



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION GR-92-09

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE GILA RIVER INDIAN COMMUNITY AND STATE OF ARIZONA (THROUGH THE ARIZONA WATER BANKING AUTHORITY) TO PROVIDE PROTECTION TO THE COMMUNITY'S WATER RESOURCES AND WATER AVAILABILITY IN THE AREA OF THE SOUTHSIDE OF THE GILA RIVER INDIAN RESERVATION

WHEREAS, the Gila River Indian Community Council (the "Community Council") is the governing body of the Gila River Indian Community (the "Community"); and

WHEREAS, Public Law 108-451 (The Arizona Water Settlement Act) became federal law on December 10, 2009 ("Act") which required, among other things, that the State of Arizona adopt certain legislation which is, in part, intended to protect the Community's water resources from over-pumping on the off-Reservation lands to the south of the Community's southern border ("restricted pumping zones"); that legislation was enacted by the State of Arizona and established the Southside Pumping Protection Program; and

WHEREAS, the Community and the State of Arizona through the Arizona Water Banking Authority ("AWBA") are parties to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement dated October 21, 2005 ("Settlement Agreement"); and

WHEREAS, pursuant to the Act, Settlement Agreement and the amended Arizona Revised Statutes, the Community and the AWBA have prepared a mutually acceptable intergovernmental agreement ("Southside Pumping Agreement"); a true and correct copy of such Southside Pumping Agreement is attached to this Resolution; and

WHEREAS, the Southside Pumping Agreement divides the restricted pumping zones and to residential, commercial and industrial zones and as to each such zone, sets pumping limitations to protect the Community's water resources (both as to aquifer protection and potentially, as to the Community's subflow water resources); the Southside Pumping Agreement requires that the AWBA replenish the Community's water resources to the extent that the pumping limitations are exceeded; and

WHEREAS, the AWBA is to develop and maintain a bank of water credits for the Community, beginning with a minimum deposit of credits to which additional credits reflecting over-pumping will be added and on an annual basis, the AWBA will replenish the Community's water credit account by several means, including among other methods, arranging for delivery of CAP water and/or extinguishment of credits in exchange for other water rights or credits; and

WHEREAS, pursuant to the Act, Settlement Agreement and the amended Arizona Revised Statutes, the Community and the AWBA have prepared a mutually acceptable intergovernmental agreement ("Southside Pumping Agreement") to implement the foregoing obligations.

NOW, THEREFORE, BE IT RESOLVED, the Community Council approves the attached Southside Pumping Agreement, or a substantially similar agreement, between the Gila River Indian Community and the State of Arizona (through the AWBA).

BE IT FINALLY RESOLVED, the Governor, or in his absence, the Lieutenant Governor, shall execute the Agreement attached hereto between the Community and the State of Arizona (through the Arizona Water Banking Authority) and shall execute all other documents necessary to effectuate the intent of this Resolution and the Agreement.

CERTIFICATION

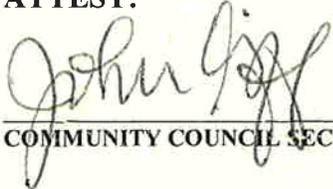
Pursuant to authority contained in Article XV, Section 1, (a) (1), (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted on the 20th of May 2009, at a regular Community Council Meeting held in District 3, Sacaton, Arizona at which a quorum of 15 Members were present by a vote of: 15 FOR; 0 OPPOSE; 0 ABSTAIN; 2 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE ARIZONA WATER BANKING AUTHORITY AND
THE GILA RIVER INDIAN COMMUNITY**

This Intergovernmental Agreement (“IGA”) is made this _____ day of _____, 2009 between the Arizona Water Banking Authority, an agency of the State of Arizona (“AWBA”), and the Gila River Indian Community (“the Community”).

RECITALS

- A. AWBA, as the agent for the State of Arizona, will satisfy any State obligations to the Community regarding the Southside Replenishment Obligation.
- B. In furtherance of the implementation of the Arizona Water Settlements Act, the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement and amendments made to the State law as provided in the Act and Agreement, the AWBA shall establish a Southside Replenishment Bank in the records of the AWBA.
- C. The Parties desire to enter into this IGA to establish an annual process to insure the obligations of the State set forth in Arizona Revised Statutes §§ 45-2623 and 45-2624 are satisfied.

DEFINITIONS

In this IGA, unless the context within which used requires otherwise:

1. Terms not otherwise defined herein shall have the same meaning as they are used in the Act, the Settlement Agreement and (to the extent they are consistent with the Act and the Settlement Agreement), in sections of the Arizona Revised Statutes (“A.R.S.”) as they refer to the replenishment obligations of the State to the Community in Title 45. References hereafter to the A.R.S. shall be to title and section numbers without reference to A.R.S.;
2. “Amended and Restated Gila River Indian Community Water Rights Settlement Agreement” or (“Settlement Agreement”) means the agreement, dated October 21, 2005, approved by the Act;
3. “Arizona Water Settlements Act” or (“Act”) means Public Law 108-451;

4. "AWBA" means the Arizona Water Banking Authority established by section 45-2421 or its successor;
5. "Community's Account" means the account established for the Community in the Southside Replenishment Bank;
6. "Industrial Acre" means the acre or acres in an eastern protection zone or in the western municipal and industrial protection zone on which water is used for an industrial use and for which the water use is reported to the Director under section 45-632, 45-875.01 or 45-2602;
7. "Irrigation Replenishment Obligation" means a replenishment obligation arising from the irrigation of lands in the western municipal and industrial protection zone, the western municipal protection zone, the eastern protection zone north, and the eastern protection zone south, calculated under section 45-2622(5) and section 45-2622(6).
8. "Reservation" means all lands lying within the exterior boundaries of the Gila River Indian Reservation;
9. "Southside Replenishment Bank" means a separate bank established in the records of the AWBA pursuant to section 45-2624;
10. "Southside Replenishment Obligation" means a replenishment obligation calculated under section 45-2622.
11. "Year" means a calendar year beginning on January 1 and ending on December 31 of the same year.

AGREEMENT

Term

This IGA shall commence, after execution by all of the parties, on the date it is filed with the Arizona Secretary of State. This IGA shall be in perpetuity and shall be reviewed at least every 25 years.

Southside Replenishment

1. Upon notification by the Director of the Arizona Department of Water Resources that a replenishment obligation has arisen in the previous Year, the AWBA, in consultation with the Community will perform one or any combination of the following replenishment activities:

a) For a replenishment obligation within any zone, deliver water acquired by the AWBA to the Community for direct use or for underground storage and recovery within the Reservation. The AWBA shall not deliver water to the Community under this subparagraph unless the Community agrees in writing to accept the water.

b) For a replenishment obligation applicable to the western municipal and industrial protection zone or the western municipal protection zone, the AWBA may extinguish long-term storage credits provided:

i) The long-term storage credits were earned within five Years before the date the credits are extinguished; and

ii) The long-term storage credits were earned for the storage of water in the western municipal and industrial protection zone or the western municipal protection zone.

c) For a replenishment obligation applicable to the eastern protection zone north or the eastern protection zone south, the AWBA may extinguish long-term storage credits provided:

i) The long-term storage credits were earned within seven Years before the date the credits are extinguished; and

ii) The long-term storage credits were earned for the storage of water in the eastern protection zone north or the eastern protection zone south.

d) For a replenishment obligation in any zone, the AWBA may debit on an acre-foot per acre-foot basis the Community's Account in the Southside Replenishment Bank in an amount not to exceed the amount of credits in the account.

2. By November 1 of each Year, the AWBA shall notify the Community of:

a) The amount of replenishment obligation that arose in the previous Year;

b) The method the AWBA chooses to satisfy that replenishment obligation; and

c) The amount of any replenishment obligation that will remain at the end of the Year.

3. Upon notification by the AWBA, if the method for satisfying the replenishment obligation is to include direct delivery to the Community, the Community

shall specify within 30 days of receipt of such notification, the locations, times and quantities for such deliveries.

4. The AWBA shall satisfy the Southside Replenishment Obligations for a particular Year no later than June 1 of the third Year following the Year that the replenishment obligation arose, except that the AWBA shall satisfy the Irrigation Replenishment Obligations for a particular Year no later than June 1 of the fifth Year following the Year in which the replenishment obligation arose.

5. The AWBA shall maintain in its records an account of the replenishment activities performed by the AWBA to satisfy a Southside Replenishment Obligation including:

- a) Water delivered to the Community;
- b) Any long-term storage credits extinguished; and
- c) Any debits registered to the Southside Replenishment Bank.

6. The Southside Replenishment Obligations shall be satisfied at no cost to the Community.

7. By January 31 of the Year following any Year in which the AWBA has provided replenishment, the AWBA shall notify the Community what replenishment activities were performed, identify the replenishment obligation for which the activities were performed and any amount of the replenishment obligation remaining.

8. The AWBA shall notify the Community no later than July 1 of the third Year, or fifth Year for an Irrigation Replenishment Obligation, following the Year that the replenishment obligation arose that the replenishment obligation has been satisfied.

Southside Replenishment Bank

9. The AWBA shall establish in its records a separate Southside Replenishment Bank. The AWBA shall establish an account in the Southside Replenishment Bank for the Community.

10. The Southside Replenishment Bank will be established in the Year in which this IGA becomes effective.

11. The AWBA shall register one (1) credit to the Community's Account for each acre-foot of water delivered to the Community under this paragraph.

12. Beginning in the Year in which this IGA becomes effective and each Year thereafter until the obligation in this paragraph has been satisfied, the AWBA will cause to be delivered to the Community's Central Arizona Project turnout (for use by and at no cost to the Community), not less than one thousand (1,000) acre-feet per Year from water acquired by the AWBA, until the credit balance in the Community's Account reaches fifteen thousand (15,000) acre-feet.

13. The AWBA in consultation with the Community and as part of the AWBA annual operating plan will determine annually the actual amount of Southside Replenishment Bank water to be delivered to the Community in any Year and provide the Community an estimate of the amount no later than September 1 of the Year immediately preceding the Year in which the deliveries are to be made.

14. Upon notification by the AWBA of the amount of Central Arizona Project water available in any Year, the Community shall order and schedule that amount from the Central Arizona Water Conservation District. If there is not sufficient Central Arizona Project water available to the AWBA to meet its obligations to the Community hereunder, the AWBA shall provide for such replenishment obligation from other sources of water. The scheduled deliveries of Central Arizona Project water to satisfy the State's replenishment obligation in any month can not exceed eleven per cent (11%) of the water required to be delivered during that Year.

15. If any debit is registered to the Community's Account that causes the credit balance to be less than five thousand (5,000) acre-feet in any Year, the AWBA shall cause to have delivered to the Community in the manner provided above an amount sufficient to bring the credit balance up to at least five thousand (5,000) acre-feet by the end of that Year.

16. By January 31 of the Year following the delivery of water to the Community the AWBA will report to the Community:

- a) Water delivered to the Community; and
- b) Any debits registered to the Community's Account in the Southside Replenishment Bank; and
- c) The current balance in the Community's Account.

Notices

17. Any notice, demand, or request authorized or required by this IGA shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or delivered at the following address:

If to the AWBA:

Manager
Arizona Water Banking Authority
3550 N. Central Avenue
Phoenix, Arizona, 85012

If to the Community:

Governor and
General Counsel for the Community
Gila River Indian Community
525 West Gu u Ki
Post Office Box 97
Sacaton, Arizona 85247

Miscellaneous

18. This IGA is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this IGA.

19. The waiver by either Party of any breach of any term, covenant or condition of this IGA shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition of this IGA.

20. The terms, covenants and conditions of this IGA constitute the entire agreement between the Parties, and no understandings of obligations not expressly set forth in this IGA shall be binding upon them. This IGA may not be modified or amended in any manner unless in writing signed by the Parties.

21. This IGA shall be governed by and construed in accordance with applicable laws of the State of Arizona.

22. The Parties to this IGA are hereby notified of section 38-511.

In Witness of this IGA, the Parties affix their official signatures below, acknowledging execution of this document on the ____ day of _____, 2009.

ARIZONA WATER BANKING AUTHORITY

By: _____
Herbert R. Guenther, Chairman

ATTEST:

By: _____
Thomas Buschatzke, Secretary

GILA RIVER INDIAN COMMUNITY

By: _____
William R. Rhodes, Governor

APPROVED AS TO FORM:

By: _____
Jennifer K. Giff, General Counsel