

**SETTLEMENT AGREEMENT IN *ARIZONA v. CALIFORNIA* BY AND AMONG
THE QUECHAN INDIAN TRIBE OF THE FORT YUMA INDIAN RESERVATION,
THE UNITED STATES OF AMERICA, THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA, COACHELLA VALLEY WATER DISTRICT,
AND THE STATE OF CALIFORNIA**

This Agreement (“Agreement”) is entered into this 14th day of February, 2005, by and among the Quechan Indian Tribe of the Fort Yuma Indian Reservation (“Tribe”), the United States of America (“United States”), the Metropolitan Water District of Southern California (“Metropolitan”), the Coachella Valley Water District (“CVWD”), and the State of California (“California”), collectively referred to in this Agreement as the “Parties.” Metropolitan, CVWD and California are collectively referred to in this Agreement as the “California Parties.”

I

RECITALS

A. On October 10, 1989, the United States Supreme Court (“Supreme Court”) granted the motion of the California Parties to reopen the Decree in *Arizona v. California*, 373 U.S. 546 (1963) (“*Arizona I*”) to determine disputed boundary claims with respect to the Fort Mojave, Colorado River, and Fort Yuma Indian Reservations. *Arizona v. California* 493 U.S. 886 (1989). The Supreme Court referred the matter to a Special Master. 493 U.S. 971 (1989).

B. The disputed boundary issue concerning the Fort Yuma Indian Reservation involves water rights claimed for lands that are the subject of a purported 1893 Agreement between the Tribe and the United States, an 1894 statute ratifying that 1893 Agreement, 28 Stat. 332, a 1904 statute, 33 Stat. 234, a December 20, 1978 Decision of the Secretary of the Interior (“1978 Secretarial Decision”), and a 1981 Determination and Directive of the Secretary of the Interior regarding the boundaries of the Fort Yuma Indian Reservation, published at 46 Federal Register 11372 (February 6, 1981) (“1981 Secretarial Determination”).

C. In his Memorandum Opinion and Order No. 4, September 6, 1991, Special Master McGarr ruled that the United States and the Tribe were precluded from asserting claims for water rights for the disputed boundary lands by virtue of a 1983 consent judgment of the United States Claims Court in *Quechan Tribe of the Fort Yuma Reservation v. United States*, No. 320 (Cl. Ct. Aug. 11, 1983). The Supreme Court rejected the Special Master's recommended ruling and remanded "the outstanding water rights claims associated with the disputed boundary lands of the Fort Yuma Indian Reservation to the Special Master for determination on the merits." *Arizona v. California*, 530 U.S. 392, 419-420 (2000).

D. This Agreement is intended to resolve the water rights issue referenced above and to conclude this litigation in *Arizona v. California*.

E. In connection with this settlement, the Parties have investigated the existence of practicably irrigable acreage and the feasibility of development on the disputed boundary lands. There is a bona fide, good faith dispute among the Parties as to the extent of practicably irrigable acreage and the feasibility of development on the disputed boundary lands. The Parties desire to enter into this Agreement to compromise and resolve, among other things, the issue of the amount of water that should be available to the Tribe for such practicably irrigable acreage and development thereon, and the place where such water may be used, and to provide an option to the Tribe to forego such development, and thereby ensure that such water continues to be available for use by Metropolitan, upon certain terms and conditions described hereinafter.

II

PURPOSE

This Agreement conclusively settles all matters now at issue between the Parties in this litigation with respect to the water rights of the Fort Yuma Indian Reservation in California.

Except as expressly provided herein, no modification of this Agreement shall be effective unless it is made with the consent of the Parties hereto.

III

SETTLEMENT TERMS AND CONDITIONS

A. Water Rights

1. In addition to the amounts of water decreed to the United States for the benefit of the Fort Yuma Indian Reservation in *Arizona I*, 376 U.S. 340 (1964), the Tribe shall be entitled to an annual (calendar year) quantity of water, that is subject to and defined by the terms and conditions in paragraph 2 below, not to exceed (a) 20,000 acre-feet of diversions from the mainstream of the Colorado River or (b) the amount of Colorado River water necessary to supply the consumptive use required for irrigation of 2,998.50 acres, and for the satisfaction of related uses, whichever of (a) or (b) is less, for lands within the boundaries of the Fort Yuma Indian Reservation in the State of California.

2. The Parties agree that the additional water allocation in paragraph 1 above shall become available for the benefit of the Fort Yuma Indian Reservation as follows:

(a) 13,000 acre-feet, or the amount necessary to supply the consumptive use required for irrigation of 1,949.03 acres, and for the satisfaction of related uses, whichever is less, shall become available to the Tribe immediately upon entry of a supplemental decree by the Supreme Court in this matter;

(b) An additional 7,000 acre-feet, or the amount necessary to supply the consumptive use required for irrigation of 1,049.47 acres, and for the satisfaction of related uses, whichever is less, shall become available to the Tribe beginning in calendar year 2035, and continuing thereafter.

3. The Parties agree that the additional diversion of Colorado River water described in paragraphs 1 and 2 above shall be included in a supplemental decree to be issued by the Supreme Court at the conclusion of the present proceedings with a priority date of January 9, 1884, and that such diversions shall be subject to the same terms and conditions that apply to the Fort Yuma Indian Reservation water diversions that are decreed in the Supreme Court's 1964 Decree in *Arizona I*, as supplemented. Upon entry of that supplemental decree by the Supreme Court, the Tribe shall become entitled to divert the water defined in paragraphs 1 and 2 in accordance with the terms and conditions therein.

4. Metropolitan and the Tribe further agree that if the Tribe chooses to limit currently proposed development and utilization of practicably irrigable acreage, which would require the diversion of any of the water available to the Tribe under paragraph 2 above, and instead allows such water to pass through the priority system and be diverted by Metropolitan in accordance with Metropolitan's water storage and delivery contracts with the Secretary of the Interior and related agreements, then Metropolitan agrees to pay the Tribe the rate identified in paragraph 6 below, provided that such water is actually available for use and is received by Metropolitan.

5. Beginning in 2035 and continuing thereafter, Metropolitan shall have the option, in its sole discretion, to terminate any payments to the Tribe for water that may be available to Metropolitan under paragraph 4 above, by providing advance written notice to the Tribe one year prior to termination of the payments. If Metropolitan terminates payments, the Tribe retains the right to divert the water for its use on lands within the boundaries of the Fort Yuma Indian Reservation in California in accordance with the terms and conditions of the Supreme Court's decrees in *Arizona v. California*.

6. For purposes of this Agreement, the rate that Metropolitan shall pay to the Tribe for water available to Metropolitan under paragraph 4 above shall be \$125 per acre-foot of diversions annually, escalated at 2.5% per year beginning on the first day of the year following the year that such payments first commence. Notwithstanding any other provision of this Agreement, this paragraph may be amended by the mutual consent of the Tribe, the United States and Metropolitan without the approval of the other Parties to this Agreement.

7. In accordance with the terms of the Quantification Settlement Agreement by and among Imperial Irrigation District, The Metropolitan Water District of Southern California, and Coachella Valley Water District, dated October 10, 2003 ("QSA"), CVWD agrees not to object to, or interfere with, the receipt and usage by Metropolitan of water that may become available to Metropolitan under paragraph 4 above, provided that CVWD retains all of its rights under the Law of the River with respect to the receipt and usage of such water by Metropolitan after the QSA has expired.

8. The Parties agree that the additional diversions of Colorado River water described in paragraphs 1 and 2 above shall be available for any beneficial use within California solely by: (a) the Tribe on lands within the boundaries of the Fort Yuma Indian Reservation or within the geographic area encompassed by surveys implementing the 1978 Secretarial Decision and 1981 Secretarial Determination, excluding and excepting therefrom those lands comprising the western half of the last natural bed of the Colorado River (before the avulsion of 1920) should the surveys include those lands, and/or (b) Metropolitan pursuant to paragraph 4 above, and not by any other water user or on any other lands.

9. The Parties agree that any future changes in the boundaries or status of the Fort Yuma Indian Reservation will not affect or limit the quantity of diversions of Colorado River

water that are available to the Tribe and to Metropolitan under this Agreement, and they further agree that the Tribe may make use of such water in California within the geographic area encompassed by the surveys implementing the 1978 Secretarial Decision and 1981 Secretarial Determination, excluding and excepting therefrom those lands comprising the western half of the last natural bed of the Colorado River (before the avulsion of 1920) should the surveys include those lands.

10. If the provisions of this Agreement that make water available to Metropolitan are challenged, the United States assumes no responsibility to undertake any legal defense of such provisions, and Metropolitan and the Tribe assume sole risk and responsibility that such provisions comply with prior decrees in *Arizona v. California*, and with all applicable federal law. The United States does not warrant or guarantee that any water will actually be delivered to Metropolitan pursuant to the terms of this Agreement. The Parties agree that none of them will challenge the validity of this Agreement, including the provisions that make water available to Metropolitan, or take any action to frustrate its implementation, subject to the reservation of rights of CVWD in paragraph 7 above.

11. The Parties agree that the Fort Yuma Indian Reservation's present perfected water rights as set forth in the Decree in *Arizona I*, 376 U.S. 340 (1964), shall remain undisturbed and shall not be affected in any manner by the terms of this Agreement.

12. The Tribe and Metropolitan agree to enter into good faith negotiations regarding a following/forbearance agreement for acreage that is subject to the Supreme Court's award of water in its 1964 Decree in *Arizona I*, 376 U.S. 340 (1964). The Tribe and Metropolitan expressly assume the risk of drafting an appropriate following/forbearance agreement that meets the requirements of the decrees in *Arizona v. California* and all applicable federal law, and the

United States assumes no liability for, and does not warrant or guarantee, the actual delivery to Metropolitan of any water subject to any such following/forbearance agreement between Metropolitan and the Tribe.

13. After entry of a supplemental decree by the Supreme Court in this matter, neither the Tribe nor the United States on behalf of the Tribe shall claim or be entitled to any additional reserved or other water rights from the Colorado River for lands in the Fort Yuma Indian Reservation in California or for the Tribe.

14. Upon entry of a supplemental decree by the Supreme Court in this matter, the United States and the Tribe waive and extinguish any claim, cognizable in law or equity, by the Tribe or by the United States for the benefit of the Tribe, of a right to use water in amounts in excess of the amounts set out in the 1964 Decree in *Arizona v. California*, the 1979 Supplemental Decree, and the supplemental decree to be entered in this matter, and waive and extinguish any claim with respect to a priority date other than the priority dates set out in said decrees.

15. (a) Upon entry of a supplemental decree by the Supreme Court in this matter, the Tribe waives and extinguishes any claim, cognizable in law or equity, against the United States, the California Parties, and all governmental subdivisions thereof, that such entities diverted, pumped, or impounded (or permitted others to divert, pump, or impound), waters of the Colorado River that had been decreed to the Tribe or to the United States for the benefit of the Tribe, or that were or could have been claimed by the Tribe or by the United States for the benefit of the Tribe prior to the date of the entry of a supplemental decree by the Supreme Court in this matter. In addition, upon entry of that supplemental decree, the United States waives and extinguishes any claim, cognizable in law or equity, against the California Parties, and all

governmental subdivisions thereof, that such entities diverted, pumped, or impounded (or permitted others to divert, pump, or impound), waters of the Colorado River that had been decreed to the Tribe or to the United States for the benefit of the Tribe, or that were or could have been claimed by the Tribe or by the United States for the benefit of the Tribe prior to the date of the entry of a supplemental decree by the Supreme Court in this matter.

(b) Notwithstanding paragraph 15 (a) above, the Tribe and the United States expressly reserve the right to claim that third-parties other than the California Parties and their governmental subdivisions diverted, pumped, impounded (or permitted others to divert, pump, or impound) waters of the Colorado River that were decreed to the Tribe in *Arizona I*, 376 U.S. 340 (1964) *provided that* any such claim or enforcement action: (a) is not against and does not affect any of the California Parties or any of their governmental subdivisions, officers, employees, contractors or agents, and does not diminish the waiver afforded the California Parties in paragraph 15(a) above, and (b) neither directly or indirectly diminishes the quantity of Colorado River water received by the California Parties nor affects the timing or terms and conditions of delivery of such water to the California Parties that would otherwise occur in the absence of any claim or enforcement action against third-parties by the Tribe and/or the United States.

B. Decision on Yuma Island Decree Accounting

The United States agrees that, no later than March 15, 2005, it will take final agency action deciding whether consumptive use of Colorado River water on the “Yuma Island” should be charged to Priority 2 under the California Seven Party Agreement of August 18, 1931. Metropolitan in its sole discretion may extend this deadline. The United States makes no commitment in this Agreement to undertake any remedial or other enforcement action as a result of this decision about consumptive use on the “Yuma Island,” but reserves all of its rights to

determine appropriate enforcement or non-enforcement in its discretion. The California Parties also reserve all of their rights, and expressly do not waive any rights that they may have to seek judicial review of the United States' decision on consumptive use on the "Yuma Island," or the enforcement or lack thereof that results from such decision. For purposes of this Agreement, "Yuma Island" means the lands that are located between the present channel of the Colorado River and the abandoned levee, commonly known as the Reservation Levee, originally constructed prior to the avulsion of the Colorado River in 1920, the consumptive use of water on which is currently being charged to California in the *Arizona v. California* decree accounting of the Bureau of Reclamation.

C. Recognition of the Fort Yuma Indian Reservation Boundary in California

Metropolitan, CVWD, the United States and the Tribe agree, without reservation, to recognize and waive any challenge to the validity of the 1981 Secretarial Determination attached hereto as Exhibit "A" and by this reference incorporated herein. The United States and the Tribe hereby reserve all arguments in that action in the United States District Court for the Southern District of California entitled *Quechan Indian Tribe, Plaintiff, vs. United States of America, et al., Defendants*, Case No. 02 CV 01096 IEG (AJB). Notwithstanding the foregoing reservation, Metropolitan, CVWD and the Tribe agree, and the Tribe shall not dispute, that the United States has the right to install, construct, reconstruct, maintain, operate, inspect, repair, enlarge, alter, replace and remove the Parker-Davis 161 kV Transmission Line in accordance with the 1981 Secretarial Determination. Metropolitan, CVWD, and the Tribe reserve their rights to challenge the surveys implementing the 1978 Secretarial Decision and the 1981 Secretarial Determination, or any future survey or resurvey of the Fort Yuma Indian Reservation, in appropriate administrative and judicial proceedings.

D. Recognition by the State of California of Geographic Area in California Within Which Fort Yuma Indian Reservation Water Rights May Be Used

For water rights purposes only, California agrees to recognize the provisions of the 1981 Secretarial Determination regarding the boundaries of the Fort Yuma Indian Reservation in California, except those lands comprising the western half of the last natural bed of the Colorado River (before the avulsion of 1920), should the surveys implementing the 1978 Secretarial Decision and the 1981 Secretarial Determination include these lands. "For water rights purposes only" means solely for the identification of the geographic area within which the reserved water rights decreed to the United States for the benefit of the Tribe and its allottees in this action may be used. It is not recognition of that demarcation as establishing political jurisdiction as between California or its political subdivisions and the Tribe, or for any other purpose. For all other purposes, California expressly reserves the right, in any judicial, administrative or legislative proceeding, to contest the boundaries of the Fort Yuma Indian Reservation, to contend that the Fort Yuma Indian Reservation in California has been diminished or disestablished by the 1893 Agreement, the 1894 or 1904 Acts, or any subsequent federal legislation, and to challenge the 1978 Secretarial Decision and 1981 Secretarial Determination, including the provisions regarding the reservation boundaries. The United States and the Tribe reserve all their arguments in opposition. If any such contest, contention, or challenge by California is successful, California nevertheless will not challenge or oppose the Tribe's use of the water rights decreed in this action as provided in paragraph A8. California also reserves the right to challenge the surveys implementing the 1978 Secretarial Decision and the 1981 Secretarial Determination, or any future survey or resurvey of the Fort Yuma Indian Reservation in appropriate administrative and judicial proceedings.

E. Riverbed Land

California contends that title to the western half of the last natural bed of the Colorado River (before the avulsion of 1920), which riverbed lies either within or adjacent to the boundaries of the Fort Yuma Reservation in California, passed to California in 1850 by operation of the Equal Footing Doctrine. The United States and the Tribe expressly disclaim any property interest in, or title to, these lands (hereinafter “riverbed lands”). The Parties, however, may dispute the extent and precise location of the riverbed lands. The Bureau of Land Management (hereinafter “BLM”) is currently completing a survey of the Fort Yuma Indian Reservation. The Parties retain and do not waive any of their claims with respect to the extent and location of riverbed lands within the Reservation boundaries: the Tribe and the United States claim that the riverbed lands lie within the Reservation, while California claims that the riverbed lands lie outside of the Reservation boundaries. This Agreement and settlement between the Parties is neither dependent nor conditioned upon resolution of the riverbed lands issues described in this paragraph. This Agreement and settlement of this litigation will become fully effective regardless of any later resolution or non-resolution of those issues.

F. Scope, Effective Date and Waiver

This Agreement merges all prior negotiations and understandings between the Parties, contains their entire agreement, and shall be effective upon unqualified approval by the Supreme Court in these proceedings and the issuance and entry of an appropriate supplemental decree. Nothing in this Agreement shall be deemed to create or give validity to any claim by the Tribe against the United States or in any way constitute acknowledgment of the validity of any claims by the Tribe against the United States. In addition, the Tribe hereby waives any claim against the United States arising out of:

1. The negotiation of this Agreement;
2. The adoption of the specific terms of this Agreement; or
3. Any allegations concerning the lack of authority of the Tribe to enter into this Agreement.

G. Signatures

This Agreement may be entered into in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the parties to the aggregate counterparts had signed the same instrument. Signature pages of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

The Parties hereto have executed this Agreement on the date set forth to the left of their signatures.

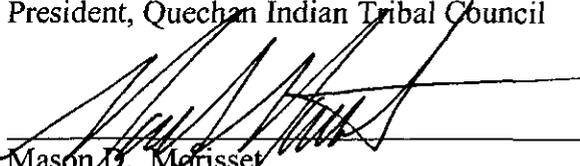
Dated: 2/24/05


Patrick Barry
Indian Resources Section
Environment & Natural Resources Division
United States Department of Justice
Attorney for the United States of America

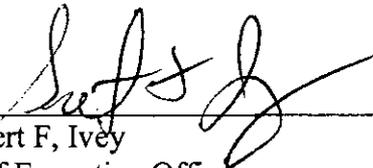
Dated: 2/24/05


Michael Jackson
President, Quechan Indian Tribal Council

Dated: 2/24/05


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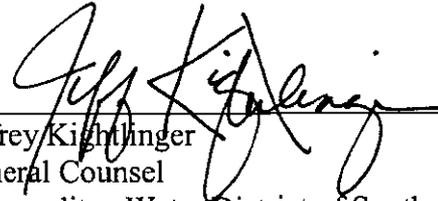
Dated: 2/28/05



Gilbert F. Ivey
Chief Executive Officer
Metropolitan Water District of Southern California

APPROVED AS TO FORM:

Dated: 2/24/05



Jeffrey Kightlinger
General Counsel
Metropolitan Water District of Southern California

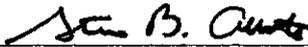
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Steven B. Robbins
General Manager and Chief Engineer
Coachella Valley Water District

APPROVED AS TO FORM:

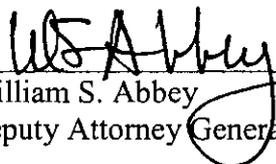
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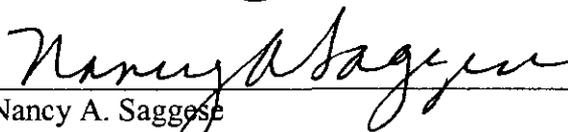
BILL LOCKYER
Attorney General of the State of California

Dated: 2/24/05



William S. Abbey
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Dated: 2/24/05



Nancy A. Saggese
Deputy Attorney General

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