



**Chandler • Arizona**  
*Where Values Make The Difference*

#17  
SEP 20 2007

**MEMORANDUM                      Law Department - Council Memo No. 10**

**DATE:**            SEPTEMBER 20, 2007

**TO:**                MAYOR AND COUNCIL  
                        W. MARK PENTZ, CITY MANAGER

**THRU:**            MICHAEL D. HOUSE, CITY ATTORNEY *MDH*

**FROM:**            CYNTHIA J. HAGLIN, ASSISTANT CITY ATTORNEY *CA*

**SUBJECT:**        RESOLUTION NO. 4125, AUTHORIZING CITY ATTORNEY TO EXECUTE THE “STIPULATION OF INTERVENORS CONCURRING IN JOINT MOTION OF CENTRAL ARIZONA CONSERVATION DISTRICT AND THE UNITED STATES TO APPROVE AMENDMENT TO THE REVISED STIPULATION AND FOR ENTRY OF STIPULATED JUDGMENT” IN CENTRAL ARIZONA WATER CONSERVATION DISTRICT v. UNITED STATES, CIV 95-625-TUC-WDB (EHC, NO. CIV 95-1720-PHX-EHC (CONSOLIDATED ACTION))

**RECOMMENDATION:** Recommend approval of Resolution No. 4125, authorizing the City Attorney to sign the “Stipulation of Intervenors Concurring in Joint Motion of Central Arizona Conservation District and the United States to Approve Amendment to the Revised Stipulation and for Entry of Stipulated Judgment” in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. Civ. 95-1720-PHX-EHC (Consolidated Action) in substantially the form attached.

**BACKGROUND/DISCUSSION:** This litigation, which was filed in 1995, arose from disagreements regarding repayment obligations of the Central Arizona Water Conservation District (“CAWCD”) to the United States for the Central Arizona Project water delivery system. CAWCD and the United States entered into a Stipulation and Order for Judgment on May 9, 2000 to resolve this lawsuit. That stipulation provided for final resolution of the Central Arizona Project (“CAP”) financial litigation, if certain conditions were met by May 9, 2003. One of these conditions was the settlement of the Gila River Indian Community water rights (“GRIC”) claims. The parties agreed to extend that deadline when they realized that these conditions could not be met by that date. On February 27, 2003, the Chandler City Council authorized the City Attorney to sign a revised stipulation that extended the deadline to May 9, 2012 for completion of all of these conditions.

Since that revised stipulation was filed in 2003, the parties to this litigation have made significant progress in completing the prerequisites to final resolution. However, the parties have determined that one of these prerequisites is no longer required for their amicable resolution of this matter. Therefore, the requirement that the Southern Arizona Water Rights Settlement Act of 1982 be fully enforceable has been removed. Also, several of the prerequisites that have been satisfied need not be recited in the Amendment to the Revised Stipulation and they have been removed as well.

CAWCD and the United States have requested that the other parties to this litigation, which includes the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Tempe and Tucson, sign the Stipulation of Intervenors Concurring in Joint Motion of Central Arizona Conservation District and the United States to Approve Amendment to the Revised Stipulation and for Entry of Stipulated Judgment.

**FINANCIAL IMPLICATIONS:** Under the terms of this Amendment to the 2003 revised stipulation, Chandler can expect to enjoy the same benefits that were agreed to in that earlier stipulation. Resolution of this longstanding litigation avoids increases in Chandler's CAP Municipal and Industrial ("M&I") water rates that would result if the United States were to prevail in its claims as to CAWCD's liability for capital repayment for the Central Arizona Project system. Public Works has estimated that these savings could be as much as \$800,000 annually. Additionally, as a result of this stipulated settlement, the capital repayment charges associated with the recent allocation to Chandler of an additional 4,986 acre-feet of water will be roughly \$115,000 less per year due to the reduction in capital repayment charges.

Resolution of this dispute also removes the potential that capital repayment may be increased due to action of the United States to either increase the unilateral repayment ceiling or change the cost allocation for the remainder of the repayment contract until 2043. Further, this settlement resolves various disputes regarding CAP operations, maintenance and repair ("O,M&R") and thereby also provides the City with greater certainty as to its future obligations for O,M&R charges for CAP water.

**PROPOSED MOTION:** Move to approve Resolution No. 4125, authorizing the City Attorney to sign the Stipulation of Intervenors Concurring in Joint Motion of Central Arizona Conservation District and the United States to Approve Amendment to the Revised Stipulation and for Entry of Stipulated Judgment in Central Arizona Water Conservation District v. United States, in substantially the form attached.

RESOLUTION NO. 4125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING STIPULATION OF INTERVENORS CONCURRING IN JOINT MOTION OF CENTRAL ARIZONA CONSERVATION DISTRICT AND THE UNITED STATES TO APPROVE AMENDMENT TO THE REVISED STIPULATION AND FOR ENTRY OF STIPULATED JUDGMENT IN CENTRAL ARIZONA WATER CONSERVATION DISTRICT V. UNITED STATES, NO CIV 95-625-TUC-WCB (EHC), NO. CIV 95-1720-PHX-(EHC) (CONSOLIDATED ACTION)

WHEREAS, pursuant to a Central Arizona Project ("CAP") repayment contract entered between the United States ("U.S.") and Central Arizona Water Conservation District ("CAWCD"), upon completion of the Central Arizona Project system, total costs to be reimbursed by the CAWCD to the U.S. were to be determined; and

WHEREAS, after the Notice of Completion was issued on September 30, 1993, a dispute arose between the U.S. and CAWCD as to the amount of capital repayment which CAWCD owed the U.S. for the CAP; and

WHEREAS, in July 1995, CAWCD filed suit against the United States in Federal District Court seeking a declaratory judgment as to the amount of its repayment obligation under the CAP repayment contract; and

WHEREAS, in 1995, the City of Chandler moved to intervene in this litigation and Chandler and several other entities were granted status as intervenors in 1996; and

WHEREAS, CAWCD and the United States negotiated a settlement and entered a stipulation and with the intervenors to this litigation, submitted an agreed upon judgment to the court for its approval on May 9, 2000 and amended that stipulation in May, 2003 ("Revised Stipulation");

WHEREAS, some of the conditions required by the 2003 Stipulation to be completed before final Order for Judgment could be entered by the Court have already been completed and the parties have agreed to modify certain of the other conditions stated in that Revised Stipulation through an amendment to that Revised Stipulation; and

WHEREAS, the approval of this Stipulation for Judgment is in the best interests of the City of Chandler.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City Attorney of the City of Chandler is hereby authorized to execute this Stipulation of Intervenors Concurring in Joint Motion of Central Arizona

Conservation District and the United States to Approve Amendment to the Revised Stipulation and for Entry of Stipulated Judgment, in substantially the form attached, on behalf of the City of Chandler.

Section 2. That the various City officers and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

\_\_\_\_\_  
CITY CLERK

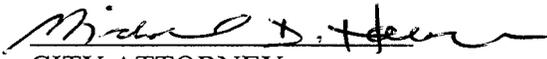
\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4125 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

CENTRAL ARIZONA WATER	)	
CONSERVATION DISTRICT, a municipal	)	No. CIV 95-625-TUC-WDB(EHC)
corporation of the State of Arizona,	)	No. CIV 95-1720-PHX-EHC
	)	(Consolidated Action)
Plaintiff,	)	
	)	STIPULATION OF INTER-
v.	)	VENORS CONCURRING IN
	)	JOINT MOTION OF CENTRAL
	)	ARIZONA WATER CONSER-
UNITED STATES OF AMERICA, UNITED	)	VATION DISTRICT AND THE
STATES DEPARTMENT OF THE INTERIOR,	)	UNITED STATES TO APPROVE
BUREAU OF RECLAMATION; DIRK	)	AMENDMENT TO THE REVISED
KEMPTHORNE, Secretary of the Interior;	)	STIPULATION AND FOR ENTRY
MARK LIMBAUGH, Assistant Secretary of the	)	OF STIPULATED JUDGMENT
Interior; ROBERT W. JOHNSON, Commissioner	)	
of Reclamation; LORRI GRAY,	)	
Regional Director, Lower Colorado Region,	)	
United States Bureau of Reclamation,	)	
	)	
Defendants.	)	
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UNITED STATES OF AMERICA	)	
	)	
Counterclaimant,	)	
	)	
v.	)	
	)	
CENTRAL ARIZONA WATER	)	
CONSERVATION DISTRICT, a municipal	)	
corporation of the State of Arizona,	)	
	)	
Counterdefendant.	)	
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The Intervenor Cities through their undersigned counsel have reviewed the Stipulation to Amend the Revised Stipulation dated \_\_\_\_\_, the Stipulation for Judgment, the Stipulated Judgment and the Joint Motion of Central Arizona Water Conservation District and the United States to Approve the Revised Stipulation and for Entry of Stipulated Judgment to which the original of this letter is to be attached as Exhibit "G" all of which are to be jointly filed in the above entitled action by the Central Arizona Water

1 Conservation District and the United States. Said Intervenor Cities stipulate and concur in the  
2 entry of Judgment in the above entitled case under the terms and conditions set forth in the  
3 foregoing identified documents.

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5 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
6 M. Byron Lewis  
7 Mark A. McGinnis  
8 Attorneys for CAIDD

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10 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
11 Gary Verburg  
12 City Attorney  
13 M. James Callahan  
14 Assistant City Attorney  
15 Attorneys for City of Phoenix

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17 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
18 Marvin S. Cohen  
19 Attorney for City of Tucson

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21 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
22 William H. Anger  
23 Attorney for the Cities of Chandler,  
24 Glendale, Goodyear, Mesa and Scottsdale

25  
26 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
27 Craig Tindall  
28 City Attorney  
Attorney for City of Glendale

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Michael D. House  
City Attorney  
Attorney for City of Chandler

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Deborah Robberson  
City Attorney  
Attorney for City of Scottsdale

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Dated: \_\_\_\_\_

By: \_\_\_\_\_

Andrew B. Ching  
City Attorney  
Charlotte Benson  
Senior Assistant City Attorney  
Attorneys for City of Tempe

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Stephen M. Kemp  
City Attorney  
Attorney for City of Peoria

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deborah J. Spinner  
City Attorney  
Attorney for City of Mesa

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Roric M. Massey  
City Attorney  
Attorney for City of Goodyear