

By T. Springston  
T. Springston, Deputy

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

IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS  
TO USE WATER IN THE GILA  
RIVER SYSTEM AND SOURCE.

No. W-1 (Salt)  
No. W-2 (Verde)  
No. W-3 (Upper Gila)  
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-209

WHITE MOUNTAIN APACHE  
TRIBE WATER RIGHTS  
QUANTIFICATION SETTLEMENT  
JUDGMENT AND DECREE

1. The United States acting in its capacity as trustee for the White Mountain Apache Tribe ("WMAT") has asserted claims to Water in the Gila River Adjudication Proceedings, Claim Numbers 39-12168 and 39-64259, as amended. The WMAT, on behalf of itself and its Members, has asserted claims to Water in the Gila River Adjudication Proceedings, Statement of Claimant Numbers 39-16945, 39-16946, 39-16947, and 39-16948. The Court has considered the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("WMAT Agreement"), including all exhibits thereto, which permanently resolves the Water Rights claims of the WMAT and of the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members, to the Gila River System and Source for land within the exterior boundaries of the Reservation and Off-Reservation Trust Land.<sup>1</sup>

2. Upon publication in the Federal Register by the United States Secretary of the Interior of a statement of findings that all of the actions necessary to make the WMAT

<sup>1</sup> The capitalized terms used in this Judgment and Decree shall be as defined in the WMAT Agreement, a copy of which is attached as Exhibit A to the Stipulation and Request for Entry of Judgment and Decree.

1 Agreement effective have been completed, as required by section 309(d)(1) of the White  
2 Mountain Apache Tribe Water Rights Quantification Act of 2010, Public Law 111-291, Title  
3 III, 124 Stat. 3064, 3073 (2010) (“Act”), this Judgment and Decree shall become enforceable<sup>2</sup>.

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

5 3. The WMAT Agreement meets all of the requirements of Paragraph D.6 of the  
6 Arizona Supreme Court’s May 16, 1991, Special Procedural Order Providing for the Approval  
7 of Federal Water Rights Settlements, Including Those of Indian Tribes (the “Supreme Court’s  
8 Order”). On that basis, and as required by Paragraph D.6 of the Supreme Court’s Order, the  
9 WMAT Agreement, including all of the exhibits thereto, is hereby approved.

10 4. The Water Rights described in Section 5 of this Judgment and Decree are held in  
11 trust by the United States acting on behalf of the WMAT as provided in Section 305(a)(1) of  
12 the Act and shall not be subject to forfeiture or abandonment as provided in Section 305(a)(2)  
13 of the Act.

14 5. As provided in Paragraphs 4.0 and 5.0 of the WMAT Agreement, the WMAT  
15 and the United States acting in its capacity as trustee for the WMAT shall have:

16 A. The permanent right to Divert for Use on the Reservation and on Off-  
17 Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from  
18 all sources of Surface Water on the Reservation and on Off-Reservation Trust Land  
19 within the Salt River Watershed, provided that the Maximum Annual Depletion  
20 Amount of all such Diversions shall not exceed 25,800 AFY;

21 B. Commencing after the Year 2100, the additional permanent right to Divert  
22 for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum  
23 Annual Diversion Amount of 3,000 AFY from all sources of Surface Water on the  
24 Reservation and on Off-Reservation Trust Land within the Salt River Watershed,  
25

26  
27 <sup>2</sup> A separate Judgment and Decree approving and implementing the WMAT Agreement in relation to  
the Little Colorado River System and Source will issue in that Adjudication.

1 provided the additional Maximum Annual Depletion Amount of all of such Diversions  
2 does not exceed 1,200 AFY;

3 C. As provided in Paragraphs 4.0 and 6.0 and Subparagraph 5.4 of the  
4 WMAT Agreement, the permanent right to Divert Groundwater from any location  
5 within the Reservation and on Off-Reservation Trust Land, subject to the Maximum  
6 Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in  
7 Sections 5A and 5B hereof;

8 D. The additional permanent right to Divert for Use on the Reservation and  
9 on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of  
10 at least 25,000 AFY from all sources of Surface Water on the Reservation and on Off-  
11 Reservation Trust Land within the Salt River Watershed pursuant to an exchange of  
12 WMAT CAP Water in accordance with the terms of Paragraph 7.0 of the WMAT  
13 Agreement, provided the additional Maximum Annual Depletion Amount of all of such  
14 Diversions from any exchange does not exceed 25,000 AFY.

15 6. For purposes of calculating Diversions and Depletions as provided in the WMAT  
16 Agreement:

17 A. All Water Diverted or Depleted on the Reservation or on Off-Reservation  
18 Trust Land by Members or pursuant to any agreement or authorization by the WMAT  
19 or the United States acting in its capacity as trustee for the WMAT shall be considered  
20 to be Diverted or Depleted by the WMAT or the United States acting in its capacity as  
21 trustee for the WMAT.

22 B. All Diversions of Water in each Year within the Reservation and on Off-  
23 Reservation Trust Land, together with all WMAT CAP Water used by the WMAT  
24 outside of the Reservation and outside of Off-Reservation Trust land, and all WMAT  
25 CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 of  
26 the WMAT Agreement, shall be counted in determining compliance by the WMAT and  
27 the United States acting in its capacity as trustee for the WMAT with the Maximum

1 Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and  
2 5.3 of the WMAT Agreement. Diversions shall be measured or calculated as provided  
3 in Paragraph 11.0 of the WMAT Agreement.

4 C. All Depletions of Water in each Year from Diversions of Water within the  
5 Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water  
6 used by the WMAT outside of the Reservation and outside of Off-Reservation Trust  
7 land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs  
8 7.0, 9.0 and 10.0 of the WMAT Agreement, shall be counted in determining compliance  
9 by the WMAT and the United States acting in its capacity as trustee for the WMAT  
10 with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and  
11 Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement. Depletions shall be  
12 measured or calculated as provided in Paragraph 11.0 of the WMAT Agreement.

13 D. Notwithstanding anything to the contrary in the WMAT Agreement or  
14 this Judgment and Decree, any Diversions of Water by the WMAT or the United States  
15 acting in its capacity as trustee for the WMAT on the Reservation and on Off-  
16 Reservation Trust land within the Salt River Watershed that occur when the Salt River  
17 Reservoir System is full and the amount of Water in the Salt River Reservoir System is  
18 increasing shall not be counted in determining compliance with the Maximum Annual  
19 Diversion Amount from the Salt River Watershed specified in Paragraph 4.0 and  
20 Subparagraphs 5.1 and 5.2 of the WMAT Agreement. Likewise, any Depletions of  
21 Water Diverted under the circumstances described in the preceding sentence shall not  
22 be counted in determining compliance with the Maximum Annual Depletion Amount  
23 from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and  
24 5.2 of the WMAT Agreement. The Salt River Reservoir System shall be deemed full  
25 for purposes of this Subparagraph when the volume of Water stored in the Salt River  
26 Reservoir System is equal to the capacity of the Salt River Reservoir System. For  
27 purposes of this Subparagraph, the capacity of the Salt River Reservoir System shall

1 mean the capacity of those reservoirs, including the new conservation space in Modified  
2 Theodore Roosevelt Dam, available to store Water on a continuous basis for irrigation,  
3 power, municipal, industrial or other purposes. SRP shall notify the WMAT and the  
4 United States acting in its capacity as trustee for the WMAT of an impending spill as  
5 soon as practicable and notify them of the date the spill ends.

6 E. In the event the Maximum Annual Diversion Amounts or the Maximum  
7 Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and  
8 5.3 of the WMAT Agreement are exceeded in any Year by the WMAT or the United  
9 States acting in its capacity as trustee for the WMAT, then the Maximum Annual  
10 Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall  
11 be reduced by the amount of any such exceedance for such Water source in the  
12 following Year.

13 F. Except as provided in Subparagraph 4.6 of the WMAT Agreement, all  
14 Uses of Water on land outside of the Reservation, if and when that land is subsequently  
15 and finally determined to be part of the Reservation through resolution of any dispute  
16 between the WMAT and the United States over the location of the Reservation  
17 boundary, and any fee land within the Reservation placed into trust and made part of the  
18 Reservation, shall be subject to the Maximum Annual Diversion Amounts and the  
19 Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs  
20 5.1, 5.2, and 5.3 of the WMAT Agreement.

21 G. All Diversions and Depletions associated with the operation of the White  
22 Mountain Apache Tribe Rural Water System, authorized under Section 307 of the Act,  
23 shall be subject to the terms of the WMAT Agreement.

24 7. The United States, acting in its capacity as trustee for the WMAT, and the  
25 WMAT have asserted claims to Water in the Gila River Adjudication Proceedings from the  
26 Salt River Watershed, Claim Number 39-12168 and Number 39-64259, as amended (United  
27 States) and Claim Numbers 39-16945, 39-16946, 39-16947, and 39-16948 (WMAT). These

1 claims contemplate construction of reservoirs along the White River, Black River, Carrizo  
2 Creek, Bonito Creek and Salt River. Except for the White Mountain Apache Tribe Rural  
3 Water System as authorized in Section 307 of the Act, the WMAT Agreement does not  
4 authorize the construction of any such reservoir. Except as provided in this Section 7, prior to  
5 the construction of any reservoir having a capacity of greater than 2,000 acre-feet, the WMAT  
6 and the Secretary shall execute a separate agreement with SRP regarding the operation of any  
7 such new reservoir. No such separate agreement shall be required for Large Reservoirs, Miner  
8 Flat Dam and Reservoir, and one Large Reservoir on the White River below Miner Flat Dam  
9 with an Active Conservation Capacity not exceeding 10,000 acre-feet.

10 8. Except as provided in this Section 8, if the combined aggregate amount of Water  
11 stored in Large Reservoirs, as defined in Subparagraph 2.45 of the WMAT Agreement, on  
12 May 1 of each Year is greater than the percentage of Active Conservation Capacity shown by  
13 the point of intersect of the line on exhibit 5.7.2 to the WMAT Agreement relative to Net SRP  
14 Reservoir Storage on May 1 of each Year, the Water in storage in such Large Reservoirs in  
15 excess of the percentage of Active Conservation Capacity at the point of intersect on exhibit  
16 5.7.2 to the WMAT Agreement shall be either:

17 A. Released by the WMAT or the United States acting in its capacity as  
18 trustee for the WMAT from one or more of the Large Reservoirs no later than  
19 July 1 of such Year to flow off of the Reservation, or

20 B. Deducted from any existing long term storage credits the WMAT may  
21 possess on May 1 of such Year as the result of the recharge and storage of CAP  
22 Water, provided that such credits are transferred to SRP by June 1 of such Year  
23 and the WMAT or the United States acting in its capacity as trustee for the  
24 WMAT pays for the costs and charges associated with such transfer including  
25 the cost of recovery of such stored CAP Water, or  
26  
27

1 C. Reduced to the requisite percentage of Active Conservation Capacity  
2 through a combination of releases pursuant to Section 8A herein and deductions  
3 of existing long term storage credits pursuant to Section 8B herein.

4 The requirements of this Section 8 do not apply to Miner Flat Dam and Reservoir located on  
5 the north fork of the White River with a capacity of not more than 9,000 acre-feet, or one  
6 Large Reservoir on the White River with an Active Conservation Capacity not exceeding  
7 10,000 acre-feet. The WMAT may exchange CAP Water for the purpose of storage in  
8 reservoirs located on the Reservation. For purposes of the calculation in this Section 8, the  
9 amount of CAP Water exchanged with SRP or others and stored within Large Reservoirs on  
10 the Reservation shall not be included within the combined aggregate amount of Water stored  
11 in Large Reservoirs on May 1 of each Year. Any exchange of WMAT CAP Water shall be in  
12 accordance with the terms of Paragraph 7.0 of the WMAT Agreement.

13 9. The priority date for the administration of the Water Rights of the WMAT and  
14 the United States acting in its capacity as trustee for the WMAT from the Salt River and its  
15 tributaries described in Sections 4, 5A, 5B and 5C hereof for Uses on the Reservation shall be  
16 November 9, 1871. The priority date for the administration of the Water Rights of the WMAT  
17 and the United States acting in its capacity as trustee for the WMAT from the Salt River and  
18 its tributaries described in Sections 4, 5A, 5B and 5C hereof for Uses on off-Reservation Trust  
19 Lands shall be November 4, 1985. Except as provided in Section 21 hereof, the Water Rights  
20 adjudged and decreed to the WMAT by Sections 4, 5A, 5B, 5C and this Section 9 of this  
21 Judgment and Decree, shall be binding on all parties to the Gila River Adjudication.

22 10. The Water Rights of the WMAT and the United States acting in its capacity as  
23 trustee for the WMAT as quantified in Paragraph 4.0 of the WMAT Agreement may be used  
24 for any Use on the Reservation, including any land finally determined to be part of the  
25 Reservation under Subparagraph 4.14 of the WMAT Agreement, or on Off-Reservation Trust  
26 Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph  
27 7.0 of the WMAT Agreement.

1           11. Surface Water, Groundwater and Effluent purchased or acquired subsequent to  
2 the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for  
3 the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-  
4 Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water  
5 Rights specified in Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3 of the WMAT Agreement.

6           12. All land held by the United States in trust for the WMAT as Off-Reservation  
7 Trust Land and all land within the Reservation shall have only those Water Rights specifically  
8 quantified in Paragraph 4.0 of the WMAT Agreement for the WMAT and the United States  
9 acting in its capacity as trustee for the WMAT.

10          13. For each Year following the Year in which the Enforceability Date occurs,  
11 fourteen and eighty-one one hundredths (14.81) percent of the actual Annual Depletion  
12 Amount from all sources of Water Diverted on the Reservation and on Off-Reservation Trust  
13 Land within the Salt River Watershed, other than Depletions resulting from the exchange of  
14 WMAT CAP Water, calculated as provided in Paragraph 11.0 of the WMAT Agreement, shall  
15 be deducted by SRP from the Water credits of RWCD as provided in Paragraph 8.0 of the  
16 WMAT Agreement. Subject to Subparagraph 8.1.2 of the WMAT Agreement, the deductions  
17 from RWCD Water credits shall not exceed 4,000 AFY.

18          14. Reporting.

19           A. Within thirty (30) days of the inspections of measuring and recording  
20 devices required by Subparagraph 11.1.1 of the WMAT Agreement, the WMAT or the  
21 United States acting in its capacity as trustee for the WMAT shall file with this Court or  
22 with the Court in the Little Colorado River Adjudication Proceedings, as applicable  
23 determined by the location of the point of Diversion of Water to be measured by the  
24 particular device, a certified copy of the report by the registered professional engineer  
25 or similarly qualified person that sets forth the findings of the inspection and  
26 verification that the measuring and recording devices and procedures satisfy industry  
27 standards.



1           B.     No later than March 1 of the second Year following the Year in which the  
2 Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the  
3 United States acting in its capacity as trustee for the WMAT shall file with this Court a  
4 report, in the form attached as exhibit 11.2 to the WMAT Agreement or as may  
5 otherwise be required by this Court, showing: (1) all amounts of Water, by source,  
6 Diverted on the Reservation and on Off-Reservation Trust Land under Paragraphs 5.0  
7 and 6.0 of the WMAT Agreement in the Year immediately preceding the Year in which  
8 the report is filed; (2) all Depletions of Water, by source, measured or calculated as  
9 provided in Subparagraphs 11.3, 11.4 and 11.5 of the WMAT Agreement; (3) all  
10 amounts of WMAT CAP Water delivered to others in exchange for the Diversion of  
11 Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources  
12 located within the Salt River Watershed; (4) all amounts of WMAT CAP Water  
13 recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts  
14 of WMAT CAP Water otherwise used by the WMAT.

15           C.     Any Party may petition this Court to modify the form set forth in exhibit  
16 11.2 to the WMAT Agreement to ensure accurate reporting of the WMAT Water  
17 Diversions and Depletions. Any other Party may object to such petition.

18           15.    Except as set forth in the WMAT Agreement and the Act, the benefits realized  
19 by the WMAT and its Members under the WMAT Agreement and the Act shall be in full  
20 satisfaction of all claims of the WMAT and its Members, and the United States acting as  
21 trustee for the benefit of the WMAT and its Members, for Water Rights and Injury to Water  
22 Rights under Federal, State, or other law with respect to the Reservation and Off-Reservation  
23 Trust Land.

24           16.    Except as provided in Subparagraphs 12.6.1(i) and 12.7.1(f) of the WMAT  
25 Agreement, the WMAT and the United States acting in its capacity as trustee for the WMAT  
26 shall not: (1) object to the usage of any well located outside the boundaries of the Reservation  
27 or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to,

1 dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and  
2 Use of Water from any well in the Gila River Adjudication Proceedings or in any other judicial  
3 or administrative proceedings.

4 17. Nothing in this Judgment and Decree, the WMAT Agreement or the Act  
5 recognizes or establishes any right of a Member to Water on the Reservation or on Off-  
6 Reservation Trust Land. Any entitlement to Water for Use on lands within the exterior  
7 boundaries of the Reservation and Off-Reservation Trust Land shall be satisfied out of the  
8 Water resources described in Section 5 of this Judgment and Decree, except as provided in  
9 Section 11 hereof.

10 18. Except for Use of WMAT CAP Water as provided in Paragraph 7.0 of the  
11 WMAT Agreement, no Water available for Use by the WMAT or by the United States acting  
12 in its capacity as trustee for the WMAT under the WMAT Agreement and the Act may be  
13 sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation  
14 Trust Land other than pursuant to an exchange.

15 19. In exchange for the benefits realized under the WMAT Agreement and as  
16 authorized by the Act, the Parties have executed Waivers and Releases of Claims, attached as  
17 exhibits 12.1, 12.2, 12.3, and 12.4 to the WMAT Agreement. These Waivers and Releases of  
18 Claims are attached hereto as Exhibits A, B, C, and D and are by this reference incorporated  
19 herein. For purposes of this Section 19, the United States shall be acting in the capacities as  
20 specifically set forth in each of the waivers referenced herein.

21 20. The claims of the WMAT and its Members, and the United States acting in its  
22 capacity as trustee for the WMAT and its Members, to Water from the Gila River System and  
23 Source are fully, finally and permanently adjudicated by this Judgment and Decree.

24 21. Nothing in this Judgment and Decree or the WMAT Agreement shall be  
25 construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of  
26 any Arizona Indian tribe, band or community, or the United States on their behalf, other than  
27


1 the WMAT and the United States acting in its capacity as trustee for the WMAT and its  
2 Members.

3 22. Nothing in the WMAT Agreement shall affect the right of any Party, other than  
4 the WMAT and the United States, acting in its capacity as trustee for the WMAT and its  
5 Members, to assert any priority date or quantity of Water for Water Rights claimed by such  
6 Party in the Gila River Adjudication or other court of competent jurisdiction.

7 23. The Court's adjudication of Water Rights to the WMAT, and the United States  
8 acting in its capacity as trustee for the WMAT, pursuant to this Judgment and Decree is limited  
9 to Water Rights to the Gila River System and Source.

10 24. This Court retains jurisdiction over this matter for enforcement of this Judgment  
11 and Decree and the WMAT Agreement, including the entry of injunctions, restraining orders  
12 or other remedies under law or equity.

13  
14 DATED this 18 day of December, 2014.

15  
16 

17 Hon. Mark H. Brain  
18 Judge of the Superior Court

19  
20 A copy of this Judgment and Decree is sent to all  
21 Persons on the Court approved mailing list for  
22 Contested Case No. W1-209 dated 9/24, 2014.

**EXHIBIT A**  
**to the Decree**

# **EXHIBIT 12.1**

## EXHIBIT 12.1

### WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of November 1, 2012, is entered into by the Parties to the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), other than the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members.

#### 1.0 DEFINITIONS.

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed on Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

#### 2.0 WAIVER AND RELEASE OF CLAIMS.

Except as provided in Paragraph 3.0 hereof, the Parties, except the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, as part of their obligations under the Agreement, hereby waive and release any claims that such Parties may have against the WMAT and its Members and the United States acting in its capacity as trustee for the WMAT and its Members under Federal, State or other law for all:

- (a) Past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;
- (b) Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation and on Off-Reservation Trust Land in a manner not in violation of the Agreement;
- (c) Past, present and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

#### 3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.

3.1 Notwithstanding the waivers of claims and releases described in Paragraph 2.0, the Parties, other than the WMAT on behalf of itself and its Members and United States acting in its capacity as trustee for the WMAT and its Members, shall retain any right to:

(a) Subject to Subparagraph 16.9 of the Agreement, assert claims for injuries to, and seek enforcement of, their rights under the Agreement or the Act in any State court or Federal court of competent jurisdiction;

(b) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1 to the Agreement;

(c) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2 to the Agreement;

(d) Assert past, present, and future claims to Surface Water that are not inconsistent with the Agreement;

(e) Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;

(f) Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein.

3.2 This Waiver and Release of Claims shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

(a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico);

(b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);

(c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);

(d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);

(e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557; and

(f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for miners' hospitals for disabled miners within said State).

#### **4.0 WAIVER EFFECTIVE UPON ENFORCEABILITY DATE.**

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

#### **5.0 COUNTERPARTS AND DUPLICATE ORIGINALS.**

This Waiver and Release of Claims 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 Waiver and Release of Claims also may be executed in duplicate originals, each of which shall constitute an original Waiver and Release of Claims.

**ATTACHMENT 1**  
**DEFINITIONS**

1.1 “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as Exhibit 2.2 to the Agreement.

1.2 “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 “Arizona Water Company” shall mean the Arizona corporation of that name, its subsidiaries and affiliates.

1.4 “Buckeye Irrigation Company” shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

1.5 “Buckeye Water Conservation and Drainage District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district with power of drainage organized under the laws of the State.

1.6 “CAP Repayment Contract” shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

1.7 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.8 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

1.9 “CAWCD” or “Central Arizona Water Conservation District” shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.



1.10 "Effluent" shall mean Water that has been used 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 on the Reservation.

1.11 "Enforceability Date" shall mean the date described in Section 309(d)(1) of the Act.

1.12 "Gila River Adjudication Proceedings" 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)*.

1.13 "Groundwater" shall mean all Water beneath the surface of the Earth other than Surface Water.

1.14 "Injury to Water Rights" shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term "Injury to Water Rights" includes a change in the Groundwater table and any effect of such a change. The term "Injury to Water Rights" does not include any injury to water quality.

1.15 "Little Colorado River Adjudication Proceedings" 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*.

1.16 "Off-Reservation Trust Land" shall mean land (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as Exhibit 2.57.

1.17 "Party" shall mean an entity represented by a signatory to the Agreement and "Parties" shall mean more than one of such entities. The State's participation as a Party shall be as described in Subparagraph 16.5 of the Agreement. The United States' participation as a Party shall be in the capacity as described in Subparagraph 2.72 of the Agreement.

1.18 "Roosevelt Water Conservation District" or "RWCD" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

1.19 "Secretary" shall mean the Secretary of the United States Department of the Interior.

1.20 "SRP" shall mean the Salt River Project Agricultural Improvement and Power

District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial Corporation.

1.21 "State" shall mean the State of Arizona.

1.22 "Surface Water" shall mean all Water that is appropriable under State law. For purposes of the definition of "Water Right," the term "Surface Water" shall also include Colorado River water.

1.23 "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.

1.24 "Use" shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.25 "Water" when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.26 "Water Right" shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.27 "White Mountain Apache Tribe" or "WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

1.28 "WMAT Reservation" or "Reservation" shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871 as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as Exhibit 2.81. The depiction of the Reservation on the map attached as Exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundaries of the Reservation.

THE STATE OF ARIZONA

By: Janice K. Brewer

Dated: 01-23-2013

Governor

Attest: Kim Blum

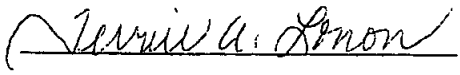
Secretary of State

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

By: 

Dated: 12-10-2012

President

Attest and Countersigned: 


Secretary

Approved as to form:



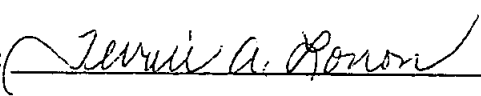
Attorney

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: 

Dated: 12-10-2012

President

Attest and Countersigned: 

Secretary

Approved as to form:



Attorney

THE ROOSEVELT WATER CONSERVATION DISTRICT

By: 

Dated: 2-7-13

President

Attest: 

Secretary

Approved as to form:



~~General~~ Counsel

ARIZONA WATER COMPANY

By: William M. Marfell

Dated: 1-14-2013

President

Attest: R. W. Grabe

Secretary

Approved as to form:

R. W. Grabe

General Counsel

CITY OF AVONDALE

By: Charles P. McLeod

Dated: 2-5-13

City Manager

Attest: Carmen Martinez

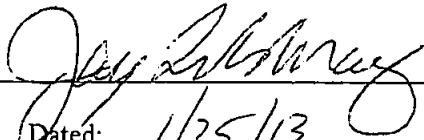
City Clerk

Approved as to form: [Signature]


City Attorney



CITY OF CHANDLER

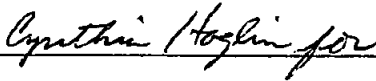
By:   
Dated: 1/25/13

Mayor

Attest: 

City Clerk

Approved as to form:



City Attorney

CITY OF GLENDALE

By: *Harold Skurtz*

Dated: February 13, 2013

City Manager

Attest: *Daniel McCarter*

City Clerk

Approved as to form:

*[Signature]*

City Attorney

CITY OF MESA

By: *Christopher J. Purdy*  
Dated: 1/30/13

City Manager  
Attest: *DeLynn Mickelsen*  
*Interim*  
City Clerk



Approved as to form:

*M. Tubel*  
City Attorney

CITY OF PEORIA

By: Bob Bennett

Dated: 2/16/13

~~City Manager~~ Mayor

Attest: Linda K. Blas  
for City Clerk



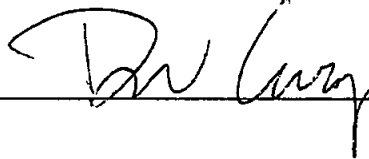
Approved as to form:

Stephen J. Brug

City Attorney

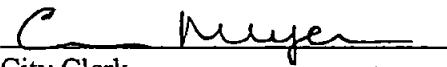
CITY OF PHOENIX

CITY OF PHOENIX, ARIZONA, a municipal  
corporation  
DAVID CAVAZOS, City Manager

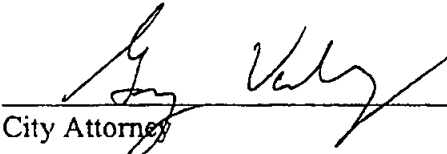
  
\_\_\_\_\_

DATED this \_\_\_ day of \_\_\_\_\_, 2013.


ATTEST:

  
\_\_\_\_\_  
City Clerk

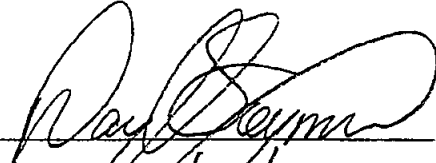
APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

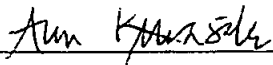


  
CITY CLERK DEPT.  
APR 23 2013 9:12

CITY OF SHOW LOW

By:   
Dated: 2/5/2013

Mayor

Attest: 

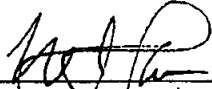
City Clerk

Approved as to form:



City Attorney

CITY OF SCOTTSDALE

By: 


Dated: 1/25/2013

Mayor

Attest: 

City Clerk

Approved as to form:



City Attorney

CITY OF TEMPE

By: Mark W. McHugh

Dated: January 10, 2013

Mayor

Attest: Bonita M. King

City Clerk

Approved as to form:

Andrew B. Cling

City Attorney



TOWN OF GILBERT

By: John Qui

Dated: 1/24/13

Town Mayor

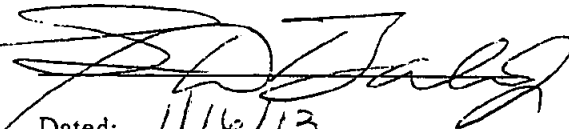
Attest: Catherine A. Temple

Town Clerk

Approved as to form: W. P. G.

Town Attorney

BUCKEYE IRRIGATION COMPANY

By:   
Dated: 11/16/13

President

Attest: Ed Gerak

Secretary

Approved as to form:

  
General Counsel

BUCKEYE WATER CONSERVATION  
AND DRAINAGE DISTRICT

By: William T. Bladden

Dated: 1/21/13

President

Attest: Ed Gerak

Secretary

Approved as to form:

M. J. Peane

General Counsel

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: Pamela J. Rickard

Dated: Dec. 6, 2012

President

Attest: Timothy R. Pugh

Secretary

Approved as to form:

[Signature]

General Counsel

**EXHIBIT B**  
**to the Decree**

# **EXHIBIT 12.2**

## EXHIBIT 12.2

### WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE WMAT, ON BEHALF OF ITSELF AND ITS MEMBERS, AND THE UNITED STATES, ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of November 1, 2012, is entered into by the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), and in accordance with the commitments under Subparagraph 12.2 of said Agreement and pursuant to the authorization granted in Section 309(a)(1) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

#### 1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

#### 2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under the Agreement, hereby waive and release any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) 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 WMAT, its Members, or their predecessors;

(b)(i) past and present claims for Injury to Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from Off-Reservation Diversion or Use of Water in a manner that is not in violation of the Agreement or State law; and

(c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

### **3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS**

Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the WMAT, on behalf of itself and its Members, and the United States, acting as trustee for the WMAT and its Members, shall retain any right:

(a) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under the Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.1 to the Agreement;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.2 to the Agreement;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to participate in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings to the extent provided in subparagraph 14.1 of the Agreement;

(f) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Paragraph 2.0;

(g) to assert any past, present, or future claim for Injury to Water Rights against any other Indian tribe, Indian community or nation, dependent Indian



community, allottee, or the United States on behalf of such a tribe, community, nation or allottee;

(h) to assert any past, present, or future claim for trespass, use, and occupancy of the Reservation in, on, or along the Black River against Freeport-McMoran Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc., (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities; and

(i) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009, in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T. 8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use.

#### **4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.**

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

#### **5.0 COUNTERPARTS AND DUPLICATE ORIGINALS**

This Waiver and Release of Claims 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 Waiver and Release of Claims also may be executed in duplicate originals, each of which shall constitute an original Waiver and Release of Claims.

## ATTACHMENT 1 DEFINITIONS

1.1 “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

1.5 “Diversion” shall mean the act of Diverting.

1.6 “Divert” or “Diverting” shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 “Effluent” shall mean Water that has been used 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 on the Reservation.

1.8 “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

1.9 “Gila River Adjudication Proceedings” 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)*.

1.10 “Groundwater” shall mean all Water beneath the surface of the Earth other than Surface Water.

1.11 “Injury to Water Rights” shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term “Injury to Water Rights” includes a change in the Groundwater table and any effect of such a change. The term “Injury to Water Rights” does not include any injury to water quality.

1.12 “Little Colorado River Adjudication Proceedings” 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*.

1.13 “Member” or “Members” shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

1.14 “Off-Reservation Trust Land” shall mean land: (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as exhibit 2.57.

1.15 “Secretary” shall mean the Secretary of the United States Department of the Interior.

1.16 “State” shall mean the State of Arizona.

1.17 “Surface Water” shall mean all Water that is appropriable under State law. For purposes of the definition of “Water Right,” the term “Surface Water” shall also include Colorado River water.

1.18 “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.

1.19 "Use" shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.20 "Water" when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.21 "Water Right" shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.22 "White Mountain Apache Tribe" or "WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") ((25 U.S.C. § 476).

1.23 "WMAT Reservation" or "Reservation" shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

THE UNITED STATES OF AMERICA

By: Sally Jewell

Dated: 7/30/13

Secretary of the Interior

WHITE MOUNTAIN APACHE TRIBE

By: 

Dated: 01-04-2013

Chairman

Attest: 

Approved as to Form:



General Counsel

**EXHIBIT C**  
**to the Decree**

# **EXHIBIT 12.3**



## EXHIBIT 12.3

### WAIVER AND RELEASE OF CLAIMS BY THE WMAT, ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES (EXCEPT IN THE CAPACITY OF THE UNITED STATES AS TRUSTEE FOR OTHER INDIAN TRIBES)

This Waiver and Release of Claims dated as of November 1, 2012, is entered into by the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), and in accordance with the commitments under Subparagraph 12.3 of said Agreement and pursuant to the authorization granted in Section 309(a)(3) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

#### 1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

#### 2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under the Agreement, hereby waives and releases any claim against the United States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) 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 WMAT, its Members, or their predecessors;

(b)(i) past and present claims relating in any manner to damages, losses, or injuries to Water, 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 Reservation and Off-Reservation Trust Land that first accrued at any time prior to the Enforceability Date;

(ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and

(iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from the Off-Reservation Diversion or Use of Water in a manner that is not in violation of the Agreement or applicable law;

(c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act;

(d) past and present claims relating in any manner to pending litigation of claims relating to the Water Rights of the WMAT for the Reservation and Off-Reservation Trust Land;

(e) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the Reservation constructed prior to the Enforceability Date that first accrued at any time prior to the Enforceability Date, which waiver shall only become effective on the full appropriation and payment to the WMAT of \$4,950,000 of the amounts made available under Section 312(b)(2)(B) of the Act;

(f) any claims relating to operation, maintenance, and replacement of the WMAT Rural Water System, which waiver shall only become effective on the date on which the funds are made available under Section 312(b)(3)(B) of the Act and deposited in the WMAT Maintenance Fund;

(g) past and present breach of trust and negligence claims for damage to the land and natural resources of the WMAT caused by riparian and other vegetative manipulation by the United States for the purpose of increasing Water runoff from the Reservation that first accrued at any time prior to the Enforceability Date; and

(h) past and present claims for trespass, use, and occupancy of the Reservation in, on, and along the Black River that first accrued at any time prior to the Enforceability Date.

### 3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the WMAT, on behalf of itself and its Members, shall retain any right:

(a) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under the Agreement or the Act in any Federal or State court of competent jurisdiction;

(b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.1 to the Agreement;

(c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as exhibit 12.9.6.2 to the Agreement;

(d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(e) to assert past, present or future claims for Injury to Water Rights, or any other claims other than a claim to Water Rights, against any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(f) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009, in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T. 8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use;

(g) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Paragraph 2.0;

(h) to seek remedies and assert other claims not specifically waived in Paragraph 2.0; and

(i) to assert any claim arising after the Enforceability Date for a future taking by the United States of Reservation land, Off-Reservation Trust Land, or any property rights appurtenant to that land, including any Water Rights set forth in paragraph 4.0 of the Agreement.

**4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.**

Except as otherwise specifically provided in Subparagraphs 2.0(e) and (f), this Waiver and Release of Claims shall become effective upon the Enforceability Date.

**ATTACHMENT 1**  
**DEFINITIONS**

1.1 “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

1.5 “Diversion” shall mean the act of Diverting.

1.6 “Divert” or “Diverting” shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 “Effluent” shall mean Water that has been used 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 on the Reservation.

1.8 “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

1.9 “Gila River Adjudication Proceedings’ 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)*.

1.10 “Groundwater” shall mean all Water beneath the surface of the Earth other than Surface Water.

1.11 “Injury to Water Rights” shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term “Injury to Water Rights” includes a change in the Groundwater table and any effect of such a change. The term “Injury to Water Rights” does not include any injury to water quality.

1.12 “Little Colorado River Adjudication Proceedings” 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*.

1.13 “Member” or “Members” shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

1.14 “Off-Reservation Trust Land” shall mean land: (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as exhibit 2.57.

1.15 “Secretary” shall mean the Secretary of the United States Department of the Interior.

1.16 “State” shall mean the State of Arizona.

1.17 “Surface Water” shall mean all Water that is appropriable under State law. For purposes of the definition of “Water Right,” the term “Surface Water” shall also include Colorado River water.

1.18 “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.

1.19 "Use" shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.


1.20 "Water" when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.21 "Water Right" shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.22 "White Mountain Apache Tribe" or "WMAT" shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

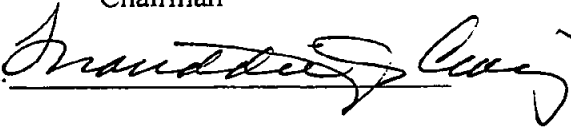
1.23 "WMAT Reservation" or "Reservation" shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

WHITE MOUNTAIN APACHE TRIBE

By: 

Dated: 01-04-2013

Chairman

Attest: 

Approved as to Form:



General Counsel



**EXHIBIT D**  
**to the Decree**

# **EXHIBIT 12.4**

## EXHIBIT 12.4

### WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES IN ALL CAPACITIES (EXCEPT AS TRUSTEE FOR AN INDIAN TRIBE OTHER THAN THE WMAT) AGAINST THE WMAT AND ITS MEMBERS

This Waiver and Release of Claims dated as of November 1, 2012, is entered into by the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 ("Agreement"), and in accordance with the commitments under Subparagraph 12.4 of said Agreement and pursuant to the authorization granted in Section 309(a)(2) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010).

#### 1.0 DEFINITIONS

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed in Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

#### 2.0 WAIVER AND RELEASE OF CLAIMS

Except for the specifically retained claims described in Paragraph 3.0, the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under the Agreement, hereby waives and releases any and all claims against the WMAT, its Members, or any agency, official, or employee of the WMAT, under Federal, State or any other law for all:

- (a) past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;
- (b) claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land in a manner that is not in violation of the Agreement; and
- (c) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

**3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS**

3.1 Notwithstanding the waiver and release of claims set forth in Paragraph 2.0, the United States shall retain any right to assert any claims not specifically waived in Paragraph 2.0.

**4.0 WAIVER EFFECTIVE UPON THE ENFORCEABILITY DATE.**

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

## ATTACHMENT 1 DEFINITIONS

1.1 “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as exhibit 2.2 to the Agreement.

1.2 “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.4 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

1.5 “Diversion” shall mean the act of Diverting.

1.6 “Divert” or “Diverting” shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

1.7 “Effluent” shall mean Water that has been used 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 on the Reservation.

1.8 “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

1.9 “Groundwater” shall mean all Water beneath the surface of the Earth other than Surface Water.

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48 Stat. 984 (commonly known as the "Indian Reorganization Act") (25 U.S.C. § 476).

1.21 "WMAT Reservation" or "Reservation" shall mean the land within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the "Fort Apache Reservation" pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as exhibit 2.81. The depiction of the Reservation on the map attached to the Agreement as exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

THE UNITED STATES OF AMERICA

By: Sally Jewell

Dated: 7/30/13

Secretary of the Interior