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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Gila Valley Irrigation District, et al.,

Defendants.

No. CV-31-00059-TUC-SHR
**Order Granting Limited Modification
to 1993 Change in Use Rule**

Pending before the Court is the Joint Motion for Limited Modification to the 1993 Change in Use Rule filed by the Gila Valley Irrigation District, Franklin Irrigation District, Gila River Indian Community, San Carlos Apache Tribe, and the United States (Doc. 8402). No objections to the Motion have been filed and the Gila Water Commissioner does has provided her Comments on the Motion (Doc. 8404), which are well-taken. Having reviewed the Motion and the Commissioner’s Comments, and good cause appearing,

IT IS ORDERED the joint Motion (Doc. 8402) is **GRANTED**.

IT IS FURTHER ORDERED the Modified Change in Use Rule stated below shall apply to change in use applications subject to the October 16, 2020 Agreement for Abandonment and Transfer of Decree Rights (copy attached as Exhibit A), in lieu of the 1993 Change in Use Rule.¹

....
....

¹ A red-lined copy of the modifications to the 1993 Change in Use Rule is attached as Exhibit B.

MODIFIED CHANGE IN USE RULE

Section 1. Application for change in the point of diversion, place, means, manner or purpose of the use of waters subject to the Gila Decree

A. An application that is subject and conforms to the October 16, 2020 Agreement for Abandonment and Transfer of Decree Rights entered into by the Gila and Franklin Irrigation Districts, the Gila River Indian Community, the San Carlos Apache Tribe, and the United States for a change in the place, means, manner or purpose of use of waters subject to the Gila Decree shall be filed with the Gila Water Commissioner (a "Change in Use Application" or "application").

B. The applicant, shall, at the time of filing the Change in Use Application with the Commissioner, pay a filing fee, to be determined by the Commissioner and approved by the court, and shall deposit with the Commissioner an amount sufficient to cover all costs associated with the processing of the Change in Use Application.

C. The application shall be in such form as prescribed by the Commissioner and shall include:

1. Name, address and telephone number of the applicant;
2. Location of existing point of diversion and place of use (legal description and map). An electronic map (shape file) appropriately prepared using the current Globe Equity Water Rights Database (hereinafter "GEWRD") and legal descriptions appropriately derived therefrom shall be presumptively sufficient;
3. Location of proposed new point of diversion and place of use (legal description and map). An electronic map (shape file) appropriately prepared using the current GEWRD and legal descriptions appropriately derived therefrom shall be presumptively sufficient;
4. Quantity of water involved in the change and rate of diversion (if only a portion of the water right is proposed to be transferred, a statement of how remainder will be used);
5. Purpose for which the application is filed;
6. Reference to the Gila Decree wherein the water right was defined and adjudicated and the priority date of such right;
7. Means, manner and purpose of existing use and proposed new means, manner and purpose of use;
8. Name, address and telephone number of irrigation district or project within which existing right is used;

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- 9. Name, address and telephone number of irrigation district within which the right would be transferred to;
- 10. Name of canal company presently delivering water under right and name of canal company which would deliver water under proposed transfer;
- 11. A description of the historical use of the water right for the last ten (10) years; and
- 12. Such other information as may be necessary to permit complete understanding of the proposed change.

D. The application shall be accompanied by the written consent and approval of the governing body of each irrigation district, irrigation project and canal company named in C.8, 9 and 10 above or the statement of the applicant that a written request for such consent and approval was delivered or mailed, return receipt requested, to such body and forty-five (45) days have elapsed since the receipt of the application and request for approval by such body. Failure of such governing body to approve or reject the proposed application within 45 days after receipt shall constitute approval of the application.

E. A separate application must be filed for each water right affected by the proposed change or changes, except that changes to allow the combination of rights by the same applicant, within the same irrigated adjacent fields, on the same canal, may be filed and processed in one application. Such applications for change(s) to allow the combination of rights by the same applicant must include separate locations and/or maps for each water right affected by the proposed change(s) that satisfy the requirements of Section 1, paragraph C. If such an application includes electronic maps (shapefiles), it must also include a composite electronic map (shapefile) that includes all water rights affected by the application.

F. The applicant shall state under oath that the information contained in the application is true and correct, to the best of the applicant's knowledge at the time of filing.

G. Failure to provide the foregoing information and approvals will result in rejection of the application.

H. Forfeiture and abandonment

- 1. No change in the point of diversion, place, means, manner or purpose of use shall be made under these Rules with respect to any decreed

1 right to water which, under applicable law, has been forfeited or
2 abandoned.

3 2. The Commissioner is not authorized to make any determination as to
4 whether a water right has or has not been abandoned or forfeited. If
5 an objection to an application is that the water right has been
6 abandoned or forfeited, such objection shall be determined in
7 proceedings before the United States District Court under Section 4
8 herein, and the Commissioner shall not deny an application on the
9 basis of abandonment or forfeiture.

10 I. If the Commissioner denies an application for any reason the applicant shall
11 have the right to have the application heard by the court upon filing of a complaint as
12 provided in Article XII of the Gila Decree; provided that such complaint shall also be
13 served in accordance with Federal Rule of Civil Procedure 5(b) on the parties listed in
14 Section 2, paragraph B.

15 J. If the Commissioner denies an application because the applicant has failed
16 to comply with any provision of these rules, the applicant may file another application with
17 the Commissioner, which complies with these rules.

18 Section 2. Notice of Change in Use Application

19 A. Any party holding a water right adjudicated under the Gila Decree may file
20 a written request with the Commissioner for special notice of all Change in Use
21 Applications filed pursuant to these rules. The request shall state the mailing address of the
22 party. The Commissioner shall keep a list of such requests, and provide a copy of the list
23 to every applicant upon the filing of an application. The Commissioner may periodically,
24 but not more frequently than once a year, require by written notice to each such party a
25 renewal of such request for notice.

26 B. Within five (5) business days after the application is filed, the Irrigation
27 District (Gila Valley or Franklin) wherein the affected lands are located, shall send, by
28 certified mail, return receipt requested, and via email, a copy of the application showing
the date the application was filed to: The United States, c/o The United States Department
of the Interior, Office of the Field Solicitor; Bureau of Indian Affairs, Phoenix Area Office

1 and Superintendent, San Carlos Agency; The Franklin Irrigation District; The Gila Valley
2 Irrigation District; The San Carlos Apache Tribe, The Gila River Indian Community; The
3 San Carlos Irrigation and Drainage District; The San Carlos Project; The State of Arizona,
4 c/o the Attorney General; ASARCO, Inc.; any canal companies named in the application;
5 and each party who has filed with the Commissioner a request for special notice. Upon
6 completing the mailing, the relevant Irrigation District shall file with the Commissioner a
7 certificate of mailing, signed by the Irrigation District's Representative, stating the names
8 and addresses for every party to whom the application was mailed, and the date of mailing.
9 Parties to whom notice is to be mailed shall file with the Commissioner a list of names and
10 addresses to which the notice shall be mailed which may include counsel for such parties.
11 The Commissioner shall keep a list of such notices, and provide a copy of the list to every
12 applicant upon the filing of an application.

13 C. Within 30 days after the application is filed, the Commissioner shall also
14 cause a copy of the Notice of Change in Use Application to be posted on the
15 Commissioner's website, with the date of such Notice prominently displayed. The
16 Commissioner shall also cause a link to the application to be displayed prominently on the
17 homepage while the application remains pending before the Commissioner or the Court.

18 D. The notice of Change in Use Application shall set forth:

- 19 1. That the application has been filed;
- 20 2. The date of filing;
- 21 3. The name and address of the applicant;
- 22 4. The location of the existing point of diversion and place of use and
23 present manner of use;
- 24 5. The location of the proposed new point of diversion and place of use and
25 proposed new manner of use;
- 26 6. The quantity of water involved in the proposed change;
- 27 7. Names of irrigation district or irrigation project and canal companies
28 affected by the proposed change;
8. The purpose for which the application has been filed;
9. Date by which objections must be filed with the Commissioner.

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Section 3. Objections to Change in Use Application

A. An objection to a Change in Use Application may be filed under these rules only by a person, corporation, governmental agency, Indian Tribe or other entity holding a water right under the Gila Decree for itself or in trust for another.

B. An objection to the application shall be in writing and verified and shall be filed in the office of the Commissioner no later than 90 days after the date of the Commissioner’s posting of the application on the Commissioner’s website, calculated in accordance with Fed. R. Civ. P. 6(a). An objection shall set forth the name, address and telephone number of the objector and shall set forth the grounds for the objection in a manner to permit complete understanding of the objection.

C. Within five (5) business days after an objection is filed, the objecting party shall send a copy of the objection in the manner and to the applicant and the parties specified in paragraph 2.B above. An objection shall also be filed within such time with the United States District Court, which shall be served in accordance with Federal Rule of Civil Procedure 5(b).

D. If no timely objection to the application is filed in the Office of the Commissioner, the Commissioner shall grant or deny the application on the basis of the information contained in the application. If the Commissioner approves the application, the Commissioner shall forthwith file the application with the Clerk of the Court with the Commissioner's affidavit setting forth the matters contained in the notice and stating that no objection has been filed pursuant to these Rules and that the Commissioner has approved the application and shall submit an order to the court for the court's approval of the change in use. The applicant shall be responsible for the costs of preparation of such affidavit and order.

E. A party who fails to file a timely objection with the Commissioner may not object to a proposed transfer during review by the court.

1 Section 4. Proceedings Before the Court

2 A. Upon the filing and service of an objection as provided in section 3
3 paragraphs B and C, the applicant or objector may request an evidentiary hearing before
4 the court. The Federal Rules of Evidence shall apply to such hearings and the matter shall
5 be tried without a jury.

6 B. The applicant shall have the burden of establishing a prima facie case of no
7 injury to the rights of other parties under the Gila Decree and a right to transfer. Upon
8 making such a prima facie showing, the burden of proof will shift from the applicant to the
9 objecting party to demonstrate that injury will result from the proposed change or that the
10 applicant has no right to the proposed transfer.

11 C. The decision of the court regarding a Change in Use Application shall not
12 take effect until the court enters an order approving the change and such decision becomes
13 final. The applicant or objecting party shall have the right to appeal the order in accordance
14 with the Federal Rules of Appellate Practice.

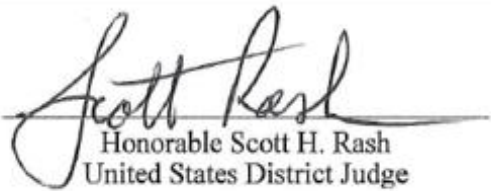
15 D. A party may seek an expedited hearing before the court upon a showing of
16 exigent or exceptional circumstances by filing a motion for an expedited hearing no later
17 than 10 days after an objection to an application has been served as provided by these rules.

18 E. A party found to have filed a frivolous Change in Use Application or
19 asserting a frivolous objection thereto may be assessed costs at the discretion of the court.

20 F. Upon approval of a Change in Use Application, the GEWRD shall be
21 updated to reflect the change.

22 Dated this 16th day of November, 2021.

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Honorable Scott H. Rash
United States District Judge

EXHIBIT A

Agreement for Abandonment and Transfer of Decree Rights

Parties

1. This Agreement is entered into by the following Parties: (a) the Gila Valley Irrigation District and the Franklin Irrigation District (collectively, the “Irrigation Districts”); (b) the Gila River Indian Community (the “Community”); (c) the United States of America; and (d) the San Carlos Apache Tribe.

Purpose

2. This Agreement is made with reference to

a. the Globe Equity Decree (“Decree”);

b. paragraphs 9 and 10 of the UVFA Paragraph 5.3 Settlement Agreement between the Irrigation Districts and the Community dated March 21, 2018 (“5.3 Settlement Agreement”), which was filed in the United States District Court for the District of Arizona (the “Globe Equity Decree court”) in Case No. 4:31-cv-00059-SRB as Document 8053-1; and

c. paragraphs 15, 16, 17, and 18 of the UVFA Paragraph 6.1 Settlement Agreement between the Irrigation Districts and the Community dated June 18, 2018 (“6.1 Settlement Agreement”), which was filed in the Globe Equity Decree court in Case No. 4:31-cv-00059-SRB as Document 8094-1.

3. The purpose of this Agreement is to eliminate objections to the Change In Use Applications for transfer of Decree rights described in paragraphs 9 and 10 of the 5.3 Settlement Agreement (“Agreed 5.3 Transfer Applications”); eliminate objections to the Change In Use Applications for transfer of Decree rights described in paragraphs 15, 16, 17, and 18 of the 6.1 Settlement Agreement (“Agreed 6.1 Transfer Applications”); and accomplish the abandonment of 550 acres of Decree rights that are located in the Irrigation Districts.

4. This Agreement is made as a matter of settlement and compromise to resolve or avoid disputes over matters of Decree administration that might otherwise need to be resolved in litigation in the Globe Equity Decree court.

Abandonment

5. The Irrigation Districts agree to seek to cause the abandonment of 550 acres of Globe Equity Decree rights not previously identified under paragraph 5.0 of the Upper Valley Forbearance Agreement. These rights are referred to in this Agreement as the “Abandonment Rights.” To the full extent possible, the Abandonment Rights shall be drawn from the Decree rights appurtenant to the lands identified in Exhibit A hereto.

6. For each of the Abandonment Rights, the Irrigation Districts shall obtain in a valid contract with the owner or owners of the right the power to abandon the right in compliance with this Agreement.

7. In the event that the Irrigation Districts are unable to obtain the power to abandon a full set of 550 acres of rights from within the lands identified in Exhibit A, the Irrigation Districts may obtain and abandon other rights to reach the total of 550 acres of Abandonment Rights, except that if such rights not in Exhibit A are appurtenant in whole or in part to lands with a road, a ditch, or a building, the acreage of the road, ditch, or building shall not be included in calculating the 550 acres of Abandonment Rights (*e.g.*, a 5.0-acre parcel with 0.5 acres of road would count only as a 4.5-acre right toward the 550 acres of Abandonment Rights).

8. After the Irrigation Districts have identified the Abandonment Rights and have obtained the necessary authority to abandon the rights, the Community shall prepare a draft motion for an order of abandonment (including maps and legal descriptions) for the Abandonment Rights and shall provide it to all other Parties to this Agreement for a period of review prior to filing. Such period of review shall be sufficient to permit the Parties to perform any necessary technical analysis to confirm the Abandonment Rights conform to the requirements of this Agreement. The Parties shall file the motion for an order of abandonment for the Abandonment Rights as a joint motion in the Globe Equity Decree court. If the Irrigation Districts are unable to obtain the necessary authority to reach the total of 550 acres of Abandonment Rights within 60 days of the date on which this Agreement becomes effective, or a later date mutually agreed by the parties to this Agreement in writing, this Agreement will be null and void and will have no legal effect on the rights and obligations of any of the Parties to this Agreement.

9. All Parties to this Agreement shall take all reasonable measures that may be necessary to promote the granting of an order of abandonment for the Abandonment Rights by the Globe Equity Decree court, including but not limited to cooperating with and not objecting to amendments to the motion or a refiled motion or other pleadings to cure any defects or to respond to any objection.

10. The Parties to this Agreement expect all obligations and actions taken pursuant to this agreement to be completed within five years from the date of execution.

Agreed 5.3 Transfer Applications

11. The United States and the San Carlos Apache Tribe agree not to object to the Agreed 5.3 Transfer Applications for 900 acres of Decree rights to be transferred to the in-stream gage at Calva. The 900 acres of rights to be severed and transferred shall be from among those rights that have previously been identified for severance and transfer in Exhibit A to the 5.3 Settlement Agreement and in the Notice of Compliance with 5.3 Settlement Agreement (Paragraph 6) (Doc. 8087) filed on June 6, 2018 in the Globe Equity Decree court.

12. After the Agreed 5.3 Transfer Applications are filed, all Parties to this Agreement shall take all reasonable measures that may be necessary to promote the granting of the Agreed 5.3 Transfer Applications by the Gila Water Commissioner and/or the Globe Equity Decree court,

including but not limited to cooperating with and not objecting to amendments or refiled Applications to cure any defects.

13. By entering into this Agreement, the San Carlos Apache Tribe and the United States on behalf of the San Carlos Apache Tribe are not agreeing that any volume of water called for at Calva under any right transferred pursuant to any approved Agreed 5.3 Transfer Application will actually reach the San Carlos Reservoir or may be released from the Reservoir for use below the Reservoir.

Agreed 6.1 Transfer Applications

14. The Irrigation Districts have identified the sever and transfer parcels for the Agreed 6.1 Transfer Applications. Maps showing these parcels are attached hereto as Exhibit B. The sever parcel and transfer parcel(s) for a single Agreed 6.1 Transfer Application are identified with matching numbers and a suffix beginning with S or T (e.g., sever parcel 1-S is the right that will be transferred to parcel 1-T, or to the parcels 1-T1 and 1-T2).

15. The Irrigation Districts and the Community agree that (1) Exhibit B satisfies the Irrigation Districts' duty to identify the general location of the sever parcels and transfer parcels under paragraph 16 of the 6.1 Settlement Agreement; (2) Exhibit B also satisfies the Community's duty to prepare maps in paragraph 17 of the 6.1 Settlement Agreement; and (3) the severances and transfers described by the mapping in Exhibit B will reshape existing fields without increasing currently farmed Decree acreage, by severing and transferring rights from actively farmed Decreed acres to UV Non-Decreed Lands in the same or adjacent fields.

16. The Parties to this Agreement agree that in Exhibit B hereto (1) the mapping of the sever parcels correctly depicts lands that currently have Decree rights and (2) the mapping of the transfer parcels correctly depicts lands without Decree rights.

17. The Irrigation Districts shall prepare Change in Use Applications corresponding to and consistent with the sets of sever and transfer parcels identified in Exhibit B. Such Agreed 6.1 Transfer Applications shall comply with the amended Change In Use Rule, pursuant to Paragraph 22 below. Each such Agreed 6.1 Transfer Application shall seek only a change in the place of use and shall not seek a change in the point of diversion, but shall instead maintain as the point of diversion for the transfer parcel or parcels the current approved point of diversion for a surface diversion for the sever parcel or parcels under the Globe Equity Decree.

18. The Community, the United States, and the San Carlos Apache Tribe agree not to object to the Agreed 6.1 Transfer Applications consistent with Exhibit B that are filed on or after the date of filing of a joint motion for an order of abandonment for the Abandonment Rights pursuant to this Agreement. This agreement not to object to such applications does not constitute waiver of any claims against the use of pumped water to irrigate any of the sever parcels or transfer parcels, but the Community, the United States, and the San Carlos Apache Tribe agree not to raise any such claims in the change in use proceedings for such Agreed 6.1 Transfer Applications so long as such Applications do not seek a change in the point of diversion.

19. The Irrigation Districts shall provide all Parties to this Agreement each proposed Agreed 6.1 Transfer Application at least 30 days before it is filed with the Gila Water Commissioner. Upon receipt of such Application, the Community, the United States, and the San Carlos Apache Tribe shall notify the Irrigation Districts in writing within 30 days of any (1) defect in form, (2) inaccuracy, (3) inconsistency with Exhibit B, (4) potential noncompliance with the amended Change in Use Rule, pursuant to Paragraph 21 below, or (5) potential noncompliance with the terms of this Agreement, so that these can be addressed by the Irrigation Districts before filing. In commenting on the Agreed 6.1 Transfer Applications, the Community, the United States, and the San Carlos Apache Tribe shall not raise any issue relating to the mapping or location of the sever or transfer parcels or any claim of injury to other parties to the Decree except for any inconsistency with Exhibit B hereto. Before filing the Agreed 6.1 Transfer Applications, the Irrigation Districts shall in good faith address any defects in form, inaccuracies, inconsistencies with Exhibit B, potential non-compliance with the Change In Use Rule, or potential noncompliance with the terms of this Agreement identified in a timely manner by any other Party to this Agreement pursuant to this paragraph. So long as the Irrigation Districts comply with the terms of this Agreement and have addressed in good faith any claim that an Agreed 6.1 Transfer Application is not consistent with Exhibit B, the Irrigation Districts' failure to comply with the preceding sentence shall not excuse any other Party to this Agreement from the promises herein not to object to the Agreed 6.1 Transfer Applications.

20. After the Agreed 6.1 Transfer Applications are filed, all Parties to this Agreement shall take all reasonable measures that may be necessary to promote the granting of the Agreed 6.1 Transfer Applications by the Gila Water Commissioner and/or the Globe Equity Decree court, including but not limited to cooperating with and not objecting to amendments or refiled Applications to cure any defects.

21. The promises in paragraphs 18 and 20 shall not become operative or binding on any Party to this Agreement until the date on which a motion for an order of abandonment for the Abandonment Rights has been filed.

22. The Parties agree to file, simultaneously with or prior to the filing of the Agreed 6.1 Transfer Applications, a joint motion seeking changes to notice requirements in the Globe Equity court for the 6.1 Transfer Applications that would allow adequate notice at a reasonable cost, including website publication instead of newspaper publication. The motion shall also seek changes to allow the combination of rights by the same owner, within the same irrigated adjacent fields, on the same canal, to be processed in one application.

General Provisions

23. This Agreement does not alter, supplant, or supersede any of the provisions of the 5.3 Settlement Agreement or the 6.1 Settlement Agreement.

24. This Agreement makes reference to the Upper Valley Forbearance Agreement and other settlement agreements to which the San Carlos Apache Tribe and the United States on behalf of the San Carlos Apache Tribe are not parties. By entering into this Agreement, the San Carlos Apache Tribe and the United States on behalf of the San Carlos Apache Tribe are agreeing only to

the obligations expressly set forth in this Agreement, and are not in any manner acquiescing to, assenting to, or expressly or impliedly agreeing to be bound by any of the terms of any other agreement to which they are not parties.

25. The Parties recognize that the successful performance of this Agreement will require the Parties to cooperate in good faith. So that the purposes of this Agreement may be realized, the Parties shall each be subject to a duty of good faith and fair dealing in the performance of this Agreement.

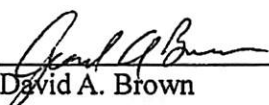

26. The obligations in this Agreement are mutually dependent and are not severable.

27. This Agreement constitutes the entire agreement among the Parties with respect to the matters stated herein, and the Parties have not relied on any unwritten representations or promises in entering into this Agreement.

28. This Agreement, including Exhibits, shall not be modifiable except in writing.

29. The signatories to this Agreement each represent that they have valid authority to enter into this Agreement on behalf of the respective Parties for which they have signed.

30. This Agreement may be executed in counterparts and is effective on the date of the last signature.

<p>Gila Valley Irrigation District and Franklin Irrigation District</p> <p>Date: <u>October 16</u> 2020</p> <p> _____ David A. Brown</p>	<p>San Carlos Apache Tribe</p> <p>Date: _____, 2020</p> <p>_____</p> <p>Chairman Terry Rambler</p> <p>Approved as to form:</p> <p>Date: _____, 2020</p> <p>_____</p> <p>Joe P. Sparks</p>
<p>Gila River Indian Community</p> <p>Date: <u>October 7</u>, 2020</p> <p> _____ Donald R. Pongrace</p>	<p>United States of America</p> <p>Date: _____, 2020</p> <p>_____</p> <p>Patrick Barry</p>

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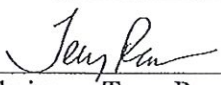
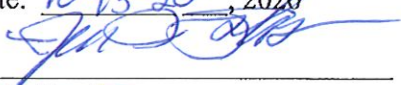
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<p>Gila Valley Irrigation District and Franklin Irrigation District</p> <p>Date: _____, 2020</p> <p>_____</p> <p>David A. Brown</p>	<p>San Carlos Apache Tribe</p> <p>Date: <u>October 07</u>, 2020</p> <p></p> <p>Chairman Terry Rambler</p> <p>Approved as to form:</p> <p>Date: <u>10-13-20</u>, 2020</p> <p></p> <p>Joe P. Sparks</p>
<p>Gila River Indian Community</p> <p>Date: _____, 2020</p> <p>_____</p> <p>Donald R. Pongrace</p>	<p>United States of America</p> <p>Date: _____, 2020</p> <p>_____</p> <p>Patrick Barry</p>

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25. The Parties recognize that the successful performance of this Agreement will require the Parties to cooperate in good faith. So that the purposes of this Agreement may be realized, the Parties shall each be subject to a duty of good faith and fair dealing in the performance of this Agreement.

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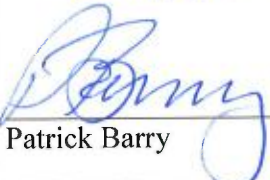
<p>Gila Valley Irrigation District and Franklin Irrigation District</p> <p>Date: _____, 2020</p> <hr/> <p>David A. Brown</p>	<p>San Carlos Apache Tribe</p> <p>Date: _____, 2020</p> <hr/> <p>Chairman Terry Rambler</p> <p>Approved as to form:</p> <p>Date: _____, 2020</p> <hr/> <p>Joe P. Sparks</p>
<p>Gila River Indian Community</p> <p>Date: _____, 2020</p> <hr/> <p>Donald R. Pongrace</p>	<p>United States of America</p> <p>Date: <i>October 13</i>, 2020</p>  <hr/> <p>Patrick Barry</p>

EXHIBIT B

Change in use rule, excerpted from Order entered September 23, 1993

Section 1. Application for change in the point of diversion, place, means, manner or purpose of the use of waters subject to the Gila Decree:

A. ~~An application for a change in the point of diversion,~~An application that is subject and conforms to the October 16, 2020 Agreement for Abandonment and Transfer of Decree Rights entered into by the Gila and Franklin Irrigation Districts, the Gila River Indian Community, the San Carlos Apache Tribe, and the United States for a change in the place, means, manner or purpose of use of waters subject to the Gila Decree shall be filed with the Gila Water Commissioner (a "Change in Use Application") or "application".

B. The applicant, shall, at the time of filing the Change in Use Application with the Commissioner, pay a filing fee, to be determined by the Commissioner and approved by the court, and shall deposit with the Commissioner an amount sufficient to cover all costs associated with the processing of the Change in Use Application, ~~including mailing and publication costs.~~

C. The application shall be in such form as prescribed by the Commissioner and shall include:

1. Name, address and telephone number of the applicant;
2. Location of existing point of diversion ~~or~~and place of use (legal description and map/~~survey~~) ~~and proposed new manner of use~~. An electronic map (shape file) appropriately prepared using the current Globe Equity Water Rights Database (hereinafter "GEWRD") and legal descriptions appropriately derived therefrom shall be presumptively sufficient;
3. Location of proposed new point of diversion ~~or~~and place of use (legal description and map/~~survey~~) ~~and proposed new manner of use~~. An electronic map (shape file) appropriately prepared using the current GEWRD and legal descriptions appropriately derived therefrom shall be presumptively sufficient;
4. Quantity of water involved in the change and rate of diversion (if only a portion of the water right is proposed to be transferred, a statement of how remainder will be used);

5. Purpose for which the application is filed;
6. Reference to the Gila Decree wherein the water right was defined and adjudicated and the priority date of such right;
7. ~~Purpose~~ Means, manner and purpose of existing use and proposed new means, manner and purpose of use;
8. Name, address and telephone number of irrigation district or project within which existing right is used;
9. Name, address and telephone number of irrigation district within which the right would be transferred to;
10. Name of canal company presently delivering water under right and name of canal company which would deliver water under proposed transfer;
11. A description of the historical use of the water right for the last ten (10) years; and
12. Such other information as may be necessary to permit complete understanding of the proposed change.

D. The application shall be accompanied by the written consent and approval of the governing body of each irrigation district, irrigation project and canal company named in C.8, 9 and 10 above or the statement of the applicant that a written request for such consent and approval was delivered or mailed, return receipt requested, to such body and forty-five (45) days have elapsed since the receipt of the application and request for approval by such body. Failure of such governing body to approve or reject the proposed application within 45 days after receipt shall constitute approval of the application.

~~E. A separate application must be filed for each water right affected by the proposed change or changes.~~

E. A separate application must be filed for each water right affected by the proposed change or changes, except that changes to allow the combination of rights by the same applicant, within the same irrigated adjacent fields, on the same canal, may be filed and processed in one application. Such applications for change(s) to allow the combination of

rights by the same applicant must include separate locations and/or maps for each water right affected by the proposed change(s) that satisfy the requirements of Section 1, paragraph C. If such an application includes electronic maps (shapefiles), it must also include a composite electronic map (shapefile) that includes all water rights affected by the application.

F. The applicant shall state under oath that the information contained in the application is true and correct, to the best of the applicant's knowledge at the time of filing.

G. Failure to provide the foregoing information and approvals will result in rejection of the application.

H. ~~(1)~~ — Forfeiture and abandonment

H.1. No change in the point of diversion, place, means, manner or purpose of use shall be made under these Rules with respect to any decreed right to water which, under applicable law, has been forfeited or abandoned.

2. ~~(2)~~ — The Commissioner is not authorized to make any determination as to whether a water right has or has not been abandoned or forfeited. If an objection to an application is that the water right has been abandoned or forfeited, such objection shall be determined in proceedings before the United States District Court under Section 4 herein, and the Commissioner shall not deny an application on the basis of abandonment or forfeiture.

I. If the Commissioner denies an application for any reason the applicant shall have the right to have the application heard by the court upon filing of a complaint as provided in Article XII of the Gila Decree; provided that such complaint shall also be served in accordance with Federal Rule of Civil Procedure 5(b) on the parties listed in Section 2, paragraph B.

J. If the Commissioner denies an application because the applicant has failed to comply with any provision of these rules, the applicant may file another application with the Commissioner, which complies with these rules.

Section 2. Notice of Change in Use Application

A. Any party holding a water right adjudicated under the Gila Decree

may file a written request with the Commissioner for special notice of all Change in Use Applications filed pursuant to these rules. The request shall state the mailing address of the party. The Commissioner shall keep a list of such requests, and provide a copy of the list to every applicant upon the filing of an application. The Commissioner may periodically, but not more frequently than once a year, require by written notice to each such party a renewal of such request for notice.

B. Within ~~30~~five (5) business days after the application is filed, the ~~Commissioner~~Irrigation District (Gila Valley or Franklin) wherein the affected lands are located, shall send, by certified mail, return receipt requested, and via email, a copy of the application, ~~together with a copy of a written notice setting forth showing~~ the date ~~by which objections to the application must be~~was filed ~~in the office of the Commissioner,~~ to: The United States, c/o The United States Department of the Interior, Office of the Field Solicitor; Bureau of Indian Affairs, Phoenix Area Office and Superintendent, San Carlos Agency; The Franklin Irrigation District; The Gila Valley Irrigation District; The San Carlos Apache Tribe, The Gila River Indian Community; The San Carlos Irrigation and Drainage District; The San Carlos Project; The State of Arizona, c/o the Attorney General; ASARCO, Inc.; any canal companies named in the application; ~~and to~~ each party who has filed with the Commissioner a request for special notice. Upon completing the mailing, the relevant Irrigation District shall file with the Commissioner a certificate of mailing, signed by the Irrigation District's Representative, stating the names and addresses for every party to whom the application was mailed, and the date of mailing. Parties to whom notice is to be mailed shall file with the Commissioner a list of names and addresses to which the notice shall be mailed which may include counsel for such parties. The Commissioner shall keep a list of such notices, and provide a copy of the list to every applicant upon the filing of an application.

~~C. The Commissioner shall also cause a copy of the notice of Change in Use Application to be published once a week for three consecutive weeks in a newspaper of general circulation in the county and counties in which the change is to occur (and in the counties Greenlee, Graham, Pinal and Maricopa, Arizona).~~

C. Within 30 days after the application is filed, the Commissioner shall also cause a copy of the Notice of Change in Use Application to be posted on the Commissioner's website, with the date of such Notice prominently displayed. The Commissioner shall also cause a link to the application to be displayed prominently on the homepage while the application remains pending before the Commissioner or the Court.

D. The notice of Change in Use Application shall set forth:

1. That the application has been filed;

2. The date of filing;
3. The name and address of the applicant;
4. The location of the existing point of diversion ~~or~~ and place of use and present manner of use;
5. The location of the proposed new point of diversion ~~or~~ and place of use and proposed new manner of use;
6. The quantity of water involved in the proposed change;
7. Names of irrigation district or irrigation project and canal companies affected by the proposed change;
8. The purpose for which the application has been filed;
9. Date by which objections must be filed with the Commissioner.

Section 3. Objections to Change in Use Application

A. An objection to a Change in Use Application may be filed under these rules only by a person, corporation, governmental agency, Indian Tribe or other entity holding a water right under the Gila Decree for itself or in trust for another.

B. An objection to the application shall be in writing and verified and shall be filed in the office of the Commissioner ~~on or before the date specified in the notice which shall be a date~~ no later than 90 days after the date of the ~~last publication~~ Commissioner's posting of the notice, application on the Commissioner's website, calculated in accordance with Fed. R. Civ. P. 6(a). An objection shall set forth the name, address and telephone number of the objector and shall set forth the grounds for the objection in a manner to permit complete understanding of the objection.

C. Within ~~ten (10)~~ five (5) business days after an objection is filed, the objecting party shall send a copy of the objection in the manner and to the applicant and the parties specified in paragraph 2.B above. An objection shall also be filed within such time with the United States District Court, which shall be served in accordance with Federal Rule of Civil Procedure 5(b).

D. If no timely objection to the application is filed in the Office of the Commissioner ~~on or before the date specified in the notice~~, the Commissioner shall grant or deny the application on the basis of the information contained in the application. If the Commissioner approves the application, the Commissioner shall forthwith file the application with the Clerk of the Court with the Commissioner's affidavit setting forth the matters contained in the notice and stating that no objection has been filed pursuant to these Rules and that the Commissioner has approved the application and shall submit an order to the court for the court's approval of the change in use. The applicant shall be responsible

for the costs of preparation of such affidavit and order.

E. A party who fails to file a timely objection with the Commissioner may not object to a proposed transfer during review by the court.

Section 4. Proceedings Before the Court

A. Upon the filing and service of an objection as provided in section 3 ~~paragraph~~paragraphs B and C, the applicant or objector may request an evidentiary hearing before the court. The Federal Rules of Evidence shall apply to such hearings and the matter shall be tried without a jury.

B. The applicant shall have the burden of establishing a prima facie case of no injury to the rights of other parties under the Gila Decree and a right to transfer. Upon making such a prima facie showing, the ~~burden-of proof~~ burden of proof will shift from the applicant to the objecting party to demonstrate that injury will result from the proposed change or that the applicant has no right to the proposed transfer.

C. The decision of the court regarding a Change in Use Application shall not take effect until the court enters an order approving the change and such decision becomes final. The applicant or objecting party shall have the right to appeal the order in accordance with the Federal Rules of Appellate Practice.

D. A party may seek an expedited hearing before the court upon a showing of exigent or exceptional circumstances by filing a motion for an expedited hearing at the time a complaint is filed or subsequent to filing of a complaint as warranted by the circumstances, no later than 10 days after an objection to an application has been served as provided by these rules.

E. A party found to have filed a frivolous Change in Use Application or asserting a frivolous objection thereto may be assessed costs at the discretion of the court.

F. Upon approval of a Change in Use Application, the GEWRD shall be updated to reflect the change.

