



## SPARKS, TEHAN & RYLEY, P. C.

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Settlement Agreement, dated March 30, 1999, as amended ("Settlement Agreement"). The Settlement Act and Settlement Agreement confirm certain water rights for the Tribe, including, *inter alia*, rights to 64,145 acre-feet of Central Arizona Project ("CAP") water. See Settlement Act at 106 Stat. 4740, 4742-4747 and Settlement Agreement at Sections 9-12.

The Tribe has a Central Arizona Project Indian Water Delivery Contract Between the United States and the San Carlos Apache Tribe dated December 11, 1980 ("CAP Contract"). See CAP Contract enclosed. This CAP Contract originally allocated 12,700 acre-feet of CAP water to the Tribe. The Tribe's CAP Contract was subsequently amended to include the additional 51,445 acre-feet of CAP water allocated to the Tribe under the Settlement Act. The Tribe agreed to settle a portion of its water rights claims in return for, *inter alia*, this additional allocation of CAP water. The allocation of CAP water to the Tribe pursuant to the Settlement Act and Settlement Agreement are trust assets of the Tribe which the Secretary of Interior has a specific trust responsibility to manage and protect. See 512 DM 2.2 (Dec. 1995). See also, Secretarial Order 3215, April 28, 2000.

River management strategies or decisions which would increase the frequency of shortages or the participation of others in the shortage pools, or reduce the long-term reliability of the Tribe's CAP water by declarations of a "shortage," must be avoided. 1

Section 3.21 of the Tribe's CAP Contract defines a "Time of Shortage" as "a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Basin Project Act, such that there is not sufficient Project Water in that year to supply up to a limit of 309,828 acre feet of water for Indian uses, and up to a limit of 510,000 acre feet of water for non-Indian Municipal and Industrial uses." Under the Tribe's CAP Contract, deliveries of Project Water to the Tribe in Times of Shortage may be reduced or terminated in accordance with Section 4.9 of the Tribe's CAP Contract.

It is paramount that the Secretary of Interior ("Secretary") carefully consider and reject any proposed management strategies for Lake Powell and Lake Mead that would breach the Tribe's CAP Contract or breach the Secretary's trust responsibility to properly manage and protect the Tribe's CAP water. It is apparent that representatives from the Upper and Lower Basin States have been meeting regularly to propose management strategies to the Secretary. The Tribe is concerned that adoption of these proposed strategies will interfere with the delivery of CAP water to the Tribe and breach the Tribe's CAP Contract. For instance, if the Secretary adopted a management strategy where a shortage is artificially declared in order to benefit an arrangement by the States, such a strategy would interfere with the Tribe's reasonable contractual expectation for delivery of its CAP water under the CAP Contract. In fact, such an arrangement would also violate Section 301(b) of the Basin Project Act.

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The Tribe has always understood the terms of the CAP Contract relating to shortage to mean that delivery of CAP water depends upon the physical situation of the Colorado River and not upon a scheme of management where some are benefitted while others are not. The Secretary owes the Tribe a trust duty to refrain from implementing management strategies which interfere with the Tribe's expectation of delivery of CAP water under its CAP Contract.

The Tribe also continues to be concerned with declarations of "surplus" conditions on the Colorado River by the Secretary to accomodate, *inter alia*, the "insatiable" thirst of Southern California and Las Vegas, Nevada. Withdrawals from the Colorado River to satisfy these entities, reduces the cumulative storage in the Colorado River reservoirs, thus making the long-term water supply for the Tribe less reliable.

The Tribe requests the Secretary to assign a representative or team of representatives to act as the United States' trustee for the Tribe and provide for direct participation by the Tribe in all future discussions of this matter. The Tribe also requests that the Secretary arrange to regularly consult with the Tribe during the development of the proposed strategies so that the Secretary can avoid making a decision which would breach the Tribe's CAP Contract and/or her trust responsibility to the Tribe to manage and protect the Tribe's CAP water. 2 3

Please put this Firm on your mailing list for all future communications and documents related to this matter.

Yours Truly,

**SPARKS, TEHAN & RYLEY, P.C.**

  
Joe P. Sparks

Enclosure  
JPS/rli

cc: Kathleen W. Kitcheyan, Chairwoman  
Robert Howard, Vice-Chairman  
Council Members

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE:

THIS CONTRACT, made this 11 day of December 1980,

in pursuance generally of the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto, the Boulder Canyon Project Act, 45 Stat. 1057, 43 USC s614 et seq (1928), the Colorado River Basin Project Act, 82 Stat. 885, 43 USC s1501 et seq. (1968), and the various authorities and responsibilities of the Secretary of the Interior (hereinafter "Secretary") in relation to Indians and Indian Tribes as contained in Title 25 USC and 43 USC s1457; and is between the United States of America (hereinafter "United States") and the San Carlos Apache Tribe (hereinafter "Contractor") located on the San Carlos Apache Reservation, Arizona.

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the Colorado River Basin Project Act provides, among other things, that the Secretary of the Interior shall construct, operate and maintain the Central Arizona Project for the purpose of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico and for other purposes; and

WHEREAS, Contractor is in need of Central Arizona Project water to sustain its agricultural base and for other tribal homeland purposes; and

WHEREAS, upon completion of the Central Arizona Project, water will be available for delivery to Contractor for such purposes in accordance with the Secretarial notice of December 1, 1980, 45 FR 81265 ;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is agreed as follows:

3. DEFINITIONS:

When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms:

3.1 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968.

3.2 "Secretary" shall mean the Secretary of the Interior of the United States.

3.3 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

3.4 "Central Arizona Project" or "Project" shall mean the dams, reservoirs, aqueducts, canals, distribution and drainage works and appurtenant works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

3.5 "Main System" shall mean those principle works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tuscon Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and rights-of-way for such works and appurtenances.

3.6 <sup>"CM&R"</sup> ~~"CM&R"~~ shall mean the care, operation, maintenance, and replacement of the Main System or any part thereof.

3.7 "Operating Agency" shall mean the entity or entities authorized to assume CM&R responsibility of all or any part of the Main System and approved for that purpose by the Contracting Officer.

3.8 "Project Water" shall mean (a) Colorado River mainstream water, (b) all other water conserved and developed by Central Arizona Project dams and reservoirs and available for delivery by the United States, and (c) Return Flow captured by the Secretary for Project use.

3.9 "Notice of Availability of Project Water" shall mean the notice or notices which the Contracting Officer issues to Contractor to announce the availability of water for delivery to Contractor.

3.10 "Agricultural Water" or "Irrigation Water" shall mean Project Water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto.

3.11 "Miscellaneous Water" shall mean water delivered from the Project for recreational and fish and wildlife purposes at other than Project facilities.

3.12 "Municipal and Industrial Water" hereinafter referred to as "M&I Water" shall mean water other than Agricultural Water or Miscellaneous Water delivered by means of the Main System.

3.13 "Return Flow" shall mean waste water, seepage, and ground water which originates or results from Agricultural Water, M&I Water, and Miscellaneous Water contracted for from the Central Arizona Project.

3.14 "Contractor's Reservation" shall mean the lands within the legal boundaries of Contractor's reservation(s).

3.15 "Distribution Works" shall mean those facilities constructed or financed by the United States for the primary purpose of distributing Project Water to the Delivery Point(s) within the Contractor's Reservation after said Project Water has been transported or delivered through the Main System.

3.16 "Water Right(s)" shall mean all those water rights which Contractor or the United States owns or holds for the benefit of the lands of the Contractor's Reservation(s) and the people thereon.

3.17 "Nonproject Water" shall mean water acquired by Contractor's other than from the Central Arizona Project.

3.18 "Year" shall mean the twelve month period between January 1 through the next succeeding December 31.

3.19 "Delivery Point(s)" is defined as the point(s) on Contractor's Reservation that are reasonably required, by agreement by the Contracting Officer and the Contractor, or selected by the Secretary to permit the Contractor to put the Project Water to its intended use.

3.20 "Substantial Completion" shall mean that degree of completion which, in the determination of the Contracting Officer, will enable the transportation of Project Water to Contractor's Delivery Points.

3.21 "Time of Shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Basin Project Act, such that there is not sufficient Project Water in that year to supply up to a limit of 309,828 acre feet of water for Indian uses, and up to a limit of 510,000 acre feet of water for non-Indian Municipal and Industrial uses.

3.22 "Exchange Water" shall mean water to be delivered to Contractor hereunder from a local source pursuant to an exchange as provided in section 304(d) of the Basin Project Act.

4. DELIVERY OF WATER:

4.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this contract during such periods as it operates and maintains the Project, the United States will deliver Project Water to the Contractor. The United States will use reasonable diligence to make available to the Contractor the quantities of water specified in the schedule submitted by Contractor and shall make deliveries of Project Water to Contractor to meet Contractor's water requirements within the constraints of and in accordance with Section 4.6. After transfer of OM&R to Operating Agency the United States will make deliveries of Project Water to the Operating Agency for subsequent delivery to Contractor as provided herein; the Secretary shall require a Subcontractor or other Indian Contractor to accept Project Water in exchange for or in replacement of existing supplies other than the mainstream of the Colorado River so that Contractor may receive the water to be delivered to it pursuant to this contract from a local source, all pursuant to Sec. 304(d) of the Basin Project Act (43 USCA 1524(d)).

4.2 Term of Contract. This Contract shall become effective upon its execution and shall remain in effect for a period of 50 years beginning with the year following Substantial Completion of the Project; Provided, that this Contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract.

4.3 Conditions Relating to Delivery. Contractor hereby agrees that:

(a) The obligation of the United States to deliver water under this contract is subject to:

(1) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, '82 Stat. 885; the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now issued or hereafter modified.

(2) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty.

(3) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be

subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(4) The right of the United States temporarily to discontinue to reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized for, in the opinion of the Secretary, necessary for delivery of water hereunder, its being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) There be in effect measures, adequate in the judgment of the Secretary, to provide for the internally integrated management and control of surface and groundwaters within Contractor's Reservation to the end that groundwater withdrawals are managed on a responsible basis.

(c) The canals and Distribution Works through which Project Water is conveyed after its delivery to the Contractor shall be maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses: Provided, the Contractor shall be relieved from this obligation if the United States does not make funds for this purpose available to Contractor following a timely request for such funds.

(d) The Contractor shall not pump nor permit others to pump groundwater from within the exterior boundaries of Contractor's Reservation for use outside said Reservation unless the Secretary and the Contractor agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is required; Provided however, that where such pumping is presently permitted pursuant to contract, said pumping may continue throughout the life of said contract; Provided further, that such pumping may be permitted in other and additional cases subject to the approval of the Secretary.

(e) The Contractor shall not sell or permit the sale or other disposition of any Project Water for use outside the Contractor's Reservation except:

(1) The Contractor may exchange Project Water and may change times and places of delivery of Project Water, subject to the approval of the Secretary; and

(2) The Contractor may dispose of Project Water credited against finally determined Water Rights to the same extent that said Water Rights may then be subject to disposition by Contractor.

4.4 Delivery of Project Water Prior to Completion of Project

Prior to completion of the Project works, water may be temporarily available for delivery to Contractor. When such water is available, the Contractor Officer will so notify Contractor and the water will be delivered on a "when available" basis at such terms as agreed upon between the Contractor and the Contracting Officer.

4.5 Delivery Entitlements and Obligations. The United States or the Operating Agency will not be required to deliver to the Contractor under this contract in excess of 10,700 acre-feet of Project Water yearly during the life of the Project.

4.6 Procedure for Ordering Water.

Following notice of Substantial Completion of the Project, Contracting Officer will issue a Notice of Availability of Project Water to Contractor. The Contractor will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery. If the Notice of Availability of Project Water is given by Contractor prior to July 1 of any year, the first schedule for the balance of the current year shall be submitted to the Contracting Officer within 30 days. If said Notice is given after July 1 of any year, the first schedule shall cover the balance of the then current year and the next succeeding full year. Thereafter, the amounts, times, and rates of delivery of Project water to the Contractor during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before October 1 of each year, the Contractor shall submit in writing to the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Contractor during each month of the following year along with a preliminary schedule of water desired for the succeeding two years.

(b) Upon receipt of a schedule the Contracting Officer shall review it and, after consultation with the Operating Agency and the Contractor, shall make only such modifications in it as are necessary to insure that the amounts, times, and rates of delivery to the Contractor will be consistent with the provisions of section 4.3(a). On or before December 1 of each year, the Contracting Officer shall determine and furnish to the Contractor the water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the Contractor during each month of that year.

(c) A water delivery schedule may be amended by the Contracting Officer upon the Contractor's written request. Proposed amendments shall be submitted by the Contractor within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

4.7 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) The Exchange Water to be furnished to the Contractor pursuant to this Contract will be delivered at the point(s) to be agreed upon in writing by the Contracting Officer and the Contractor, or in the event they are unable to agree, to be selected by the Secretary.

(b) All water delivered to the Contractor shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon request of the Contractor, the accuracy of such measurements will be investigated by the Contracting Officer or the Operating Agency and Contractor, and any errors or omissions therein adjusted.

(c) Neither the United States nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the turnout point(s) from the Main System to the Distribution Works serving the Contractor, and the Contractor shall hold the United States and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or death arising out of or connected with the Contractor's control, carriage, handling, used, disposal, or distribution of such water beyond said turnout point(s).

#### 4.8 Water Acquired by Contractor Other than from the United States.

The provisions of the Contract shall not be applicable to or affect Non-project Water or water rights now owned or hereafter acquired by the Contractor.

#### 4.9 Priority in Time of Shortages.

In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including Contractor) and to non-Indian contractors for municipal and industrial uses according to the following formula:

$$IP = I / (I + MI) \text{ where:}$$

- IP is the Indian Share of Project Water;
- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes;

provided that, for the purposes of this formula, such ten (10) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract;

Provided that, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)

-- MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a Time of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

4.10 Secretarial Control of Return Flow. The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor's Reservation as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. Contractor may recapture and reuse or sell Return Flow ~~within~~ within the exterior boundaries of Contractor's reservation Provided however, that such Return Flow may not be sold for use outside the Contractor's Reservation unless the Secretary has given prior written approval.

4.11 Exchange Water. Where the Secretary determines that Contractor is physically able to receive Project water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from

the confluence of the Salt and Verde Rivers and Buller Dam site, if such dam is then existent, the Secretary may require and Contractor agrees to accept said Project water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

5. OTHER WATER:

Nothing in this contract shall prevent Contractor from agreeing with a water user to receive water from an off-reservation source where the water user does not condition delivery upon substitution for Project Water.

6. Payment of Costs:

(a) Repayment of construction costs associated with Contractor's of Project Water shall be subject to the provisions of 43 U.S.C. 1542 and 25 U.S.C. 386a.

(b) The Secretary shall fix O&M charges payable by Contractor pursuant to 25 U.S.C. s385 and regulations promulgated pursuant thereto (25 C.F.R. Part 191). Project Water will not be delivered to Contractor unless the annual O&M assessment is paid in advance, except where such payment is deferred, adjusted, or cancelled pursuant to 25 CFR 191.17.

(c) In the event the Contractor fails or refuses to accept delivery at the Deliveries Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Contract, or in the event the Contractor in any year fails to submit a schedule for delivery as provided in Section 4.6 hereof, said failure or refusal shall not relieve the Contractor of its obligation to make the payments required in this Section. Contractor agrees to make payment therefor in the same

manner as if said water had been delivered to an acceptor by it in accordance with this Contract; Provided however, if Contractor fails or refuses to accept delivery of Project Water, Operating Agency is then able to sell that portion of Contractor's allotment of Project waters to another contractor that would not have otherwise received the additional increment of Project Water, then the Contractor's financial responsibility will be decreased by a like amount. The Secretary shall require Operating Agency to use due diligence to secure a reasonable price for said water. Provided further that Contractor shall be relieved from the obligation to pay for refusal to accept delivery if the United States does not make funds available to Contractor to construct Distribution Works and said Distribution Works are not in place to accept delivery.

(d) It is anticipated by both parties that a separate agreement will be entered into concerning the operation, maintenance, and replacement of the Distribution Works, the appointment of a Distribution Works Operating Agent and the setting and collection of appropriate charges for the care, operation, maintenance and replacement of the Distribution Works.

7. DISTRIBUTION SYSTEM - ENVIRONMENTAL REVIEW: Notwithstanding any other provision of this contract, the United States will not deliver Project Water through Distribution Works to the Contractor's Reservation until additional environmental analyses as necessary, relating to the Distribution Works have been completed by the United States in accordance with the National Environmental Policy Act, and the design of Distribution Works suitable for delivery of Project Water to the Contractor pursuant to the terms of this contract is thereafter approved by the Secretary, it being the intent of the parties hereto that such approval is to be based on environmental considerations related only to the Distribution Works.

B. GENERAL PROVISIONS:

B.1 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and shall obtain all required permits or licenses from the appropriate Federal authorities.

B.2 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

B.3 Rules, Regulations, and Determinations.

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract and the laws of the United States and to add to or to modify such rules and regulations as he may deem proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations.

(b) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or

~~unreasonable~~ opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor.

- 8.4 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters the Contracting Officer may reasonably require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

8.5 Notices. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor when mailed, postage prepaid, or delivered to the appropriate agent of the United States, or when mailed, postage prepaid, or delivered to the [Tribe and address]. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

8.6 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate

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funds or the absence of any allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

8.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

8.8 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this contract if made with a corporate or company for its general benefit.

(b) No official of the Contractor shall receive any benefit that may arise by reason of this contract other than as a landowner within the project and in the same manner as other landowners within the project.

8.9 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or ~~transfer~~; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or a understanding, a notice to be provided by the Agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H.10 Title VI, Civil Rights Act of 1964.

(a) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the grounds of race, color, religion, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

#### 9. CREDIT AGAINST WATER RIGHTS:

At such time as Contractor's Water Rights, are finally determined, the Project Water delivered to the Contractor under this contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and Contractor at that time. Thereafter Contractor may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this contract. Until such time as Contractor's Water Rights are finally determined the Project Water delivered to Contractor is supplemental water and is not credited against, or in any way related to, Contractor's Water Rights.

#### 10. ALLOCATION NOT TO RELEASE RIGHTS

Neither the allocation of Project Water to the Contractor or otherwise, nor the execution of this contract shall constitute a taking, either directly or by implication of any water rights of the tribes, nor shall it be construed to alter or release the right of any person or entity, including the Contractor, to assert rights to water all without limitation as to whether the water is surface or groundwater, nor will it constitute the Department's opinion as to the legal rights of the tribes.

11. EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS:

The provisions of Subarticles 7.1, 7.9, and 7.10 apply except where they conflict with Sections 701(b)(1) and 702(1) of Title VII of the Civil Rights Act of 1964, 73 Stat. 253-257, 42 U.S.C. 200e which pertains to Indian Tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

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

THE UNITED STATES OF AMERICA

BY

*Daniel Beard*  
Office of the Secretary

San Carlos Apache Tribe

ATTEST:

BY

*Ned Anderson*  
Tribal Chairman

ATTEST:

BY

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