APPENDIX A

Wellton-Mohawk Transfer Act
and
Memorandum of Agreement

• Wellton-Mohawk Transfer Act, Public Law 106-221, which was enacted by Congress on June 7, 2000 and signed into law by President Clinton June 20, 2000.

• Memorandum of Agreement dated July 10, 1998 between the U.S. Bureau of Reclamation and the Wellton-Mohawk Irrigation and Drainage District regarding terms and conditions for the transfer of Wellton-Mohawk Division facilities and lands.

• Amendment No. 1 to the Memorandum of Agreement, dated May 11, 2001, which clarifies the methods and principles by which title to certain federal lands on which Wellton-Mohawk Division facilities are located would be transferred to the Wellton-Mohawk Irrigation and Drainage District.

• Amendment No. 2 to the Memorandum of Agreement, dated August 4, 2005, which clarifies the terms of the cost sharing arrangements of the appraisal services.

• Amendment No. 3 to the Memorandum of Agreement, dated February 9, 2006, which clarifies the terms of the cost sharing arrangements of the title transfer.

• A Resolution by the Yuma County Board of Supervisors establishing the Wellton-Mohawk Irrigation and Drainage District Rural Planning Area (WMIDD/RPA).

• Status report from Eluid L. Martinez, Commission, U. S. Department of Interior, Bureau of Reclamation to the Honorable Frank Murkowski, Chairman, Committee on Energy and Natural Resources.
An Act

To authorize the Secretary of the Interior to convey certain works, facilities, and titles of the Gila Project, and designated lands within or adjacent to the Gila Project, to the Wellton-Mohawk Irrigation and Drainage District, and for other purposes.

June 20, 2000
[S. 356]

SEC. 1. SHORT TITLE.

This Act may be referred to as the "Wellton-Mohawk Transfer Act".

SEC. 2. TRANSFER.

The Secretary of the Interior ("Secretary") is authorized to carry out the terms of the Memorandum of Agreement No. 8-AA-34-WAO14 ("Agreement") dated July 10, 1998 between the Secretary and the Wellton-Mohawk Irrigation and Drainage District ("District") providing for the transfer of works, facilities, and lands to the District, including conveyance of Acquired Lands, Public Lands, and Withdrawn Lands, as defined in the Agreement.

SEC. 3. WATER AND POWER CONTRACTS.

Notwithstanding the transfer, the Secretary and the Secretary of Energy shall provide for and deliver Colorado River water and Parker-Davis Project Priority Use Power to the District in accordance with the terms of existing contracts with the District, including any amendments or supplements thereto or extensions thereof and as provided under section 2 of the Agreement.

SEC. 4. SAVINGS.

Nothing in this Act shall affect any obligations under the Colorado River Basin Salinity Control Act (Public Law 93-320, 43 U.S.C. 1571).

SEC. 5. REPORT.

If transfer of works, facilities, and lands pursuant to the Agreement has not occurred by July 1, 2000, the Secretary shall report on the status of the transfer as provided in section 6 of the Agreement.
SEC. 6. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved June 20, 2000.
Agreement No. 8-AA-34-WA014

MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION
YUMA AREA OFFICE
AND
WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT
TO
TRANSFER TITLE TO WORKS, FACILITIES AND LANDS IN THE
WELLTON-MOHAWK DIVISION OF THE GILA PROJECT, ARIZONA

This MEMORANDUM OF AGREEMENT (hereafter referred to as the
"Agreement"), made this 10th day of July, 1998, is between THE
UNITED STATES OF AMERICA, BUREAU OF RECLAMATION (hereafter referred
to as the "United States or Reclamation") and WELLTON-MOHAWK
IRRIGATION AND DRAINAGE DISTRICT (hereafter referred to as the
"District"), an irrigation and drainage district created,
organized, and existing under and pursuant to the laws of the State
of Arizona, with its principal place of business in Yuma County,
Arizona.

The purpose of this Agreement is to define the method and
principles by which title to the Gila Project-Wellton Mohawk
Division works, facilities and certain federally-owned lands will be
transferred from the United States to the District.

EXPLANATORY RECITALS

WHEREAS, Reclamation desires to transfer title to, and the
District desires to accept transfer of, title now vested in the
United States to Gila Project, Wellton-Mohawk Division works,
facilities and certain federally-owned lands; and

WHEREAS, on November 27, 1991, a Certificate of Discharge of
Repayment Obligation and Exemption from Acreage Limitation and Full
Cost Pricing Provisions of Federal Reclamation Law was issued to
the District.

NOW, THEREFORE, in consideration of mutual covenants herein
contained, the Parties agree as follows:
DEFINITIONS

1. Unless otherwise noted, the following definitions apply only to the terms used in this Agreement:

(a) "Acquired Lands" means those lands within or adjacent to the Division acquired by the United States pursuant to Public Law 93-320 or Public Law 100-512.

(b) "Agricultural Return Flows" means, including but not limited to: (1) water delivered at Reclamation's Main Outlet Drain (MOD) Station 0+00; (2) Gila Gravity Main Canal seepage credited to the District; (3) gravity flow returns, both surface and subsurface, to the Gila River measured at Dome.

(c) "Consolidated Contract" means Reclamation's contract with the District, Contract No. 1-07-30-W0021 as amended and/or supplemented.

(d) "Division" means the Wellton-Mohawk Division of the Gila Project, Arizona, as authorized under Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628).

(e) "Exhibit A" lists the tasks, responsible party, schedule, and costs for all land transactions included in this Agreement.

(f) "Exhibit B" lists the tasks, responsible party, schedule, and costs to convey all works and facilities of the Division to the District.

(g) "Exhibit C" lists the tasks, responsible party, schedule, and costs of compliance with all laws, regulations, and manual requirements; including but not limited to, environmental compliance clearances, National Environmental Policy Act (NEPA) activities, hazardous waste remediation, National Historic Preservation Act (NHPA) compliance, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) compliance.

(h) "Exhibit D" lists the title transfer contracts to be developed, existing contracts or contract provisions that may require amendment or supplementation due to title transfer; and identifies the task, responsible party, schedule and costs of development, amendment or supplementation.
(i) "Exhibit E" lists all costs to reflect the total cost of this title transfer.

(j) "GVFP/MMWCD Lands" means those Gila Valley Power District and Mohawk Municipal Water Conservation District lands remaining in title to the United States which were acquired by the United States pursuant to Section 2 of the Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628) for which the repayment obligation has been satisfied.

(k) "Offered Lands" means those lands, primarily in the Gila River Channel, owned by the District, offered to Reclamation for exchange or purchase at fair market value, to allow Reclamation to meet the reasonable and prudent alternatives of the Biological Opinion for Colorado River operations.

(l) "Oversight Committee" means the committee comprised of the Manager of the Yuma Area Office, Reclamation, and the Manager of the District or a designated representative.

(m) "Priority Use Power" means the capacity and energy associated with Parker-Davis Project Generation for full project development and operation; and for use on or by federal Reclamation projects in the Yuma County, Arizona area.

(n) "Project" means the Gila Project as identified by the Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628).

(o) "Public Lands" means the public lands within and adjacent to the Division that the Secretary of Interior, at his discretion, is authorized to sell to the District at fair market value.

(p) "Reclamation" means the United States Department of Interior, Bureau of Reclamation.

(q) "Secretary" means the Secretary of the Interior or a duly authorized representative.

(r) "Title Transfer Contract" means the contract that incorporates the terms and conditions for, and lists the works, facilities, and lands to be transferred.

(s) "Western" means the Western Area Power Administration of the United States Department of Energy.

(t) "Withdrawn Lands" means those lands within and adjacent to the District that have been withdrawn from public use for
Reclamation purposes.

(u) "Works and Facilities" means the works and facilities of the Division, or portions thereof, constructed by the United States for the District pursuant to the Consolidated Contract as more particularly described in Exhibit B of said Contract, or otherwise constructed as Division works and facilities. Works and facilities do not include Acquired Lands or Withdrawn Lands on which the works and facilities have been constructed.

STATEMENT OF PRINCIPLES

2. This Agreement shall protect the financial interest of the United States. The following principles shall guide and direct the transfer process:

(a) Legislation Required: The United States holds title to works and facilities in the Wellton-Mohawk Division of the Gila Project, Arizona, as well as lands within and adjacent to the District. The Secretary is not authorized to transfer title to United States assets without express authorization by Congress through legislation. This title transfer will not occur unless, and until, authorized by duly enacted legislation.

(b) Compliance with Environmental Laws and Regulations: Reclamation will ensure compliance with NEPA, NHPA, CERCLA and other applicable Federal laws as required for transfer of ownership of Division works, facilities, and lands. The District will ensure that the works, facilities, and lands to be transferred will be operated in accordance with authorized purposes. No change in project purpose, operation, or use is contemplated or intended by the District or the United States as a result of this transfer.

(c) Lands Transactions: The District and Reclamation shall jointly identify lands within and adjacent to the District to be purchased or exchanged or otherwise transferred by and between the District and Reclamation. Acquired Lands, Public Lands, and Withdrawn Lands shall be appraised in accordance with practices approved by the Secretary to ensure that the United States receives fair market value for the lands purchased or exchanged. Withdrawn Lands may be acquired by the District at fair market value provided that Congress enacts legislation authorizing and providing for such acquisition and transfer. The acquisition costs of GVPD/MMWCD lands have been fully repaid by the District and the GVPD/MMWCD lands shall be transferred to the District without cost to the District except as identified in Exhibit A.
(d) **Agricultural Return Flows (ARFs) From the District Delivered to the MOD at Station 0+00:** The District agrees to accept Reclamation’s goal of delivery of ARFs at the Yuma Desalting Plant (YDP) design capacity at MOD Station 0+00, and that the District water management activities will reflect this goal to the extent that the goal remains relevant regardless of whether the United States operates the YDP or replaces the bypass stream in accordance with Public Law 93-320, as amended. Further, District water management activities will reflect Reclamation’s goal that salinity levels of ARF’s delivered at MOD Station 0+00 shall not increase above historical salinity levels of ARFs delivered at MOD Station 0+00.

(e) **Agricultural Production Lands:** Pursuant to Public Law 93-320, as amended, and the Consolidated Contract, the District is restricted to irrigating not more than 62,875 acres of land.

(f) **Repair of Main Outlet Drain Extension (MODE)/MOD:** The District will cooperate with Reclamation in discontinuing use of MODE/MOD for two weeks each year or as needed for repairs. The District will also inform Reclamation of any outages that may occur in relation to the ARFs.

(g) **Applicability of Existing Water and Power Contracts:** The Secretary and the District shall maintain in place and in force all contracts which provide for Colorado River water and Parker-Davis Project Priority Use Power, and the delivery thereof, unless such contract or contracts are modified or terminated by mutual consent of the parties thereto or as otherwise provided in said contracts. This Agreement shall not alter, supplement or amend any contract. Title to the Western’s Wellton-Mohawk Substation, transmission lines and substations associated with Pumping Plant One and Pumping Plant Three, underlying lands, and all appurtenant rights of way and easements shall remain in the name of the United States. Notwithstanding the transfer of title to works, facilities, and lands, the Secretary is authorized and shall continue to provide for and deliver water and Priority Use Power to Wellton-Mohawk in accordance with the terms of the Consolidated Contract including any amendments, supplements, or extensions thereof and the Power Management Agreement (Reclamation’s and Western’s Contract Numbers 6-CU-30-P1136, 6-CU-30-P1137 and 6-CU-30-P1138) including any amendments, supplements, or extensions thereof.

(h) **Works and Facilities:** This title transfer shall include all works and facilities of the Division.
(i) Rights of Way and Easements: The transfer of works and facilities shall include any and all rights of way and easements appurtenant to the operation of the works and facilities including works and facilities in the Gila River channel. The transfer of rights of way and easements shall not result in any impairment or defect in any right of way or easement. Each right of way and easement shall be in full force and effect following transfer. Conveyance and transfer of easements and rights of way shall be approved by Reclamation and the District.

EFFECTIVE DATE

3. This Agreement shall be signed before legislation is enacted. The signed Agreement shall become effective upon enactment of authorizing legislation. No transfer of title to works, facilities and lands shall occur unless and until legislation authorizing this transfer is enacted by Congress. The target date for completion of the transfer of title is December 31, 2001, or such date as set by Congress.

TERMINATION

4. This Agreement may be terminated, if permitted by duly enacted legislation, by either party 30 days after receiving written notification from the party requesting termination. In any event, this Agreement will terminate upon execution of the Title Transfer Contract. Upon termination, all outstanding, irrevocable, reimbursable obligations incurred by Reclamation under the terms of this Agreement shall be satisfied by the District. Any funds advanced by the District for reimbursable costs not expended or obligated by Reclamation shall be refunded to the District.

REPORT TO CONGRESS

5. If title transfer has not occurred, pursuant to duly enacted legislation and this Agreement, by July 1, 2000, Reclamation will provide a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate. The report will cover the status of the Title Transfer, any obstacles to completion of the transfer as provided in the legislation, and the anticipated date for such transfer.

The goal of Reclamation and the District is that within one hundred eighty days of the execution of the Title Transfer Contract, the Secretary shall convey to the District all right, title and
interest of the United States to the facilities, works and lands to be conveyed and transferred to the District; provided, that such transfer is not otherwise directed by Congress.

LAND PURCHASE PAYMENT

6. The District shall pay such sums, and on such terms, as are stated in the Title Transfer Contract for lands purchased by the District pursuant to this Agreement.

RESPONSIBILITY FOR WORKS AND FACILITIES FOLLOWING TRANSFER

7. (a) **Operation, Maintenance, Repair and Replacement:** The District shall assume full responsibility and liability for all duties and costs associated with the operation, maintenance, repair, replacement, enhancement, and betterment of the following transfer. The District shall not be eligible for any federal funding under federal Reclamation law to assist the District’s activities listed in this paragraph.

(b) **Other Federal Assistance:** This title transfer action is not intended to affect the District’s right to request or receive federal assistance under other federal programs.

COSTS

8. The following cost allocation, which is consistent with existing Reclamation policy, applies in the absence of specific criteria established through legislation.

(a) **Cost-effective Cost-efficient:** The goal is for Reclamation and the District to seek the most cost effective means in developing and implementing this transfer. It is the intent of the parties to accomplish this transfer of title and assignment of interest in the most fiscally responsible manner consistent with proper land and facility title transfer practices.

(b) **Cost Shared:** The District and Reclamation shall 50-50 cost share all expenses associated with NEPA compliance, CERCLA, and NHPA, in accordance with Exhibit C. Reclamation will not be responsible for mitigation costs associated with this transfer. The cost of preparing and presenting the report to Congress shall be shared equally by Reclamation and the District.

(c) **District’s Cost Responsibility:** The District will be responsible for payment of costs directly attributable to and solely occasioned by the transfer as they relate to works,
facilities, and lands transferred to the District. Such costs include normal costs of land transfer, purchase, and/or exchanges including, but not limited to, title examinations, title searches, boundary surveys, appraisals and legal descriptions and recording costs.

(d) **Reclamation's Cost Responsibility:** Reclamation will be responsible for Reclamation costs associated with miscellaneous transfer activities, consisting of contract development, contracting negotiations, research activities undertaken by Reclamation staff, including preparation and execution of this Agreement, costs associated with works and facilities transfer, costs of preparation of property voucher for transfer of physical property, and transfer costs for lands transferred to the United States.

**COOPERATION, PROCEDURES AND RESPONSIBILITIES**

9. (a) **Reclamation will be responsible for the following:**

1. To establish a unique cost authority number to track and account for the cost of services provided under the terms of this Agreement and to provide the District with quarterly updates itemized by month.

2. To provide the District with copies of all contracts, invoices, and other writings which evidence obligations pursuant to this Agreement.

3. To ensure compliance with applicable federal laws.

4. To draft and execute this Agreement and the Title Transfer Contract(s) and other documents.

5. Reclamation will be responsible for CERCLA remediation on the lands under Reclamation control.

(b) **The District will be responsible for the following:**

1. To establish a process to track and account for the costs associated with title transfer activities provided under the terms of this Agreement and to provide Reclamation with quarterly updates itemized by month.

2. To review and comment on the draft Title Transfer Contract.
3. To provide to Reclamation environmental compliance reviews and documents that are necessary for Reclamation to accept or adopt the environmental compliance actions undertaken by the District with respect to this title transfer.

4. To provide any required boundary surveys, title searches, appraisals, and legal descriptions for lands associated with this conveyance to be transferred, purchased, and/or exchanged including deeds therefore.

5. The District will be responsible for CERCLA remediation on the lands under the District’s control.

(c) Areas of mutual responsibility:

1. To determine which lands will be exchanged, sold, purchased, conveyed or otherwise transferred to the District or Reclamation.

2. To identify works, facilities, and lands to be transferred.

3. To ensure, and provide for, reasonable and appropriate public participation.

4. To identify in-kind services. Credit may be given for in-kind services directly related to this project, and agreed to by the Oversight Committee. In-kind services will not be credited for an amount greater than Reclamation’s cost to do the work. These costs will be outlined in the Exhibits.

OVERSIGHT COMMITTEE

10. The Oversight Committee shall provide the administrative oversight to ensure a timely and successful transfer. This Committee shall guide transfer activities including the formation and guidance of technical committees. The Committee has the authority to approve variations in tasks, schedules, costs and budget to meet the purpose of this Agreement.

LIABILITY

11. The District shall hold the United States harmless and shall indemnify the United States for any and all claims, costs, damages, and judgements of any kind arising out of any act, omission, or occurrence relating to the works, facilities and lands at issue herein, except for such claims, costs, or damages arising from acts
of negligence committed by the United States or by its employees, 
agents, or contractors prior to the date of title transfer for 
which the United States is found liable under the Federal Tort 
Claims Act, 28 U.S.C 2671 et.seq. or as provided by Congress in 
transfer legislation.

EXHIBITS MADE PART OF THIS AGREEMENT

12. The Exhibits as attached hereto are incorporated and made a 
part of this Agreement and each shall be effective until modified 
or superseded as provided in this Agreement. The Exhibits may be 
amended upon mutual agreement of the District and Reclamation.

CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

13. The expenditure or advance of any money for the performance of 
any obligation of the United States under this Agreement shall be 
contingent upon the appropriation or allotment of funds. Absence 
of appropriations or allotment of funds shall relieve Reclamation 
and the District from any obligations under this Agreement. No 
liability shall accrue to the United States in case funds are not 
appropriated or allotted.

NOTICES

14. Any notice, demand, or request authorized or required by this 
Agreement shall be deemed to have been given by the District when 
mailed or delivered to the Area Manager, Yuma Area Office, Bureau 
of Reclamation, and by Reclamation when mailed or delivered to the 
Manager of the District. The designation of the addressee or the 
address may be changed by written notification to the parties.

COMPLIANCE WITH LAWS AND REGULATIONS

15. Following title transfer, the District shall comply with all 
applicable federal and state laws and regulations.

THIRD PARTY AGREEMENTS

16. The United States shall, if assignable, assign to the District 
its rights, duties, obligations, and responsibilities which exist 
as a result of third-party agreements in the Division, including 
the granting of any right to use, cross, or occupy any of the 
facilities, works and lands. The District shall honor all third-
party agreements for the length of the agreement and shall provide 
all third parties with the same allowances that they receive under 
the existing contracts.
OFFICIALS NOT TO BENEFIT

17. No member of, or delegate to, Congress, resident Commissioner, or official of the District shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

AMENDMENT, MODIFICATION, AND SUPPLEMENTATION

18. This Agreement may be amended, supplemented or modified, in writing and signed by Reclamation and the District. Any Exhibit referenced herein may be later attached as a supplement to this Agreement and shall be signed by Reclamation and the District.

In Duplicate

Accepted and agreed to this 10th Day of July, 1998.

THE UNITED STATES OF AMERICA

By: [Signature]
Regional Director
Lower Colorado Region
Bureau of Reclamation

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

By: [Signature]
Title: [Title]

Attest:
[Signature]
Secretary
AMENDATORY MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION
YUMA AREA OFFICE
AND
WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT
TO
TRANSFER TITLE TO WORKS, FACILITIES AND LANDS IN THE
WELLTON-MOHAWK DIVISION OF THE GILA PROJECT, ARIZONA

AMENDMENT NO. 1

This AMENDMENT, made this 11th day of May, 2001, pursuant to the provisions of Article 18 of Memorandum of Agreement (hereinafter MOA) Between the United States Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Yuma Area Office and Wellton-Mohawk Irrigation and Drainage District to Transfer Title to Works, Facilities and Lands in the Wellton-Mohawk Division of the Gila Project, Arizona [Agreement No. 8-AA-34-WA014] dated July 10, 1998, is intended to clarify and define the method and principles by which title to the Gila Project-Wellton-Mohawk Division works, facilities and certain federally-owned lands will be transferred from the United States (hereinafter Reclamation) to the Wellton-Mohawk Irrigation and Drainage District (hereinafter District).

EXPLANATORY RECITALS

Whereas, on July 10, 1998, Reclamation and the District, by virtue of the above referenced MOA, agreed to certain methods and principles by which title to the Gila Project-Wellton-Mohawk Division works, facilities, and certain federally-owned lands will be transferred from Reclamation to the District; and

Whereas, Reclamation and the District desire to clarify the methods and principles by which title to certain federally-owned lands on which works and facilities of the Division are located are to be transferred from Reclamation to the District.

NOW, THEREFORE, in consideration of the mutual covenants contained in the MOA, and contained herein, Reclamation and the District do hereby agree to amend the MOA as follows:

1. The MOA is hereby amended by the deletion therefrom of Articles 1(u) and 2(c) and the substitution therefor of the following:
“Works and facilities” means the works and facilities of the Division, or portions thereof, constructed by the United States for the District pursuant to the Consolidated Contract as more particularly described in Exhibit B of said Contract, or otherwise constructed as Division works and facilities. Works and facilities include Acquired Lands or Withdrawn Lands on which the works and facilities have been constructed.”

Lands Transactions: The District and Reclamation shall jointly identify lands within and adjacent to the District to be purchased or exchanged or otherwise transferred by and between the District and Reclamation.

Acquired Lands, Public Lands, and Withdrawn Lands shall be appraised in accordance with practices approved by the Secretary to ensure that the United States receives fair market value for the lands purchased or exchanged. Withdrawn Lands may be acquired by the District at fair market value provided that Congress enacts legislation authorizing and providing for such acquisition and transfer.

The acquisition costs of GVPD/MMWCD lands have been fully repaid by the District and the GVPD/MMWCD lands shall be transferred to the District without additional cost to the District except as identified in Exhibit A.

All lands and interests in lands on which works and facilities are located, which are appurtenant to the works and facilities, including those lands required for the works and facilities in the Gila River channel, shall be transferred to the District. Conveyance and transfer of such lands and interests in lands shall be approved by Reclamation and the District.”

2. Except as amended, all provisions of the MOA shall remain in full force and effect.
Accepted and agreed to on the day first written above.

THE UNITED STATES OF AMERICA

By:  

Area Manager
Yuma Area Office
Lower Colorado Region
Bureau of Reclamation

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

By:  

Title:  

[Signatures]
AMENDATORY MEMORANDUM OF AGREEMENT 
BETWEEN 
UNITED STATES DEPARTMENT OF THE INTERIOR 
BUREAU OF RECLAMATION 
LOWER COLORADO REGION 
YUMA AREA OFFICE 

AND 

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT 

TO 

TRANSFER TITLE TO WORKS, FACILITIES AND LANDS IN THE 
WELLTON-MOHAWK DIVISION OF THE GILA PROJECT, ARIZONA 

AMENDMENT NO. 2 

This AMENDMENT, made this 4th day of August, 2005, pursuant to the provisions of Article 18 of Memorandum of Agreement (hereinafter MOA) between the United States Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Yuma Area Office and Wellton-Mohawk Irrigation and Drainage District to Transfer Title to Works, Facilities and Lands in the Wellton-Mohawk-Division of the Gila Project, Arizona [Contract No. 8-AA-34-WA014] dated July 10, 1988, is intended to clarify and define the method and principles by which title to the Gila Project, Wellton-Mohawk Division works, facilities and certain Federally-owned lands will be transferred from the United States (hereinafter Reclamation) to the Wellton-Mohawk Irrigation and Drainage District (hereinafter District).
EXPLANATORY RECITALS

Whereas, on July 10, 1998, Reclamation and the District, by virtue of the above-referenced MOA, agreed to certain methods and principles by which title to the Gila Project, Wellington-Mohawk Division works, facilities and certain Federally-owned lands will be transferred from Reclamation to the District; and

Whereas, Reclamation and the District desire to modify and clarify the methods and principles by which title to certain Federally-owned lands on which works and facilities of the Division are located are to be transferred from Reclamation to the District; and

Whereas, an Executive action taken by the Secretary of the Interior in 2003, wherein the Appraisal Services Directorate was created, rendered moot the plans and budget for the ratification of a previously completed appraisal dated May 20, 2002, and significantly increases the anticipated costs for the completion of the appraisal as required by Articles 8.(c) and 9.(b)4. of the MOA.

NOW, THEREFORE, in consideration of the mutual covenants contained in the MOA, and contained herein, Reclamation and the District do hereby agree to amend the MOA as follows:

1. The MOA is hereby amended by adding the following paragraphs as subparagraphs to Article 8(c) District’s Cost Responsibility:

"1. Reclamation and the District shall cost share on an equal 50/50 basis the cumulative cost(s) of any and all additional appraisals that are required by Reclamation and prepared subsequent to the original appraisal dated May 20, 2002, up to a total cost of fifty thousand dollars ($50,000) and further agree that any and all costs related to these same additional appraisal(s) that exceed a cumulative cost of fifty thousand dollars ($50,000) shall be borne in full (100%) by Reclamation, thereby limiting the cost to the District for of any required additional appraisals to a maximum expenditure of twenty five thousand dollars ($25,000)."

"2. Nothing in the above provision changes the District’s obligation to be responsible for the full cost of the appraisal dated May 20, 2002, and that the cost of that appraisal shall have no bearing whatsoever on the intent of this amendment."

Agreement No. 8-AA-34-WA014
2. Except as amended herein, all provisions of the MOA and existing amendments shall remain in full force and effect.

Accepted and agreed to on the day first written above.

THE UNITED STATES OF AMERICA

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

By: [Signature]
Area Manager
Yuma Area Office
Lower Colorado Region
Bureau of Reclamation

By: [Signature]
General Manager

Agreement No. B-AA-34-WA014
Agreement No. 8-AA-34-WA014

AMENDATORY MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION
YUMA AREA OFFICE

AND

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

TO

TRANSFER TITLE TO WORKS, FACILITIES AND LANDS IN THE
WELLTON-MOHAWK DIVISION OF THE GILA PROJECT, ARIZONA

AMENDMENT NO. 3

This AMENDMENT, made this 9th day of February, 2006, pursuant to the provisions of Article 18 of Memorandum of Agreement (hereinafter Agreement) Between the United States Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Yuma Area Office and Wellton-Mohawk Irrigation and Drainage District to Transfer Title to Works, Facilities and Lands in the Wellton-Mohawk Division of the Gila Project, Arizona [Contract No. 8-AA-34-WA014] dated July 10, 1998, is intended to clarify and define the method and principles by which title to the Gila Project, Wellton-Mohawk Division works, facilities and certain Federally-owned lands will be transferred from the United States (hereinafter Reclamation) to the Wellton-Mohawk Irrigation and Drainage District (hereinafter District).
EXPLANATORY RECITALS

Whereas, on July 10, 1998, Reclamation and the District, by virtue of the above-referenced Agreement, agreed to certain methods and principles by which title to the Gila Project, Wellton-Mohawk Division works, facilities and certain Federally-owned lands will be transferred from Reclamation to the District; and

Whereas, Reclamation and the District desire to modify and clarify the methods and principles by which title to certain Federally-owned lands on which works and facilities of the Division are located are to be transferred from Reclamation to the District; and

Whereas, the District and Reclamation have undertaken and completed cultural resource inventory work in consultation with the Arizona State Historic Preservation Officer under Section 106 of the National Historic Preservation Act; and

Whereas, Reclamation has determined it appropriate to undertake additional cultural resources inventory work at the request of the Quechan Tribe at the expense of Reclamation; and

Whereas, the completion of this additional work using the existing contractors and billing process as has been used for the title transfer process is clearly timely, cost effective and advantageous for the government;

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and herein, Reclamation and the District do hereby agree to amend the Agreement as follows:

1. The Agreement is hereby amended by incorporating the following in replacement of the previous paragraph 8 (b) "Cost Shared."

"(b) Cost-Share: The District and Reclamation shall 50/50 cost-share all expenses associated with compliance with NEPA, CERCLA, and NHPA, in accordance with Exhibit C. Reclamation will not be responsible for environmental or cultural resource mitigation costs associated with this transfer. The cost of preparing and presenting the report to Congress will be shared equally by Reclamation and the District. The District will not be responsible for costs incurred or required in completion of work incidental to normal Federal management responsibilities including costs
incurred under Section 110 of the NHPA or costs resulting from government-to-government commitments to Indian tribes not directly required for Section 106 NHPA compliance for this title transfer.”

2. The Agreement is hereby amended by incorporating the following in replacement of the previous paragraph 8 (c) “District’s Cost Responsibility” and includes the changes made under Amendment No. 2 to the Agreement.

“(c) District’s Cost Responsibility: The District will be responsible for payment of costs directly attributable to and solely occasioned by the transfer as they relate to works, facilities, and lands transferred to the District. Such costs include normal costs of land transfer, purchase, and/or exchanges including but not limited to, title examinations, title searches, boundary surveys, appraisals, and legal descriptions and recording costs, and for its own internal operational and staff costs and overheads, legal and consultation fees associated with transfer activities.

1. Reclamation and the District shall cost share on an equal 50/50 basis the cumulative costs of any and all additional appraisals that are required by Reclamation and prepared subsequent to the original appraisal dated May 20, 2002, up to a total cost of fifty thousand dollars ($50,000) and further agree that any and all costs related to these same additional appraisal(s) that exceed a cumulative cost of fifty thousand dollars ($50,000) shall be borne in full (100%) by Reclamation, thereby limiting the cost to the District of any required additional appraisals to a maximum expenditure of twenty-five thousand dollars ($25,000).

2. Nothing in the above provision changes the District’s obligation to be responsible for the full cost of the appraisal dated May 20, 2002, and that the cost of that appraisal shall have no bearing whatsoever on the intent of this amendment.”

3. The Agreement is hereby amended by incorporating the following in replacement of the previous paragraph 8 (d) “Reclamation’s Cost Responsibility.”

“(d) Reclamation’s Cost Responsibility: Reclamation will be responsible for Reclamation costs associated with miscellaneous transfer activities, consisting of contract development, contracting negotiations, research activities undertaken by Reclamation staff including preparation and
execution of this Agreement, costs associated with works and facilities transfer, costs of preparation of property voucher for transfer of physical property, and transfer costs for lands transferred to the United States. Reclamation is also responsible for all costs of Federal management activities on lands prior to transfer, costs for certain appraisal activities as provided in paragraph 8 (c)1 above as amended by Amendment No. 2 to this Agreement, for its own internal staff costs and overheads associated with transfer activities, and for such other costs and expenses incurred by the District deemed appropriate, reasonable, and lawful by Reclamation to be reimbursed."

4. The Agreement is hereby amended by incorporating the following sub-paragraph No. 6. in addition to the previous content of paragraph 9 (b).

"6. During the period of implementation under this Agreement, Reclamation may request, and the District may agree to assist Reclamation in completion of Federal management activities indirectly associated with lands under consideration for transfer under this Agreement within the Gila Project. Assistance by the District may include facilitating the use of certain consultants and contractors retained under contract by the District, through the District’s existing contracts, when determined by Reclamation to be advantageous to the United States. All costs and charges for such Federal management activities as agreed to by Reclamation and the District shall be documented by the parties and reimbursed to the District by Reclamation through the payment process used for title transfer activities under this Agreement."

5. Except as amended herein, all provisions of the Agreement and previous amendments shall remain in full force and effect.

Accepted and agreed to on the day first written above.

THE UNITED STATES OF AMERICA                         WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

By: [Signature]
    Area Manager
    Yuma Area Office
    Lower Colorado Region
    Bureau of Reclamation

By: [Signature]
    General Manager

Agreement No. 8-AA-34-WA014  4
A RESOLUTION BY THE YUMA COUNTY BOARD OF
SUPERVISORS ESTABLISHING THE WELLTON-MOHAWK
IRRIGATION AND DRAINAGE DISTRICT RURAL PLANNING
AREA (WMIDD/RPA).

WHEREAS, pursuant to A.R.S. § 11-806 the Yuma County Board of Supervisors has adopted the Yuma County 2010 Comprehensive Plan, and;

WHEREAS, the Board of Supervisors, in compliance with A.R.S. §11-806(D)(3) encourages voluntary participation in the planning area and shall aid the planning areas in providing a sound factual and policy basis for planning, and;

WHEREAS, pursuant to A.R.S. §11-806(D)(3) the recommendations of the WMIDD/RPA does emphasize voluntary, nonregulatory incentives for compliance and accommodation of continuing traditional rural and agricultural enterprises, and;

WHEREAS, pursuant to A.R.S. §11-806(D)(3) the WMIDD/RPA wants to transmit its recommendations to the Yuma County Board of Supervisors for consideration to be included in the annual amendment process to the 2010 Comprehensive Plan, and;

WHEREAS, the Yuma County Board of Supervisors has authorized the establishment of a Rural Planning Area by the Wellton Mohawk Irrigation and Drainage District, and;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors hereby enacts the establishment of the Wellton-Mohawk Irrigation and Drainage District Rural Planning Area.

Adopted this 19th day of August 2002

Robert J. McLendon, Chairman
Board of Supervisors
Yuma County, State of Arizona

ATTEST:

WALLY HILL
County Administrator

APPROVED AS TO FORM AND DETERMINED TO BE WITHIN THE SCOPE OF PERFORMANCE OF DUTY OF THE YUMA COUNTY BOARD OF SUPERVISORS

Patricia A. Orezo
Yuma County Attorney

by:
Honorable Frank Murkowski
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to report on the status of the conveyance of certain works, facilities, and designated lands authorized for title transfer by the Wellton-Mohawk Transfer Act of 2000 (Public Law 106-221). Section 5 of Public Law 106-221 requires the Secretary of the Interior to report to the Congress on the status of the title transfer by July 1, 2000, if the title transfer has not occurred by that date. As you know, this legislation was enacted only 7 working days prior to the reporting deadline, thus making it impossible for us to comply with this requirement.

Public Law 106-221 and the July 10, 1998, Memorandum of Agreement between the Bureau of Reclamation and the Wellton-Mohawk Irrigation and Drainage District for the Transfer of Title to Works, Facilities, and Lands in the Wellton-Mohawk Division of the Gila Project, Arizona, require that a significant number of steps before title can be transferred. These steps include compliance with the National Environmental Policy Act and other Federal environmental laws, identification and appraisal of lands that should be transferred, and implementation of a public participation process.

Reclamation and the District will soon begin work on the environmental compliance document, realty transactions, public participation process, and other required activities. The Secretary will provide the Congress with a mid-course report on the progress of this title transfer at the earliest possible date. In the mean time, if you need additional information, please call me at (202) 208-4157.

Sincerely,

SGD
Eluid L. Martinez
Commissioner
Identical Letter sent to:

Honorable Don Young  
Chairman  
Committee on Resources  
House of Representatives  
Washington, DC  20515

cc: Honorable Jeff Bingaman  
Ranking Minority Member  
Committee on Energy and Natural Resources  
United States Senate  
Washington, DC  20510

Honorable George Miller  
Ranking Minority Member  
Committee on Resources  
House of Representatives  
Washington, DC  20515

Honorable Jon Kyl  
United States Senate  
Washington, DC  20510

Honorable John McCain  
United States Senate  
Washington, DC  20510

Honorable Ed Pastor  
House of Representatives  
Washington, DC  20515