
- 11.1.2.1.10 Claims in the case styled *The Navajo Nation v. United States Department of the Interior*, Case No. CV-03-057-PCT-PGR, pending in the United States District Court for the District of Arizona, including all claims based on the facts alleged in the complaint filed in the action, except any claim that is dismissed without prejudice pursuant to Subparagraph 11.9 of this Agreement; and

11.1.2.1.11 Past and present claims relating in any manner to damages, losses, or Injuries to Water Rights, land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the Navajo Reservation and Off-Reservation Navajo Trust Land that first accrued at any time prior to the LCR Enforceability Date.

11.1.2.2 Effective date. The waiver and release of claims described in Subparagraph 11.1.2.1 shall be in the form set forth in Exhibit 11.1.2 and, except as provided in Subparagraph 11.1.2.1.9, shall be effective upon the LCR Enforceability Date.

11.1.2.3 Retention of claims. The Navajo Nation and the Members of the Navajo Nation (but not Members in their capacity as Allottees) shall retain all rights not expressly waived under the waiver and release of claims described in Subparagraph 11.1.2.1, including any right:

11.1.2.3.1 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water for Navajo Land;

11.1.2.3.2 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water that are based on aboriginal occupancy of land within the Upper Basin by the Navajo Nation, the Members of the Navajo Nation, or their predecessors;

11.1.2.3.3 Subject to Subparagraph 13.8, to assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under this Agreement or the Act, in any federal or State court of competent jurisdiction;

11.1.2.3.4 To assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;

11.1.2.3.5 To assert claims for injuries to, and seek enforcement of, the rights of the Navajo Nation under the Gila River

Adjudication Decree, the form of which is attached to this Agreement as Exhibit 3.1.49;

- 11.1.2.3.6 To participate in the LCR Adjudication to the extent provided in this Agreement;
- 11.1.2.3.7 To participate in the Gila River Adjudication to the extent provided in Subparagraphs 4.12, 4.13, and 4.14;
- 11.1.2.3.8 Except as provided in this Agreement, to object to any claims for Water Rights, Injury to Water Rights or Injury to Water Quality by or for any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));
- 11.1.2.3.9 Except as provided in this Agreement, to assert past, present, or future claims for Injury to Water Rights, Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));
- 11.1.2.3.10 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water for Navajo Land; and
- 11.1.2.3.11 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water that are based on aboriginal occupancy of land by the Navajo Nation, the Members of the Navajo Nation, or their predecessors.

11.2 HOPI TRIBE WAIVERS, RELEASES, AND RETENTIONS OF CLAIMS

11.2.1 Claims against the State and others.

- 11.2.1.1 In general. Except as provided in Subparagraph 11.2.1.3, the Hopi Tribe, on behalf of itself and the Members of the Hopi Tribe (but not Members in their capacity as Allottees), and the United States, acting in its capacity as trustee for the Hopi Tribe and the Members of the Hopi Tribe (but not Members in their capacity as Allottees), as part of the performance of the respective obligations of the Hopi Tribe and the United States under this Agreement and section 105(b)(1) of the Act, shall execute a waiver and release of any claims against the State (or any agency or political

subdivision of the State), the Navajo Nation or any other person, entity, corporation or municipal corporation under federal, State or other law for all:

- 11.2.1.1.1 Past, present, and future claims for Water Rights for Hopi Land arising from time immemorial and, thereafter, forever;
 - 11.2.1.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors;
 - 11.2.1.1.3 Past and present claims for Injury to Water Rights and Injury to Water Quality for Hopi Land arising from time immemorial through the LCR Enforceability Date;
 - 11.2.1.1.4 Past, present, and future claims for Injury to Water Rights and Injury to Water Quality arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors;
 - 11.2.1.1.5 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date for Hopi Land resulting from the Diversion or use of Water in a manner not in violation of this Agreement; and
 - 11.2.1.1.6 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.
- 11.2.1.2 Effective date. The waiver and release of claims described in Subparagraph 11.2.1.1 shall be in the form set forth in Exhibit 11.2.1 and shall be effective on the LCR Enforceability Date.
- 11.2.1.3 Retention of claims. The Hopi Tribe on behalf of itself and the Members of the Hopi Tribe (but not Members in their capacity as Allottees), and the United States, acting in its capacity as trustee for the Hopi Tribe and the Members of the Hopi Tribe (but not Members in their capacity as Allottees), shall retain all rights not expressly waived under Subparagraph 11.2.1.1, including any right:

- 11.2.1.3.1 To assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under the Norviel Decree, as set forth in the Abstracts attached to this Agreement as Exhibits 5.4.1A through 5.4.1, inclusive;
- 11.2.1.3.2 Subject to Subparagraphs 6.3 and 13.8 of this Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under this Agreement or the Act, in any federal or State court of competent jurisdiction;
- 11.2.1.3.3 To assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;
- 11.2.1.3.4 To participate in the LCR Adjudication to the extent provided in this Agreement;
- 11.2.1.3.5 Except as provided in this Agreement, to object to any claims for Water Rights, Injury to Water Rights, or Injury to Water Quality by or for any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e)) or the United States on behalf thereof;
- 11.2.1.3.6 Except as provided in this Agreement, to assert past, present, or future claims for Injury to Water Rights, Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e)) or the United States on behalf thereof;
- 11.2.1.3.7 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water for Hopi Land; and
- 11.2.1.3.8 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors.

11.2.2 Claims against the United States.

- 11.2.2.1 In general. Except as provided in Subparagraph 11.2.2.3, the Hopi Tribe, on behalf of itself and the Members of the Hopi Tribe (but not Members in their capacity as Allottees), as part of the performance of its obligations under this Agreement and section 105(b)(2) of the Act, shall execute a waiver and release of any claims against the United States (or agencies, officials, or employees of the United States) under federal, State, or other law for all:
- 11.2.2.1.1 Past, present, and future claims for Water Rights for Hopi Land arising from time immemorial and, thereafter, forever;
 - 11.2.2.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors;
 - 11.2.2.1.3 Past and present claims for Injury to Water Rights and Injury to Water Quality for Hopi Land arising from time immemorial through the LCR Enforceability Date;
 - 11.2.2.1.4 Past, present, and future claims for Injury to Water Rights and Injury to Water Quality arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors;
 - 11.2.2.1.5 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date for Hopi Land resulting from the Diversion or use of Water in a manner not in violation of this Agreement;
 - 11.2.2.1.6 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act;
 - 11.2.2.1.7 Past, present, and future claims for failure to protect, acquire, or develop Water Rights for or on behalf of the Hopi Tribe and the Members of the Hopi Tribe arising from time immemorial and, thereafter, forever;
 - 11.2.2.1.8 Past, present, and future claims relating to failure to assert any claims described in this Subparagraph 11.2.2.1;

- 11.2.2.1.9 Claims for the OM&R costs of the Hopi Groundwater Projects, which shall be effective on the date on which the Secretary transfers title to, and OM&R responsibility for, the Hopi Groundwater Projects to the Hopi Tribe; and
- 11.2.2.1.10 Past and present claims relating in any manner to damages, losses, or Injuries to Water Rights, land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the Hopi Reservation and Off-Reservation Hopi Trust Land that first accrued at any time prior to the LCR Enforceability Date.
- 11.2.2.2 Effective date. The waiver and release of claims described in Subparagraph 11.2.2.1 shall be in the form set forth in Exhibit 11.2.2 and, except as provided in Subparagraph 11.2.2.1.9, shall be effective upon the LCR Enforceability Date.
- 11.2.2.3 Retention of claims. The Hopi Tribe on behalf of itself and the Members of the Hopi Tribe (but not Members in their capacity as Allottees) shall retain all rights not expressly waived under Subparagraph 11.2.2.1, including any right:
 - 11.2.2.3.1 To assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under the Norviel Decree, as set forth in the Abstracts attached to this Agreement as Exhibits 5.4.1A through 5.4.1 inclusive;
 - 11.2.2.3.2 Subject to Subparagraph 13.8 of this Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under this Agreement or the Act, in any federal or State court of competent jurisdiction;
 - 11.2.2.3.3 To assert claims for injuries to, and seek enforcement of, the rights of the Hopi Tribe under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;

- 11.2.2.3.4 To participate in the LCR Adjudication to the extent provided in this Agreement;
- 11.2.2.3.5 Except as provided in this Agreement, to object to any claims for Water Rights, Injury to Water Rights, or Injury to Water Quality by or for any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e)) or the United States on behalf thereof;
- 11.2.2.3.6 Except as provided in this Agreement, to assert past, present, or future claims for Injury to Water Rights or Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e)) or the United States on behalf thereof;
- 11.2.2.3.7 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water for Hopi Land; and
- 11.2.2.3.8 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water that are based on aboriginal occupancy of land by the Hopi Tribe, the Members of the Hopi Tribe, or their predecessors.

11.3 WAIVERS AND RELEASES OF CLAIMS BY THE UNITED STATES ACTING AS TRUSTEE FOR ALLOTTEES

11.3.1 In general. Except as provided in Subparagraph 11.3.3, the United States acting as trustee for Allottees of the Navajo Nation and Hopi Tribe, pursuant to the authorization set forth in section 105(c) of the Act, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), the Navajo Nation, the Hopi Tribe, or any other person, entity, corporation, or municipal corporation under federal, State or other law, for all:

- 11.3.1.1 Past, present, and future claims for Water Rights for Allotments arising from time immemorial, and, thereafter, forever;
- 11.3.1.2 Past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are

- based on aboriginal occupancy of land by Allottees or their predecessors;
- 11.3.1.3 Past and present claims for Injury to Water Rights and Injury to Water Quality for Allotments arising from time immemorial through the LCR Enforceability Date;
 - 11.3.1.4 Past, present, and future claims for Injury to Water Rights and Injury to Water Quality, if any, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by Allottees or their predecessors;
 - 11.3.1.5 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date for Allotments resulting from the Diversion or Use of Water in a manner not in violation of this Agreement; and
 - 11.3.1.6 Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.
- 11.3.2 Effective date. The waiver and release of claims described in Subparagraph 11.3.1 shall be in the form set forth in Exhibit 11.3 and shall be effective upon the LCR Enforceability Date.
- 11.3.3 Retention of claims. The United States, acting as trustee for Allottees of the Navajo Nation and Hopi Tribe, shall retain all rights not expressly waived under Subparagraph 11.3.1, including any right:
- 11.3.3.1 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water, if any, for Allotments;
 - 11.3.3.2 Subject to Subparagraph 13.14, to assert claims of Rights to Upper Basin Water that are based on aboriginal occupancy of land within the Upper Basin in the State by Allottees or their predecessors;
 - 11.3.3.3 Subject to Subparagraph 13.8, to assert claims for injuries to, and seek enforcement of, the rights of Allottees, if any, under this Agreement or the Act, in any federal or State court of competent jurisdiction;
 - 11.3.3.4 To assert claims for injuries to, and seek enforcement of, the rights of Allottees, if any, under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;

- 11.3.3.5 To participate in the LCR Adjudication to the extent provided in this Agreement;
 - 11.3.3.6 Except as provided in this Agreement, to object to any claims for Water Rights, Injury to Water Rights, or Injury to Water Quality by or for any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));
 - 11.3.3.7 Except as provided in this Agreement, to assert past, present, or future claims for Injury to Water Rights or Injury to Water Quality, or any other claims other than a claim for Water Rights, against any Indian tribe, community, nation or dependent Indian community (as defined in 25 U.S.C § 450b(e));
 - 11.3.3.8 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water for Allotments; and
 - 11.3.3.9 To assert past, present, or future claims for Rights to Lower Colorado River Water, Injury to Rights to Lower Colorado River Water, or Injury to Quality of Lower Colorado River Water that are based on aboriginal occupancy of land by Allottees or their predecessors.
- 11.4 WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES AGAINST THE NAVAJO NATION AND THE HOPI TRIBE
- 11.4.1 In general. Except as provided in Subparagraph 11.4.3, the United States, except when acting as trustee for an Indian tribe other than the Navajo Nation or the Hopi Tribe, pursuant to the authorizations set forth in section 105(d) of the Act, is authorized to execute a waiver and release of any and all claims of the United States against the Navajo Nation and the Hopi Tribe, including any agency, official, or employee of the Navajo Nation or the Hopi Tribe, under federal, State, or any other law for all:
 - 11.4.1.1 Past, present, and future claims arising out of, or relating in any manner to, the negotiation or execution of this Agreement or the Act;
 - 11.4.1.2 Past and present claims for Injury to Water Rights and Injury to Water Quality resulting from the Diversion or use of Water on Navajo Land and Hopi Land arising from time immemorial through the LCR Enforceability Date; and

- 11.4.1.3 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date resulting from the Diversion or use of Water on Navajo Land and Hopi Land in a manner not in violation of this Agreement.
- 11.4.2 Effective date. The waiver and release of claims under Subparagraph 11.4.1 shall be in the form set forth in Exhibit 11.4 and shall be effective upon the LCR Enforceability Date.
- 11.4.3 Retention of claims. The United States shall retain all rights not expressly waived under Subparagraph 11.4.1, including:
 - 11.4.3.1 Subject to Subparagraph 13.8, to assert claims for injuries to, and seek enforcement of, this Agreement or the Act, in any federal or State court of competent jurisdiction;
 - 11.4.3.2 To enforce the Gila River Adjudication Decree, the form of which is attached to this Agreement as Exhibit 3.1.49; and
 - 11.4.3.3 To enforce the LCR Decree, the form of which is attached as to this Agreement as Exhibit 3.1.70.
- 11.5 WAIVERS AND RELEASES OF CLAIMS BY THE PARTIES, EXCEPT THE UNITED STATES, THE NAVAJO NATION AND THE HOPI TRIBE
 - 11.5.1 Waiver and Release of Claims for Injury to Water Rights and Injury to Water Quality by the Parties, Except the United States, the Navajo Nation and the Hopi Tribe, for Claims Against the Navajo Nation, its Members (but not Members in their Capacity as Allottees), and the United States Acting in its Capacity as Trustee for the Navajo Nation and its Members (but not Members in their Capacity as Allottees).
 - 11.5.1.1 Except as provided in Subparagraph 11.5.1.3, the Parties, except the United States, the Navajo Nation, and the Hopi Tribe, as part of their obligations under the Agreement, shall execute a waiver and release of any claims that such Parties may have against the Navajo Nation, its Members (but not Members in their capacity as Allottees), and the United States acting in its capacity as trustee for the Navajo Nation and its Members (but not Members in their capacity as Allottees), under federal, State or other law for:
 - 11.5.1.1.1 Past and present claims for Injury to Water Rights and Injury to Water Quality resulting from the Diversion or use of Water on or for Navajo Land in Arizona, arising from time immemorial through the LCR Enforceability Date;

- 11.5.1.1.2 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date resulting from the Diversion or use of Water on or for Navajo Land in Arizona in a manner not in violation of this Agreement or applicable law; and
- 11.5.1.1.3 Past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.
- 11.5.1.2 The waiver and release of claims described in Subparagraph 11.5.1.1 shall be in the form set forth in Exhibit 11.5.1 and shall become effective upon the LCR Enforceability Date.
- 11.5.1.3 The Parties, other than the Navajo Nation, the Hopi Tribe and the United States, shall retain all rights not expressly waived in the waiver and release of claims described in Subparagraph 11.5.1.1, including, but not limited to, any right to:
 - 11.5.1.3.1 Assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State or federal court of competent jurisdiction;
 - 11.5.1.3.2 Assert claims for injury to and seek enforcement of their rights under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;
 - 11.5.1.3.3 Assert claims for injury to and seek enforcement of their rights under the Gila River Adjudication Decree, the form of which is attached to this Agreement as Exhibit 3.1.49; and
 - 11.5.1.3.4 Assert past, present and future claims to Water that are subject to the Gila River Adjudication, the LCR Adjudication or other applicable law, and that are not inconsistent with this Agreement or the Act.
- 11.5.1.4 Nothing in Subparagraph 11.5.1.1 shall preclude the State from taking any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety or the environment.
- 11.5.2 Waiver and Release of Claims for Injury to Water Rights and Injury to Water Quality by the Parties, Except the United States, the Navajo Nation and the Hopi Tribe, for Claims Against the Hopi Tribe, its Members (but not Members in their Capacity as Allottees), and the

United States Acting in its Capacity as Trustee for the Hopi Tribe and its Members (but not Members in their Capacity as Allottees).

11.5.2.1 Except as provided in Subparagraph 11.5.2.3, the Parties, except the United States, the Navajo Nation and the Hopi Tribe, as part of their obligations under the Agreement, shall execute a waiver and release of any claims that such Parties may have against the Hopi Tribe, its Members (but not Members in their capacity as Allottees), and the United States acting in its capacity as trustee for the Hopi Tribe and its Members (but not Members in their capacity as Allottees), under federal, State or other law for:

11.5.2.1.1 Past and present claims for Injury to Water Rights and Injury to Water Quality resulting from the Diversion or use of Water on or for Hopi Land in Arizona, arising from time immemorial through the LCR Enforceability Date;

11.5.2.1.2 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date resulting from the Diversion or use of Water on or for Hopi Land in Arizona in a manner not in violation of this Agreement or applicable law; and

11.5.2.1.3 Past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

11.5.2.2 The waiver and release of claims described in Subparagraph 11.5.2.1 shall be in the form set forth in Exhibit 11.5.2 and shall become effective upon the LCR Enforceability Date.

11.5.2.3 The Parties, other than the Navajo Nation, the Hopi Tribe and the United States, shall retain all rights not expressly waived in the waiver and release of claims described in Subparagraph 11.5.2.1, including, but not limited to, any right to:

11.5.2.3.1 Assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State or federal court of competent jurisdiction;

11.5.2.3.2 Assert claims for injury to and seek enforcement of their rights under the LCR Decree, the form of which is attached to this Agreement as Exhibit 3.1.70;

- 11.5.2.3.3 Assert claims for injury to and seek enforcement of their rights under the Gila River Adjudication Decree, the form of which is attached to this Agreement as Exhibit 3.1.49; and
- 11.5.2.3.4 Assert past, present and future claims to Water that are subject to the Gila River Adjudication, the LCR Adjudication or other applicable law, and that are not inconsistent with this Agreement or the Act.
- 11.5.2.4 Nothing in Subparagraph 11.5.2.1 shall preclude the State from taking any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety or the environment.
- 11.5.3 Waiver and Release of Claims for Injury to Water Right and Injury to Water Quality by the Parties, Except the United States, the Navajo Nation and the Hopi Tribe, for Claims Against the United States Acting in its Capacity as Trustee for Allottees.
 - 11.5.3.1 Except as provided in Subparagraph 11.5.3.3, the Parties, except the United States, the Navajo Nation, and the Hopi Tribe, as part of their obligations under the Agreement, shall execute a waiver and release of any claims that such Parties may have against the United States acting in its capacity as trustee for the Allottees, under federal, State or other law for:
 - 11.5.3.1.1 Past and present claims for Injury to Water Rights and Injury to Water Quality resulting from the Diversion or use of Water on or for Allotments arising from time immemorial through the LCR Enforceability Date;
 - 11.5.3.1.2 Claims for Injury to Water Rights and Injury to Water Quality arising after the LCR Enforceability Date resulting from the Diversion or use of Water on or for Allotments in a manner not in violation of this Agreement or applicable law; and
 - 11.5.3.1.3 Past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.
 - 11.5.3.2 The waiver and release of claims described in Subparagraph 11.5.3.1 shall be in the form set forth in Exhibit 11.5.3 and shall become effective upon the LCR Enforceability Date.

- 11.5.3.3 The Parties, other than the Navajo Nation, the Hopi Tribe and the United States, shall retain all rights not expressly waived in the waiver and release of claims described in Subparagraph 11.5.3.1, including, but not limited to, any right to:
 - 11.5.3.3.1 Assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State or federal court of competent jurisdiction;
 - 11.5.3.3.2 Assert claims for injury to and seek enforcement of their rights under the LCR Decree, the form of which is attached as Exhibit 3.1.70; and
 - 11.5.3.3.3 Assert past, present and future claims to Water that are subject to the LCR Adjudication or other applicable law, and that are not inconsistent with this Agreement or the Act.
- 11.5.3.4 Nothing in Subparagraph 11.5.3.1 shall preclude the State from taking any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety or the environment.

11.6 SATISFACTION OF WATER RIGHTS AND OTHER BENEFITS

11.6.1 Navajo Nation and Its Members.

- 11.6.1.1 The benefits realized by the Navajo Nation and its Members under this Agreement and the Act shall be in complete and full satisfaction of all claims of the Navajo Nation and its Members, and the United States acting in its capacity as trustee for the Navajo Nation and its Members, for Water Rights and Injury to Water Rights, Injury to Water Quality, except as set forth in this Agreement, under federal, State, or other law with respect to Navajo Land. Notwithstanding the preceding sentence, nothing in this Agreement or the Act has the effect of recognizing or establishing any right of a Member to Water on the Navajo Reservation.
- 11.6.1.2 Any entitlement to Water of the Navajo Nation and its Members, or the United States acting in its capacity as trustee for the Navajo Nation and its Members for Navajo Land shall be satisfied out of the water resources and other benefits granted, confirmed or recognized to or for the Navajo Nation, its Members and the United States acting in its capacity as trustee for the Navajo Nation and its Members by this Agreement and in the Act.

11.6.2 Hopi Tribe and Its Members.

11.6.2.1 The benefits realized by the Hopi Tribe and its Members under this Agreement and the Act shall be in complete and full satisfaction of all claims of the Hopi Tribe and its Members, and the United States acting in its capacity as trustee for the Hopi Tribe and its Members, for Water Rights and Injury to Water Rights, Injury to Water Quality, except as set forth in this Agreement, under federal, State, or other law with respect to Hopi Land. Notwithstanding the preceding sentence, nothing in this Agreement or the Act has the effect of recognizing or establishing any right of a Member to Water on the Hopi Reservation.

11.6.2.2 Any entitlement to Water of the Hopi Tribe and its Members, or the United States acting in its capacity as trustee for the Hopi Tribe and its Members for Hopi Land shall be satisfied out of the water resources and other benefits granted, confirmed or recognized to or for the Hopi Tribe, its Members and the United States acting in its capacity as trustee for the Hopi Tribe and its Members by this Agreement and in the Act.

11.6.3 Allottees and the United States Acting in Its Capacity as Trustee for Allottees.

11.6.3.1 The benefits realized by the Allottees under this Agreement and the Act shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Allottees, and the United States acting in its capacity as trustee for the Allottees, for Water Rights and Injury to Water Rights and Injury to Water Quality, except as set forth in this Agreement, under federal, State, or other law with respect to Allotments. Notwithstanding the preceding sentence, nothing in this Agreement or the Act has the effect of recognizing or establishing any right of an Allottee to Water on the Navajo Reservation or the Hopi Reservation.

11.6.3.2 Except as provided in Exhibit 4.7.3, any entitlement to Water of the Allottees, or the United States acting in its capacity as trustee for the Allottees, for Allotments shall be satisfied out of the water resources and other benefits granted, confirmed or recognized to or for the Tribe by this Agreement and in the Act.

11.7 EFFECT ON MEMBERS AND ALLOTTEES

Except as provided in Subparagraphs 11.1.1, 11.1.2, 11.2.1, 11.2.2, and 11.3, nothing in this Agreement shall affect any rights to water of any Member of the Navajo Nation, or Member of the Hopi Tribe, or any Allottee, for land outside of Navajo Land, Hopi Land or Allotments.

11.8 NO EFFECT ON ENFORCEMENT OF ENVIRONMENTAL LAWS

Nothing in this Agreement precludes the United States, the Navajo Nation, or the Hopi Tribe, from enforcing the requirements of federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. § 9601 *et seq.* (including but not limited to claims for damages to natural resources), the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Resource Conservation and Recovery Act 42 U.S.C. § 6901 *et seq.*, or the regulations implementing such acts.

11.9 DISMISSAL OF PENDING COURT CASE

Within thirty days after this Agreement is executed by the United States, the Navajo Nation shall execute and file a Stipulation and proposed Order, in the form attached hereto as Exhibit 11.9, for: (1) the dismissal with prejudice of the First, Second, Third, Fourth and Fifth Claims for Relief contained in the Complaint for Declaratory and Injunctive Relief filed by the Navajo Nation on March 14, 2003, in United States District Court for the District of Arizona, as part of the case captioned *The Navajo Nation v. United States Department of the Interior*, Case No. CV-03-0507-PCT-PGR; and (2) the dismissal without prejudice of the Sixth Claim for Relief contained in said complaint. Any statute of limitations which may otherwise apply to, limit, or bar said Sixth claim for relief shall be tolled as follows: (1) If a settlement of the Navajo Nation's claims to Lower Colorado River water has been approved by act of Congress enacted on or before December 15, 2022, then any statute of limitations which may otherwise apply to, limit, or bar said Sixth claim for relief shall be tolled until the Navajo Nation waives its claims to Lower Colorado River water pursuant to such act of Congress, (2) If no settlement of the claims of the Navajo Nation to Lower Colorado River water has been approved by act of Congress on or before December 15, 2022, then any statute of limitations which may otherwise apply to, limit, or bar said Sixth claim for relief shall be tolled until December 15, 2022.

11.10 PENDING STATE COURT CASE

Within thirty days following the Execution Date, the Hopi Tribe shall execute and file a Stipulation and proposed Order, in the form attached hereto as Exhibit 11.10, for the dismissal of the Notice of Appeal on the Second Claim for Relief contained in the Verified Complaint for Relief filed by the Hopi Tribe

on August 19, 2011, *The Hopi Tribe vs. The City of Flagstaff*, in Coconino County Superior Court for the State of Arizona, Case No. CV2011-00701, without prejudice as to raising the Second Claim for Relief in the LCR Adjudication Court when and if the LCR Adjudication Court lifts the stay of litigation provided in Subparagraph 13.6.

12.0 LCR ENFORCEABILITY DATE

12.1 CONDITIONS TO THE LCR ENFORCEABILITY DATE

The waivers and releases of claims described in Subparagraphs 11.1 through 11.5, shall take effect and be fully enforceable, and construction of the Navajo Groundwater Projects and the Hopi Groundwater Project may begin, on the date that the Secretary publishes in the Federal Register a statement of findings that:

- 12.1.1 to the extent that this Agreement conflicts with the Act, this Agreement has been revised through an amendment to eliminate the conflict and the revised Agreement has been executed by the Secretary, the Navajo Nation, the Hopi Tribe, the Governor of Arizona, and no fewer than nineteen (19) other Parties;
- 12.1.2 the waivers and releases of claims described in section 105 of the Act have been executed by the Navajo Nation, the Hopi Tribe, and the United States;
- 12.1.3 the full amount referenced in section 104(a)(2)(A)(i) of the Act, as adjusted through the LCR Enforceability Date, pursuant to section 104(a)(2)(C) of the Act, has been deposited in the Navajo Groundwater Projects Account;
- 12.1.4 the full amount referenced in section 104(b)(2) of the Act, , has been deposited in the Navajo OM&R Trust Account;
- 12.1.5 the full amount referenced in section 104(c)(2)(A)(i) of the Act, as adjusted through the LCR Enforceability Date pursuant to section 104(c)(2)(C) of the Act, has been deposited in the Hopi Groundwater Project Account;
- 12.1.6 the full amount referenced in section 104(d)(2) of the Act, has been deposited in the Hopi OM&R Trust Account;
- 12.1.7 the judgments and decrees in the LCR adjudication and the Gila River adjudication have been approved by the LCR adjudication court and the Gila adjudication court substantially in the form of the judgments and decrees attached to this Agreement as Exhibits 3.1.49 and 3.1.70, respectively;
- 12.1.8 legislation has been enacted by the State substantially in the form of the state implementing legislation attached to this Agreement as Exhibit 3.1.128 and said legislation remains effective;
- 12.1.9 the provisions of A.R.S. § 45-544 restricting the transporting of Groundwater from the Little Colorado River Plateau Groundwater Basin are in effect;

- 12.1.10 the Secretary has published in the Federal Register a Record of Decision approving construction of:
- 12.1.10.1 the Navajo Groundwater Projects in a configuration substantially similar to that described in section 103(a) of the Act; and
 - 12.1.10.2 the Hopi Groundwater Project, in a configuration substantially similar to that described in section 103(b) of the Act;
- 12.1.11 the Navajo Nation has dismissed with prejudice the First, Second, Third, Fourth and Fifth claims for relief contained in the Complaint for Declaratory and Injunctive Relief filed by the Navajo Nation on March 14, 2003, in United States District Court for the District of Arizona, as part of the case captioned *The Navajo Nation v. United States Department of the Interior*, No. CV-03-0507-PCT-PGR, and has dismissed without prejudice the Sixth claim for relief contained in said Complaint, substantially in the form of the dismissal attached to this Agreement as Exhibit 11.9;
- 12.1.12 the full amount referenced in section 104(e)(2)(A) of the Act, as adjusted through the LCR Enforceability Date pursuant to section 104(e)(2)(B) of the Act, has been appropriated and is available for use to implement the N-Aquifer management plan;
- 12.1.13 the State contributions referred to in Subparagraph 13.22 of this Agreement and sections 104(a)(2)(B)(iii) and 104(c)(2)(B)(ii) of the Act have been made; and
- 12.1.14 the full amount referenced in section 104(f)(2)(A) of the Act, as adjusted through the LCR Enforceability Date pursuant to section 104(f)(2)(B) of the Act, has been appropriated and is available for use to implement the Pasture Canyon Springs Protection Program.

12.2 FAILURE TO SATISFY CONDITIONS

If the Secretary does not publish the statement of findings under Subparagraph 12.1 by October 31, 2022, then this Agreement shall be null and void.

12.3 CONSTRUCTION

Except as provided in Subparagraphs 10.1.11 and 10.2.11, construction of the Navajo Groundwater Projects and the Hopi Groundwater Project may begin only after the LCR Enforceability Date.

13.0 OTHER PROVISIONS

13.1 NO IMPAIRMENT OF EXISTING RIGHTS

Nothing in this Agreement or any contract entered into pursuant to this Agreement or the Act shall impair any right to the delivery or beneficial consumptive use of Colorado River water under the 1944 Treaty with Mexico or any compact, law, decree, or contract in effect on the LCR Enforceability Date.

13.2 ENTIRE UNDERSTANDING

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

13.3 MODIFICATIONS TO AGREEMENT AND AMENDMENTS TO EXHIBITS

13.3.1 Amendments to the Agreement. No modification of this Agreement after the LCR Enforceability Date shall be effective unless it is in writing, signed by all Parties, and is approved by the LCR Adjudication Court. Notice of such amendments shall be made to all of the Parties in accordance with Subparagraph 13.19.

13.3.2 Amendments to Exhibits. Notwithstanding the provisions of Subparagraph 13.3.1, Exhibits to this Agreement may be amended by the Parties to such Exhibits in accordance with their terms, without LCR Adjudication Court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Act, or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment. Notice of such amendments shall be made to all of the Parties in accordance with Subparagraph 13.19. Failure to provide such notice in accordance with the terms of Subparagraph 13.19 shall not affect the validity of an amendment to an Exhibit made hereunder.

13.4 STATE CAPACITY

13.4.1 Execution by the Governor. Execution of this Agreement by the Governor of the State constitutes the commitment of the State to assist in carrying out the provisions of this Agreement to the extent it may do so in accordance with its responsibility and authority under the law. Execution of this Agreement by the Governor of the State also constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 8.3.1, 8.3.1.2, 8.3.4, 9.10.2, 11.5, and 13.23.1.

- 13.4.2 Execution by State Agencies. Execution of this Agreement by the Arizona State Land Department, the Arizona Game and Fish Commission and the Arizona Department of Transportation signifies that provisions of this Agreement affecting the State as a Claimant have been approved by the Arizona State Land Department, the Arizona Game and Fish Commission, the Arizona Department of Transportation, and these agencies assume the obligations of and are entitled to the benefits of this Agreement.
- 13.4.3 Exceptions. Except as provided in Subparagraphs 13.4.1 and 13.4.2, it is not intended that this Agreement shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory, rule making, or other proceeding or matter.

13.5 PARTIES BOUND ON EXECUTION DATE; OBLIGATION TO WORK IN GOOD FAITH

With the exception of the United States, all of the Parties shall be bound by the terms of this Agreement as of the Execution Date, regardless of the date on which the Party executes the Agreement. Each Party shall have the obligation to work in good faith to satisfy the conditions in this Agreement.

13.6 STAY OF LITIGATION

Not later than 30 days following the Execution Date, the Parties who are parties to the LCR Adjudication shall petition the LCR Adjudication Court to stay all litigation relating to the claims of the Navajo Nation, the Hopi Tribe and the United States on their behalf.

13.7 AUTHORITY TO EXECUTE

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

13.8 RIGHT TO PETITION ANY COURT OF COMPETENT JURISDICTION

Any Party shall have the right to petition any State or federal court of competent jurisdiction, without any requirement to exhaust tribal administrative or judicial remedies, for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions, and limitations of this Agreement. Nothing contained herein waives the right of the United States, the Navajo Nation, or the Hopi Tribe to object to the jurisdiction of the courts of the State to adjudicate any dispute arising under this Agreement or the Act. Furthermore, nothing herein waives the right of any Party to object to the jurisdiction of any federal Court to adjudicate a dispute arising under this Agreement or the Act.

13.9 GOVERNING LAW

This Agreement shall be construed in accordance with applicable law.

13.10 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, including successor State agencies.

13.11 STATE CONFLICT OF INTEREST

The provisions of A.R.S. § 38-511 are incorporated by reference herein.

13.12 ANTI-DEFICIENCY

13.12.1 United States. The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds. The United States shall not be liable for the failure to carry out any obligation or activity authorized under this Agreement and the Act (including any such obligation or activity under this Agreement and the Act) if adequate appropriations are not provided by Congress expressly to carry out the purposes of this Agreement and the Act.

13.12.2 State. The expenditure or advance of any money or the performance of any obligation by the State, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds. No liability shall accrue to the State, in any of its capacities, in the event funds are not appropriated.

13.13 NO BENEFIT TO MEMBERS OF CONGRESS OR RESIDENT COMMISSIONERS

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

13.14 NGS WATER PROVISIONS

The Navajo Nation agrees that, during the term of the Navajo Project Lease and any renewal or extension thereof, of the 50,000 AFY of water allocated to the State pursuant to Article III(a)(1) of the Upper Colorado River Basin Compact (63 Stat. 31), 34,100 AFY of water shall at all times be available for consumptive use by the Navajo Project Lessees in the operation of the Navajo Generating Station and all other purposes related to such operation, including coal transportation and ash disposal. The Navajo Nation agrees that the use of water on the Navajo Reservation within the upper basin of the Colorado River in

the State (as said upper basin is defined in the Upper Colorado River Basin Compact) shall not reduce or diminish the availability of said 34,100 AFY to the Navajo Project Lessees. This Agreement shall not be construed in any manner as a waiver by the Navajo Nation of any present or prospective water rights of the Navajo Nation, other than as set forth in this Subparagraph 13.14.

13.15 DUPLICATE ORIGINALS AND COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Agreement also may be executed in duplicate originals, each of which shall constitute an original Agreement.

13.16 NO QUANTIFICATION OR EFFECT ON RIGHTS OF OTHER TRIBES OR THE UNITED STATES ON THEIR BEHALF

13.16.1 Except as provided in Subparagraph 7.2, nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any Indian tribe, nation, band or community, including the San Juan Southern Paiute Tribe, other than the Navajo Nation and the Hopi Tribe.

13.16.2 Nothing in this Agreement shall affect the ability of the United States to take action on behalf of any Indian tribe, nation, band, community, including the San Juan Southern Paiute Tribe, other than the Navajo Nation, the Hopi Tribe, their Members and Allottees.

13.17 EFFECT OF AGREEMENT ON PEABODY

13.17.1 Peabody may retain the existing permanent mining structures included on Exhibit 13.17.1 as permanent Impoundments within the Peabody leaseholds on the Navajo and Hopi Reservations after mining is completed subject to the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), 30 U.S.C. 1201 *et seq.* The Tribes and the United States acting in its capacity as trustee for the Tribes may not object to, dispute, or challenge the retention of any such permanent Impoundments by Peabody in the LCR Adjudication or any other judicial or administrative proceeding. Peabody may relocate permanent Impoundments within Peabody leaseholds so long as overall storage capacity is not increased and so long as the new permanent Impoundment is not sited on the mainstem of any Managed Wash.

13.17.2 New temporary Impoundments may be built on the Peabody leaseholds by Peabody pursuant to SMCRA when needed for the mining operation. All Impoundments not described in Subparagraph 13.17.1 that Peabody has built or will build shall be temporary and the United States and Tribe owning beneficial title to the surface shall require Peabody to remove such Impoundments after mining is completed and to reclaim the

disturbed areas associated with such Impoundments in accordance with the requirements of SMCRA.

13.18 CONSTRUCTION AND EFFECT

The Paragraph and Subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement. As used in this Agreement, a capitalized term shall have the meaning set forth in Subparagraph 3.1. All other words shall have their ordinary meaning.

13.19 NOTICES

All notices required to be given hereunder shall be in writing and may be given in person or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight hours after deposit in the United States mail addressed as shown on Exhibit 13.19 or to such other address as such Party may from time to time designate in writing. Any communication by facsimile transmission or electronic mail by one Party to another shall not constitute effective notice as is required by this Subparagraph, but shall be deemed to be given as a courtesy only.

13.20 INTENDED THIRD-PARTY BENEFICIARIES

Any Person who is not a Party to this Agreement but whose Water Rights are protected by this Agreement is a third-party beneficiary and is entitled to enforce the provisions of this Agreement against the Parties.

13.21 INHOLDINGS ON THE NAVAJO RESERVATION

This Agreement does not determine whether the Navajo Nation has jurisdiction over inholdings of land owned in fee and located within the Navajo Reservation, or whether such inholdings are subject to the Navajo Nation Water Code or any other laws of the Navajo Nation.

13.22 STATE CONTRIBUTION

The State shall contribute \$1 million to the Navajo Groundwater Projects Account and \$1 million to the Hopi Groundwater Project Account, as provided in sections 104(a)(2)(B)(iii) and 104(c)(2)(B)(ii) of the Act.

13.23 STATE LEGISLATION

In order to carry out the provisions of Paragraphs 7.0 and 8.0:

- 13.23.1 After the Execution Date, the Parties, other than the United States, shall jointly seek State Implementing Legislation substantially in the form of Exhibit 3.1.128.
- 13.23.2 After the LCR Enforceability Date, the Parties, other than the State, the Arizona State Land Department, the Arizona Game and Fish Commission, the Arizona Department of Transportation, and the United States, shall not seek legislation that would repeal the State Implementing Legislation in whole or in part and shall oppose any bill introduced in the state legislature that would repeal the State Implementing Legislation in whole or in part.
- 13.23.3 If the State Implementing Legislation is repealed after the LCR Enforceability Date, the Parties shall continue to comply with the provisions of Paragraphs 7.0 and 8.0.
- 13.23.4 After the LCR Enforceability Date, the Parties, other than the State, the Arizona State Land Department, the Arizona Game and Fish Commission, the Arizona Department of Transportation, and the United States, shall not seek legislation, and shall oppose any bill introduced in the state legislature, that would allow groundwater to be transported away from the Little Colorado River Plateau Groundwater Basin, except as allowed under A.R.S. § 45-544 in effect on the Effective Date.

14.0 RETENTION OF LOWER COLORADO RIVER WATER FOR FUTURE LOWER COLORADO RIVER SETTLEMENT

14.1 RETENTION OF CAP NIA PRIORITY WATER

Notwithstanding section 104(a)(1)(B)(i) of the AWSA, and subject to Subparagraph 14.3, the Secretary shall retain until January 1, 2031:

14.1.1 22,589 AFY of the CAP NIA priority water referred to in section 104(a)(1)(A)(iii) of the AWSA for use in a future settlement of the claims of the Navajo Nation to Lower Colorado River water.

14.1.2 1,000 AFY of the CAP NIA priority water referred to in section 104(a)(1)(A)(iii) of the AWSA for use in a future settlement of the claims of the Hopi Tribe to Lower Colorado River water.

14.2 RETENTION OF FOURTH PRIORITY COLORADO RIVER WATER

The Secretary shall retain the 3,500 AFY of uncontracted Arizona fourth priority mainstream Colorado River water referred to in section 11.3 of the Arizona Water Settlement Agreement, among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004, as follows:

14.2.1 2,000 AFY shall be retained for use in a future settlement of the claims of the Navajo Nation to Lower Colorado River water.

14.2.2 1,500 AFY shall be retained for use in a future settlement of the claims of the Hopi Tribe to Lower Colorado River water.

14.3 CONDITIONS ON RETENTION OF LOWER COLORADO RIVER WATER

14.3.1 Except as provided in Subparagraph 14.3.2, the fourth priority Colorado River water retained for the Navajo Nation under Subparagraph 14.2.1 shall not be allocated, nor shall any contract be issued under the Boulder Canyon Project Act for the use of the water, until a final Indian water rights settlement for the Navajo Nation has been approved by Congress, resolving the Navajo Nation's claims to Lower Colorado River Water within Arizona.

14.3.2 Except as provided in Subparagraphs 14.3.3 and 14.3.7, if the Navajo Nation's claims to Lower Colorado River Water are fully and finally adjudicated through litigation without a settlement of those claims, the 22,589 AFY of CAP NIA priority water referred to in Subparagraph 14.1.1 and the 2,000 AFY of fourth priority mainstream Colorado River water referred to in Subparagraph 14.2.1 shall no longer be retained as provided in those Subparagraphs, but shall be used to satisfy, in whole or in part, any rights of the Navajo Nation to Lower Colorado River Water determined through that litigation. Notwithstanding the last sentence of

section 104(a)(1)(B)(i) of the AWSA, the manner and extent to which the water shall be used to satisfy any such rights of the Navajo Nation shall be determined by the court in the litigation. To the extent that any of the CAP NIA priority water is not needed to satisfy any such rights of the Navajo Nation, such water shall be available to the Secretary under section 104(a)(1)(B)(i) of the AWSA. To the extent that any of the fourth priority mainstream Colorado River water is not needed to satisfy any such rights of the Navajo Nation, such water shall be retained by the Secretary for uses relating to Indian water right settlements in Arizona.

- 14.3.3 If the Navajo Nation files an action against the United States regarding its claims to Lower Colorado River Water or the operation of the Lower Colorado River after it dismisses the court case described in Subparagraph 11.9 and before January 1, 2031, the Secretary may, prior to any judicial determination of the claims asserted in the action, terminate the retention of the 22,589 AFY of CAP NIA priority water described in Subparagraph 14.1.1. If the Secretary terminates the retention of the 22,589 AFY of CAP NIA priority water under this Subparagraph:
 - 14.3.3.1 The Secretary shall promptly give written notice of that action to the Navajo Nation and the Arizona Department of Water Resources.
 - 14.3.3.2 The Secretary shall use the 22,589 AFY of CAP NIA priority water as provided in section 104(a)(1)(B)(i) of the AWSA.
- 14.3.4 Except as provided in Subparagraph 14.3.5, the fourth priority Colorado River water retained for the Hopi Tribe under Subparagraph 14.2.2 shall not be allocated, nor shall any contract be issued under the Boulder Canyon Project Act for the use of the water, until a final Indian water rights settlement for the Hopi Tribe and the Navajo Nation has been approved by Congress, resolving the Hopi Tribe's and the Navajo Nation's claims to Lower Colorado River Water within Arizona.
- 14.3.5 Except as provided in Subparagraphs 14.3.6 and 14.3.7, if the Hopi Tribe's claims to Lower Colorado River Water are fully and finally adjudicated through litigation without a settlement of those claims, the 1,000 AFY of CAP NIA priority water referred to in Subparagraph 14.1.2 and the 1,500 AFY of fourth priority mainstream Colorado River water referred to in Subparagraph 14.2.2 shall no longer be retained as provided in those Subparagraphs, but shall be used to satisfy, in whole or in part, any rights of the Hopi Tribe to Lower Colorado River Water determined through that litigation. Notwithstanding the last sentence of section 104(a)(1)(B)(i) of the AWSA, the manner and extent to which the water shall be used to satisfy any such rights of the Hopi Tribe shall

be determined by the court in the litigation. To the extent that any of the CAP NIA priority water is not needed to satisfy any such rights of the Hopi Tribe, such water shall be available to the Secretary under section 104(a)(1)(B)(i) of the AWSA. To the extent that any of the fourth priority mainstream Colorado River water is not needed to satisfy any such rights of the Hopi Tribe, such water shall be retained by the Secretary for uses relating to Indian water right settlements in Arizona.

14.3.6 If the Hopi Tribe files an action against the United States regarding its claims to Lower Colorado River Water or the operation of the Lower Colorado River before January 1, 2031, the Secretary may, prior to any judicial determination of the claims asserted in the action, terminate the retention of the 1,000 AFY of CAP NIA priority water described in Subparagraph 14.1.2. If the Secretary terminates the retention of the 1,000 AFY of CAP NIA priority water under this Subparagraph:

14.3.6.1 The Secretary shall promptly give written notice of that action to the Hopi Tribe and the Arizona Department of Water Resources

14.3.6.2 The Secretary shall use the 1,000 AFY of CAP NIA priority water as provided in section 104(a)(1)(B)(i) of the AWSA.

14.3.7 If Congress does not approve a settlement of the claims of the Navajo Nation to Lower Colorado River Water by January 1, 2031, the CAP NIA Priority Water retained for the Navajo Nation under Subparagraph 14.1.1 shall be available to the Secretary under section 104(a)(1)(B)(i) of the AWSA. If Congress does not approve a settlement of the claims of the Hopi Tribe to Lower Colorado River Water by January 1, 2031, the CAP NIA Priority Water retained for the Hopi Tribe under Subparagraph 14.1.2 shall be available to the Secretary under section 104(a)(1)(B)(i) of the AWSA.

14.3.8 Nothing in this Paragraph shall be construed to determine, confirm or limit the validity or extent of either Tribe's claims to Lower Colorado River Water.

15.0 SIGNATURES