

RESOLUTION NO. 4262

A RESOLUTION OF THE COUNCIL OF THE CITY OF
CHANDLER, MARICOPA COUNTY, ARIZONA,
APPROVING AND AUTHORIZING THE MAYOR TO
EXECUTE THE WHITE MOUNTAIN APACHE TRIBE
WATER RIGHTS QUANTIFICATION AGREEMENT

WHEREAS, proceedings to determine the nature and extent of rights to the water of the White Mountain Apache Tribe and its Members, the United States and other claimants are pending in the General Adjudication of All Rights to Use Water in the Gila River System and Source in Maricopa County Superior Court (the "Gila River Adjudication") and in the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source (the "Little Colorado River Adjudication"); and

WHEREAS, the City of Chandler is a claimant of water rights in the Gila River Adjudication wherein the White Mountain Apache Tribe has also asserted claims to substantial water rights; and

WHEREAS, recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the White Mountain Apache Tribe, the City of Chandler and others, have agreed to permanently quantify the water rights of the White Mountain Apache Tribe, its Members and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this Quantification Agreement; and

WHEREAS, the Tribe, its Members, the United States, the City of Chandler ("City") and other named parties have agreed to permanently settle the Tribe's claims to water in the Agreement entitled the *White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District* ("Quantification Agreement"); and

WHEREAS, the best interests of the City will be served by approving and entering this Quantification Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

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- Section 1. The City Council hereby approves this Quantification Agreement which, with all Attachments, is on file at the City Clerk's Office.
- Section 2. The Mayor of the City of Chandler is hereby authorized to execute the *White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.*
- Section 3. The Mayor is further authorized to execute the following documents in the form set forth in Exhibits to that Quantification Agreement:
- a. Lease Agreement for CAP Water Among the City of Chandler, the White Mountain Apache Tribe and the United States in the form attached as Exhibit 10.1.1B to that Quantification Agreement with such additions, deletions, and modifications as shall be approved by the City Attorney; and
 - b. Waiver and Release of Claims for Injury to Water Rights by Parties other than the White Mountain Apache Tribe and the United States in the form attached as Exhibit 12.1 to that Quantification Agreement.
- Section 4. The City Attorney is authorized to execute a stipulation and request for entry of judgment in the Gila River Adjudication proceedings, in substantially the form attached as Exhibit 12.9.6.1 to that Quantification Agreement, with such additions, deletions, and modifications as shall be approved by the City Attorney and such other similar stipulation and request for entry of judgment as the City Attorney deems necessary in the Little Colorado River Adjudication proceedings.
- Section 5. That the various City officers and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2009.

ATTEST:

City Clerk

Mayor

#11

FEB 26 2009



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MEMORANDUM **Law Department - Council Memo No. 34**

DATE: FEBRUARY 26, 2009

TO: MAYOR AND COUNCIL

THRU: MARY WADE, CITY ATTORNEY *mw* *DS by CA*
 DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR

FROM: CYNTHIA J. HAGLIN, ASSISTANT CITY ATTORNEY *CA*

SUBJECT: RESOLUTION NO. 4262 APPROVING THE WHITE MOUNTAIN APACHE
 TRIBE WATER RIGHTS QUANTIFICATION SETTLEMENT AGREEMENT

RECOMMENDATION: Recommend approval of Resolution No. 4262, which authorizes the Mayor on behalf of the City of Chandler to execute the *White Mountain Apache Tribe Water Rights Quantification Agreement*, and certain Exhibits thereto, and which authorizes the City Attorney to execute any required stipulations and requests for entries of judgment in the Gila River and Little Colorado River Adjudications.

BACKGROUND: The United States, on behalf of the White Mountain Apache Tribe (“Tribe”) has asserted claims in the Gila River Adjudication for up to 180,000 acre-feet of water annually. These claims conflict with the water rights claims asserted by the City of Chandler, as well as water rights claims of Salt River Project and the Roosevelt Water Conservation District, which both provide a portion of Chandler’s water supplies.

After extensive negotiations, the Tribe and the United States on behalf of the Tribe, have reached an agreement with numerous parties to quantify the Tribe’s water rights and resolve potential future litigation as to its water rights entitlements. In addition to the Tribe and the United States, other parties include Salt River Project, Roosevelt Water Conservation District, the Cities of Chandler, Avondale, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Showlow, Tempe and the Town of Gilbert, the Buckeye Irrigation Company, the Buckeye Water Conservation District, and the Central Arizona Water Conservation District.

On January 26, 2009, Senator Kyl introduced the White Mountain Apache Water Rights Settlement Act, which authorizes and confirms the Tribe’s Quantification Agreement and authorizes funding for a key drinking water project required by the Tribe for its reservation. The proposed Act is being reviewed by various Congressional Committees, and will then be submitted for approval by the Senate and the House of Representatives.

DISCUSSION: Through this settlement the Tribe will receive an annual water budget of approximately 52,000 acre-feet per year, comprising 27,000 acre-feet per year of surface water and groundwater supplies, and 25,000 acre-feet per year of Central Arizona Project (“CAP”) water supplies. The Tribe will also receive federal funds to be used to construct a dam, treatment facilities and pipelines for its municipal water supply near Whiteriver and for certain other projects. In exchange, the Tribe will waive any other claims to water in the Gila River Adjudication that could have jeopardized the other parties’ use of Gila River water supplies. Additionally, the Tribe has agreed to lease its CAP supplies for 100 years, to several valley cities and the Central Arizona Water Conservation District. The annual quantity of water Chandler intends to lease from the Tribe offsets the Tribe’s water use under the terms of the Quantification Agreement.

Chandler will lease 1,261 acre-feet of CAP M&I priority or non-Indian CAP priority water that has been firmed to the equivalent of an M&I priority, and 3,336 acre-feet of non-Indian CAP priority water. In 2008 dollars, the one-time fee per acre-foot for the M&I priority water is \$2,550 and the per-acre-foot fee for the non-Indian agricultural priority water is \$2,075. The leases will become effective after the Quantification Agreement becomes enforceable, no later than October 31, 2013. The one-time fee for the water will be inflated from the 2008 price by the Consumer Price Index based on the date the lease becomes effective.

A copy of the Quantification Agreement and all its exhibits are available for review at the City Clerk’s office.

FINANCIAL IMPLICATIONS:

Resolving the outstanding claims of the White Mountain Apache Tribe enables the City of Chandler to avoid future costs and uncertainty of litigation as to these water rights.

Chandler’s cost to lease 1,261 acre-feet CAP M&I priority and 3,336 acre-feet of non-Indian CAP priority water (a total of 4,597 acre-feet) in 2008 dollars is \$10,137,750.00. The one-time fee for the water will be inflated from the 2008 price by the Consumer Price Index based on the date the lease becomes effective. Staff anticipates the lease payment to occur in 2012 and will program funds for expenditure in the appropriate year of the 2009-2014 Capital Improvement Program. Council will consider adopting the 2009-2014 Capital Improvement Program in May 2009.

PROPOSED MOTION: Move to approve Resolution No. 4262, approving and authorizing the Mayor to execute the *White Mountain Apache Tribe Water Rights Quantification Agreement* and certain Exhibits thereto, and which authorizes the City Attorney to execute any required stipulations and requests for entries of judgment in the Gila River and Little Colorado River Adjudications.

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WHEREAS, the City of Chandler is a claimant of water rights in the Gila River Adjudication wherein the White Mountain Apache Tribe has also asserted claims to substantial water rights; and

WHEREAS, recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the White Mountain Apache Tribe, the City of Chandler and others, have agreed to permanently quantify the water rights of the White Mountain Apache Tribe, its Members and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this Quantification Agreement; and

WHEREAS, the Tribe, its Members, the United States, the City of Chandler ("City") and other named parties have agreed to permanently settle the Tribe's claims to water in the Agreement entitled the *White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District* ("Quantification Agreement"); and

WHEREAS, the best interests of the City will be served by approving and entering this Quantification Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

- Section 1. The City Council hereby approves this Quantification Agreement which, with all Attachments, is on file at the City Clerk's Office.
- Section 2. The Mayor of the City of Chandler is hereby authorized to execute the *White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.*
- Section 3. The Mayor is further authorized to execute the following documents in the form set forth in Exhibits to that Quantification Agreement:
- a. Lease Agreement among the White Mountain Apache Tribe, the Secretary and the City of Chandler in the form attached as Exhibit 10.1.1B to that Quantification Agreement; and
 - b. Waiver and Release of Claims for Injury to Water Rights by Parties other than the White Mountain Apache Tribe and the United States in the form attached as Exhibit 12.1 to that Quantification Agreement.
- Section 4. The City Attorney is authorized to execute a stipulation and request for entry of judgment in the Gila River Adjudication proceedings, in substantially the form attached as Exhibit 12.9.6.1 to that Quantification Agreement, with such additions, deletions, and modifications as shall be approved by the City Attorney and such other similar stipulation and request for entry of judgment as the City Attorney deems necessary in the Little Colorado River Adjudication proceedings.
- Section 5. That the various City officers and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this
____ day of _____, 2009.

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney *CHJ*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4262 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2009, and that a quorum was present thereat.

City Clerk