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INTERGOVERNMENTAL AGREEMENT FOR UPPER VERDE
RIVER WATERSHED PROTECTION COALITION BETWEEN
YAVAPAI COUNTY, TOWN OF CHINO VALLEY, TOWN OF PRESCOTT VALLEY,
CITY OF PRESCOTT, YAVAPAI-PRESCOTT INDIAN TRIBE AND TOWN OF DEWEY-HUMBOLDT

UNOFFICIAL COPY



INTERGOVERNMENTAL AGREEMENT UPPER VERDE RIVER WATERSHED PROTECTION COALITION

THIS AGREEMENT is entered into this 8 day of June, 2006 ("the Effective Date") by and between the TOWN OF CHINO VALLEY, TOWN OF DEWEY-HUMBOLDT, TOWN OF PRESCOTT VALLEY, CITY OF PRESCOTT, YAVAPAI-PRESCOTT INDIAN TRIBE, YAVAPAI COUNTY, and the SALT RIVER PROJECT CORPORATION (hereinafter the "PARTIES").

RECITALS

WHEREAS, the PARTIES recognize that adequate water resources are critical to the quality of life and economic well being of the residents in the incorporated and unincorporated areas of the Upper Verde River Watershed Area (as defined in Exhibit A);

WHEREAS, the PARTIES acknowledge the importance of the Verde River and their stewardship of the Upper Verde River Watershed Area; and

WHEREAS, the PARTIES mutually acknowledge the importance of collaborative efforts to address water resource issues on a regional basis by creating management goals that help protect the Verde River, and therefore wish to form the Upper Verde River Watershed Protection Coalition (hereinafter the "COALITION") to further such efforts; and

WHEREAS, appropriations will be authorized by individual PARTIES once the COALITION (as defined in Section 1 below) is established, and funds contributed by the PARTIES will allow the COALITION to study, evaluate and submit consensus recommendations concerning implementation of Best Management Practices (BMPs) intended to protect the base flow of the Upper Verde River;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. FORMATION OF COALITION.** In order to create a forum for cooperative action intended to protect the water resources of the Upper Verde River, the PARTIES hereby create the COALITION consisting of appointed representatives of each PARTY. The PARTIES may at any time during the effective term of this Agreement join the COALITION by signing this Agreement. Representatives shall be appointed by the respective governments and agencies in accordance with their respective appointment procedures.
- 2. PURPOSE.** Working together to protect the Upper Verde River, the COALITION is committed to balancing the reasonable water needs of the residents of the Upper Verde River Watershed Area with protection of the base flow of the Upper Verde River to the maximum possible extent by developing BMPs that



incorporate science-based planning, utilization and conservation of all water resources within the Upper Verde River Watershed Area (Exhibit A), and provide financial and staff resources as determined by each of the respective COALITION members to be required to support the protection activities of the COALITION.

3. **GOALS.** Acknowledging that water users throughout the Upper Verde River Watershed Area have impacts upon surface and groundwater systems of this area, the COALITION recognizes that water users should be responsible for their impacts. Therefore, the COALITION supports the creation of BMPs that balance the reasonable water needs of the residents of the Upper Verde Watershed Area with the need to preserve the vitality, health and future flows of the Upper Verde River, good stewardship of the water resources, and equal access to unbiased scientific information upon which BMPs are to be based.
4. **ORGANIZATION.** The COALITION is comprised of (a) an Executive Board which consists of one representative of each of the PARTIES, and (b) a Technical Advisory Committee with members appointed by the Executive Board. Membership of the Executive Board is expressly limited to the PARTIES. If necessary, work groups to support efforts of the Technical Advisory Committee may be established. The COALITION is not a separate legal entity, but rather is a forum for the PARTIES to act jointly and cooperatively as appropriate to further the goals of this Agreement.
5. **FUNDING.** The PARTIES agree to (a) contribute funds annually in amounts to be determined by each PARTY, subject to appropriation of such funds by the governing body of each PARTY, and (b) provide in-kind services to the COALITION which will be furnished without charge to COALITION members to accomplish various tasks, including (but not limited to) coordinating meetings, completing grants and requests for proposals, and coordinating scientific and professional services.
6. **COALITION COORDINATION.** The COALITION shall be facilitated through in-kind services from the PARTIES until such time as hiring a full-time coordinator and full-time staff may be deemed necessary by the Executive Board. Any coordinator shall act under the direct supervision of the Executive Board and any staff shall act under the supervision of any coordinator. The duties and responsibilities of any staff or coordinator shall be determined by the Executive Board, along with any necessary Personnel Rules and Regulations. Nothing herein shall preclude the Executive Board from electing to contract with individual PARTIES for any staff and coordinator.
7. **DURATION AND TERMINATION.** The initial term of this Agreement shall run from its effective date until June 30, 2011. It shall thereafter be deemed renewed for successive one-year terms unless any PARTY notifies the other PARTIES no less than 60 days prior to the date of expiration of the then-current term or renewal term of its intent to terminate. Further, the Agreement may be terminated, with or without cause by any PARTY upon providing 180 days' notice to the other PARTIES. In the event any PARTY provides notification of its intent to terminate, the remaining PARTIES may continue under the terms of this Agreement. In the event any PARTY chooses not to renew, the remaining



PARTIES may agree to renew the Agreement under such terms and conditions as they determine to be in their mutual interest. As of the effective date of the renewal Agreement among the remaining PARTIES, the terminating PARTY shall no longer be bound by the terms and conditions of this Agreement.

8. **DISPOSITION OF ASSETS UPON TERMINATION.** Upon termination of this Agreement, an amount equal to the depreciated value of any assets acquired pursuant to this Agreement shall be distributed among the PARTIES in proportion to their total contributions during the effective term of this Agreement.
9. **CANCELLATION FOR CONFLICT OF INTEREST.** This Agreement is subject to cancellation pursuant to A.R.S. §38-511 (the pertinent provisions of which are incorporated herein by reference).
10. **REQUIRED FILING.** Pursuant to A.R.S. §11-952, a copy of this Agreement shall be filed in the Office of the Yavapai County Recorder.
11. **GOVERNING LAW.** This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona and shall be deemed made and entered into in Yavapai County.
12. **AMENDMENT.** This Agreement contains the entire agreement except as expressly provided herein. The terms of this Agreement may only be amended, modified or waived by a written instrument approved by the respective governments and agencies.
13. **INDEMNIFICATION.** Each PARTY (as "indemnitor") agrees to save, hold harmless and indemnify the other PARTIES (as "indemnitees") for any claims, losses, liability, costs or expenses arising out of omissions, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers pursuant to this Agreement.
14. **WAIVER OF ATTORNEYS FEES.** The PARTIES expressly covenant and agree that in the event of litigation arising from this Agreement, no PARTY shall be entitled to an award of attorneys fees, either pursuant to the Agreement, pursuant to A.R.S. §12-341.01(A) and (B), or pursuant to any other state or federal statute.
15. **DISPUTE RESOLUTION.** The PARTIES intend that disputes regarding the interpretation and application of this Agreement shall, to the greatest possible extent, be resolved internally. The Executive Board may establish uniform procedures for such internal dispute resolution. In the event of disagreements regarding interpretation and application of this Agreement that cannot be resolved internally, the PARTIES agree to submit only such matters to an arbitrator selected by Agreement of the affected PARTIES. If the PARTIES are unable to agree on an arbitrator, each shall select an arbitrator who shall, in turn, select a third arbitrator. The arbitration proceeding shall be conducted in accordance of the then-current rules of the Yavapai County Superior Court. The decision of the arbitrator shall be final, non-appealable and binding on all PARTIES. Aside from expenses of counsel, all parties shall share equally in the



expenses of arbitration. In the event of litigation, the PARTIES agree to waive trial by jury, agree that all such matters shall be submitted for trial by the Court.

- 16. CONDUCT OF MEETINGS.** Meetings of the COALITION will be conducted in accordance with the Arizona Open Meeting Laws. Each respective COALITION member shall post meeting notices and agendas in accordance with their respective notice and posting practices. Any conclusions or recommendations of the Executive Committee shall be by consensus, rather than voting. All records of the COALITION shall be public unless such records are otherwise deemed confidential pursuant to applicable statutes.
 - 17. NOTICES.** Any notices provided pursuant to this Agreement shall be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing in the United States mail, postage prepaid to such addresses as may be specified in writing by a PARTY.
 - 18. BREACH.** Failure or unreasonable delay by any PARTY to perform or act in accordance with any term or condition of this Agreement shall constitute a breach of the Agreement. A PARTY claiming a breach by another PARTY shall provide written notice thereof, said notice setting forth the factual basis for the determination that a breach has occurred. If the breach is not remedied within thirty (30) days of the breaching PARTY's receipt of notice or within such additional time as may be reasonably required to remedy the breach, the non-breaching PARTY may exercise all rights and remedies as provided in this Agreement or otherwise by law. No waiver by a PARTY of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.
 - 19. RECORDS.** The COALITION shall keep and maintain all records reasonably required for audit arising from or relating to its activities under this Agreement. The COALITION shall reasonably accommodate any request by representatives of any PARTY to have access to all such records for review, monitoring, and audit, during normal working hours.
 - 20. FURTHER PERFORMANCES.** Each of the PARTIES hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.
 - 21. NO PARTNERSHIP OR THIRD-PARTY BENEFICIARY.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between or among the PARTIES. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
 - 22. MULTIPLE COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.
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APPROVALS

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their duly-authorized officials and to be effective on the date first-above written.

TOWN OF CHINO VALLEY

SEAL

Karen Fann 6/27/2006
Karen Fann, Mayor Date

ATTEST:

Jami Lewis 6-27-06
Jami Lewis Date
Town Clerk

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Town of Chino 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 Chino Valley.

A. M. [Signature] 7/5/06
Town Attorney Date

TOWN OF DEWEY-HUMBOLDT

Tomas Hintze 6.20.06
Tomas Hintze, Mayor Date

ATTEST:

Debbie Gifford 6.20.06
Debbie Gifford Date
Town Clerk

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Town of Dewey-Humboldt, 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 Dewey-Humboldt.



[Signature] 6-20-06
Town Attorney Date

SEAL

TOWN OF PRESCOTT VALLEY

[Signature] 6-8-06
Harvey Skoog, Mayor Date

ATTEST:

[Signature] 6-8-06
Diane Russell Date
Town Clerk

Determination of Counsel

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.

[Signature] 6/9/06
Town Attorney Date

CITY OF PRESCOTT

SEAL

[Signature] 6/13/06
Rowle Simmons, Mayor Date

ATTEST:

[Signature] 6/13/06
Elizabeth A. Burke Date
City Clerk

Determination of Counsel

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.



Don J. Mills 6/14/06
City Attorney Date

YAVAPAI COUNTY

SEAL

Thomas Thurman 7-10-06
Thomas Thurman, Chairman Date
Yavapai County Board of Supervisors

ATTEST:

Bev Staddon 7/10/06
Bev Staddon Date
County Clerk
Yavapai County Board of Supervisors

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Yavapai County, 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 Yavapai County.

[Signature] 7/12/06
County Attorney Date

YAVAPAI - PRESCOTT TRIBE

Authorized Representative Date

ATTEST:

Witnessed Date

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Yavapai - Prescott Tribe, 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 Yavapai - Prescott Tribe.



YAVAPAI-PRESCOTT INDIAN TRIBE

The foregoing Intergovernmental Agreement regarding the Upper Verde River Watershed Protection Coalition is entered into by the Yavapai-Prescott Indian Tribe ("YPIT") under the following three terms and conditions:

1. Nothing in the Agreement shall be construed to impair the rights granted, reserved, or protected by federal law or interfere with YPIT's right to tribal self government;
2. Nothing contained in the Agreement waives the right of the YPIT to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under the Agreement.
3. Nothing contained in the Agreement shall be construed to waive or amend agreements entered into between the YPIT and the other PARTIES to the Agreement, including, but not limited to, the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Public Law 103434, 108 Stat. 4526 (1994) (the "Act"), and the Water Service Agreement, as ratified by the U.S. Congress in the Act.

Ernest Jones, Sr.,
President, Board of Directors

1-23-07
Date

ATTEST:

Lorna Galeano,
Secretary-Treasurer

1-23-07
Date

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the forgoing agreement has been reviewed by the undersigned attorney for the Yavapai-Prescott Indian Tribe, 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 Yavapai-Prescott Tribe.

Attorney

12/15/06
Date



Attorney Date

SALT RIVER PROJECT CORPORATION

Authorized Representative Date

ATTEST:

Witnessed Date

Determination of Counsel

Pursuant to A.R.S. § Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Salt River Project Corporation, 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 Salt River Project Corporation.

Attorney Date

not participating