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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF APACHE**

**IN RE: THE GENERAL ADJUDICATION  
OF ALL RIGHTS TO USE WATER IN  
THE LITTLE COLORADO RIVER  
SYSTEM AND SOURCE**

No. 6417

**APPLICATION FOR AN ORDER FOR  
SPECIAL PROCEEDINGS TO  
APPROVE AN INDIAN WATER  
RIGHTS SETTLEMENT AND  
STIPULATION**

Descriptive Summary: In accordance with the Administrative Order issued by the Supreme Court of Arizona on September 27, 2000, in which the Court adopted special procedures for the approval of Indian water rights settlements, this is an application for an order for special proceedings to approve an Indian Water Rights Settlement Agreement dated June 7, 2002, as amended, and a Stipulation dated March 1, 2006, to which the undersigned are parties. The Settlement Agreement and the Stipulation settle the claims to federally reserved and other water rights in the Little Colorado River Basin in Arizona by the Zuni Indian Tribe and the United States for the benefit of the Zuni Indian Tribe.

Statement of Claimant Numbers: Salt River Project: 39-82193 through 39-82206 and 39-87393; United States for Zuni Indian Tribe: 39-91736 through 39-91752; the Lyman Water Company: 39-89196; Round Valley Water Users' Association: 39-89112; Town of Eagar: 39-84465 through 39-84471; Arizona Game and Fish Commission: 39-80693, 39-80963, 39-83748, 39-83751, 39-83753, 39-83757, 39-83758, 39-83761, 39-83766, 39-88135, 39-88136, 39-88146, 39-88147, 39-88148, 39-88149, 39-88273, 39-88275, 39-88277, 39-88280, 39-88600, 39-89158, 39-89160, 39-89292, 39-89293, 39-89297, 39-89298, 39-91712, 39-92045, 39-92046; Arizona State Land Department: 39-86042, and numerous others; Arizona State Parks Board: 39-03-84421; St. Johns Irrigation & Ditch Company: 39-85024; City of St. Johns: 39-89123 through 39-89126 and 39-91702 through 39-91706; Town of Springerville: 39-84149; Tucson Electric Power Company: 39-080889 through 39-080913.

Date of Filing: Original sent by overnight mail for filing on March 1, 2006.

Number of Pages: 8; Exhibit A – 11; Exhibit B – 5; Exhibit C - 7

In accordance with the Administrative Order issued by the Supreme Court of Arizona on September 27, 2000, in which the Court adopted special procedures for the approval of Indian water rights settlements, this is an Application for an Order for Special Proceedings to obtain a final Judgment and Decree approving the Zuni Indian Tribe Water

1 Rights Settlement Agreement of 2002, as amended (“Settlement Agreement”) and a  
2 Stipulation dated March 1, 2006.

3           The Applicants are the Zuni Indian Tribe (“Tribe”), the United States of  
4 America in its capacity as trustee for the Tribe, the Arizona Game and Fish Commission, the  
5 Arizona State Land Department, the Arizona State Parks Board, St. Johns Irrigation & Ditch  
6 Company, the Lyman Water Company, Round Valley Water Users’ Association, Salt River  
7 Project Agricultural Improvement and Power District, Tucson Electric Power Company, the  
8 City of St. Johns, the Town of Eagar, and the Town of Springerville. The Applicants are also  
9 parties to the Settlement Agreement and to the Stipulation.

10           The Settlement Agreement settles the rights of the Tribe and of the United  
11 States for the benefit of the Tribe to underground water and to surface water from the Little  
12 Colorado River and its tributaries in Arizona, as these terms are defined by the Settlement  
13 Agreement. The Stipulation, which summarizes and incorporates the terms of the Settlement  
14 Agreement, is attached as Exhibit A to this Application. The Settlement Agreement is  
15 attached as Exhibit 1 to the Stipulation. A proposed Judgment and Decree, which is  
16 substantially similar to the proposed Judgment and Decree attached to the Settlement  
17 Agreement as Exhibit 11.9, is attached as Exhibit B to this Application.

18           An Order for Special Proceedings to Approve the Settlement Agreement and the  
19 Stipulation should be issued for the following reasons:

20           1. Special circumstances prevent the consideration of the Settlement Agreement  
21 and the Stipulation in the normal course of the Adjudication. The Tribe’s claims, which were  
22 filed by the United States for the benefit of the Tribe, are based on the federal reserved water  
23 rights doctrine. These claims are not subject to the doctrine of prior appropriation as are other  
24 state based water rights.

25           2. The water rights claims of the United States for the benefit of the Zuni Indian  
26 Tribe, which are described in statement of claimant numbers 39-91736 through 39-91752, are  
27 within the jurisdiction of the Court under the principles of Arizona v. San Carlos Apache

1 Tribe of Arizona, 463 U.S. 545 (1983) and United States v. Superior Court, 144 Ariz. 265,  
2 697 P.2d 658 (1985).

3           3. The claims of the United States for the benefit of the Tribe, which are  
4 described in statement of claimant numbers 39-91736 through 39-91752, are the subject of the  
5 Settlement Agreement. All parties to the Settlement Agreement, other than the United States,  
6 the Tribe, and the State of Arizona, are claimants in this adjudication proceeding whose  
7 claims are adverse to statement of claimant numbers 39-91736 through 39-91752 by the  
8 United States for the benefit of the Tribe.

9           4. The terms of the Settlement Agreement were approved, ratified and  
10 confirmed by the United States Congress in the Zuni Indian Tribe Water Rights Settlement  
11 Act, Public Law 108-34, 117 Stat. 788 (2003) ("Settlement Act").

12           5. Section 9(a) (12) of the Settlement Act and Paragraph 3.1.K of the Settlement  
13 Agreement provide that the Settlement Agreement will not be effective unless it is approved  
14 in this proceeding on or before December 31, 2006.

15           The Settlement Agreement and the Stipulation should be approved for the  
16 following reasons:

17           1. The Settlement Agreement and the Stipulation are fair, adequate, reasonable,  
18 and consistent with applicable law, considering all of the circumstances surrounding the  
19 settlement and all of the consideration provided under the settlement.

20           2. The water rights of the Tribe and the United States for the benefit of the Tribe  
21 that are resolved by the Settlement Agreement and described in the Stipulation are no more  
22 extensive than the Tribe or the United States for the benefit of the Tribe would have been able  
23 to prove at trial.

24           3. The Settlement Agreement and the Stipulation were reached in good faith.

25           4. The Settlement Act is consistent with the requirements of the United States  
26 Constitution.

1           Copies of the Settlement Agreement, the Stipulation and the proposed Judgment  
2 and Decree will be mailed to and available for inspection in the offices of the Arizona  
3 Department of Water Resources and the Clerks of the Superior Court in every Arizona County  
4 located within the Little Colorado River System and Source promptly upon issuance of the  
5 Order for Special Proceedings.

6           Attached as Exhibit C to this Application is a proposed form of order directing  
7 that special proceedings be conducted to approve the Settlement Agreement and the  
8 Stipulation, and to adjudicate the federally reserved and other water rights of the Tribe and of  
9 the United States for the benefit of the Tribe.

10           WHEREFORE,

11           The Applicants request that this Court enter an Order for Special Proceedings to  
12 Approve an Indian Water Rights Settlement and a Stipulation, substantially in the form  
13 attached as Exhibit C to this Application.

14           The Applicants also request that this Court approve the Settlement Agreement  
15 and the Stipulation and enter a final judgment and decree, consistent with the proposed  
16 Judgment and Decree attached hereto as Exhibit B and which is substantially in the form of  
17 the proposed Judgment and Decree attached to the Settlement Agreement as Exhibit 11.9,  
18 adjudicating the water rights of the Tribe and the United States for the benefit of the Tribe to  
19 the water supplies within its jurisdiction as provided by the terms of the Settlement  
20 Agreement. The Judgment and Decree shall be binding upon all parties to the Little Colorado  
21 River Adjudication except to the extent that the express terms of the Settlement Agreement  
22 and the Stipulation provide that non-signing parties will not be bound by the Settlement  
23 Agreement and the Stipulation.

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1 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2006.

2 UNITED STATES DEPARTMENT OF JUSTICE

3  
4 By: Vanessa Boyd Willard  
5 Vanessa Boyd Willard, Esq.  
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20 TERRY GODDARD  
21 ATTORNEY GENERAL

22  
23 By: [Signature]  
24 James F. Odenkirk, Esq. (013992)  
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27 (602) 542-7787  
Attorney for the Arizona Game and Fish  
Commission

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TERRY GODDARD  
ATTORNEY GENERAL

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Eagar, and the Town of Springerville

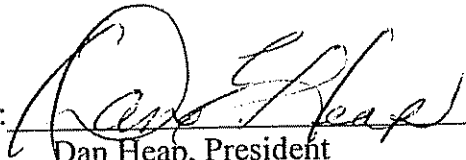
PLATT LEGAL SERVICES, INC.

By: \_\_\_\_\_

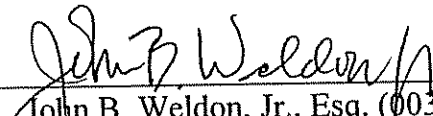
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Attorney for the City of St. Johns

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ST. JOHNS IRRIGATION & DITCH CO.

By:   
Dan Heap, President

SALMON, LEWIS & WELDON, P.L.C.

By:   
John B. Weldon, Jr., Esq. (003701)  
Alexandra M. Arboleda, Esq. (016673)  
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(602) 801-9060  
Attorneys for Salt River Project Agricultural  
Improvement and Power District

TUCSON ELECTRIC POWER COMPANY

By: \_\_\_\_\_  
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(520) 884-3770  
Attorney for Tucson Electric Power Company

~~ORIGINAL AND ONE COPY of the foregoing  
mailed via overnight delivery on this \_\_\_\_ day of  
\_\_\_\_\_, 2006 for filing to:~~

~~Clerk of the Apache County Superior Court  
Attn: Water Case 6417  
70 West Third South  
St. Johns, AZ 85936~~

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ST. JOHNS IRRIGATION & DITCH CO.

By: \_\_\_\_\_  
Dan Heap, President

SALMON, LEWIS & WELDON, P.L.C.

By: \_\_\_\_\_  
John B. Weldon, Jr., Esq. (003701)  
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Attorney for Tucson Electric Power Company

ORIGINAL AND ONE COPY of the foregoing  
mailed via overnight delivery on this 1st day of  
March, 2006 for filing to:

Clerk of the Apache County Superior Court  
Attn: Water Case 6417  
70 West Third South  
St. Johns, AZ 85936



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AND COPIES of the foregoing sent via first-class mail  
on March 1, 2006 to:

The Hon. Eddward P. Ballinger, Jr.  
Judge of the Superior Court  
18380 N. 40<sup>th</sup> St., Ste. 120  
Phoenix, AZ 85032

AND COPIES of the foregoing sent via first-class mail  
this 15<sup>th</sup> day of March, 2006 to all parties  
appearing on the Court-approved mailing list for this  
Adjudication dated June 15, 2005

Cheryl Kilcline

EXHIBIT A  
to  
APPLICATION FOR SPECIAL PROCEEDINGS

1                                   **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
2                                   **IN AND FOR THE COUNTY OF APACHE**

3  
4 **IN RE: THE GENERAL ADJUDICATION**  
5 **OF ALL RIGHTS TO USE WATER IN**  
6 **THE LITTLE COLORADO RIVER**  
7 **SYSTEM AND SOURCE**

No. 6417

**STIPULATION AND REQUEST FOR**  
**ENTRY OF JUDGMENT AND**  
**DECREE**

8  
9                                   THIS STIPULATION, dated this 1<sup>st</sup> day of March, 2006, is entered into among  
10 the Zuni Indian Tribe, the United States of America in its capacity as trustee for the Zuni  
11 Indian Tribe, the Arizona Game and Fish Commission, the Arizona State Land Department,  
12 the Arizona State Parks Board, St. Johns Irrigation & Ditch Company, the Lyman Water  
13 Company, Round Valley Water Users' Association, Salt River Project Agricultural  
14 Improvement and Power District, Tucson Electric Power Company, the City of St. Johns, the  
15 Town of Eagar, and the Town of Springerville.

16                                   WHEREAS,

17                                   1. Certain water rights claimed by the Zuni Indian Tribe ("Tribe") and the United  
18 States for the benefit of the Tribe ("United States") are to be permanently settled by  
19 agreement among the parties to this Stipulation ("Parties"). The terms of the Zuni Indian  
20 Tribe Water Rights Settlement Agreement of 2002, as amended, ("Settlement Agreement")  
21 were approved, ratified and confirmed by the United States Congress in the Zuni Indian Tribe  
22 Water Rights Settlement Act, Public Law 108-34, 117 Stat. 788 (2003) ("Settlement Act"). A  
23 copy of the Settlement Agreement is attached as Exhibit 1 to this Stipulation and is  
24 incorporated herein by reference. The terms that are used in this Stipulation and defined in  
25 Article 2 of the Settlement Agreement have the meaning set forth in the Settlement  
26 Agreement. A proposed Judgment and Decree, which is substantially in the form of the  
27

1 proposed Judgment and Decree that is attached to the Settlement Agreement as Exhibit 11.9,  
2 is attached as Exhibit B to the Application for an Order for Special Proceedings to Approve  
3 an Indian Water Rights Settlement and Stipulation.

4           2. The purpose of the Settlement Agreement is to resolve water rights litigation  
5 and to provide resources to restore wetlands and the Sacred Lake on the Zuni Heaven  
6 Reservation. The Reservation was authorized by Congress to protect and to recognize long-  
7 standing religious and sustenance activities by the Tribe on certain lands along the Little  
8 Colorado River and the Zuni River in the vicinity of St. Johns, Arizona. Public Law 98-498,  
9 98 Stat. 1533 (1984), as amended by Public Law 101-486, 104 Stat. 1174 (1990).

10           3. The primary benefits of the Settlement Agreement for the Tribe and the United  
11 States are a resolution of litigation; a recognition of the Tribe's water rights; the restoration of  
12 a wetland area and lake that have special significance to the Tribe; the fulfillment of the  
13 United States' trust responsibility to the Tribe; and a waiver of the State parties' claims  
14 against the Tribe and the United States as well as a waiver of the Tribe's claims against the  
15 United States.

16           4. The primary benefits of the Settlement Agreement for the State of Arizona and  
17 other non-federal parties are a resolution of litigation; the Tribe's and the United States'  
18 agreement not to object to existing surface water and underground water uses; the facilitation  
19 of State programs to rehabilitate streams, enhance riparian habitats, protect fish and wildlife  
20 resources, and provide recreational opportunities; and a waiver of the Tribe's and the United  
21 States' claims against the non-federal parties.

22           5. As described in Paragraph 1.7 of the Settlement Agreement, the Tribe will use at  
23 least 5,500 acre feet of surface water per annum for wetland restoration on the Reservation in  
24 accordance with the Settlement Agreement. The Tribe will use existing surface water rights  
25 appurtenant to its fee lands, and, within the scope of the Settlement Agreement, it has the  
26 right to acquire up to 3,600 acre feet of water per annum of existing court decreed upstream  
27 surface water. The Tribe may sever and transfer its water rights for use on the Reservation in

1 accordance with the Settlement Agreement and State law. The Tribe's existing surface water  
2 rights are described in abstracts, which are attached to the Settlement Agreement as Exhibits  
3 4.1.A (1) et seq. The Tribe's abstracted rights will be adjudicated along with other  
4 claimants' rights in the normal course of the adjudication. The Parties have agreed not to  
5 object to the attributes of the Tribe's water rights described in these abstracts as set forth in  
6 Paragraph 4.2.A of the Settlement Agreement.

7           6. For wetland restoration purposes on the Reservation, the Tribe will receive an  
8 appropriation of 5,500 acre feet per annum from the unappropriated flows of the Little  
9 Colorado River with a priority date of August 28, 1984 as described in Paragraph 4.6.B of the  
10 Settlement Agreement and in the abstract attached to the Settlement Agreement as Exhibit  
11 4.6.B.

12           7. As provided in Paragraphs 4.6 (D) and (E) of the Settlement Agreement, the  
13 Tribe or the United States may purchase surface water rights from willing sellers in the  
14 Norviel Decree area. The Tribe, the United States and the Lyman Water Company have  
15 executed a Water Right, Entitlement and Perpetual Delivery Agreement ("Entitlement and  
16 Delivery Agreement"). Pursuant to the Entitlement and Delivery Agreement, the Tribe and  
17 the United States for the benefit of the Tribe shall hold all right, title and interest to a  
18 permanent water right and entitlement to receive, on an annual basis, twelve percent (12%) of  
19 LWC Delivered Water as defined in Paragraph 5 of the Entitlement and Delivery Agreement,  
20 at the priority date of Lyman Reservoir under the Norviel Decree. Twelve percent (12%) of  
21 LWC Delivered Water has historically provided 972 AFA of water. Nothing in the  
22 Entitlement and Delivery Agreement restricts, enlarges or otherwise determines the subject  
23 matter jurisdiction of any state or federal court. A copy of the Entitlement and Delivery  
24 Agreement is attached to this Stipulation as Exhibit 2 and is incorporated herein by reference.

25           8. The Lyman Water Company and St. Johns Irrigation Company have prepared  
26 abstracts of their surface water rights, which are attached to the Settlement Agreement as  
27 Exhibits 4.1.C (1) et seq. The companies' abstracted rights will be adjudicated along with

1 other parties' rights in the normal course of the adjudication. The Parties have agreed not to  
2 object to the attributes of the companies' water rights described in these abstracts as set forth  
3 in Paragraph 4.2.C of the Settlement Agreement.

4 9. The Arizona Game and Fish Commission will also prepare abstracts of its  
5 surface water rights in the manner described in Paragraph 3.1.F of the Settlement Agreement.  
6 The Commission's abstracted rights will be adjudicated along with other parties' rights in the  
7 normal course of the adjudication. The Parties will agree not to object to the attributes of the  
8 Commission's water rights described in these abstracts as set forth in Paragraph 4.2.B of the  
9 Settlement Agreement. The Parties will amend the Settlement Agreement as required by  
10 Paragraph 3.1.F of the Settlement Agreement.

11 10. No new surface water appropriations will be allowed in the Norviel Decree  
12 Area as described in Paragraph 4.3 of the Settlement Agreement.

13 11. No new reservoirs or dams will be constructed on the Little Colorado River  
14 between Lyman Dam and the western boundary of the Reservation without the written  
15 consent of the Tribe except under certain conditions described in Paragraph 4.4 of the  
16 Settlement Agreement.

17 12. The Parties will not object to the Tribe's withdrawal or use of 1,500 acre feet  
18 per annum of underground water from wells on the Zuni Pumping Lands if the water is used  
19 on those lands, in accordance with Paragraph 5.3 of the Settlement Agreement. The Zuni  
20 Pumping Lands, which are adjacent to the Reservation, are described in Exhibit 2.48 to the  
21 Settlement Agreement.

22 13. The Tribe will not object to water uses from all existing wells and from new  
23 exempt wells as set forth in Paragraphs 5.1 and 5.5 of the Settlement Agreement.

24 14. For new wells located outside the Zuni Protection Area, the Tribe and the  
25 United States will not object to the withdrawal of water from new non-exempt wells unless  
26 the withdrawal of water interferes with the Tribe's surface water rights as described in  
27

1 Paragraph 5.6 of the Settlement Agreement. The Zuni Protection Area, which is adjacent to  
2 the Reservation, is set forth in Exhibit 2.48 to the Settlement Agreement.

3 15. For new wells located inside the Zuni Protection Area, the Tribe and the United  
4 States will not object to the withdrawal of water unless the Static Water Level Decline is more  
5 than 50 feet as described in Paragraph 5.7.D of the Settlement Agreement.

6 16. Any owner of land located within the Zuni Protection Area may sign a Pumping  
7 Protection Agreement and agree to limit the capacity of new wells on his or her land to a total  
8 of 500 gallons per minute for each section of land, or a prorated amount if the lands are less  
9 than one section. If a landowner enters into a Pumping Protection Agreement, the Tribe and  
10 the United States will not object to wells or withdrawals of underground water from wells on  
11 his or her land that are consistent with the terms of the Pumping Protection Agreement. The  
12 Pumping Protection Agreement Form is attached to the Settlement Agreement as Exhibit  
13 5.7.B.

14 17. The Tribe and the United States have also entered into agreements with Salt  
15 River Project, Tucson Electric Power Company and the Arizona State Land Department that  
16 recognize certain intended uses of underground water. These agreements are acknowledged  
17 in Section 5.8 of the Settlement Agreement.

18 18. The United States will take certain lands into trust for the benefit of the Tribe to  
19 aid its wetland restoration project in accordance with Article 6 of the Settlement Agreement.  
20 With respect to these new trust lands, the Tribe will cooperate with the State of Arizona and  
21 local governments through an Intergovernmental Agreement addressing certain  
22 environmental, water, tax and land use issues.

23 19. The Tribe will receive \$21,863,000, which will be used for water rights  
24 acquisition, and wetland restoration and maintenance in accordance with Article 7 of the  
25 Settlement Agreement. As provided by the Settlement Act, the United States will contribute  
26 \$19,250,000 for water rights acquisition, facility construction and other related costs. The  
27 State of Arizona will contribute \$1,613,000 for wetland restoration. The Salt River Project

1 will contribute \$1,000,000 for restoration of the Sacred Lake and cultivation of riparian  
2 vegetation on the Reservation. In addition, the Arizona Game and Fish Commission will  
3 spend up to \$6,000,000 to acquire irrigated land and water rights, which it may sever and  
4 transfer to the Tribe. Pursuant to these expenditures by the Arizona Game and Fish  
5 Commission, up to 1,000 acre-feet of water per annum will be delivered to the Tribe for the  
6 benefit of wildlife.

7           20. As set forth in Article 8 of the Settlement Agreement, water rights made  
8 available to the Tribe under the Settlement Agreement and used on the Zuni Heaven  
9 Reservation will be held in trust by the United States in perpetuity, and will not be subject to  
10 forfeiture and abandonment. State law does not apply to water uses on the Zuni Heaven  
11 Reservation. Subject to paragraph 7.7 of the Settlement Agreement, the Tribe will use water  
12 made available to it under the Settlement Agreement on the Zuni Heaven Reservation for any  
13 use it deems advisable. The Tribe or the United States will not, however, sell, lease, transfer,  
14 or transport water made available to it for use on the Zuni Heaven Reservation to any other  
15 place; provided, however, that water may be severed and transferred from the Zuni Heaven  
16 Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance  
17 with state law. Once transferred to any lands held in fee, that water will be subject to state  
18 law.

19           21. Neither the Tribe nor the United States will enforce the priority of non-Norviel  
20 Decree water rights that it holds against Norviel Decree water rights pursuant to Paragraph  
21 10.3 of the Settlement Agreement.

22           22. The State parties will execute a waiver of past, present, and future claims for  
23 injuries to water rights or water quality against the Tribe and the United States, as described  
24 in the waiver, which is attached to the Settlement Agreement as Exhibit 11.1(revised).

25           23. The Tribe and the United States for the benefit of the Tribe will execute waivers  
26 of past, present and future claims to water rights, injuries to water rights and injuries to water  
27



1 quality, as described in the waivers, which are attached to the Settlement Agreement as  
2 Exhibits 11.2.1, 11.2.2 and 11.2.3.

3           24. The Tribe will execute a waiver of its right to request that the United States  
4 bring past, present, and future claims of injury to water quality, and claims of interference  
5 with the trust responsibility of the United States, as described in the waivers, which are  
6 attached to the Settlement Agreement as Exhibits 11.2.2 and 11.3 (revised).

7           25. The water supplies that are the subject of the Settlement Agreement between  
8 the Parties are subject to the jurisdiction of this Court.

9           26. The Parties to this Stipulation have submitted the Settlement Agreement to this  
10 Court for its approval pursuant to Section 9 (a) (12) of the Settlement Act and the Arizona  
11 Supreme Court's Administrative Order dated September 27, 2000, in which the Court adopted  
12 special procedures for the approval of Indian water rights settlements.

13                   NOW THEREFORE,

14           1. The Parties to this Stipulation request that this Court approve this Stipulation  
15 and the Settlement Agreement, which is attached hereto as Exhibit 1.

16           2. The Parties to this Stipulation also request that after completion of the  
17 conditions set forth in Section 9 of the Settlement Act and Paragraph 3.1 of the Settlement  
18 Agreement, this Court enter a Judgment and Decree, consistent with the proposed Judgment  
19 and Decree attached as Exhibit B to the Application for an Order for Special Proceedings to  
20 Approve an Indian Water Rights Settlement and Stipulation, which is substantially in the form  
21 of the proposed Judgment and Decree attached to the Settlement Agreement as Exhibit 11.9,  
22 adjudicating the water rights of the Tribe and of the United States for the benefit of the Tribe  
23 to the water supplies within its jurisdiction as provided by the terms of the Settlement  
24 Agreement. The Judgment and Decree shall be binding upon all parties to the Little Colorado  
25 River Adjudication except to the extent that the express terms of the Stipulation and  
26 Settlement Agreement provide that non-signing parties will not be bound by the Stipulation  
27 and Settlement Agreement.

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RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2006.

UNITED STATES DEPARTMENT OF JUSTICE

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PLATT LEGAL SERVICES, INC.

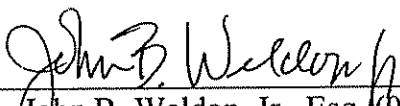
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ST. JOHNS IRRIGATION & DITCH CO.

By:   
Dan Heap, President

SALMON, LEWIS & WELDON, P.L.C.

By:   
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TUCSON ELECTRIC POWER COMPANY

By: \_\_\_\_\_  
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~~ORIGINAL AND ONE COPY of the foregoing,  
mailed via overnight delivery on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006 for filing to:~~

~~Clerk of the Apache County Superior Court  
Attn: Water Case 6417  
70 West Third South  
St. Johns, AZ 85936~~

~~AND COPIES of the foregoing sent via first-class mail~~

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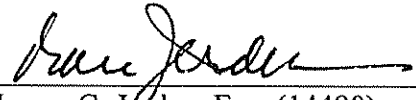
ST. JOHNS IRRIGATION & DITCH CO.

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Dan Heap, President

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St. Johns, AZ 85936

AND COPIES of the foregoing sent via first-class mail

1 on March, 2006 to:

2 The Hon. Eddward P. Ballinger, Jr.  
3 Judge of the Superior Court  
4 18380 N. 40<sup>th</sup> St., Ste. 120  
5 Phoenix, AZ 85032

6 AND COPIES of the foregoing sent via first-class mail  
7 this 15<sup>th</sup> day of March, 2006 to all parties  
8 appearing on the Court-approved mailing list for this  
9 Adjudication dated June 15, 2005.

10 Cheryl Kilcline

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EXHIBIT 1  
to  
STIPULATION