

1 SUPPLEMENTAL AGREEMENT AMONG THE UNITED STATES,
2 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
3 THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY,
4 THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
5 DISTRICT AND SALT RIVER VALLEY WATER USERS'
6 ASSOCIATION, THE ARIZONA CITIES OF CHANDLER,
7 GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE,
8 THE STATE OF ARIZONA, AND THE CITY OF TUCSON FOR
9 FUNDING OF PLAN SIX FACILITIES OF THE CENTRAL
10 ARIZONA PROJECT, ARIZONA, AND FOR OTHER PURPOSES

11 PREAMBLE

12 1. THIS SUPPLEMENTAL AGREEMENT, made as of the 1st day
13 of July, 1987, pursuant to the Reclamation Act of June 17, 1902 (32
14 Stat. 388), and acts amendatory thereof or supplementary thereto
15 including, but not limited to, the Contributed Funds Act of March
16 4, 1921 (41 Stat. 1404), the Colorado River Basin Project Act of
17 September 30, 1968 (82 Stat. 885), the Reclamation Safety of Dams
18 Act of 1978, (92 Stat. 2471, as amended by 98 Stat. 1481), the
19 Hoover Power Plant Act of August 17, 1984 (98 Stat. 1333),
20 collectively known as Federal Reclamation law, among THE UNITED
21 STATES OF AMERICA, acting through the Secretary of the Interior;
22 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT; THE FLOOD CONTROL
23 DISTRICT OF MARICOPA COUNTY (hereinafter, the "FLOOD CONTROL
24 DISTRICT"); THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND
25 POWER DISTRICT AND SALT RIVER VALLEY WATER USERS' ASSOCIATION
(hereinafter, collectively the "SALT RIVER PROJECT"); THE ARIZONA
CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE;
THE STATE OF ARIZONA; AND THE CITY OF TUCSON, each represented by
its respective duly authorized representatives;

26 WITNESSETH, THAT:

27 2. WHEREAS, the United States, through the Bureau of
28 Reclamation, is constructing the Central Arizona Project pursuant

1 to the Colorado River Basin Project Act of September 30, 1968, and
2 the December 15, 1972, Repayment Contract between the United States
3 and the Central Arizona Water Conservation District for Delivery of
4 Water and Repayment of Costs of the Central Arizona Project; and

5 WHEREAS, the United States, the Central Arizona Water
6 Conservation District, the Flood Control District, the Salt River
7 Project, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix,
8 Scottsdale, and Tempe, the State of Arizona, and the City of Tucson
9 executed an Agreement on April 15, 1986 ("Plan Six Agreement"), for
10 the funding of facilities of Plan Six of the Central Arizona
11 Project and for other purposes; and

12 WHEREAS, the Arizona Congressional Delegation has
13 withdrawn its support for Cliff Dam as part of an overall agreement
14 regarding the continuance of other features of Plan Six; and

15 WHEREAS, the Cities and the Salt River Project have been
16 and the Flood Control District may be contributing funds under the
17 Plan Six Agreement toward pre-construction and construction work on
18 Cliff Dam and Modified Roosevelt Dam in expectation of new water
19 storage and yield, safety of dams benefits and flood control
20 benefits from those Plan Six features; and

21 WHEREAS, in accordance with Article 18.a of the Plan Six
22 Agreement, the United States and the Non-Federal Parties to the
23 Plan Six Agreement have determined that a significant change has
24 occurred or will occur such as to justify the renegotiation of the
25 Plan Six Agreement; and

26 WHEREAS, Section 7.A of Chapter 21, Laws 1986, Arizona
27 Session Laws, Thirty-Seventh Legislature, Second Regular Session,
28 provides for such renegotiation of the Plan Six Agreement and

1 expressly approves the provisions of Article 18.a of the Plan Six
2 Agreement; and

3 WHEREAS, the parties wish to provide that the contri-
4 butions toward the costs of securing the water supplies and the
5 safety of dams benefits associated with Cliff Dam will be applied
6 toward the costs of securing alternatives comparable to the
7 quantity, quality, reliability and cost of those water supplies and
8 safety of dams benefits which were expected to be provided by Cliff
9 Dam; and

10 WHEREAS, Section 7.I and Section 27 of Chapter 21, Laws
11 1986, Arizona Session Laws, authorize each of the Non-Federal
12 Parties to the Plan Six Agreement to approve, authorize, execute
13 and perform an agreement between itself and the Arizona State
14 Treasurer regarding the Treasurer's receiving, holding, investing
15 in conjunction with public monies and disbursing contributions made
16 pursuant to the Plan Six Agreement, and authorize the State
17 Treasurer to receive, hold, invest in conjunction with public
18 monies and disburse any and all contributions made pursuant to the
19 Plan Six Agreement; and

20 WHEREAS, the United States and the Non-Federal Parties to
21 the Plan 6 Agreement wish to supplement the Plan Six Agreement in
22 accordance with Article 18.a thereof to provide for development of
23 alternatives to the water supplies, safety of dams benefits and
24 flood control benefits that would have been provided by Cliff Dam,
25 to clarify the applicability of the Plan Six Agreement to those
26 alternatives, and to establish an alternative set of instructions
27 for the contribution of funds by the Cities and the Salt River
28 Project for Cliff Dam and withdrawal of such funds by the United

1 States for such purposes;

2 NOW, THEREFORE, in consideration of the mutual and
3 dependent covenants herein, it is agreed by the parties hereto as
4 follows:

5
6 DEFINITIONS

7 3. Specific terms used herein shall have the same
8 meaning as defined in Article 3 of the Plan Six Agreement.

9
10 CITIES CONTRIBUTIONS

11 4. (a) In accordance with the instructions set forth in
12 Exhibit B of the Plan Six Agreement and the trust agreements with
13 the Arizona State Treasurer, except as modified herein, a special
14 escrow account will be maintained with the Arizona State
15 Treasurer. All existing and future contributions by the Cities for
16 Cliff Dam, plus all existing and future accrued interest on such
17 contributions, as set forth in Exhibit A to the Plan Six Agreement,
18 will be maintained in the special escrow account and shall be
19 subject to the provisions of this Supplemental Agreement.

20 (b) Notwithstanding any other provisions of the Plan
21 Six Agreement and the trust agreements with the Arizona State
22 Treasurer, the United States shall withdraw contributions or
23 accrued interest from the special escrow account only upon a
24 determination by the Secretary, with the approval of the Cities,
25 that a source of water reasonably comparable to that which was
26 expected to be provided by Cliff Dam will be secured for and
27 available to the Cities by December 31, 1997. Upon such determi-
28 nation and approval, the United States shall have the right to

1 withdraw part or all of the funds on deposit in the special escrow
2 account to finance the acquisition and development of such
3 alternative water supplies, according to a schedule agreed upon by
4 the United States and the Cities.

5 (c) In the event that the funds on deposit in the
6 special escrow account are in excess of amounts required to meet
7 the Cities' contributions for the approved alternative water
8 supplies, such excess funds shall be returned to the Cities as soon
9 as practicable.

10 (d) If by the date of enactment of the Energy and
11 Water Development Appropriations Act for Fiscal Year 1988, or by
12 March 30, 1988, whichever first occurs, adequate authorization and
13 appropriations, as determined by the Cities, are not provided to
14 the Secretary of the Interior for identifying and securing the
15 benefits associated with and to have been provided by Cliff Dam for
16 which the Cities have made contributions, those contributions will
17 be subject to disbursement to the Cities including interest earned
18 in the special escrow account at the Cities' option and at their
19 sole direction. If such election is not made by the Cities within
20 30 days of enactment of the Energy and Water Development
21 Appropriations Act for Fiscal Year 1988, or by March 30, 1988,
22 whichever first occurs, the Cities agree to continue making
23 contributions in accordance with the provisions of this
24 Supplemental Agreement.

25 (e) If on or before December 15, 1988, a determi-
26 nation has not been made by the Secretary with the approval of the
27 Cities that a source of water reasonably comparable to that which
28 was expected to be provided by Cliff Dam will be secured for and

1 available to the Cities by December 31, 1997, then the Cities shall
2 have the right to demand by January 14, 1989, that all funds in the
3 special escrow account be returned to them. Upon receipt of such
4 demand in writing, the Secretary will instruct the Arizona State
5 Treasurer to return such funds to the Cities as soon as
6 practicable.

7 (f) In the event that the Plan Six Agreement is
8 terminated in accordance with the provisions thereof, the remaining
9 portion of the monies in the special escrow account then held by
10 the Arizona State Treasurer shall be returned to the Cities in
11 accordance with Article 7 of Exhibit B to the Plan Six Agreement.

12 (g) With regard to deposits by the Cities to the
13 special escrow account maintained pursuant to this Supplemental
14 Agreement, the prepayment crediting provisions of Article 13.a. and
15 the prepayment crediting and liquidated damages provisions of
16 Article 7.b. of the Plan Six Agreement, to the extent that such
17 provisions apply to Cliff Dam, shall be suspended. The suspended
18 prepayment crediting provisions of Article 13.a. and the suspended
19 prepayment crediting and liquidated damages provisions of Article
20 7.b. of the Plan Six Agreement shall be modified to apply to any
21 identified and approved alternative. The Cities and the Secretary,
22 at such time as an alternative water supply is identified and prior
23 to approval by the Cities, shall agree upon a schedule of
24 contributions and withdrawals which will modify the schedule in
25 Exhibit A to the Plan Six Agreement which will describe how the
26 Cities' contributions and accrued interest will be applied by the
27 United States against the cost of acquiring such water supply and
28 the dates for implementing the alternative. At the same time, the

1 Cities, the Secretary and CAWCD shall also agree upon how the
2 prepayment crediting and liquidated damages provisions of Articles
3 13.a. and 7.b. of the Plan Six Agreement, formerly applicable to
4 Cliff Dam, shall be modified to apply to any such alternative.

5 (h) In the event the Cities exercise their right to
6 demand the return of funds in the special escrow account, the
7 Secretary shall have no further obligation to the Cities to provide
8 alternative water supplies, the prepayment crediting provisions of
9 Article 13.a. and the prepayment crediting and liquidated damages
10 provisions of Article 7.b. of the Plan Six Agreement, to the extent
11 that they relate to the Cities' contributions for Cliff Dam, shall
12 be waived, the Cities shall have no further obligation to make
13 contributions for Cliff Dam or alternatives thereto, and any rights
14 created in any party to the Plan Six Agreement due to such non-
15 payment of contributions shall not be exercised.

16 (i) The obligation of the Cities under this
17 Supplemental Agreement shall be contingent upon their obtaining
18 such additional legislative authority as may be necessary or
19 appropriate to enable them to carry out the terms of this
20 Supplemental Agreement.

21 22 SAFETY OF DAMS

23 5. (a) In accordance with the instructions set forth in
24 Exhibit B to the Plan Six Agreement and the trust agreements with
25 the Arizona State Treasurer, except as modified herein, a special
26 escrow account will be established and maintained with the Arizona
27 State Treasurer. All existing and future contributions by the Salt
28 River Project for Cliff Dam, plus all existing and future accrued

1 interest on such contributions, as set forth in Exhibit A to the
2 Plan Six Agreement, will be maintained in the special escrow
3 account and shall be subject to the provisions of this Supplemental
4 Agreement.

5 (b) Notwithstanding any other provisions of the Plan
6 Six Agreement and the trust agreement with the Arizona State
7 Treasurer, the United States shall withdraw contributions or
8 accrued interest from the special escrow account for safety of dams
9 activities on the Verde River only upon a determination by the
10 Secretary, in consultation with the Salt River Project, that
11 alternatives to provide safety of dams benefits acceptable to the
12 Salt River Project can be constructed by December 31, 1997. Upon
13 such determination, the United States shall have the right to
14 withdraw funds on deposit in the special escrow account to finance
15 the development of such alternatives according to a schedule to be
16 agreed upon between the United States and the Salt River Project..

17 (c) In the event that the funds on deposit in the
18 special escrow account are in excess of amounts required to meet
19 the Salt River Project's obligations for the safety of dams
20 alternatives on the Verde River, such excess funds shall be
21 returned to the Salt River Project as soon as practicable. Nothing
22 in this Supplemental Agreement shall affect the procedures for
23 allocating costs to safety of dams.

24 (d) In the event that the Secretary has not identi-
25 fied safety of dams alternatives for the Verde River acceptable to
26 the Salt River Project by December 15, 1988, the Salt River Project
27 shall have the right to demand by January 14, 1989, that all funds
28 in the special escrow account for Verde River safety of dams

1 activities be returned to it. Upon receipt of such demand in
2 writing, the Secretary will instruct the Arizona State Treasurer to
3 return such funds to the Salt River Project as soon as practicable.

4 (e) Unless by December 15, 1992: 1) the Secretary
5 has transmitted a Safety of Dams Program Modification Report
6 pursuant to the Reclamation Safety of Dams Act of 1978 (92 Stat.
7 2471, as amended by 98 Stat. 1481) identifying a safety of dams
8 alternative for the Verde River acceptable to the Salt River
9 Project; 2) sixty days have transpired since such submittal; and 3)
10 Congress has taken no action to invalidate such report, the Salt
11 River Project shall have the right to demand by January 14, 1993,
12 that all funds in the special escrow account deposited for Verde
13 River safety of dams activities be returned to it. Upon receipt of
14 such demand in writing, the Secretary will instruct the Arizona
15 State Treasurer to return such funds to the Salt River Project as
16 soon as practicable.

17 (f) In the event that the Plan Six Agreement is
18 terminated in accordance with the provisions thereof, the remaining
19 monies in the special escrow account then held by the Arizona State
20 Treasurer shall be returned to the Salt River Project in accordance
21 with Article 7 of Exhibit B to the Plan Six Agreement.

22 (g) With regard to deposits by the Salt River
23 Project to the special escrow account maintained pursuant to this
24 Supplemental Agreement, the crediting provisions of Article 13.a.
25 of the Plan Six Agreement, to the extent that such provisions apply
26 to Cliff Dam, shall be suspended. The suspended crediting
27 provisions of Article 13.a. of the Plan Six Agreement shall be
28 modified to apply to any acceptable alternative. The Salt River

1 Project and the Secretary, at such time as an alternative safety of
2 dams solution is identified, shall agree upon a schedule of
3 contributions and withdrawals which will modify the schedule in
4 Exhibit A to the Plan Six Agreement which will describe how the
5 Salt River Project's contributions and accrued interest will be
6 applied by the United States against the cost of such alternative
7 and the dates for implementing the alternative. At the same time,
8 the Salt River Project and the Secretary shall also agree upon how
9 the crediting provisions of Article 13.a. of the Plan Six
10 Agreement, formerly applicable to Cliff Dam, shall be modified to
11 apply to any such alternative.

12 (h) In the event the Salt River Project exercises
13 its right to demand the return of funds in the special escrow
14 account, the United States shall be relieved of any obligation
15 created in this Supplemental Agreement and the Plan Six Agreement
16 to provide safety of dams benefits on the Verde River, the Salt
17 River Project shall have no further obligation to make
18 contributions for Cliff Dam or alternatives thereto, and any rights
19 created in any party to the Plan Six Agreement due to such non-
20 payment of contributions shall not be exercised.

21 22 ALLOCATED COSTS

23 6. Nothing in this Supplemental Agreement shall be
24 construed to suggest that any of the costs associated with identi-
25 fying or providing alternative water supplies, flood control or
26 safety of dams benefits, in lieu of those to have been provided by
27 Cliff Dam, shall be included in or excluded from Central Arizona
28 Project costs repayable by the Central Arizona Water Conservation

1 District. Implementation of this Supplemental Agreement shall not
2 be construed to cause the financial obligation of the United States
3 for the construction of Plan Six to exceed that which was
4 contemplated with construction of Plan Six with Cliff Dam.

5
6 WAIVER OF RENEGOTIATION AND OTHER PROVISIONS

7 7. The United States and the Flood Control District,
8 with the concurrence of the other Non-Federal Parties, agree that
9 the renegotiation, prepayment crediting, liquidated damages and
10 other provisions of Articles 7.b, 13.a, and 18.b of the Plan Six
11 Agreement, as they may pertain to Cliff Dam, shall be suspended
12 with respect to the contributions the Flood Control District would
13 have made toward the flood control benefits to have been provided
14 by Cliff Dam. If and when acceptable alternative flood control
15 measures are identified by the Secretary for the Verde River, the
16 Flood Control District and the Secretary shall agree upon the
17 manner in which the contributions of the Flood Control District
18 toward such alternative shall be applied to such alternative, and
19 the Flood Control District, the Secretary and CAWCD shall also
20 agree upon how the prepayment crediting and liquidated damages
21 provisions of Articles 13.a. and 7.b. shall be modified to apply to
22 such alternative; provided, however, that the determination of the
23 amount and scheduling of contributions by the Flood Control
24 District toward such alternative shall be in accordance with the
25 procedures prescribed by Sections B.2 and C.2. of Exhibit A to the
26 Plan Six Agreement.

PLAN SIX AGREEMENT NOT OTHERWISE MODIFIED

8. The provisions of the Plan Six Agreement are hereby modified to conform to the provisions of this Supplemental Agreement. All provisions of the Plan Six Agreement not inconsistent with this Supplemental Agreement shall remain in full force and effect.

1 IN WITNESS WHEREOF, the parties hereto have executed this
2 Supplemental Agreement which shall be effective on the day and year
3 first above written.
4

5 THE UNITED STATES OF AMERICA

6
7
8 By: Charles A. Small
9 Commissioner of Reclamation

By: James V. Giff
Assistant Secretary of the
Interior for Water and Science

10
11 THE STATE OF ARIZONA

12
13 Attest: David B. Boff
14 Secretary of State

By: Lyman H. McCreary
Governor

15
16 CENTRAL ARIZONA WATER
17 CONSERVATION DISTRICT

18
19 Attest: Marilyn H. Bonstadt
Secretary

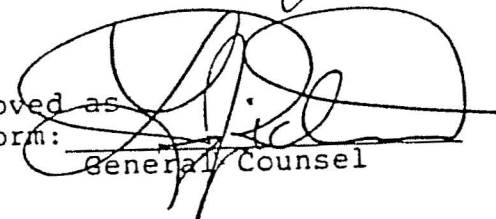
By: Robert W. Mullin
President

20
21 Approved as
22 to form: Angela R. Smith
General Counsel

FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY

Attest: 
Clerk of the Board

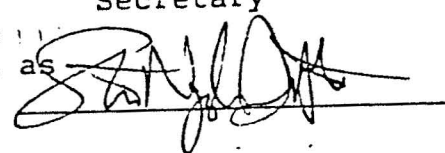
By: 
Chairman,
Board of Directors
OCT 19 1987

Approved as
to form: 
General Counsel

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

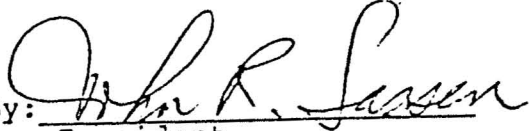
Attest and
Countersign: 
Secretary

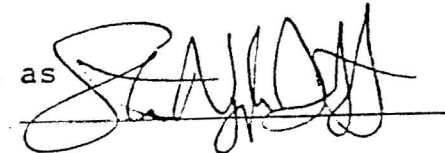
By: 
President

Approved as
to form: 

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

Attest and
Countersign: 
Secretary

By: 
President

Approved as
to form: 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CITY OF CHANDLER

Attest:

Clerk

By:

Mayor

Approved as
to form:

City Attorney

CITY OF GLENDALE

Attest:

Clerk

By:

Mayor

Approved as
to form:

City Attorney

CITY OF MESA

Attest:

Clerk

By:

City Manager

Approved as
to form:

City Attorney



CITY OF PHOENIX
Marvin A. Andrews,
City Manager

Attest:

ACTING Clerk

By:

Environmental Services Manager

Approved as
to form:

ACTING City Attorney

By:

Mayor, City of Phoenix

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CITY OF SCOTTSDALE

Attest: Roy R. Pederson,
City Clerk

By: [Signature]
Mayor

By: [Signature]
Deputy City Clerk

Approved as
to form: Barbara R Goldberg
Asst City Attorney

CITY OF TEMPE

Attest: [Signature]
Deputy Clerk

By: [Signature]
Mayor

Approved as
to form: [Signature]
City Attorney

CITY OF TUCSON

Attest: [Signature]
Clerk

By: [Signature]
Mayor

Approved as
to form: [Signature]
Asst. City Attorney