Withdrawal and Use of Water from the Big Chino Sub-Basin and the Protection of Stream Flow in the Upper Verde River

An Agreement in Principle Among the City of Prescott, the Town of Prescott Valley, and the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District

1. The parties to this agreement are the City of Prescott (Prescott), the Town of Prescott Valley (Prescott Valley), and the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District (SRP). Collectively Prescott, Prescott Valley, and SRP are the "Parties"; and Prescott and Prescott Valley are the "Communities."

2. The Parties desire to mutually address various interests and issues, and achieve certain objectives related to the withdrawal and use of water from the Big Chino Sub-Basin, including protection of stream flow in the Upper Verde River, in a responsible manner. The Parties understand and acknowledge that this agreement is intended to create a conceptual framework setting out the principles which will guide the Parties and form the basis for future agreements between the Parties which the Parties contemplate at this time. The Parties understand and agree that they will work together in a good faith manner to negotiate, draft and complete these more detailed and comprehensive agreement(s) addressing the specific details and terms necessary to facilitate and complete this conceptual framework and understanding. Accordingly, the Parties hereby commit to the following course of actions.

A. Legislative Amendment to ARS § 45-555(E); Groundwater Monitoring and Modeling.

(1) SRP will join and assist the Communities in obtaining a legislative amendment to ARS §45-555(E) during the current legislative session. This statute will be amended to: 1) settle the quantification of water which may be withdrawn from the Big Chino Sub-Basin by Prescott, as set forth by the Final Decision and Order of the Director, Arizona Department of Water Resources ("ADWR") relating to Prescott's current Application for Modification of Assured Water Supply dated October 12, 2007 (the "Application"); 2) modify the exemption, to the mutual satisfaction of the Parties, to remove any argument that this statute is an unconstitutional special law; and 3) make clear that any water imported into the Prescott Active Management Area ("PrAMA") by Prescott may be delivered for use anywhere within the PrAMA. The Communities acknowledge that the support of SRP for perfecting said amendment is expressly conditioned upon Subsections 2.A.(2) and 2.A.(3) hereinafter. In the event that said amendment is not achieved by sine die of the current regular session of the state legislature, the Parties may mutually agree to complete this agreement, or return to the status quo prior to this agreement. Upon enactment into law, SRP agrees that it shall defend, and cooperate with Prescott and Prescott Valley to defend, any challenge that is made to such legislation by any entity or person.

(2) The Communities agree that in the event the withdrawal of water from the Big Chino Sub-Basin is negatively affecting the minimum flow of water in the Upper Verde River, they will mitigate such impact proportionately to the extent of the effect of their combined withdrawals on the Upper Verde River as compared to the effect of the withdrawals by other water users in the Big Chino aquifer.

(3) The Communities further agree to participate with SRP, ADWR, and the United States Geologic Survey ("USGS") in the funding and implementation of the Big Chino Sub-Basin Monitoring Plan ("Monitoring Plan") set forth in the draft report entitled, "Big Chino Sub-Basin Monitoring Plan, Yavapai County, Arizona, prepared for Mayors of the City of Prescott, Town of Prescott Valley, and Town of Chino Valley; Salt River Project; Arizona Department of Water Resources, July 29, 2008"; and to participate with SRP, ADWR, and the USGS in the funding, creation, and implementation of a Big Chino Sub-Basin Groundwater Model, the framework for which is set forth in the document entitled, "Development of a nested ground-water flow model of the Big Chino Sub basin, Central Arizona, a proposal from the USGS Arizona Water Science Center, October 17, 2008."

B. Suspension/Cessation of Certain Requests and Litigation.

(1) The parties agree that while they continue to negotiate to resolve any outstanding issues in connection with the terms of Section 2.A.(1) of this Agreement:

(a) Prescott and Prescott Valley shall agree to a stay of further proceedings in the two pending lawsuits that concern SRP's response to the Public Records Act requests served on it by the Communities. Those two suits are: (i) the "auditor letters" suit, Prescott and Prescott Valley v. Salt River Project (Maricopa County Superior Court Cause No. No. LC20090-000799, filed November 16, 2009); and (ii) the "work product" suit, Prescott and Prescott Valley v. Salt River Project (Maricopa County Superior Court Cause No. LC2009-000833, filed November 16, 2009) (the "PRAR Suits").

(b) Prescott and Prescott Valley further agree to suspend and not make any additional demands in regard to any obligation on the part of SRP in regard to SRP's response to any pending Public Records Act requests. SRP likewise agrees to suspend and not make any new requests or additional demands on Prescott, Prescott Valley, and/or the Communities regarding existing Public Records Act requests.

(c) If legislation identified in Subsection 2.A.(1) is not passed by June 30, 2010, any of the parties may reinitiate the public records requests and/or litigation referred to herein, unless an extension is mutually agreed by the Parties.

(d) At such time as the legislation identified by Subsection 2.A.(1) has been passed and is in effect, Prescott and Prescott Valley agree to dismiss the PRAR Suits, and to withdraw all then pending Public Records Act requests.

(2) SRP, Prescott and Prescott Valley will agree to the quantities of water identified by the Final Decision and Order of the ADWR Director for purposes of preparing the legislative amendment contemplated by Subsection 2.A.(1) above. SRP, Prescott and Prescott Valley acknowledge that there are three pending judicial appeals of that administrative decision. Prescott reserves the right to challenge, defend, and/or appeal said Final Decision and Order in any such judicial appeal but, regardless of the outcome of such appeals, SRP, Prescott and Prescott Valley agree that it shall not change the quantity of water to be clarified in the legislative amendment contemplated by Subsection 2.A.(1) above. Likewise, SRP, Prescott and Prescott Valley acknowledge that litigation remains pending in Maricopa County Superior Court Cause No. CV2009-000947 regarding the quantification and use of Big Chino water. Prescott reserves the right to challenge, defend and/or appeal any claim made in such litigation but, regardless of the outcome of such action, SRP, Prescott and Prescott Valley agree that it shall not change the

quantity of water to be clarified in the legislative amendment contemplated by Subsection 2.A.(1) above. SRP will not object to withdrawal from the Big Chino Water Ranch and transport of HIA water which may be presently owned or acquired in the future by Prescott, Prescott Valley or the Communities or otherwise transported by Prescott in its pipeline, pursuant to state law.

(3) SRP will suspend all litigation, financial, and/or other support to other parties in the various lawsuits pertaining to the Application as well as any and all current lawsuits pertaining to the Big Chino Sub-Basin and/or Upper Verde River which involve SRP, Prescott, and/or Prescott Valley.

c. Resolution of Other Related Items. The Parties additionally agree to work cooperatively and in good faith to resolve and reach agreement on the following related items:

(1) Withdrawal of any and all objections to, and recognition by SRP of, the "Intergovernmental Agreement for the Sale of Water and Cost Participation" between Prescott and Prescott Valley dated December 7, 2004 (Book 4214, Page 98, Records of the Yavapai County, Arizona, Recorder).

(2) Confirmation of certain water rights of Prescott, Prescott Valley, and SRP, and agreement not to object to said water rights to be listed henceforth as an attachment to this Agreement.

(3) Creation and implementation of one or several water management, replenishment, or augmentation areas, districts, or other mechanisms to benefit the Big Chino Sub-Basin, to include working to establish a quantity cap for groundwater withdrawals from the Big Chino aquifer, and seeking the participation of owners of property and rights to HIA water within the Big Chino Sub-Basin.

(4) Measures for protecting the Upper Verde River which may include mitigation triggers and actions.

(5) "Wild and Scenic" designation for the headwaters of the Verde River and maintaining a minimum in-stream flow.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 11 day of FEBRUARY, 2010.

Signature Pages Follow

SALT RIVER VALLEY WATER USERS' ASSOCIATION

JOHN M. WILLIAMS, JR., PRESIDENT

2/11/10
DATE

ATTEST:

TERRILL A. LONON
CORPORATE SECRETARY

APPROVED AS TO FORM:

FREDERIC L. BEESON
ATTORNEY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

JOHN M. WILLIAMS, JR., PRESIDENT

2/11/10
DATE

ATTEST:

TERRILL A. LONON
COPORATE SECRETARY

APPROVED AS TO FORM:

FREDERIC L. BEESON
ATTORNEY

CITY OF PRESCOTT

MARLIN KUYKENDALL, MAYOR

2-11-10
DATE

ATTEST:

ELIZABETH A. BURKE
CITY CLERK

APPROVED AS TO FORM:

GARY D. KIDD
CITY ATTORNEY

TOWN OF PRESCOTT VALLEY

HARVEY SKOOG, MAYOR

2-18-10
DATE

ATTEST:

DIANE RUSSELL
TOWN CLERK

APPROVED AS TO FORM:

IVAN LEGLER
TOWN ATTORNEY

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

CITY ATTORNEY

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

TOWN ATTORNEY