

ATTACHMENT B

SUPPLEMENTAL AND ADDITIONAL
INDENTURE OF LEASE

FOUR CORNERS



CF-18-86

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Authorizing Supplemental Lease with Arizona Public Service Company, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Tucson Gas and Electric Company, and Salt River Valley Water Users' Association, together with a Supplemental Wholesale Power Supply Agreement with Arizona Public Service Company

WHEREAS:

1. The Navajo Tribal Council authorized the execution of a Wholesale Power Supply Agreement with the Arizona Public Service Company, together with supplements thereto, and a lease of a plant site in the Four Corners Area, for generating power, pursuant to a resolution of the Navajo Tribal Council, CJY-46-60, dated July 21, 1960, which lease was subsequently executed and dated December 1, 1960.

2. Arizona Public Service Company has proposed to amend and supplement the said original lease by adding thereto certain lands through a supplemental lease which shall contain the amendatory provisions of the original lease.

3. Arizona Public Service Company, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Tucson Gas and Electric Company, and Salt River Valley Water Users' Association have proposed to enter into a new lease with the Tribe, the terms of which are contained in the previously described supplemental lease, in order to accomplish by the joint efforts of said corporations the construction, operation and maintenance of two additional generating units, each having a generating capacity of 755,000 kw (nameplate capacity),.

4. Utah Construction and Mining Company, lessee under a coal-mining lease from the Navajo Tribe, is to supply coal for said enlarged generating plant, and

5. Arizona Public Service Company further proposes to enter into a further supplement to the Wholesale Power Supply Agreement, and

6. The General Counsel and associate attorneys in the Legal Department of the Navajo Tribe have conducted extensive negotiation with Arizona Public Service Company and

other members of the proposed group of new lessees in order to recommend to the Tribe the terms of a proposed Supplemental Lease and a Supplemental Wholesale Power Supply Agreement, which are now substantially completed and to be recommended for consideration of the Advisory Committee of the Navajo Tribal Council, pursuant to instructions and authorization from the Navajo Tribal Council.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby authorizes the Advisory Committee of the Navajo Tribal Council to approve a Supplemental Lease to Arizona Public Service Company, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Tucson Gas and Electric Company, and Salt River Valley Water Users' Association, which Supplemental Lease will supplement and amend the original lease with Arizona Public Service Company and will also contain the terms of a new lease with six lessees, in the following principal respects:

- A. The additional property to be leased under the new lease shall consist of approximately 90 acres adjoining the existing plant site for the proposed plant addition, and approximately 340 acres to be added to the ash disposal area.
- B. The original lease shall be amended by deleting therefrom certain acreage and incorporating such acreage in the new lease.
- C. The term of the new lease shall be for a period of fifty years with an option to extend the term for a period of up to an additional twenty-five years.
- D. The original lease shall be amended to provide that its initial term shall be for a fifty-year period to be co-extensive with the term of the new lease, and to provide that there shall be an option to extend the amended original lease for a period of up to an additional twenty-five years.
- E. The rental to be paid to the Navajo Tribe under the amended original lease shall be \$32,056.25 per year, and the rental under the new lease shall be \$84,182.50 per year, or a total combined rental of \$116,238.75 per year.
- F. Such other terms as the Advisory Committee deems to be in the best interest of the Navajo Tribe.

2. The Navajo Tribe hereby consents to the grant by the Secretary of the Interior, pursuant to 25 U.S.C. 323

and/or 43 U.S.C. 959, or rights-of-way to the six lessee corporations as tenants in common for the construction, use, operation, maintenance, relocation and removal of the generating units and all facilities related thereto on the Navajo Reservation, with said rights-of-way being cumulative, additional, and supplementary to, and separate and independent from, and not conditioned upon, the leasehold rights leased to the six lessee corporations under the new lease.

3. The Navajo Tribal Council hereby authorizes the Advisory Committee of the Navajo Tribal Council to approve a supplement to the existing Wholesale Power Supply Agreement with Arizona Public Service Company in the following principal respects, together with any amendment or amendments thereto deemed by the said Committee to be in the best interest of the Navajo Tribe:

- A. The Tribe shall be entitled to receive under the terms of the Wholesale Power Supply Agreement 19,156 kilowatts from each of the two units respectively to be constructed pursuant to the new lease.
- B. This entitlement shall be subject to such terms and conditions as the Advisory Committee may deem to be in the best interest of the Navajo Tribe.

4. The officers of the Navajo Tribe be and they hereby are authorized and instructed to do any and all things necessary, incidental, or advisable to carry out the purposes of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 48 in favor and 0 opposed, this 23rd day of February, 1966.

Nelson Larson

Vice Chairman
Navajo Tribal Council

Filed or Recorded
Book 636 Page 4
San Juan County, New Mexico
1966 Jul 21 AM 9:41
S/Johnnie Byrd, County Clerk
Re: #3038 Fee \$114.75

1 SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE

2 INCLUDING

3 AMENDMENTS AND SUPPLEMENTS TO ORIGINAL LEASE -

4 FOUR CORNERS UNITS 1, 2 AND 3

6 BETWEEN

8 THE NAVAJO TRIBE OF INDIANS

10 AND

12 ARIZONA PUBLIC SERVICE COMPANY

14 AND INCLUDING

16 NEW LEASE -

17 FOUR CORNERS UNITS 4 AND 5

19 BETWEEN

21 THE NAVAJO TRIBE OF INDIANS

23 AND

25 ARIZONA PUBLIC SERVICE COMPANY

26 EL PASO ELECTRIC COMPANY

27 PUBLIC SERVICE COMPANY OF NEW MEXICO

28 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

29 SOUTHERN CALIFORNIA EDISON COMPANY

30 TUCSON GAS & ELECTRIC COMPANY

32

SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE

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1 SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE

2
3 This Supplemental and Additional Indenture of Lease
4 made and entered into as of this _____ day of _____,
5 1966, by and between THE NAVAJO TRIBE OF INDIANS, acting through
6 the Navajo Tribal Council and its chairman for and on behalf of
7 The Navajo Tribe of Indians (hereinafter referred to as the
8 "Tribe"), as Lessor, and ARIZONA PUBLIC SERVICE COMPANY, EL PASO
9 ELECTRIC COMPANY, PUBLIC SERVICE COMPANY OF NEW MEXICO, SALT RIVER
10 PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, SOUTHERN
11 CALIFORNIA EDISON COMPANY, and TUCSON GAS & ELECTRIC COMPANY
12 (hereinafter collectively, together with their successors and
13 assigns, referred to as "Lessees", and singly referred to as
14 "Lessee"), as Lessees,

15 W I T N E S S E T H:

16 WHEREAS, the following definitions will for convenience
17 be used in this Supplemental and Additional Indenture of Lease:

18 "Arizona" - Arizona Public Service Company, an Arizona
19 corporation;

20 "El Paso" - El Paso Electric Company, a Texas corpora-
21 tion;

22 "New Mexico" - Public Service Company of New Mexico, a
23 New Mexico corporation;

24 "Salt River Project" - Salt River Project Agricultural
25 Improvement and Power District, an agricultural improvement
26 district organized under the laws of the State of Arizona;

27 "Edison" - Southern California Edison Company, a
28 California corporation;

29 "Tucson" - Tucson Gas & Electric Company, an Arizona
30 corporation;

31 "Original Lease" - Indenture of Lease dated December 1,
32 1950, between the Tribe and Arizona, leasing to Arizona certain

1 leasehold rights pursuant to which it has constructed the Initial
2 Four Corners Plant, said Original Lease being of record in Book
3 474, page 187, in the office of the County Clerk of San Juan
4 County, New Mexico, and supplemental exhibits to said Original
5 Lease recorded in Book 511, page 65, in the office of said County
6 Clerk of San Juan County, New Mexico;

7 "Amended Original Lease" - The Original Lease, as
8 amended, supplemented and revised by this Supplemental Lease;

9 "Supplemental Lease" - This Supplemental and Additional
10 Indenture of Lease, which combines the amendments and supplements
11 to and the revisions of the Original Lease, and the New Lease;

12 "New Lease" - The provisions of this Supplemental Lease
13 that are applicable to the Four Corners Project, and under which
14 the Lessees shall acquire leasehold rights to construct, re-
15 construct, use, operate, maintain, relocate and remove the Four
16 Corners Project;

17 "Utah Mining" - Utah Construction & Mining Co., a
18 Delaware corporation;

19 "Coal Lease" - The Lease dated as of July 26, 1957, and
20 recorded in Book 480, page 74, in the office of the County Clerk
21 of San Juan County, New Mexico, and amended by amendment dated
22 October 18, 1957, and recorded in Book 480, page 74-V, in the
23 office of the County Clerk of San Juan County, New Mexico, and
24 amended by amendment dated October 24, 1961, not recorded, and
25 amended by amendment dated March 29, 1965, not recorded, between
26 the Tribe and Utah Mining;

27 "Utah Mining Leased Lands" - The lands leased to Utah
28 Mining under the terms of the Coal Lease;

29 "Original Fuel Agreement" - Fuel Agreement dated August
30 18, 1960, as amended and supplemented by five supplements,
31 including the Fifth Supplement, between Utah Mining and Arizona,
32 relating to fuel for the Initial Four Corners Plant;

1 "Additional Fuel Agreement" - Four Corners Fuel
2 Agreement No. 2 between Lessees and Utah Mining relating to fuel
3 for Units 4 and 5;

4 "Four Corners" - The Site of the Four Corners Steam
5 Electric Generating Plant, located on the Navajo Reservation,
6 near Shiprock, New Mexico;

7 "Initial Four Corners Plant" - The existing generating
8 station of Arizona, located on the Navajo Reservation near
9 Shiprock, New Mexico, on lands leased by Arizona pursuant to the
10 Amended Original Lease, consisting of Units 1 and 2, each 175 MW
11 (nameplate), and Unit 3, 225 MW (nameplate), all facilities and
12 structures used therewith or related thereto, the related switch-
13 yard and substation facilities therefor, and the respective
14 undivided interests in the Common Facilities and the Related
15 Facilities allocated thereto;

16 "Enlarged Four Corners Generating Station" - The
17 Initial Four Corners Plant and the Four Corners Project;

18 "Four Corners Project" - Proposed Units 4 and 5, each
19 to be 755 MW (nameplate), all facilities and structures used
20 therewith or related thereto, the switchyard facilities therefor,
21 and the respective undivided interests in the Common Facilities
22 and the Related Facilities allocated thereto, to be constructed
23 at Four Corners by Lessees;

24 "Common Facilities" - Those existing facilities,
25 including the dam, pumping plant, pipelines, ash disposal facili-
26 ties and access roads, constructed by Arizona pursuant to the
27 Original Lease which will serve in connection with the operation
28 and maintenance both of Units 4 and 5 and of the existing three
29 units of the Initial Four Corners Plant;

30 "Related Facilities" - Those facilities to be
31 constructed or installed at Four Corners and ultimately to be
32 owned by Lessees which will serve in connection with the
operation and maintenance both of Units 4 and 5 and of the

1 existing three units of the Initial Four Corners Plant;

2 "Amended Original Plant Site" - The plant site for the
3 existing three units of the Initial Four Corners Plant, the area
4 and location of which are shown and described on the plat attached
5 hereto as Exhibit 1 hereof, this Amended Original Plant Site being
6 a revision (and a diminution) of the so-called "plant site area"
7 leased to Arizona under the Original Lease and shown on Exhibit
8 A and supplemental Exhibits thereto of the Original Lease;

9 "New Plant Site" - The plant site for Units 4 and 5 and
10 the switchyard facilities therefor, the area and location of
11 which are shown and described on the plat attached hereto as
12 Exhibit 2 hereof. The New Plant Site includes a portion of the
13 so-called "plant site area" leased to Arizona under the Original
14 Lease, as well as additional contiguous lands (the portion hereto-
15 fore leased to Arizona as part of the area designated as the "plant
16 site area" under the Original Lease being deleted from said "plant
17 site area" pursuant to this Supplemental Lease);

18 "Pumping Plant Site" - The site for facilities to divert
19 and pump water from the San Juan River, including diversion works,
20 water intake works, pumping station, water lines and facilities
21 related thereto, the area and location of which are shown and
22 described on the plat attached hereto as Exhibit 3 hereof, this
23 Pumping Plant Site being the same as the area designated as the
24 "pumping plant site" leased to Arizona under the Original Lease
25 and shown on Exhibit B and supplemental Exhibits thereto of the
26 Original Lease;

27 "Dam Site" - The site of the dam and other facilities
28 and appurtenances constructed by Arizona as lessee under the
29 Original Lease, the area and location of which are shown and
30 described on the plat attached hereto as Exhibit 4 hereof, this
31 Dam Site being the same as the area designated as the "dam site"
32 leased to Arizona under the Original Lease and shown on Exhibit C

1 and supplemental Exhibits thereto of the Original Lease;

2 "Common and Related Facilities Area" - The area, in
3 addition to, and exclusive of, the Amended Original Plant Site,
4 New Plant Site, Pumping Plant Site, Dam Site and Ash Disposal
5 Area, on which are or will be located certain of the Common
6 Facilities and certain of the Related Facilities, which is shown
7 and described on the plat attached hereto as Exhibit 5 hereof;

8 "Ash Disposal Area" - The area for the disposal of
9 ash and refuse products resulting from the operation of the
10 Enlarged Four Corners Generating Station, together with access
11 thereto from the Amended Original Plant Site and the New Plant
12 Site, which area is shown and described on the plat attached
13 hereto as Exhibit 6 hereof. This area includes the area
14 designated as the "ash disposal area" under the Original Lease
15 and shown on Exhibit D thereof and Supplemental Exhibits thereto,
16 together with an additional area contiguous thereto;

17 "Reservation Lands" - The lands of the Tribe located
18 within the Navajo Reservation;

19 "Storage Lake" - The lake formed by the water impounded
20 behind the dam located on the Dam Site, the contour line showing
21 the maximum level of which lake is shown on Exhibit 8 hereof;

22 "Leased Lands" - The Amended Original Plant Site, New
23 Plant Site, Pumping Plant Site, Dam Site, Common and Related
24 Facilities Area and Ash Disposal Area;

25 "§323 Grant" - Grants of rights-of-way and easements
26 under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C.
27 §323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. §485),
28 as amended, and the Acts of July 9, 1832, and July 27, 1868 (4
29 Stat. 564, 15 Stat. 228, 25 U.S.C. 2), and such regulations pro-
30 mulgated thereunder as are applicable, including 25 CFR §1.2 and
31 Part 161, to Arizona, Edison, New Mexico, El Paso, Tucson and Salt
32 River Project, pursuant to which they will construct, reconstruct,

1 use, operate, maintain, relocate and remove the Four Corners Project;

2 "Arizona §323 Grant" - Grants of rights-of-way and ease-
3 ments under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C.
4 §323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. §485),
5 as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat.
6 564, 15 Stat. 228, 25 U.S.C. §2), and such regulations promulgated
7 thereunder as are applicable, including 25 CFR §1.2 and Part 161,
8 to Arizona, pursuant to which it will reconstruct, use, operate,
9 maintain, relocate and remove the Initial Four Corners Plant;

10 "Secretary" - The Secretary of the Interior or such
11 person or agency as he may expressly designate to perform the
12 functions provided in the Supplemental Lease to be performed
13 by him or such Federal agency as may succeed to the duties of
14 the Secretary of the Interior under the Supplemental Lease;

15 "Area Director" - Area Director of the Navajo Area
16 Office of the Bureau of Indian Affairs at Window Rock, Arizona,
17 or other official in charge of the Indian Agency having
18 jurisdiction over the Reservation Lands;

19 (Other terms of specialized meaning for purposes of
20 this Supplemental Lease are defined when they first are used in
21 the contents hereof); and
22

23 WHEREAS, under the Original Lease the Tribe leased to
24 Arizona certain leasehold interests and related rights to
25 certain designated areas located on the Reservation Lands, on
26 which property Arizona has constructed and is operating its
27 Initial Four Corners Plant, using as fuel therefor, coal supplied
28 from the coal-bearing Utah Mining Leased Lands by Utah Mining
29 pursuant to the Original Fuel Agreement; and
30

31 WHEREAS, the Tribe and Lessees desire that the Original
32 Lease be amended and supplemented and that certain designated

1 provisions thereof be revised or supplanted by the provisions of
2 this Supplemental Lease, so that under the Amended Original Lease
3 the Tribe shall lease to Arizona certain leasehold rights herein-
4 after described in and to the Leased Lands, and certain Related
5 Rights hereinafter described, to reconstruct, use, operate,
6 maintain, relocate and remove the Initial Four Corners Plant, and
7 further desire that under the New Lease the Tribe shall lease to
8 the Lessees certain leasehold rights hereinafter described in and
9 to the Leased Lands, and certain Related Rights hereinafter
10 described, to construct, reconstruct, use, operate, maintain,
11 relocate and remove the Four Corners Project; and
12

13 WHEREAS, the Amended Original Lease will continue in
14 effect between the Tribe and Arizona (a) as to the Amended
15 Original Plant Site, except that the Tribe shall lease to the
16 Lessees, and each of them, as tenants in common, the right pur-
17 suant to the New Lease to have reasonable access to, and to
18 construct, reconstruct, use, operate, maintain, relocate, replace
19 and remove such Common Facilities and Related Facilities as may
20 be located upon the Amended Original Plant Site; and (b) as to
21 an undivided 27.58% interest in and to the Pumping Plant Site,
22 the Dam Site, the Common and Related Facilities Area and the
23 portion of the Ash Disposal Area located within the said "ash
24 disposal area" leased to Arizona under the Original Lease; and
25

26 WHEREAS, effective concurrently with the effective
27 date of this Supplemental Lease, Arizona shall hereby sell,
28 relinquish, exchange, reconvey, grant, transfer and dispose of
29 to the Tribe the following described leasehold rights and
30 interests under the Original Lease (exclusive of Arizona's
31 facilities, structures, improvements, equipment and property
32 located thereon) within the following described areas leased to

1 Arizona under the Original Lease:

2 (a) That portion of the New Plant Site included
3 within the plant site described in the Original Lease;

4 (b) An undivided 72.42% interest in and to the pumping
5 plant site, the dam site and the ash disposal area described
6 in the Original Lease;

7 (c) An undivided 72.42% interest in and to that portion
8 of the plant site described in the Original Lease, that is
9 included within the Common and Related Facilities Area;

10 (d) An undivided 72.42% interest in and to the Amended
11 Original Plant Site to the extent and only to the extent
12 of the rights leased to the Lessees pursuant to the New
13 Lease;

14 (e) An undivided 72.42% interest in and to the Reserva-
15 tion Lands affected by the Related Rights;

16
17 WHEREAS, the Tribe shall lease to Lessees under the
18 New Lease undivided interests as tenants in common in the New
19 Plant Site with their respective undivided interests in said real
20 property being as follows:

21	Arizona	15%
22	El Paso	7%
23	New Mexico	13%
24	Salt River Project	10%
25	Edison	48%
26	Tucson	7%

27 (with the interests or ownerships of Lessees in Units 4 and 5 or
28 the output thereof to be subject to agreements among the
29 Lessees from time to time); and

30
31 WHEREAS, the Tribe shall lease to Arizona under the
32 Amended Original Lease the right to have reasonable access to,

1 and use, operate, maintain, relocate, replace and remove such
2 Common Facilities and Related Facilities, and such facilities of
3 Arizona, as may be located upon the New Plant Site; and
4

5 WHEREAS, the Tribe shall lease to Lessees under the
6 New Lease, undivided interests as tenants in common in the Pumping
7 Plant Site, the Dam Site, the Common and Related Facilities Area
8 and the Ash Disposal Area, with their respective undivided
9 interests in said real property being as follows:

10	Arizona	10.86%
11	El Paso	5.07%
12	New Mexico	9.42%
13	Salt River Project	7.24%
14	Edison	34.76%
15	Tucson	5.07%

16 (with the interests or ownerships of Lessees in the Enlarged
17 Four Corners Generating Station or the output therefrom to be
18 subject to agreements among the Lessees from time to time); and
19

20 WHEREAS, in connection with the construction, use,
21 operation, maintenance, relocation and removal of the Initial
22 Four Corners Plant, and pursuant to the consent of the Tribe
23 given in the Original Lease, the Secretary has heretofore granted
24 to Arizona the right-of-way permits hereinafter listed for
25 certain water pipelines, conduits, power lines, communication
26 lines and access roads referred to in the said Original Lease:
27

28 1. Power line from the Initial Four Corners Plant to
29 the Pumping Plant Site (a portion of which is shown on Exhibit
30 E - Sheet 2 to Original Lease and supplemental Exhibit thereto),
31 that portion of which power line located outside of the Leased
32 Lands is shown and described on the plat attached hereto as

1 Exhibit 13 hereof.

2

3 2. Access road and water pipeline from the Storage
4 Lake to the Pumping Plant Site (approximately as shown on
5 Exhibit H - Sheets 1 and 2 to Original Lease and supplemental
6 Exhibit thereto), the location of which are shown and described
7 on the plat attached hereto as Exhibit 9 hereof.

8

9 3. Communication lines and access road to Utah
10 Mining Leased Lands (Exhibit J to Original Lease and supplemental
11 Exhibit thereto), the location of which is within the right-of-
12 way shown and described on the plat attached hereto as Exhibit
13 11 hereof.

14

15 4. Plant access road from San Juan River bridge to
16 Initial Four Corners Plant (approximately as shown on Exhibit
17 I - Sheets 1 and 2 only to Original Lease and supplemental
18 Exhibit thereto), the location of which is shown and described
19 on Exhibit 10, Sheets 10 and 11 hereof.

20

21 (In addition, pursuant to the consent set out in
22 Section 3 of the Original Lease, Arizona has obtained right-of-
23 way permits for transmission lines, switching stations and
24 microwave stations referred to in said section); and

25

26 WHEREAS, the Tribe will consent that new or amended
27 rights-of-way and easements shall be granted for said water
28 pipelines, conduits, power lines, communication lines and access
29 roads, in the names of the Lessees as tenants in common with the
30 same respective undivided interests specified in the previous
31 recital clause referring to the Pumping Plant Site, the Dam
32 Site, the Common and Related Facilities Area and the Ash Disposal

1 Area; and

2
3 WHEREAS, the Lessees have applied for the grant from the
4 Secretary of the §323 Grant, to which the Tribe herein consents,
5 pursuant to a Resolution of the Advisory Committee of the Navajo
6 Tribal Council dated May ____, 1966, a copy of which is attached
7 hereto as Exhibit 14, and the rights-of-way and easements granted
8 to the Lessees by the Secretary under the §323 Grant are intended
9 to be and shall be additional and supplementary to, separate and
10 independent from, and not conditioned upon the leasehold rights
11 leased to the Lessees under the New Lease; and

12
13 WHEREAS, Arizona has applied for the grant from the
14 Secretary of the Arizona §323 Grant, to which the Tribe herein
15 consents, pursuant to the aforesaid Resolution of the Advisory
16 Committee (Exhibit 14), and the said rights-of-way and easements
17 granted to Arizona by the Secretary under the Arizona §323 Grant
18 are intended to be and shall be additional and supplementary
19 to, separate and independent from, and not conditioned upon the
20 leasehold rights leased to Arizona under the Amended Original
21 Lease; and

22
23 WHEREAS, it is contemplated that in addition to Units
24 4 and 5, additional units may ultimately be added by some or
25 all of the Lessees at Four Corners or elsewhere on the Reserva-
26 tion Lands, but it is understood that the construction, use,
27 operation, maintenance, relocation and removal of such additional
28 units will be dependent upon a new lease or leases being entered
29 into at such time by the participants in such additional units
30 and the Tribe;

31
32 NOW, THEREFORE, IT IS HEREBY AGREED:

1. Relinquishment of Rights by Arizona under Original
1 Lease. Effective concurrently with the effective date of this
2 Supplemental Lease, Arizona does hereby sell, relinquish, exchange,
3 reconvey, grant, transfer and dispose of to the Tribe the following
4 described leasehold rights and interests under the Original Lease
5 (exclusive of Arizona's facilities, structures, improvements,
6 equipment and property located thereon) within the following
7 described areas leased to Arizona under the Original Lease:

8 (a) That portion of the New Plant Site included within
9 the plant site described in the Original Lease;

10 (b) An undivided 72.42% interest in and to the pumping
11 plant site, the dam site and the ash disposal area described
12 in the Original Lease;

13 (c) An undivided 72.42% interest in and to that por-
14 tion of the plant site described in the Original Lease, that
15 is included within the Common and Related Facilities Area;

16 (d) An undivided 72.42% interest in and to the Amended
17 Original Plant Site to the extent and only to the extent of
18 the rights leased to the Lessees pursuant to the New Lease;

19 (e) An undivided 72.42% interest in and to the Reserva-
20 tion Lands affected by the Related Rights;

21

22 2. Leased Lands under New Lease. The Tribe, for and
23 in consideration of the payment by the Lessees of the rentals
24 specified and the performance by the Lessees of the covenants
25 hereinafter recited, does hereby for the term hereinafter set
26 out, and for the purpose of constructing, reconstructing, using,
27 operating, maintaining, relocating and removing the Four Corners
28 Project, lease unto the Lessees under the New Lease the real
29 property hereinafter described:

30 (a) The Tribe hereby leases the New Plant Site to the
31 Lessees as tenants in common, with Arizona having an
32 undivided 15% interest therein, El Paso having an undivided

1 7% interest therein, New Mexico having an undivided 13%
2 interest therein, Salt River Project having an undivided
3 10% interest therein, Edison having an undivided 48%
4 interest therein, and Tucson having an undivided 7% interest
5 therein.

6 (b) The Tribe hereby leases the Pumping Plant Site,
7 the Dam Site, the Common and Related Facilities Area and the
8 Ash Disposal Area to the Lessees as tenants in common, with
9 Arizona having an undivided 10.86% interest therein, El
10 Paso having an undivided 5.07% interest therein, New Mexico
11 having an undivided 9.42% interest therein, Salt River
12 Project having an undivided 7.24% interest therein, Edison
13 having an undivided 34.76% interest therein, and Tucson
14 having an undivided 5.07% interest therein. Pending the
15 outcome of technical studies and/or operating experience,
16 it is possible that additional ash disposal area will be
17 required either contiguous to or in the general area of the
18 Ash Disposal Area. In the event that such additional area
19 is required, subject to procuring the approval of the Tribe
20 and the Secretary at that time, Exhibit 6 will be amended
21 to show the additional area. Payment to the Tribe for such
22 additional Ash Disposal Area shall be at the rate of
23 \$10.00 per acre per year. Such payments shall be in
24 addition to the lease rental payments hereinafter provided
25 in Section 11.

26 (c) Insofar as some portions or components of the
27 Common Facilities or Related Facilities are located on the
28 Amended Original Plant Site, the Tribe hereby leases the
29 Amended Original Plant Site to the Lessees as tenants in
30 common, with Lessees having the same respective interests
31 set forth above in Section 2(b), to the extent and only to
32 the extent that the Lessees shall have reasonable access to

1 such portions or components of the Common Facilities and
2 Related Facilities and shall have the right to construct,
3 use, operate, maintain, relocate, replace and remove the
4 same in connection with the construction, reconstruction,
5 use, operation, maintenance, relocation and removal of the
6 Four Corners Project, provided that Lessees, in exercising
7 the rights hereby leased, shall not interfere with or
8 impair the use by Arizona of the Amended Original Plant
9 Site for the purpose for which said plant site is held
10 by Arizona under the Amended Original Lease.

11 A plat showing, among other things, all of said Leased
12 Lands, and also indicating the portions thereof heretofore leased
13 to Arizona under the Original Lease, is attached hereto as
14 Exhibit 7 hereof.

15 3. Amendments to Original Lease. The Original Lease
16 is hereby amended and supplemented, in addition to other amend-
17 ments and supplements as herein provided, so that the Amended
18 Original Lease shall provide as follows:

19 (a) The Amended Original Plant Site hereunder (Exhibit
20 1 hereof) is substituted for the plant site thereunder
21 (Exhibit A thereof and supplemental Exhibits thereto);

22 (b) The Tribe hereby leases to Arizona, as Lessee
23 under the Amended Original Lease, an undivided 27.58%
24 interest in the lands within the Ash Disposal Area
25 (Exhibit 6 hereof) not included within the ash disposal
26 area leased to Arizona under the Original Lease (Exhibit D
27 thereof and supplemental Exhibits thereto); and the Ash
28 Disposal Area under this Supplemental Lease is substituted
29 for the ash disposal area under the Original Lease;

30 (c) Insofar as some portions or components of the
31 Common Facilities or Related Facilities, or facilities of
32 Arizona, are located on the New Plant Site, the Tribe hereby

1 leases the New Plant Site to Arizona, to the extent and only
2 to the extent that Arizona shall have reasonable access to
3 such portions or components of the Common Facilities and
4 Related Facilities, and facilities of Arizona, and shall
5 have the right to construct, reconstruct, use, operate, main-
6 tain, relocate, replace and remove the same in connection
7 with the construction, reconstruction, use, operation, main-
8 tenance, relocation and removal of the Initial Four Corners
9 Plant, provided that Arizona, in exercising the rights
10 hereby leased, shall not interfere with or impair the use
11 by Lessees of the New Plant Site for the purpose for which
12 said plant site is held by Lessees under the New Lease;

13 (d) The Common and Related Facilities Area hereunder
14 (Exhibit 5 hereof) is substituted as to that portion of the
15 plant site thereunder (Exhibit A thereof and supplemental
16 Exhibits thereto) included within said Common and Related
17 Facilities Area;

18 (e) Plant access road hereunder (Exhibit 10, Sheets
19 10 and 11 hereof) is substituted for the plant access road
20 thereunder (Exhibit I, Sheets 1 and 2 thereof and supplemental
21 Exhibits thereto);

22 (f) Access road and water pipeline hereunder (Exhibit 9
23 hereof) is substituted for the access road and water pipe-
24 line thereunder (Exhibit H, Sheets 1 and 2 thereof and
25 supplemental Exhibits thereto);

26 (g) The leasehold rights leased to Arizona under
27 Section 2(b) hereof, as a Lessee under the New Lease, shall
28 be separate and independent from, and shall not merge with,
29 the leasehold rights leased to Arizona under the Amended
30 Original Lease;

31 (h) The leasehold rights leased to Lessees under
32 Section 2(b) hereof shall be equal in time and priority with

1 the leasehold rights leased to Arizona under the Amended
2 Original Lease;

3 (i) The leasehold rights leased to Lessees under
4 Sections 2(c) hereof shall be equal in time and priority with
5 the leasehold rights in the Amended Original Plant Site
6 leased to Arizona under the Original Lease and retained by
7 Arizona under the Amended Original Lease;

8 (j) The leasehold rights leased to Arizona under Section
9 3(c) hereof shall be equal in time and priority with the
10 leasehold rights in the New Plant Site leased to Lessees
11 under the New Lease.

12
13 4. Lease of Related Rights. The Tribe hereby leases
14 to Lessees under the New Lease and to Arizona under the Amended
15 Original Lease the auxiliary and related rights hereinafter set
16 out (herein sometimes for convenience referred to as "Related
17 Rights") as tenants in common, with the Lessees having the same
18 respective interests therein under the New Lease set forth above
19 in Section 2(b), and with Arizona being a tenant in common and
20 having an undivided 27.58% interest in the Related Rights as
21 lessee under the Amended Original Lease (in addition to its un-
22 divided 10.86% interest therein under the New Lease, as herein
23 provided); and the Related Rights leased to Lessees under the
24 New Lease and the related rights leased to Arizona under the
25 Original Lease and retained by Arizona under the Amended Original
26 Lease shall be equal in time and priority. The Related Rights
27 herein leased are rights to occupancy and possession of the real
28 property hereinafter described and do not apply to or affect any
29 Common Facilities heretofore constructed by Arizona on such real
30 property pursuant to the Original Lease, or any Related Facilities
31 hereafter constructed by Lessees on said real property pursuant
32 to the New Lease and the Amended Original Lease.

(a) The right to occupy and use Reservation Lands in

1 order to construct, reconstruct, install, operate, maintain,
2 relocate and remove (i) diversion works, including dams, wells,
3 pipelines, facilities and structures for diverting water, on
4 the stream bed of the San Juan River within the Reservation
5 Lands, in addition to diversion works in the Pumping Plant
6 Site, in order to maintain diversion of water to the pumps in-
7 stalled on the Pumping Plant Site, in event of change in the
8 location of the stream bed of the San Juan River; (ii) electric
9 power and communication lines and facilities and access roads
10 to the said new diversion works from other facilities of the
11 Lessees; and (iii) pipelines, conduits and other structures
12 and facilities which will conduct water from the San Juan
13 River or from other sources to the Storage Lake.

14 (b) The right to construct, reconstruct, install,
15 operate, maintain, relocate and remove water lines across the
16 Reservation Lands (in addition to those from the Pumping
17 Plant Site) for the purpose of transporting water for
18 operation of the Enlarged Four Corners Generating Station,
19 and the right of access thereto.

20 (c) The right to construct, reconstruct, install,
21 operate, maintain, relocate and remove a power line and a
22 communication line from the Dam Site to the Pumping Plant
23 Site. The location of said power line and communication
24 line is within the real property shown and described on
25 Exhibit 13 hereof.

26 (d) The right to construct, reconstruct, install,
27 improve, operate, maintain, relocate and remove a water
28 pipeline and access road from the Storage Lake to the
29 Pumping Plant Site. The locations of said pipeline and
30 access road are within the real property shown and described
31 on Exhibit 9 hereof.

32 (e) The right to construct, reconstruct, improve,

1 maintain, and relocate an access road extending from the San
2 Juan River bridge to the Amended Original Plant Site. The
3 location of said access road is within the real property
4 shown and described on Exhibit 10, Sheets 10 and 11 hereof.

5 (f) The right to construct, reconstruct, install, im-
6 prove, operate, maintain, relocate and remove an access road,
7 water pipelines and power and communication lines extending
8 from the Common and Related Facilities Area to the Utah Mining
9 Leased Lands. The location of said access road, water pipe-
10 lines and power and communication lines is within the real
11 property shown and described on Exhibit 11 hereof.

12 (g) The right to construct, reconstruct, install,
13 operate, maintain, relocate and remove water pipelines
14 extending from the Common and Related Facilities Area and
15 the Storage Lake to the Utah Mining Leased Lands. The
16 location of said water pipelines is within the real property
17 shown and described on Exhibit 12 hereof.

18 (h) The right to store water in the Storage Lake behind
19 the dam located on the Dam Site; to flood and utilize Reserva-
20 tion Lands to the extent that will be required to store the
21 water in the Storage Lake which can be contained behind the
22 dam, up to a maximum elevation of 5327.5 feet, with a maxi-
23 mum Storage Lake area of approximately 1288 acres (including
24 the portions of the Storage Lake included in the Common and
25 Related Facilities Area and the Dam Site), the Storage Lake
26 at such maximum level to have substantially the contour line
27 shown on Exhibit 8 hereof; to use and draw down the water
28 from, and to fill, refill and empty the Storage Lake;
29 to fluctuate the level of the Storage Lake and the Storage
30 Lake surface area; to take water from the Storage Lake into
31 the Enlarged Four Corners Generating Station and to discharge
32 water back into the Storage Lake at a higher temperature;

1 to use the Storage Lake in any way required for operation
2 of the Enlarged Four Corners Generating Station; to clean
3 the Storage Lake surface; to take any action that Lessees
4 may deem necessary for limiting or preventing undue seep-
5 age and for controlling, curtailing and removing debris,
6 and weed, vegetable, marine, insect and animal growths;
7 to have access to all of the Storage Lake area for all
8 of such previously described purposes; and to construct
9 and maintain dikes and embankments (as shown on Exhibit 8)
10 to prevent flooding of roads. Insofar as the dam and
11 Storage Lake will affect Reservation Lands subject to
12 existing rights-of-way, to the extent the Tribe has the
13 right to do so, the Tribe hereby leases to the Lessees the
14 right to construct and maintain said dam and Storage Lake
15 and confers upon the Lessees whatever rights the Tribe may
16 have with respect to construction and maintenance of a dam
17 and Storage Lake affecting Reservation Lands subject to such
18 rights-of-way.

19 (i) The right to dispose of waste water on the
20 Reservation Lands by permitting waste water from the
21 Enlarged Four Corners Generating Station to flow from
22 the Ash Disposal Area into and along the Chaco Wash; the
23 right to construct, reconstruct, install, operate,
24 maintain, relocate and remove pipelines, sluice works
25 and other facilities for transporting of ashes, refuse
26 products and waste water, and roads, from the Common
27 and Related Facilities Area to the Ash Disposal Area.
28 In addition to the Related Rights leased under this
29 Section 4(i), the lease of the Ash Disposal Area
30 to the Lessees shall include the right for the fol-
31 lowing uses, among others: the right to dispose
32

1 of and dump thereon ashes, refuse products and waste water
2 from the Enlarged Four Corners Generating Station; the right
3 to construct, reconstruct, install, operate, maintain, re-
4 place and remove roads, pipelines, sluice works, dikes, dams,
5 canals, and other works and facilities for the storage and
6 disposal of ashes, refuse products and waste water. Lessees
7 will install such dikes, settling basins, or other facilities
8 as are reasonably necessary to retain said ashes in the Ash
9 Disposal Area. Appropriate and standard tests for determining
10 the presence of contaminants in the waste water will be con-
11 ducted by Lessees under the New Lease and Arizona under the
12 Amended Original Lease, and reasonable steps will be taken by
13 them to reduce such contaminants to an acceptable minimum.

14 (j) The locations and routes of the facilities referred
15 to in Section 4(a) and (b), and of any ash, refuse product and
16 waste water disposal facilities located outside of the Ash
17 Disposal Area, and referred to in Section 4(i), shall be first
18 submitted to and approved by the Tribe and the Secretary, and
19 the Tribe agrees that it will not withhold its consent to any
20 reasonable locations and routes. In the event additional or
21 extended diversion works are constructed or installed in the
22 stream bed of the San Juan River within the Reservation Lands,
23 other than on the Pumping Plant Site, or facilities are con-
24 structed within the Chaco Wash, a plat or plats showing the
25 location thereof shall promptly be filed with the Secretary
26 and with the Tribe.

27 (k) All access roads outside the Leased Lands will be
28 subject to being used by members of the Tribe or its permit-
29 tees in a normal manner not preventing the Lessees from making
30 normal use of the roads; provided, however, that the Lessees
31 are not obligated hereby to maintain such roads, except for
32 maintenance made necessary by the use by the Lessees of such
roads.

1 In the event an access road shall be incorporated into
2 the improved road system for the State of New Mexico or the
3 Reservation Road System of the Bureau of Indian Affairs, so
4 as to become open for public use, the Lessees will surrender
5 their right-of-way and easement for such road.

6 For heavy haulage during periods of construction, recon-
7 struction, use, operation, maintenance, relocation and removal
8 of Enlarged Four Corners Generating Station, in cases where use
9 of the access roads hereinabove described is not practicable,
10 the Lessees shall have the right to reasonable access across
11 the Reservation Lands to the Leased Lands.

12
13 5. Consent to Grant of Rights-of-Way by Secretary.

14 (a) The Lessees under the New Lease and Arizona under
15 the Amended Original Lease shall have the right to obtain by
16 grant from the Secretary, and the Tribe hereby gives its con-
17 sent to the grant by the Secretary, of rights-of-way and ease-
18 ments pursuant to 25 U.S.C. 323 (such rights-of-way and ease-
19 ments being herein called "rights-of-way") for some or all
20 of the Related Rights described in Sections 4(c), 4(d), 4(e),
21 4(f) and 4(h) hereof.

22 Subject to procuring the prior approval by the Tribe as
23 to route, other similar rights-of-way or additions to or
24 changes in rights-of-way theretofore procured, which may here-
25 after be found necessary for construction, reconstruction, use,
26 operation, maintenance, relocation and removal of the Enlarged
27 Four Corners Generating Station may be procured from the
28 Secretary, including, but not limited to, rights-of-way for
29 additional access to the Utah Mining Leased Lands and access
30 roads to the boundary of the Reservation Lands or main roads
31 and highways.

32 (b) The Lessees shall have the right to obtain by

1 grant from the Secretary, and the Tribe hereby gives
2 its consent to the grant by the Secretary, of the
3 §323 Grant; provided that the terms and conditions of
4 the §323 Grant, except for the next following paragraph
5 of this Section 5(b), shall be consistent with the
6 terms and conditions of the New Lease. Under no condi-
7 tions shall the leasehold rights leased under the New
8 Lease merge with the §323 Grant.

9 The §323 Grant shall be additional and supplementary
10 to, separate and independent from, and not conditioned
11 upon the leasehold rights leased to the Lessees under the
12 New Lease; and a termination of the New Lease for any
13 reason shall not terminate the §323 Grant, and a termina-
14 tion of the §323 Grant for any reason shall not terminate
15 the New Lease.

16 (c) Arizona shall have the right to obtain by
17 grant from the Secretary, and the Tribe hereby gives
18 its consent to the grant by the Secretary, of the
19 Arizona §323 Grant; provided that the terms and condi-
20 tions of the Arizona §323 Grant, except for the next
21 following paragraph of this Section 5(c), shall be
22 consistent with the terms and conditions of the Amended
23 Original Lease. Under no conditions shall the leasehold
24 rights leased under the Amended Original Lease merge
25 with the Arizona §323 Grant.

26 The Arizona §323 Grant shall be additional and
27 supplementary to, separate and independent from,
28 and not conditioned upon the leasehold rights leased
29 to Arizona under the Amended Original Lease; and a
30 termination of the Amended Original Lease for any
31 reason shall not terminate the Arizona §323 Grant, and
32 a termination of the Arizona §323 Grant for any reason

1 shall not terminate the Amended Original Lease.

2
3 6. Lease of Additional Rights to Arizona and to the
4 Lessees Under the New Lease, Pertaining to Utah Mining.

5 (a) The Tribe also hereby consents hereunder (without
6 thereby limiting its consent in the Original Lease) that
7 Arizona may, with the consent of Utah Mining, and subject to
8 Utah Mining's rights under its Coal Lease, construct, oper-
9 ate, maintain, relocate and remove on the Utah Mining
10 Leased Lands, any and all powerand related electric facili-
11 ties and communication lines and service roads deemed
12 necessary or appropriate for the purpose of selling and
13 supplying power to Utah Mining for coal mining operations;
14 provided, however, that the location and operations here-
15 under by Arizona on the Utah Mining Leased Lands shall not
16 be in conflict with the rights of Utah Mining, its suc-
17 cessors or assigns, under its Coal Lease.

18 (b) Arizona may supply electric power to Utah Mining
19 for any facilities used for purposes related to the supply
20 of fuel to Lessees under the Additional Fuel Agreement and/or
21 to Arizona under the Original Fuel Agreement, but if and
22 when requested by the Tribe, Arizona will cease or refrain
23 from the supply of power to Utah Mining for other facilities
24 or operations on the Utah Mining Leased Lands.

25 (c) The Tribe further consents that the Lessees, when
26 under emergency conditions they are entitled to do so
27 pursuant to the Additional Fuel Agreement, may go upon the
28 Utah Mining Leased Lands and conduct mining operations
29 thereon and remove coal or fuel therefrom, subject to the
30 terms, provisions and limitations of the Additional Fuel
31 Agreement; provided, however, that the Lessees shall take
32 no actions hereunder which shall violate the rights of

1 Utah Mining under the Coal Lease and the Additional Fuel
2 Agreement.

3 (d) The Lessees shall have the right to permit Utah
4 Mining to use a portion of the New Plant Site and the Common
5 and Related Facilities Area for the installation and opera-
6 tion of any or all of the following facilities:

7 (i) Coal transportation terminus, unloading and
8 crushing facilities;

9 (ii) Facilities for handling and delivery of
10 crushed coal, including space for a coal
11 delivery pile or piles and for a coal blending
12 pile or piles;

13 (iii) Coal weighing, sampling and analysis facili-
14 ties;

15 (iv) If requested by Utah Mining, space for placing
16 coal on consignment for subsequent transfer to
17 Lessees or for delivery for other uses, or
18 other coal users, which consignment space, if
19 desired by Utah Mining and agreeable to
20 Lessees and if found to be practicable, may be
21 so located that it could be served by Lessees'
22 facilities for handling coal into and out of
23 Lessees' emergency storage;

24 (v) Service road, fencing, and auxiliary facili-
25 ties required in connection with the facili-
26 ties specifically noted above.

27
28 7. Exercise of Rights under New Lease and Amended
29 Original Lease. All of the rights leased to Lessees under the
30 New Lease and to Arizona under the Amended Original Lease,
31 subject to the respective terms and conditions of the New Lease
32 and the Amended Original Lease, shall extend and be available

1 to the Lessees and Arizona, respectively, and to their respective
2 officers, employees, agents, licensees, representatives, con-
3 tractors, successors and assigns.

4
5 8. Consent by Arizona to Grants of Rights-of-Way and
6 Easements. Arizona, which holds in its name permits for certain
7 of the existing rights-of-way referred to in Section 4, hereby
8 consents that new or amended easements for said existing rights-
9 of-way pursuant to 25 U.S.C. 323 may be granted by the Secretary
10 or a duly authorized representative thereof to the Lessees as
11 tenants in common with the same respective interests set forth
12 above in Section 2(b) hereof.

13
14 9. Transmission and Communication Facilities.

15 (a) The proposed transmission and communication
16 facilities planned in connection with the Four Corners
17 Project include the following:

- 18 (i) An extra high-voltage transmission system
19 to be owned and built by Arizona, extending
20 from the Four Corners Project in a general
21 westerly direction across the Reservation
22 Lands, and which will interconnect with
23 Edison's transmission system in Nevada.
- 24 (ii) An extra high-voltage transmission system
25 to be owned and built by New Mexico, ex-
26 tending from the Four Corners Project in a
27 general easterly direction to the boundary of
28 the Reservation Lands, which will interconnect
29 with New Mexico's system near Albuquerque.
- 30 (iii) An extra high-voltage transmission system
31 which may be owned and built by Salt River
32 Project, extending from the Four Corners

1 Project in a generally northerly direction to
2 the boundary of the Reservation Lands, which
3 will interconnect with the United States
4 Bureau of Reclamation's Colorado River
5 Storage Project Transmission System at the
6 Shiprock Substation.

7 (iv) Microwave communication stations for con-
8 trolling the operation of the transmission
9 circuits.

10 (b) The Tribe hereby agrees to consent to the grant by
11 the Secretary of rights-of-way and easements therefor to
12 the respective Lessees owning the new facilities described
13 in Items (i), (ii), (iii) and (iv) above, subject to sub-
14 mission of surveys for Tribal approval (which approval
15 shall not be unreasonably withheld) as to exact route or
16 location, and to the payment of right-of-way charges and
17 damages as provided in Sections 12 and 13 hereof.

18 (c) In addition, it is contemplated by the Lessees
19 that additional transmission lines may ultimately inter-
20 connect the Enlarged Four Corners Generating Station with
21 the electric system of other distributors and with the
22 United States Bureau of Reclamation. Rights-of-way and
23 easements for such lines are to be procured in the regular
24 manner at the time when such facilities are to be con-
25 structed.

26
27 10. Terms.

28 (a) The New Lease shall extend from the date this
29 Supplemental Lease becomes effective for a period of 50 years,
30 with the right and option in the Lessees to extend it for a
31 period of up to an additional 25-year term by notice to the
32 Tribe given not less than one year prior to the end of the

1 initial 50-year term, which notice shall specify the term of
2 the extension; provided, however, that the lease rentals for
3 the second twenty-five years of the initial 50-year term and
4 for the period after the initial 50 years of the term of the
5 New Lease shall be subject to adjustment on the basis herein-
6 after provided in Section 11.

7 (b) The term of the Original Lease is hereby amended
8 so that the Amended Original Lease shall extend from the date
9 that the Original Lease was originally effective for a period
10 ending on the same day as the day that the initial 50-year
11 term of the New Lease shall end, with a right and option in
12 Arizona to extend the Amended Original Lease for a period up
13 to twenty-five years thereafter by notice to the Tribe given
14 not less than one (1) year prior to the end of the new
15 extended 50-year term of the Amended Original Lease, which
16 notice shall specify the term of the extension. The rental
17 adjustment provided in Section 6 of the Original Lease shall
18 be made concurrently with the adjustments provided for in
19 Section 11 of this Supplemental Lease, rather than as was
20 originally provided in Section 6 of the Original Lease.
21

22 11. Lease Rentals.

23 (a) Arizona agrees to pay to the Tribe under the Amended
24 Original Lease for the initial 25 years of the term hereof,
25 commencing when this Supplemental Lease becomes effective,
26 a rental aggregating \$801,406.25, payable in annual install-
27 ments of \$32,056.25 each and the provisions of Section 6 of
28 the Original Lease shall be deemed amended to reflect such
29 revised rental. The annual installments (other than for the
30 period ending December 31, 1966) shall be payable in advance
31 on or before January 1 of each year, with the first and last
32 payments to be prorated. The installment for the initial

1 period from the date this Supplemental Lease becomes
2 effective through December 31, 1966, shall be paid when this
3 Supplemental Lease becomes effective. Arizona shall receive
4 credit against its first rental payment or against subsequent
5 rental payments hereunder for any payments of rental made
6 under Section 6 of the Original Lease for the period in the
7 year 1966 after the Supplemental Lease becomes effective.

8 (b) Each Lessee agrees individually to pay to the Tribe
9 under the New Lease, subject to the provisions of Section 11

10 (d) hereof, its respective prorata portion (in the ratio of
11 its respective interest in the New Plant Site under Section 2
12 (a) hereof) of an aggregate rental for the initial 25 years of
13 \$2,104,562.50, payable in annual installments of \$84,182.50
14 each, the installments (other than for the period ending De-
15 cember 31, 1966) to be payable in advance on or before Janu-
16 ary 1 of each year, with the first and last payments to be
17 prorated. The installment for the initial period from the
18 date the New Lease becomes effective through December 31, 1966,
19 shall be paid when this Supplemental Lease becomes effective.

20 (c) The rental for the last 25 years of the terms of the
21 Amended Original Lease and of the New Lease shall be the rent-
22 als for the respective initial 25-year periods, after adjust-
23 ment (upward but not downward) in direct proportion to the
24 ratio of the average level of the Index for Bituminous Coal
25 in the monthly series of Wholesale Price Indexes of the Bu-
26 reau of Labor Statistics, for the thirty-six (36) months im-
27 mediately preceding the commencement of the initial 50-year
28 term of the New Lease, to the last thirty-six (36) months of
29 the initial 25-year portion of the 50-year initial term thereof.

30 In the event the term of the Amended Original Lease
31 and/or of the New Lease shall be extended for a period after
32 50 years from the effective date of this Supplemental Lease,

1 then and in such event, for the twenty-five years (or part
2 thereof) thereafter during which the Amended Original Lease
3 and/or the New Lease shall be in effect, Arizona and the
4 Lessees, respectively, agree to pay, subject, in the case of
5 the Lessees, to the provisions of Section 11(d) hereof, a
6 rental for each respective extended period of such lease or
7 leases, which shall be equal to the respective rentals for
8 the initial 25-year terms of said leases, respectively, said
9 rentals to be prorated if the applicable extended period is
10 less than twenty-five years, and adjusted (upward but not
11 downward) in direct proportion to the ratio of the average
12 monthly level of said Index for the thirty-six (36) months
13 immediately preceding the commencement of the initial 50-year
14 term of the New Lease, to the thirty-six months immediately
15 preceding the beginning of such extended term or terms.

16 For such extended term or terms, the applicable rentals
17 shall similarly be payable in annual installments in advance.

18 In the event that publication of the Index above referred
19 to is discontinued, the Tribe, and the Lessees and Arizona
20 respectively, agree that a mutually satisfactory substitute
21 Index of similar character will be adopted, or if no agree-
22 ment can be reached, the matter shall be determined as pro-
23 vided in Section 32. In the event of a change of the base point
24 from which the Index is computed, the base Index figure will
25 be revised in accordance with any pertinent published instruc-
26 tions regarding such revision, or if no instructions are pub-
27 lished, a proportionate revision shall be determined mathemati-
28 cally which will fairly reflect any such change in the base point.

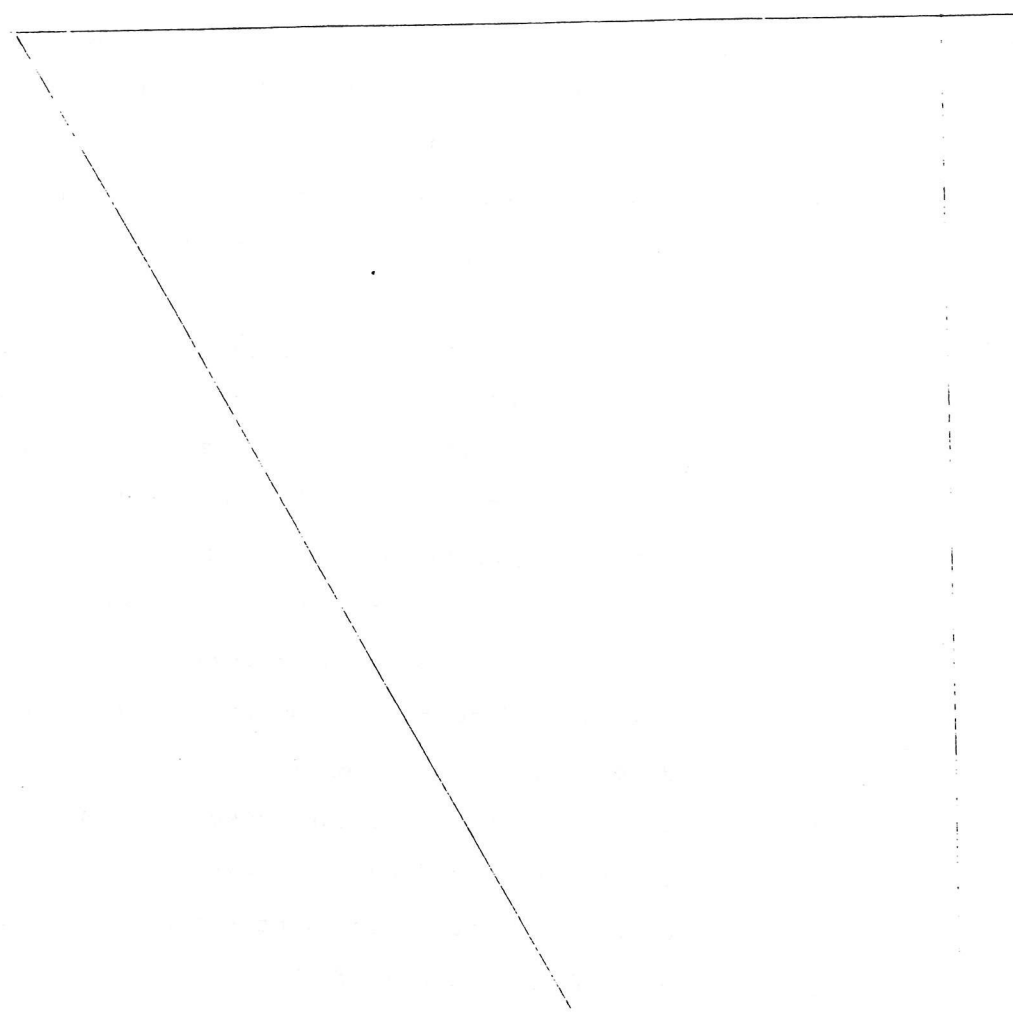
29 (d) Each individual Lessee under the New Lease shall
30 be individually responsible and liable to the Tribe for the
31 payment of a part of the total rental under the New Lease,
32 and the respective parts of each Lessee are as follows:

1	Arizona	15%
2	El Paso	7%
3	New Mexico	13%
4	Salt River Project	10%
5	Edison	48%
6	Tucson	7%

7 No Lessee shall be responsible or liable to the Tribe for
8 the payment of any portion of the rental of any other Lessee.

9 (e) The lease rentals for the New Lease and the Amended
10 Original Lease are to be in lieu of all taxes, assessments,
11 levies, exactions or charges of any kind made or imposed by
12 the Tribe, and the Tribe covenants that it will not tax or
13 assess, in any manner whatever, directly or indirectly, the
14 §323 Grant, the Arizona §323 Grant, the New Lease, the
15 Amended Original Lease, or the property of the Lessees lo-
16 cated on the Leased Lands or located on Reservation Lands
17 pursuant to the Related Rights leased in the New Lease or
18 Amended Original Lease, or Lessee's activities under the
19 New Lease or Arizona's activities under the Amended Original
20 Lease, or their ownership, construction, operation or re-
21 moval of the Four Corners Project by Lessees, pursuant to
22 the New Lease, or the Initial Four Corners Plant by Arizona
23 under the Amended Original Lease, or the power generated
24 thereon or the transmission, sale, or disposal of such power,
25 their income, or otherwise, or the sale or delivery of fuel
26 to the Lessees by the suppliers of their fuel, or the sever-
27 ance or extraction thereof by such suppliers (other than
28 royalties provided in their leases from the Tribe) or the
29 diversion or use of water; provided, however, that after
30 thirty-five (35) years from the commencement of commercial
31 operation of Unit 5 of the Four Corners Project, the fore-
32 going covenants shall lapse as to taxation of the property

1 of Lessees located on the Leased Lands, or located on
2 Reservation Lands pursuant to the Related Rights, or located
3 pursuant to the rights-of-way and easements referred to in
4 Section 5(a), (b) and (c) hereof; provided that during the
5 remainder of the term of the New Lease, no property taxes
6 shall be levied by the Tribe on such property at a rate or in
7 an



1 amount, in relation to value, in excess of one-half (1/2) of
2 the equivalent rate, in relation to value, of the aggregate
3 property taxes levied or imposed by the State of New Mexico or
4 Arizona or any political subdivision thereof, as the case may
5 be, applicable to such property at that time, and further pro-
6 vided that in the event no property taxes should then be levied
7 or imposed by any such state or political subdivision thereof
8 on such property, then the rate or amount, in relation to value,
9 of taxation of such property by the Tribe may be increased up
10 to the rate or amount, in relation to value, of taxation to
11 which the property would have been subjected as of the last
12 date when property taxes were levied or imposed on such property.

13
14 12. Right-of-Way and Easement Charges and Terms.

15 (a) For the rights-of-way and easements to be procured
16 from the Secretary for the transmission and communication
17 facilities referred to in Section 9 hereof, the particular
18 Lessee procuring any such right-of-way and easement will pay
19 the charges, if any, fixed by the Area Director.

20 (b) For the rights-of-way and easements for the trans-
21 mission and communication facilities referred to in Section
22 9 hereof, if the Area Director shall fix or approve such
23 charges, the particular Lessee obtaining the grant of such
24 right-of-way and easement agrees to pay, and the Tribe hereby
25 approves, a standard twenty-five (25) year charge (inclusive
26 of timber damages) of \$250 per mile for a right-of-way and
27 easement 135 feet wide, \$430 per mile for a right-of-way
28 and easement 165 feet wide, \$755 per mile for a right-of-
29 way and easement 200 feet wide, and \$1,250 per mile for a
30 right-of-way and easement 330 feet wide (subject to adjust-
31 ment for variance in width), and in the case of microwave
32 stations, substations and switching stations and similar

1 structures, \$100 per acre for such right-of-way and easement.

2 (c) All of the said rights-of-way and easements shall
3 be for a term of fifty (50) years, with payment of the charges
4 above stated to be made as of the time of the initial grant of
5 such right-of-way and easement and as of the commencement of
6 the second twenty-five years of the fifty-year term.

7 (d) The grantee of such right-of-way and easement shall
8 have the right to procure an extension after the initial
9 fifty-year term, for up to an additional fifty-year term, in
10 which event it will make like payments each twenty-five years
11 or part thereof during any such extension.

12 (e) The payments made by the right-of-way and easement
13 holders are to be in lieu of taxes, assessments, levies
14 or charges of any kind made or imposed by the Tribe, and the
15 Tribe covenants that it will not, directly or indirectly, tax
16 or assess, in any manner whatsoever, the transmission and
17 communication facilities constructed or located on the rights-
18 of-way and easements so procured, or the use or transmission
19 of power or communications over those facilities, or the
20 sales or disposal of power transmitted over said facilities,
21 or otherwise, except for the period and to the extent per-
22 mitted in Section 11(e) hereof.

23
24 13. Damages to Permittees; Protection of Livestock.

25 (a) The Lessees and any thereof who procure rights-of-
26 way and easements will pay to or for the account of the Tribe
27 for the benefit of its individual Indian permittees the direct
28 and reasonable damages for impairment of their use rights,
29 i.e., the loss of grazing areas, the removal of buildings,
30 hogans or structures of Indian permittees made necessary by
31 construction on the rights-of-way and easements, withdrawal
32 of areas for leases, or damages to crops of Indian permittees,

1 arising as a consequence of the construction and operation of
2 the Four Corners Project, and the transmission and communica-
3 tion facilities referred to in Section 9 hereof.

4 (b) The Lessees will install such fencing, dikes,
5 settling basins and other facilities as are necessary and are
6 designed to prevent damage or injury to livestock from access
7 to the waste water within the Ash Disposal Area.

8
9 14. Control of Stack Emissions.

10 (a) The Lessees under the New Lease shall install and
11 diligently operate in the Four Corners Project equipment of-
12 fering the most effective commercially proven electrostatic con-
13 cept available under the technology known at the time of design,
14 to minimize smoke, flyash, and dust in stack emissions as here-
15 in provided. Stack designs and the design of such equipment
16 and of other plant features that may affect air pollution, and
17 plans and facilities for control and disposal of waste materials,
18 shall be such as will enable compliance with the obligations
19 herein set out, and shall be subject to approval by the Secre-
20 tary in advance of construction. The Lessees under the New
21 Lease shall operate the air pollution control equipment installed
22 so as to remove not less than 97 percent of the particulate
23 matter in the stack emissions in each month and not less than
24 96 percent in any 24-hour period, unless the Lessees shall be
25 prevented from so operating such air pollution control equip-
26 ment as provided in Section 31. From time to time, but at
27 least every 10 years, representatives of the Lessees and the
28 Department of the Interior agencies as determined by the Secre-
29 tary, will meet to review technological advances in air pollu-
30 tion control equipment and mutually weigh and decide upon the
31 feasibility of installing additional equipment or modifying
32 existing equipment, taking into account costs as well as the
benefits of improved air pollution control. In the event

1 agreement cannot be reached on the initial or subsequent
2 design or equipment, the matter shall be subject to
3 arbitration as provided in Section 44.

4 (b) In the operation of Units 4 and 5, the Lessees
5 will make such tests and measurements and keep such records
6 as will enable them to make reports to the Secretary
7 relating to the operation and efficiency of the air pollu-
8 tion control equipment at such intervals as may be mutually
9 agreed upon, but not less than once annually. The tests and
10 measurements will be made in conformance with American
11 Society of Mechanical Engineers (ASME) test procedures for
12 determining dust concentration in a gas stream or in
13 conformance with some other mutually agreed upon accepted
14 procedures.

15 (c) The Lessees during normal working hours will
16 permit access to, and inspection and copying of, all records
17 relating to air pollution, by representatives of the Secretary
18 and will permit such representatives to enter upon and inspect
19 such facilities, together with all appurtenances thereto.

20 (d) The foregoing requirements and obligations of
21 subsections (a), (b) and (c) of this Section 14, other than
22 those relating to stack design, shall become applicable to
23 the existing three units of the Initial Four Corners Plant,
24 upon installation by Arizona of air pollution control equip-
25 ment for the existing three units which will meet the
26 requirements of subsection (a) of this Section 14. Firm
27 orders for such air pollution control equipment shall be
28 placed by Arizona within fourteen (14) months after Unit 5
29 becomes commercially operative, and with such air pollution
30 control equipment to become operative as soon thereafter as
31 practicable; provided that the Secretary may waive the
32 requirement that the air pollution control equipment to be

1 installed under this subsection (d) operate on the electrostatic
2 concept. Pending the initiation of operation of air pollution
3 control equipment to be installed as above stated, Arizona shall
4 operate the existing air pollution control equipment in connec-
5 tion with the existing three units, to the best of its ability
6 in accordance with sound and reasonable practices.

7 (e) Nothing herein shall relieve the Lessees from comply-
8 ing with all valid applicable air pollution laws and regulations
9 under federal or state jurisdiction now or hereafter in force.

10
11 15. Storage Lake. The Tribe and Lessees agree that: (a)
12 subject to all rights of Lessees under Section 4(h) hereof, and the
13 rights of Arizona under Section 2(b) of the Amended Original Lease,
14 the Tribe will retain control of the Storage Lake shores and the
15 Storage Lake surface (other than the part included in the Amended
16 Original Plant Site, the New Plant Site, the Dam Site, and the
17 Common and Related Facilities Area), and may use or permit the use
18 of the Storage Lake and its waters for recreational purposes and for
19 other purposes not interfering with the use of the water by the
20 Lessees hereunder or by Arizona under the Amended Original Lease;
21 and (b) the Lessees shall not have control over or responsibility
22 for such use by the Tribe or its permittees or for injuries or deaths
23 resulting therefrom; provided, that there shall be no use (other
24 than stock watering) by the Tribe and its permittees which will
25 divert or consume the water or contaminate it or raise its tempera-
26 ture or add foreign matter or debris, or otherwise be inconsistent
27 with use of the water in the operation of the Enlarged Four Corners
28 Generating Station. It is recognized that fluctuations in the
29 amount of water stored incident to power plant operation will result
30 in fluctuations in the surface area of the Storage Lake and hence
31 in the location of the shoreline of the stored water.

1 16. Water for Stock and Other Tribal Use. Along any
2 water pipelines installed by the Lessees pursuant to Section
3 4(a), (b) and (d) outside the Leased Lands, the Lessees will
4 install, on written request by the Tribal Council and where
5 needed for stock watering, not more than two (2) valves (not over
6 one inch in diameter) per mile for the purpose of furnishing
7 water for stock, and the Lessees will, upon similar request, at
8 their own expense, install water tanks for stock watering at each
9 valve; provided, however, that no further tanks or valves need be
10 installed hereunder if Arizona has already installed such valves
11 or tanks in connection with water lines constructed by it under
12 the Original Lease which are along the same route. Lessees will
13 endeavor to cause the pumps at the Pumping Plant Site to be
14 operated sufficiently often so that water will normally be
15 available in the tanks through the period from May through
16 September, provided water is available to the Lessees at the
17 diversion point, and provided that such use is not inconsistent
18 with the rights of the Lessees or Utah Mining under Permit 2838,
19 as amended, referred to in Section 21 hereof. The Lessees will
20 maintain and replace such valves and tanks, but any expenses
21 thereby incurred by the Lessees are to be reimbursed by the Tribe.

22 The Lessees will, if requested by the Tribe, cooperate
23 with it to try to work out mutually satisfactory arrangements
24 whereby the diversion and pumping facilities of the Lessees or of
25 Arizona can be enlarged and utilized to pump water for the Tribe
26 under equitable arrangements for reimbursement of costs and
27 expenses.

28
29 17. Transport of Water to Utah Mining. In addition to
30 the rights of Lessees under the New Lease, and of Arizona under
31 the Amended Original Lease, to occupy and utilize Reservation
32 Lands to install and maintain a pumping station, water pipelines

1 and facilities related thereto for the operation of the Enlarged
2 Four Corners Generating Station, the Lessees and Arizona may uti-
3 lize such facilities to transport water for Utah Mining, or its
4 assignees (or permit Utah Mining to utilize the water pipelines and
5 facilities related thereto, of Arizona under the Amended Original
6 Lease or Lessees under the New Lease, to transport water), from the
7 diversion works and Pumping Plant Site to the Utah Mining Leased
8 Lands, whether such water is to be conducted to Utah Mining Leased
9 Lands by a pipeline from the Lessees' or Arizona's water pipeline
10 referred to in Section 4(a) and 4(d), from the Storage Lake, from
11 the Amended Original Plant Site, from the New Plant Site, or from
12 the Common and Related Facilities Area.

13

14 18. Removal of Improvements.

15 (a) The permanent buildings hereinafter listed, or any
16 of them, located on the Leased Lands (hereinafter referred to
17 as "nonremovable buildings"), shall become the property of the
18 Tribe; provided, however, that until the termination of the New
19 Lease and the Amended Original Lease, (i) such nonremovable
20 buildings built or owned by Lessees shall remain the property
21 of the Lessees; (ii) the Lessees may make replacements thereof,
22 in whole or in part, and either in separate structures or in
23 combination with other such nonremovable buildings in one
24 structure; (iii) may make relocations within the Leased
25 Lands of any of said nonremovable buildings, as they may
26 deem advisable from time to time; and (iv) may remove the
27 components thereof so replaced. It is possible some of
28 those listed below may not be built or may be combined with
29 each other, or may have heretofore been built by Arizona
30 under the Original Lease. It is agreed by the Lessees that
31 the following buildings shall, as hereinabove stated, be
32 deemed nonremovable buildings:

1 Office Building
2 Warehouse Building
3 Laboratory
4 Machine Shop
5 Cafeteria and Kitchen Building
6 Recreation Building

7 (b) All facilities, structures, improvements, equipment
8 and property (other than nonremovable buildings) of whatever
9 kind and nature constructed, placed or affixed by the Lessees
10 on the Leased Lands pursuant to rights acquired hereby, or
11 constructed, placed or affixed elsewhere on Reservation Lands
12 pursuant to the Related Rights acquired under the New Lease or
13 the Amended Original Lease (or on the §323 Grant, the Arizona
14 §323 Grant, or other rights-of-way and easements referred to
15 in the New Lease or the Amended Original Lease), expressly in-
16 cluding but not being limited to Units 4 and 5, the Initial
17 Four Corners Plant, all facilities and structures used there-
18 with and related thereto, the related switchyards and all Com-
19 mon Facilities and Related Facilities (hereinafter called "re-
20 movable property"), as against Lessor and all other parties and
21 persons whomsoever (including without limitation any party ac-
22 quiring any interest in the Leased Lands or any interest in or
23 lien, claim or encumbrance against any of such facilities,
24 structures, improvements, equipment and property of whatever
25 kind and nature), shall be deemed to be and remain personal
26 property of Lessees, not affixed to the realty, and removable
27 by Lessees at any time prior to or within 120 days after expira-
28 tion or earlier termination for any reason of the New Lease
29 and the Amended Original Lease, whichever shall occur last
30 (the end of such time period being hereinafter referred to as
31 "removal date"). All removable property not removed at or prior
32 to the removal date shall become the property of the Tribe after
the removal date. Subject to the provisions of Section 18
(d), upon receipt of written request from the Tribe given
to the Lessees at least 16 months prior to the removal date,

1 the Lessees, on or before the removal date, shall remove
2 all removable property, other than dams, dikes, roads and
3 other similar types of improvements.

4 (c) The Lessees may remove, at or prior to the removal
5 date, all removable property, and the Tribe consents that
6 the Lessees may utilize any access roads for which the
7 Lessees or for which Arizona then hold rights-of-way and
8 easements for any purpose or use (and any public highways
9 on the Reservation Lands) for the removal of such removable
10 property, and further consents that all such rights-of-way
11 and easements may include provisions expressly permitting
12 the Lessees and Arizona, and the Tribe hereby agrees to
13 permit the Lessees and Arizona, to utilize such rights-of-
14 way and easements for access to the Leased Lands and for
15 removal of such removable property.

16 (d) On the removal date, the Lessees may either (i)
17 leave in place the water pipelines running from the Storage
18 Lake to the Pumping Plant Site, and any electrical and
19 communication lines extending from the Amended Original
20 Plant Site or the New Plant Site to the Pumping Plant Site,
21 or to the Utah Mining Leased Lands, in which case they will,
22 if requested by the Tribe, and upon payment by the Tribe to
23 Lessees of net salvage value, deliver to the Tribe a bill of
24 sale quit-claiming to the Tribe their interest in such water
25 pipelines, and electrical and communication lines; or (ii)
26 remove all or any portion of said water pipelines, or elec-
27 trical and communication lines, in which event the Lessees
28 shall refill any holes or trenches caused in the removal, or
29 in lieu thereof may pay to the Tribe reasonable damages for
30 the loss of value of the land caused by such holes or trenches.

31
32 19. Mortgage and Transfer of Leasehold Interest. The

1 Lessees under the New Lease and each of them, and Arizona under the
2 Amended Original Lease, shall have the right at any time and from
3 time to time to mortgage all their respective rights leased to
4 them hereunder, including but not limited to interests in the
5 Leased Lands and in all property of Lessees and Arizona located on
6 the Leased Lands and elsewhere on the Reservation Lands pursuant to
7 the Related Rights (whether located by Lessees pursuant to the New
8 Lease or by Arizona pursuant to the Amended Original Lease), and
9 on any rights-of-way and easements referred to in the Supplemental
10 Lease, and to transfer, convey or assign the New Lease and the
11 Amended Original Lease to a trustee or trustees under deeds of
12 trust, mortgages or indentures, regardless of whether or not said
13 deeds of trust, mortgages or indentures have been, are or will be
14 for the purpose of borrowing capital for the development and improve-
15 ment of the Leased Lands, and to any successors or assigns thereof,
16 or any receiver, referee or trustee in bankruptcy or receivership or
17 reorganization of any of the Lessees or Arizona, or any successor by
18 action of law or otherwise, or any purchaser, transferee or assignee
19 of any thereof, without need for consent by the Tribe or the Secre-
20 tary; and any mortgagee or trustee of any of the Lessees under the
21 New Lease or Arizona under the Amended Original Lease and any success-
22 or or assignee thereof, or any receiver, referee or trustee in bank-
23 ruptcy or receivership or reorganization of any of the Lessees or
24 Arizona, or any successor by action of law or otherwise or any
25 purchaser, transferee or assignee or any thereof, may without need for
26 consent of the Tribe or the Secretary, succeed to and acquire all the
27 rights of any of the Lessees or Arizona hereunder, and in any of said
28 property of Lessees or of Arizona, located on the Leased Lands and
29 elsewhere on Reservation Lands pursuant to the Related Rights, or on
30 such rights-of-way and easements, and may take over possession of said
31 property, rights and interests of any Lessee or Lessees or of
32 Arizona, subject to all such Lessee's or Lessees' obligations under
the New Lease or Arizona's obligations under the Amended Original

1 Lease, respectively. Pursuant to 25 CFR §131.12, the Secretary
2 hereby approves all such encumbrances upon all interests of each
3 Lessee under the New Lease, and all the interests of Arizona under
4 the Amended Original Lease, and hereby for the purposes of said
5 regulation approves each indenture, mortgage and deed of trust
6 and other such instrument of each Lessee and of Arizona.

7 In addition, each Lessee shall have the right to trans-
8 fer or assign its rights and interests in the New Lease (and
9 Arizona shall have the same rights with regard to the Amended
10 Original Lease) without need for consent of the Tribe or Secre-
11 tary at any time (i) to any corporation or other entity acquiring
12 all or substantially all of the property of such Lessee or Arizona,
13 or (ii) to any corporation or entity into which or with which
14 such Lessee or Arizona may be merged or consolidated, or (iii) to
15 any other Lessee or Lessees hereunder, or (iv) in the case of a
16 transfer by Salt River Project, to the Salt River Valley Water
17 Users' Association, an Arizona corporation; provided that any
18 such successor shall become subject to all such Lessee's obliga-
19 tions or those of Arizona, as the case may be, hereunder, and
20 provided that such successor shall notify the Tribe and the
21 Secretary of such transfer, assignment or merger and shall furn-
22 ish to the Tribe and the Secretary evidence of such transfer,
23 assignment or merger.

24 20. No Encumbrances. Nothing in the New Lease shall
25 authorize the Lessees in any way to encumber the title of the
26 Tribe to the real property subject hereto.

27
28 21. Water Rights. The Tribe consents to the diversion
29 of water from the San Juan River in connection with operations by
30 the Lessees under the New Lease and by Arizona under the Amended
31 Original Lease, provided that such diversion of water shall be
32 limited (1) to waters to which the Lessees' or Arizona's rights

1 are derived from Permit 2838 which was issued in the name of
2 Utah Mining on October 9, 1958, by the New Mexico State Engineer,
3 and as such Permit 2838 has been or shall be amended, whether the
4 rights of the Lessees or of Arizona arise out of or result from
5 Lessees' or Arizona's acting as an agent of Utah Mining or under
6 a contractual arrangement with Utah Mining or by virtue of an
7 assignment to Lessees or Arizona by Utah Mining of some portion or
8 all of its water rights or otherwise; (2) to water which at any
9 time or from time to time the Lessees or Arizona may purchase from
10 the Tribe or from the Secretary; and/or (3) to other water which
11 at any time or from time to time the Lessees or Arizona may have
12 lawfully acquired the right to divert and use by purchase from the
13 previous owner or otherwise; provided that the Tribe's consent
14 under this Section 21 shall not be deemed in any way to prejudice
15 any rights which the Tribe may have in regard to such other water.

16
17 22. Operation of Enlarged Four Corners Generating Station.

18 The Tribe recognizes that the purpose of the New Lease is for Lessees
19 to construct the Four Corners Project which will be operated and
20 maintained to produce power and energy for which Lessees are entitled
21 to receive their respective portions, and which Lessees will sell,
22 at wholesale or retail, or otherwise dispose of, in the conduct of
23 their respective businesses. The Tribe covenants that, other than
24 as expressly set out in the New Lease or in the Amended Original
25 Lease, respectively, it will not directly or indirectly regulate or
26 attempt to regulate the Lessees under the New Lease or Arizona under
27 the Amended Original Lease or the construction, maintenance or opera-
28 tion of the Enlarged Four Corners Generating Station and the transmis-
29 sion systems of the Lessees and Arizona, or their rates, charges,
30 operating practices, procedures, safety rules, or other policies or
31 practices, or their sales of power; provided, however, that this
32 covenant shall not be deemed a waiver of whatever rights the

1 Tribe may have to regulate retail distribution on the Reservation
2 Lands, and further provided, that the Tribe will not attempt to
3 regulate the sale of power by Arizona to Utah Mining referred to
4 in the Amended Original Lease and in the New Lease. Nothing
5 herein shall convey to the Lessees, or any of them, any rights
6 to engage in retail distribution on Reservation Lands, other than
7 the said sale of power by Arizona to Utah Mining.

8
9 23. No Unlawful Use. The Lessees will not use or
10 cause to be used any part of the Leased Lands for any unlawful
11 conduct or purpose.

12
13 24. Employment of Navajos. Lessees agree that in
14 selecting applicants for employment on Reservation Lands in
15 connection with construction and operation of the Four Corners
16 Project, they will employ Navajo Indians when available in all
17 positions for which they are qualified in the judgment of the
18 Lessees or their operating agent or contractor, and will pay
19 prevailing wages to such Navajo employees.

20
21 25. Navajo Labor Policy. All work in connection with
22 the Four Corners Project shall be covered by the applicable
23 provisions of Tribal Council Resolutions CA 49 58 and CA 54 58
24 which have been duly adopted by the Navajo Tribal Council, and
25 which the Lessees agree to observe and be bound by.

26
27 26. Insurance. The Lessees will maintain bodily injury
28 liability insurance and property damage liability insurance
29 covering their operations on Reservation Lands, such coverage to
30 be in an amount of not less than a combined single limit of One
31 Million Dollars (\$1,000,000) each occurrence; provided, however,
32 that the said coverage may exclude the first Fifty Thousand

1 Dollars (\$50,000) on any one claim.

2
3 27. Payment of Taxes and Liens. The Lessees agree
4 that they will pay, prior to delinquency, all lawful taxes,
5 charges, assessments and governmental impositions and all other
6 lawful assessments, charges and impositions, general and special,
7 ordinary and extraordinary, of every kind and nature whatsoever,
8 including taxes levied by the Tribe pursuant to Section 11 hereof
9 (hereinafter called "taxes and impositions"), levied or assessed
10 upon their interest in the Leased Lands or upon any improvements,
11 structures, equipment, facilities or property of any kind of the
12 Lessees located on the Leased Lands, or on the Reservation Lands
13 outside of the Leased Lands pursuant to the Related Rights leased
14 herein; provided, that in the event any of such taxes and imposi-
15 tions are payable in installments, or may be paid in installments,
16 the Lessees are obligated hereunder only to pay the installments
17 falling due during their tenancy, prior to the time the install-
18 ment becomes delinquent. The Lessees will not suffer any liens
19 to remain in effect unsatisfied against said leasehold property,
20 other than the lien of a mortgage or mortgages, deed or deeds of
21 trust or indenture or indentures or pledges or similar
22 encumbrances placed thereon by Lessees, and other than liens
23 for taxes and impositions not yet delinquent, or liens for
24 workmen's compensation awards or for labor and material, not yet
25 delinquent, and undetermined charges or liens incidental to
26 construction; provided, however, that the Lessees are not required
27 to pay or discharge any taxes and impositions or fees or to
28 remove any lien, charge or encumbrance upon said leasehold
29 property as long as the Lessees, in good faith and at their own
30 cost and expense, shall be contesting the same or the lawfulness
31 or validity thereof by appropriate legal proceeding which shall
32 operate during the pendency thereof to prevent the collection or

1 enforcement of the taxes and impositions, fees, liens or en-
2 cumbrances so contested.

3
4 28. Destruction of Units. In the event that during
5 the term of the New Lease, Units 4 and 5 should be so completely
6 or substantially destroyed by earthquake, bomb, fire, explosion
7 or other cause, that under the circumstances then present, re-
8 building the Four Corners Project is determined by the Lessees to
9 be impractical or uneconomical, the Lessees shall be entitled to
10 terminate the New Lease on notice to the Tribe, with payment of
11 rentals continuing for twelve (12) months thereafter.

12
13 29. Quiet Enjoyment.

14 (a) Excepting only for and to the extent of the prior
15 rights, if any, of holders of existing oil and gas leases and
16 pipeline easements heretofore granted (as designated on Ex-
17 hibit 7 hereof) affecting the Leased Lands (and the Tribe
18 hereby represents and warrants that no other leases or ease-
19 ments or other encumbrances affecting the Leased Lands now
20 exist), the Tribe agrees that Lessees shall have quiet enjoy-
21 ment and peaceful and exclusive possession of the Leased
22 Lands and shall have quiet enjoyment and peaceful possession
23 of the lands subject to the Related Rights during the term of
24 the New Lease, and the Amended Original Lease, and quiet en-
25 joyment of their removal rights as to removable property prior
26 to the removal date, and further covenants that neither the
27 Tribe nor its members or others will interfere with such
28 quiet enjoyment of any rights leased to the Lessees under the
29 New Lease or leased to Arizona under the Amended Original
30 Lease or any right-of-way and easement on Reservation Lands
31 granted by the Secretary.

32 (b) In regard to access roads outside the Leased Lands,
as provided in Section 4(k), said roads may be used as

1 roads by members of the Tribe or by others, and such use,
2 unless it shall prevent the Lessees from making normal use
3 of said roads, shall not be deemed to be a violation of
4 this covenant.

5 (c) To the extent that it is feasible without inter-
6 ference with the rights of the Lessees under the New Lease,
7 or Lessees' utilization of such rights for and in connection
8 with the construction, operation and maintenance of the
9 Four Corners Project, development of oil and gas resources
10 of the Reservation Lands may be permitted by the Tribe and
11 the Secretary.

12
13 30. Avoidance of Subsidence. The Tribe recognizes
14 that the security of the Lessees' and Arizona's facilities on
15 the New Plant Site, Amended Original Plant Site, Common and
16 Related Facilities Area and Dam Site is dependent upon the sta-
17 bility of the earth and rock structures upon which their founda-
18 tions rest, and that any subsidence or shifting of such earth and
19 rock structures could result in disastrous damage. Except pur-
20 suant to rights existing on the date hereof, if any, the Tribe,
21 accordingly, will not conduct or permit mining operations
22 involving removal of coal, ores, or other solid material under
23 the New Plant Site, Amended Original Plant Site, Common and
24 Related Facilities Area or Dam Site or within an outward angle of
25 45° of their surface down to 5,000 feet below the surface, and
26 the Tribe will not conduct or permit seismic explosions or
27 explosions for subsurface fracturing within 1,000 feet of the
28 boundaries of the New Plant Site, the Amended Original Plant
29 Site, the Common and Related Facilities Area, or Dam Site, or
30 permit the drilling for oil or gas in and under the lands within
31 the exterior boundaries of New Plant Site, the Amended Original
32 Plant Site, the Common and Related Facilities Area, or the Dam

1 Site, except pursuant to presently issued oil and gas permits
2 (described in Exhibit 7 hereof) affecting the area of the Dam
3 Site.

4
5 31. Force Majeure Clause. Neither the Tribe nor
6 the Lessees under the New Lease, nor Arizona under the Amended
7 Original Lease, nor any thereof shall be deemed to be in
8 default in respect to any obligation hereunder, if prevented
9 from fulfilling such obligation by reason of uncontrollable
10 forces, the term "uncontrollable forces" being deemed, for
11 the purposes of the Supplemental Lease, to mean any cause beyond
12 the control of the party affected, including but not limited to
13 inadequacy of water, failure of facilities, flood, earthquake,
14 storm, lightning, fire, epidemic, war, riot, civil disturbance,
15 labor disturbance, sabotage, and restraint by court or public
16 authority, which by exercise of due diligence and foresight, such
17 party could not reasonably have been expected to avoid. Any
18 party rendered unable to fulfill any obligation by reason of
19 uncontrollable forces shall exercise due diligence to remove
20 such inability with all reasonable dispatch.

21
22 32. Determination of Disputes. All disagreements or
23 disputes between Lessees or any of them, and/or Arizona, on the
24 one part, and the Tribe, on the other part, arising under or in
25 connection with the New Lease or the Amended Original Lease or
26 concerning the validity or binding effect of the New Lease or the
27 Amended Original Lease, including any disputes arising as to the
28 provisions of the New Lease or the Amended Original Lease or the
29 rights, duties and obligations of the parties under the New
30 Lease or the Amended Original Lease or as to any questions of
31 fact affecting the application of the provisions of the New
32 Lease or the Amended Original Lease, or in any manner whatsoever

1 arising out of or related to the New Lease or the Amended
2 Original Lease, and any matter which assertedly comprises
3 or involves any default or event which could ripen into a
4 default by the passage of time or otherwise under either the
5 New Lease or the Amended Original Lease, are to be referred
6 to the Secretary for determination, if not theretofore
7 resolved by agreement between the parties. Any action
8 taken by the Secretary upon such referral will be deemed
9 to have been taken by him in his official capacity.

10 In the event of any such dispute or matter between
11 the Tribe and Lessees or any of them, and/or Arizona, arising
12 under or in connection with the New Lease or the Amended
13 Original Lease, either party (i.e., the Tribe, as one party,
14 and the Lessees or any one or more of them, and/or Arizona,
15 as the other party) may, by written notice to the other
16 party, call for a meeting of representatives of the parties
17 to consider, and if possible, resolve such dispute. Such
18 notice shall indicate what the issues and facts involved in
19 the dispute are with sufficient clarity and detail to apprise
20 the other party of the matters involved.

21 In the event the parties fail to resolve the dispute
22 promptly in accordance with the procedure outlined above, either
23 party may at anytime submit the dispute to the Secretary for
24 decision. Such submission shall be in writing, setting forth the
25 issues and facts involved with sufficient clarity and detail to
26 apprise the Secretary and the other party or parties of the nature
27 of the dispute, and a copy thereof shall be delivered to the
28 other party, concurrently with the delivery to the Secretary. It
29 is understood that the Secretary will give notice to the other
30 party of the matter submitted for his decision and will afford
31 the parties the opportunity to submit written or oral support for
32

1 their respective views. The procedures followed by and the
2 actions of the Secretary in reaching his decision shall be
3 subject to the applicable provisions, if any, of the Administra-
4 tive Procedures Act (5 U.S.C. 1001-1011), or any successor
5 statutory provisions thereto.

6 After the Secretary has reached his decision on a
7 matter submitted to him for decision as herein provided, written
8 notice of the decision shall be sent to the parties.

9 If the Secretary determines that a material default
10 exists under the New Lease or the Amended Original Lease, he
11 shall determine whether it is of a nature which should and can
12 be cured by some action to be taken by the defaulting party
13 (whether the Lessees, or any thereof, or Arizona, as the case may
14 be, or the Tribe) to prevent recurrence, which action is
15 practicable and reasonable, and feasible under the circumstances
16 (such action being herein referred to as "feasible"), or whether
17 the cure should be by payment of money damages to compensate the
18 other party for the damages caused by the default, or whether the
19 cure of the default should be in part by feasible action to
20 prevent further default from occurring, if feasible, and in part
21 by payment of money damages, or whether, if action to prevent
22 default from occurring is not feasible (whether because of
23 inordinate cost in proportion to the damage caused, or otherwise),
24 money damages should be paid to constitute a cure of or compensa-
25 tion for such past and continuing damages. If he determines
26 that the default should be cured (in whole or in part) by the
27 payment of money damages, he shall determine the amount of such
28 money damages, and if he determines that the default should be
29 cured (in whole or in part) by the taking of feasible action, he
30 shall specify the action to be taken, and give written notice
31 thereof to all parties, and the defaulting party shall pay or
32 tender payment or commence the taking of such action within

1 sixty (60) days after its receipt of notice of the final
2 determination by the Secretary.

3 It is the intent of the Tribe, the Lessees and Arizona
4 that the New Lease and the Amended Original Lease shall remain
5 in effect in accordance with their respective terms and that no
6 default shall constitute a ground of termination of the rights of
7 any party to either thereof until the existence of a default has
8 first been determined as herein provided and the party in default
9 has been given an opportunity to cure the default through payment
10 of money damages or the taking of feasible action to prevent
11 further default from occurring or both, and has failed in the
12 time provided to (i) make such payment or (ii) to take or to
13 commence such feasible action to cure the default, such two actions
14 to comprise the Tribe's sole and exclusive remedies for any default
15 hereunder, except for termination of the interest hereunder of
16 the defaulting Lessee or Lessees (or Arizona) where such Lessee
17 or Lessees (or Arizona, or others as hereinafter provided) fail
18 to take either or both of such specified actions as provided herein.
19 It is further the intent of the parties that payment of money
20 shall be the sole means of making reimbursement for past defaults
21 where damage has been sustained, and for continuing defaults in
22 the event that removal of the cause is not feasible.

23 No termination of the rights under the New Lease or the
24 Amended Original Lease of any such party thereto shall be effected
25 unless and until (i) there has been a decision by the Secretary
26 finding that a material default exists and stating the payment
27 to be made and/or the feasible action to be taken to cure or
28 make reimbursement for the default, and (ii) the party in default
29 has not within sixty (60) days after notice of the final decision
30 of the Secretary made the payment or taken or commenced taking
31 the feasible action specified in the decision, and has thereafter
32 received not less than sixty (60) days' notice from the Tribe and

1 the Secretary of the Secretary's intent to declare the rights of
2 such party thereunder terminated because of such default unless
3 it is cured by making such payments, or taking such feasible action
4 within such additional sixty (60) day period, and (iii) the party
5 in default has not within such additional sixty (60) day period
6 either (a) cured the default by making such payments or taking
7 such feasible action, or (b) if the nature of the feasible action
8 to be taken is such that it cannot be completed within sixty (60)
9 days by using reasonable diligence, commenced action in good
10 faith to so cure the default, and thereafter continued such
11 feasible action diligently and in good faith to so cure the default.
12 In the event the above decision has been made and notices given
13 and a party remains in default, the Secretary, if, but only if,
14 requested in writing by such a party not in default to do so, and
15 subject to the provisions of the immediately following paragraph,
16 may declare the rights of such defaulting party under the New
17 Lease, or under the Amended Original Lease, as the case may be,
18 terminated.

19 In the event that a default by one or more of the Lessees
20 under the New Lease, or of Arizona under the Amended Original
21 Lease, shall be determined to exist, as hereinabove provided, and
22 such default is not cured as hereinabove provided, so that the
23 Secretary may as hereinabove provided declare the rights of such
24 defaulting Lessee or Lessees under the New Lease, or of Arizona
25 under the Amended Original Lease, terminated, no such termination
26 shall be effected unless and until the Secretary and the Tribe shall
27 have given not less than sixty (60) days' written notice to any
28 Lessee or Lessees, or Arizona, not in such default, of the Secre-
29 tary's intent to declare the rights of the party in default cancel-
30 led. Such notice shall contain the date on which the Secretary
31 intends to terminate the rights under the New Lease or under the
32 Amended Original Lease of the party in default, and shall specify the

1 means by which such default may be cured (that is, by making
2 specified payments or by taking feasible action, or by both; or
3 if the nature of the feasible action to be taken is such that it
4 cannot be completed within sixty (60) days by using reasonable
5 diligence, by commencing action in good faith to cure the default
6 and thereafter continuing feasible action diligently and in good
7 faith to cure the default). No termination of the rights and
8 interests under the New Lease or the Amended Original Lease of
9 the party in default shall be effected if any of the other
10 Lessees, or Arizona, not in default, shall cure the default (i)
11 by making the required payments or by taking feasible action,
12 or (ii) if the nature of the feasible action to be taken is such
13 that it cannot be completed within sixty (60) days by using
14 reasonable diligence, shall have commenced action in good faith
15 to so cure the default and shall thereafter continue action
16 diligently and in good faith to so cure the default. It is
17 specifically agreed that any Lessee or Lessees may cure any default
18 of Arizona under the Amended Original Lease, as well as any
19 default by any other Lessee or Lessees under the New Lease. On
20 failure of all Lessees (and Arizona) not in default to cure the
21 default in the manner specified herein, the rights leased under
22 the New Lease to the Lessee or Lessees in default (or the rights
23 leased to Arizona under the Amended Original Lease) may be
24 terminated by the Secretary on or after the date of termination
25 specified in such notice. Notwithstanding any other provision of
26 this Section 32, such termination of the interest of any defaulting
27 party under the New Lease or the Amended Original Lease shall not
28 include termination of the right to removal of removable property
29 located on the Leased Lands, or elsewhere upon Reservation Lands
30 pursuant to Related Rights; and all such removal rights of any
31 such defaulting party shall nevertheless continue for the full
32 period or periods provided for in Section 18 hereof.

1 A default by Arizona under the Amended Original Lease
2 shall not be deemed a default of the Lessees under the New Lease,
3 including Arizona as a tenant in common under the New Lease. A
4 default by Lessees under the New Lease, including Arizona as a
5 tenant in common under the New Lease (and not as the lessee under
6 the Amended Original Lease) shall not be deemed a default under
7 the Amended Original Lease.

8 No termination shall be effected hereunder as to any
9 party if the failure of such party to cure or to institute or
10 continue action in good faith to cure the default by making such
11 payment or taking such action as specified in the decision was
12 due to force majeure (as defined in Section 31).

13 In the event of termination of federal responsibilities
14 to the Tribe, and if the Secretary is no longer authorized by
15 law to perform the duties and functions provided herein,
16 and if the Secretary's power, duties and functions are law-
17 fully transferred to some other official or agency of the
18 federal government, then such official or agency shall
19 perform the functions herein provided to be performed by the
20 Secretary, and if not, the parties agree that a board of arbitra-
21 tion will be created to make the decisions and perform the func-
22 tions herein provided to be done by the Secretary, such board to
23 be created and to act in accordance with the procedures herein-
24 after provided.

25 In the event that, under the circumstances above pro-
26 vided, a board of arbitration is to be created to make a decision
27 or perform a function under or in connection with the New Lease
28 or the Amended Original Lease, then, in the event of a dispute
29 arising under either thereof, either party may call for submission
30 of such dispute to arbitration in the manner herein set forth.
31 The party calling for arbitration shall give notice to the other
32 party affected and in such notice shall (i) set forth the issues

1 to be arbitrated, and (ii) appoint a person to serve as one
2 arbitrator, who shall be skilled in the matter or matters to be
3 arbitrated. Within ten (10) days from such notice, such other
4 party shall give notice appointing a person, who shall be skilled
5 in the matter or matters to be arbitrated, to serve as a second
6 arbitrator and setting forth additional related issues, if any,
7 to be arbitrated.

8 The two persons so appointed shall then agree upon and
9 secure a third arbitrator, who shall be skilled in the matter or
10 matters to be arbitrated. If the third arbitrator should not be
11 secured within ten (10) days from the appointment of the second
12 arbitrator, or if the second arbitrator should not be appointed
13 within ten (10) days from the appointment of the first, then the
14 party calling for the arbitration, with notice to the other party,
15 may call upon the American Arbitration Association to appoint the
16 third arbitrator, or the second and third arbitrators, as the
17 case may be, any and all of whom shall be skilled in the matter
18 or matters to be arbitrated.

19 The arbitrators so appointed shall hear the evidence
20 submitted by the respective parties and may call for additional
21 information. A determination of the majority of the arbitrators
22 shall be conclusive with respect to the issues submitted and shall
23 be binding upon both parties. All parties to the arbitration
24 agree to abide by and to carry out the terms of such determina-
25 tion.

26 Each party shall bear the fee and personal expenses of
27 the arbitrator appointed by it, or for it, the fees and expenses
28 of its counsel and the expenses of its own witnesses. All other
29 costs and expenses of the arbitration shall be borne in equal
30 parts by the parties concerned, unless the decision of the
31 arbitrators shall specify a different apportionment of any or
32 all of such costs and expenses.

1 33. Consent of Tribe to Sale of Output of Units. Each
2 Lessee shall have the right to assign, sell or otherwise dispose
3 of its right to the output of the Four Corners Project, and
4 Arizona shall have the right to assign, sell or otherwise dis-
5 pose of the output of the Initial Four Corners Plant, to any
6 other Lessee, person, company, corporation or governmental agency
7 without need for consent of the Tribe or the Secretary.

8
9 34. Independent Covenants. The covenants of the New
10 Lease are to be deemed to be independent covenants, not dependent
11 covenants, and the obligation of any party to perform all the
12 covenants to be performed by it is not conditioned on the per-
13 formance by the other party of all the covenants to be performed
14 by it.

15 In the event that any provision of the New Lease, or
16 the application of such provision to any person or circumstance,
17 shall be held invalid by any court having jurisdiction in the
18 premises, the remainder of the New Lease and the application of
19 such provision to persons or circumstances other than those as to
20 which it is held invalid shall not be affected thereby.

21
22 35. Control of Water Pollution.

23 (a) The Lessees under the New Lease and Arizona under
24 the Amended Original Lease propose to divert water from the
25 San Juan River under a permit from the State of New Mexico,
26 and to return certain quantities of water to the San Juan
27 River. Total dissolved solids in the surface return flow
28 shall be measured at the plant release point, and the effect
29 of such release on the total dissolved solids in the river
30 computed. The Lessees and Arizona agree that such water
31 return will not increase the total dissolved solids of the
32 San Juan River as so computed an average of more than 100

1 parts per million in any three calendar month period, or an
2 average of more than 400 parts per million in any 24-hour
3 period, provided that the river flow passed such point of
4 return averages 200 cfs or more over such three months'
5 period. If the river flow averages less than 200 cfs in
6 such a three-month period, such returned water will not
7 increase the total dissolved solids in the river as so
8 computed an average of more than 100 parts per million
9 multiplied by a factor equal to 200 cfs divided by the
10 average actual river flows in cfs in said three-month period.

11 (b) The Lessees and Arizona shall submit waste water,
12 waste material and sewage disposal plans to the Secretary to
13 meet this obligation and shall obtain his approval of such
14 plan in advance of construction or installation of facilities
15 for these purposes. In the event agreement cannot be reached
16 on the initial or subsequent design or equipment, the matter
17 shall be subject to arbitration as provided in Section 44.

18 (c) Nothing herein shall relieve the Lessees and
19 Arizona from complying with all valid applicable water
20 pollution control laws and regulations under federal or
21 state jurisdiction now or hereafter in force.

22
23 36. Notices. Any notice, demand or request provided
24 for in the New Lease, or given or made in connection with it shall
25 be deemed properly given if delivered in person or sent by
26 registered or certified mail, postage prepaid, or by telegram, to
27 the persons specified below:

28 To or upon the Tribe:

29 Director of Resources Division
30 The Navajo Tribe
Window Rock, Arizona

31 To or upon the Lessees:
32

1 Arizona Public Service Company
2 c/o Secretary
3 Post Office Box 2591
4 Phoenix, Arizona 85002

5 El Paso Electric Company
6 c/o Secretary
7 Post Office Box 982
8 El Paso, Texas

9 Public Service Company of New Mexico
10 c/o Secretary
11 Post Office Box 2267
12 Albuquerque, New Mexico

13 Salt River Project Agricultural
14 Improvement and Power District
15 c/o Secretary
16 Post Office Box 1980
17 Phoenix, Arizona 85001

18 Southern California Edison Company
19 c/o Secretary
20 Post Office Box 351
21 Los Angeles, California 90053

22 Tucson Gas & Electric Company
23 c/o Secretary
24 Post Office Box 711
25 Tucson, Arizona 85702

26 Any party may at any time by written notice to the
27 others change the designation or address of the person so speci-
28 fied as the one to receive notices hereunder.

29
30 37. Lease Unaffected by Termination of Federal
31 Responsibility. Nothing contained in the New Lease shall operate
32 to delay or prevent a termination of federal trust responsibili-
33 ties with respect to the Leased Lands and the lands affected by
34 the Related Rights during the term of the New Lease; however,
35 such termination shall not affect the rights, duties and obliga-
36 tions of the Lessees and the Tribe under the New Lease (except
37 to the extent expressly set out in Section 32 hereof).

38 38. Waiver of Right to Partition.

39 (a) The Lessees, and each of them, accept their lease-
40 hold interests under the New Lease as tenants in common, as

1 described in Section 2 hereof, and agree that their lease-
2 hold interests in the Leased Lands, and in the Reservation
3 Lands affected by the lease under the New Lease of the
4 Related Rights shall be held in such tenancy in common for
5 the duration of the term of the New Lease, including any
6 extension thereof; and for a period of 40 years after the
7 effective date of the Supplemental Lease, (i) each Lessee
8 hereby waives the right to have partition of the Four Corners
9 Project and of the leasehold rights leased to Lessees under
10 the New Lease, including any interest in the Reservation
11 Lands affected by the lease to Lessees of the Related Rights
12 (whether by partition in kind or by sale and division of
13 the proceeds thereof), and (ii) agrees that it will not
14 resort to any action at law or in equity to partition (in
15 either such manner) the Four Corners Project or the lease-
16 hold interests in the Leased Lands of Lessees or any interest
17 in the Reservation Lands affected by the lease to Lessees of
18 the Related Rights, and waives the benefits of all laws that
19 may now or hereafter authorize such partition.

20 (b) For the period of 40 years after the effective
21 date of the Supplemental Lease, Arizona waives the right to
22 partition (in either such manner) and agrees that it will
23 not resort to any action at law or in equity to partition
24 (in either such manner), and waives the benefits of all laws
25 that may now or hereafter authorize such partition of (i) the
26 Common Facilities and the Related Facilities allocated to
27 the Initial Four Corners Plant from the Common Facilities
28 and the Related Facilities allocated to the Four Corners
29 Project; or (ii) the leasehold rights leased to Arizona under
30 the Amended Original Lease for the Initial Four Corners
31 Plant, or any interest in the Reservation Lands affected by
32 the lease to Arizona under the Amended Original Lease of the

1 Related Rights, from the leasehold rights leased to Lessees
2 under the New Lease for the Four Corners Project, or any
3 interest in the Reservation Lands affected by the lease to
4 Lessees under the New Lease of the Related Rights.

5
6 39. Rights of Lessees and Arizona in Event of Utah
7 Mining Default.

8 (a) The Lessees represent and the Tribe consents that
9 the Additional Fuel Agreement and the Original Fuel Agree-
10 ment provide (or if the Additional Fuel Agreement and/or
11 the Supplement No. 5 to the Original Fuel Agreement has not
12 been executed as of the date hereof, that they will provide)
13 among other things, in summary approximately as follows:

14 (i) That Utah Mining will dedicate to and reserve
15 for delivery to Arizona pursuant to the Original
16 Fuel Agreement in order to furnish a
17 sufficient fuel supply for Units 1, 2 and 3 of
18 Arizona, for the contract term of the Original
19 Fuel Agreement, and will dedicate to and
20 reserve for delivery to Lessees, pursuant to
21 the Additional Fuel Agreement, in order to
22 furnish a sufficient fuel supply for Units 4
23 and 5 of Lessees, for the contract term of
24 the Additional Fuel Agreement, coal having
25 certain specified heat energy contents con-
26 tained in a certain described area (herein
27 referred to as the "dedicated area");

28 (ii) That Utah Mining will conditionally dedicate
29 to and reserve for delivery to provide a re-
30 serve of fuel for an extension of the term of
31 the Original Fuel Agreement in the event
32 Arizona should elect to extend the term of

1 that agreement pursuant to rights given there-
2 in, and to provide a reserve of fuel for an
3 extension of the term of the Additional Fuel
4 Agreement in the event the Lessees should exer-
5 cise their right under the Additional Fuel
6 Agreement to extend the term of that agreement
7 pursuant to rights given therein, the coal con-
8 tained in that certain area called the Supple-
9 ment Designated Area;

10 (iii) That the dedication and reservation referred to
11 in subsection (i) above and the conditional
12 dedication and reservation referred to in sub-
13 section (ii) above, are hereinafter referred to
14 as "New Dedication." The New Dedication is to
15 replace the dedication and designation and
16 supplement designation effected under the Orig-
17 inal Lease and the Fuel Agreement dated August
18 18, 1960, between Arizona and Utah Mining, as
19 supplemented by the initial four supplements
20 thereto but not as supplemented and amended in
21 Supplement No. 5, which dedication and designa-
22 tion and supplement designation shall be deemed
23 terminated when the Amended Fuel Agreement and
24 said Supplement No. 5 have become effective.

25 (iv) That the areas covered by the New Dedication
26 may be changed from time to time as provided
27 in the Additional Fuel Agreement and the
28 Original Fuel Agreement, and if so changed,
29 revised plats of said areas will be in-
30 corporated as exhibits to the instrument
31 of assignment referred to in subsection
32 (v) below and will be filed with the

1 County Clerk of San Juan County, the Director
2 of Resources Division of the Tribe and the
3 Area Director.

- 4 (v) Utah Mining will execute and acknowledge and
5 deliver to each of the Lessees as buyers under
6 the Additional Fuel Agreement and to Arizona as
7 buyer under the Original Fuel Agreement, and
8 will record with the County Clerk of San Juan
9 County, New Mexico, with the said Director of
10 Resources Division, (if there be no such office,
11 the term shall be deemed to mean the employee of
12 the Tribe having superintendence over the
13 records of the Tribe relating to land), and with
14 the Area Director an instrument of assignment
15 executed by Utah Mining, and accepted by Lessees
16 as buyers under the Additional Fuel Agreement
17 and by Arizona as buyer under the Original Fuel
18 Agreement, together with copies of plats of the
19 areas covered by the New Dedication, the said
20 instrument of assignment conditionally trans-
21 ferring to the Lessees as purchasers of fuel
22 for Units 4 and 5, and to Arizona as purchaser
23 of fuel for Units 1, 2 and 3, as tenants in
24 common, holding undivided interests in such pro-
25 portions as may be agreed upon among them, all
26 of its rights under said Coal Lease insofar as
27 it relates to areas covered by the New Dedic-
28 ation (as such areas are initially defined or
29 as such areas may from time to time be re-
30 vised as provided in the Original Fuel Agree-
31 ment and Additional Fuel Agreement), said
32 instrument of assignment to provide that Lessees

1 and Arizona shall succeed to the rights
2 interests and obligations of Utah Mining under
3 its Coal Lease, when and if Utah Mining becomes
4 in default in the performance of its Coal Lease
5 or of its Original Fuel Agreement or its Addi-
6 tional Fuel Agreement, insofar as the Coal
7 Lease relates to the areas covered by the New
8 Dedication as such areas are constituted at e
9 time of such default.

10 (vi) That Utah Mining shall be deemed in default
11 under the Original Fuel Agreement or the Addi-
12 tional Fuel Agreement, and the said instrument
13 of assignment shall provide that Utah Mining
14 shall be deemed in default under the Original
15 Fuel Agreement or Additional Fuel Agreement at
16 such times as the existence of a default under
17 the agreement in question has been determined
18 either (1) by agreement between Utah Mining and
19 Arizona (if the dispute relates to the Original
20 Fuel Agreement) or between Utah Mining and
21 and Lessees (if the dispute relates to the
22 Additional Fuel Agreement) that it is in de-
23 fault, or (2) by a judgment or decision of a
24 court having jurisdiction over the matter, and
25 such default has not been cured in accordance
26 with the provisions of the agreement and/or
27 agreements in question. Said instrument of
28 assignment shall provide that Utah Mining shall
29 be deemed in default under the Coal Lease when
30 and if there has been a final determination of
31 such default and a final notice has been given
32 effectively cancelling or forfeiting the Coal

1 Lease in accordance with its terms and pursuant
2 to applicable law and regulation (1) insofar
3 as Utah Mining's rights thereunder are concerned,
4 or (2) insofar as it relates to lands other than
5 areas covered by the New Dedication.

6 (viii) That the instrument of assignment by its terms
7 shall become void insofar as it benefits the
8 Lessees as buyers under the Additional Fuel
9 Agreement and insofar as it effects a dedica-
10 tion of fuel for Units 4 and 5, if and when the
11 §323 Grant and the New Lease shall terminate
12 or Lessees shall become in default under the
13 Additional Fuel Agreement; and said instrument
14 of assignment by its terms shall become void
15 insofar as it benefits Arizona as buyer under
16 the Amended Original Fuel Agreement and insofar
17 as it effects a dedication of fuel for Units
18 1, 2 and 3, if and when Arizona's Amended
19 Original Lease and Arizona §323 Grant shall
20 terminate or Arizona shall become in default
21 under the Original Fuel Agreement; and that in
22 either such event, revision of the areas
23 covered by the New Dedication may be made as
24 provided in said Original Fuel Agreement and/or
25 Additional Fuel Agreement.

26 (b) In the event that Utah Mining shall be in default
27 in its performance under the Coal Lease, the Amended Original
28 Fuel Agreement or the Additional Fuel Agreement as provided
29 above and as provided in the instrument of assignment,
30 Lessees and Arizona shall succeed to the rights, interests
31 and obligations of Utah Mining insofar as the area covered
32 by the New Dedication is concerned and no cancellation or

1 forfeiture of the Coal Lease by the Secretary or the
2 Tribe shall be operative as to the areas covered by the
3 New Dedication until the Lessees and Arizona shall have
4 had a reasonable opportunity to cure the default as to
5 such areas and shall have failed to do so.

6 (c) If and when Lessees as buyers under the Addi-
7 tional Fuel Agreement and Arizona as buyer under the
8 Amended Original Fuel Agreement shall succeed to Utah
9 Mining's interest in the Coal Lease by virtue of such
10 assignment, the Lessees and Arizona as tenants in
11 common with such respective undivided interests as
12 may be agreed upon between them shall be deemed
13 Successor Lessees to Utah Mining's entire interest
14 under the Coal Lease, and upon the same terms and con-
15 ditions as are set out in the Coal Lease, insofar as
16 (but only insofar as) the areas covered by the New
17 Dedication are concerned, and the Lessees shall have
18 the right, as to such areas, to go upon such areas,
19 to mine coal and to remove it from such areas and
20 to exercise all rights, and shall be subject to all
21 obligations of Utah Mining under the Coal Lease as
22 to such areas, and with the Coal Lease to be deemed
23 assigned to the Lessees and Arizona insofar as it
24 relates to such areas. Such areas covered by the
25 New Dedication, and affected by the instrument of
26 assignment, shall be the areas shown on the plats
27 (as revised or supplanted by plats filed after the
28 New Dedication) of record with the County Clerk of
29 San Juan County and on file with the said Director of
30 Resources Division and the Area Director at the time the
31
32

1 Lessees and Arizona shall succeed to Utah Mining's
2 interest under the Coal Lease in and to the areas
3 covered by the New Dedication, there shall be required
4 no further consent on behalf of the Secretary or the
5 Tribe, the Tribe's execution of the Supplemental Lease
6 to constitute its approval of the Lessees' and Arizona's
7 succeeding to the interest of Utah Mining under the
8 Coal Lease with respect to the areas covered by the
9 New Dedication.

10
11 40. Successors in Interest. Every obligation hereunder
12 shall extend to and be binding upon and every benefit hereof shall
13 inure to the successors and assigns of the respective parties, and
14 shall be construed as covenants running with the land.

15 Salt River Project may without the prior consent of the
16 Tribe, or of any of the Lessees, transfer, convey and assign all
17 of its right, title and interest in, to and under the New Lease
18 to the Salt River Valley Water Users' Association, an Arizona
19 corporation, provided, however, that such transfer, conveyance
20 and assignment shall not relieve Salt River Project of its
21 liabilities and obligations herein imposed.

22
23 41. Effective Date.

24 (a) This Supplemental Lease shall become effective
25 when the last of the following shall occur:

26 (i) It has been duly executed on behalf of the
27 parties hereto and has been approved by the
28 Secretary;

29 (ii) Supplement No. 2 to the Wholesale Power
30 Agreement between Arizona and the Tribe has
31 been executed on behalf of the Tribe and
32 Arizona, and approved by the Secretary;

1 (iii) The §323 Grant has become effective; and

2 (iv) The Arizona §323 Grant has become effective.

3 (b) In the event that this Supplemental Lease shall not
4 become effective within one year after the date when all of
5 the parties hereto have executed it, the obligations of the
6 parties hereto shall be terminated.

7 (c) As soon as possible after this Supplemental Lease
8 shall become effective, the parties hereto agree to execute
9 a memorandum agreement in recordable form specifying the
10 effective date of this Supplemental Lease.

11 (d) It shall be a condition precedent to the obliga-
12 tions herein imposed upon El Paso and New Mexico, respective-
13 ly, that each such Lessee shall have received all necessary
14 authorizations from any governmental regulatory bodies having
15 jurisdiction, which authorizations are required for the
16 participation of such Lessee in the Four Corners Project.
17 In the event that El Paso or New Mexico shall fail to obtain
18 such necessary authorizations, then and in that event these
19 presents shall be null and void as to El Paso and/or New
20 Mexico who shall fail to obtain such necessary authorizations,
21 and shall be of no further force and effect. In the event of
22 such failure the remaining Lessees and the Tribe shall execute
23 a supplement to these presents evidencing any change in the
24 undivided interests of the Lessees occasioned thereby.

25
26 42. Several Rights Leased. As between the Lessees and
27 the Tribe, each Lessee hereunder shall have the several and
28 individual right to exercise all rights of whatever kind leased
29 to Lessees under the New Lease, including all rights in and to
30 the Leased Lands, and the Related Rights in and to other Reserva-
31 tion Lands, and including the rights to construct, reconstruct,
32 use, operate, maintain, relocate and remove the Four Corners

1 Project.

2 43. Conflicting Provisions between Original Lease
3 and Supplemental Lease. Arizona, as Lessee under the Original
4 Lease, and Lessees under the New Lease, agree that in the event
5 of inconsistent or conflicting provisions between the Supple-
6 mental Lease and the Original Lease the terms and provisions of
7 the Supplemental Lease shall control over any and all inconsis-
8 tent or conflicting terms and provisions of the Original Lease.

9
10 44. Arbitration. Whenever a controversy subject to
11 arbitration arising out of the provisions of Section 14 or Section
12 35 is to be submitted to arbitration, the Lessees shall name one
13 arbitrator and the Secretary shall name one arbitrator, and the
14 two arbitrators thus chosen shall select a third arbitrator, but
15 in the event of the failure of the two arbitrators to select the
16 third arbitrator within thirty (30) days after their first
17 meeting, either the Secretary or the Lessees may make application
18 to the Chief Judge of the United States District Court for the
19 District of New Mexico for the appointment of the third arbi-
20 trator. The decision of any two of the three arbitrators shall
21 be a valid arbitration award and binding upon all the signatories
22 hereto.

23
24 45. Governing Law. The Tribe, Lessees and Arizona
25 agree that the Supplemental Lease is made under and shall be
26 governed by the laws of the State of New Mexico.

27
28 46. Indemnity of Tribe.

29 (a) Arizona under the Amended Original Lease agrees to
30 indemnify and hold the Tribe harmless from and against any
31 and all damages, claims, liabilities or expenses which the
32 Tribe may incur, or to which the Tribe may be put or

1 subjected, resulting from the exercise by Lessees of the
2 leasehold rights leased to Arizona under the Amended Original
3 Lease, or from the exercise by Arizona of rights granted
4 under the Arizona §323 Grant.

5 (b) The Lessees under the New Lease agree to indemnify
6 and hold the Tribe harmless from and against any and all
7 damages, claims, liabilities or expenses which the Tribe may
8 incur, or to which the Tribe may be put or subjected,
9 resulting from the exercise by Lessees of the leasehold rights
10 leased to them under the New Lease, or from the exercise by
11 Lessees of rights granted under the §323 Grant.

12
13 47. Consent of Arizona. Arizona, as lessee under the
14 Original Lease, hereby consents to the Tribe's leasing to the
15 Lessees herein the rights herein set out, and consents to and
16 approves the execution hereof by the Tribe and the approval
17 hereof by the Secretary.

18 The Original Lease between the Tribe and Arizona shall
19 be deemed amended and supplemented, and certain provisions thereof
20 shall be deemed revised and supplanted, as herein expressly pro-
21 vided, and the Amended Original Lease shall continue in effect in
22 accordance with its terms.

23
24 48. Execution by Arizona. Arizona's execution of the
25 Supplemental Lease shall be in its capacity as Lessee under the
26 New Lease and as lessee under the Amended Original Lease.

27
28 49. Application of Regulations of Department of the
29 Interior.

30 (a) The Supplemental Lease is made and entered into
31 subject to existing applicable regulations (not waived by the
32 Secretary) of the Department of the Interior, Bureau of

1 Indian Affairs, contained in Title 25, Code of Federal
2 Regulations. Any amendments to or changes in such regula-
3 tions after the effective date of the Supplemental Lease
4 shall not affect the rights of the parties hereunder.

5 (b) The Tribe hereby gives its consent to the waiver
6 by the Secretary and to the making of exceptions by the
7 Secretary to the application of any of the regulations of
8 the Department of the Interior with regard to any provisions
9 of Original Lease, the Supplemental Lease and the Coal Lease
10 which is inconsistent with any of such regulations, and
11 hereby agrees that such waiver and exception are made in
12 the best interests of the Tribe.

13
14 50. Execution in Counterparts. The Supplemental
15 Lease may be executed in any number of counterparts, and each
16 executed counterpart shall have the same force and effect as an
17 original instrument and as if all of the parties to the aggregate
18 counterparts had signed the same instrument. Any signature page
19 of the Supplemental Lease may be detached from any counterpart
20 thereof without impairing the legal effect of any signatures
21 thereon, and may be attached to other counterparts of the
22 Supplemental Lease identical in form hereto but having attached
23 to it one or more additional signature pages.

24
25 IN WITNESS WHEREOF, the parties hereto have caused this
26 Supplemental Lease to be signed in their behalf by their duly
27 authorized officers as of the date first above set out.

28
29 THE NAVAJO TRIBE OF INDIANS

30 
31 By _____
32 Raymond Nakai, Chairman
Navajo Tribal Council

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ARIZONA PUBLIC SERVICE COMPANY

ATTEST:

Lucas D. Higgins
Secretary
Assistant

By *M. L. Tates*
Vice President

EL PASO ELECTRIC COMPANY

ATTEST:

A. W. Lane
Secretary

By *Hawthorn*
VICE - President

PUBLIC SERVICE COMPANY OF NEW MEXICO

ATTEST:

D. E. Peckham
Secretary

By *J. A. Schneider*
President

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

ATTEST:

W. L. Menette
Secretary

By *D. G. Gabel*
President

SOUTHERN CALIFORNIA EDISON COMPANY

ATTEST:

C. D. Hector
Assistant Secretary

By *William R. David*
Vice President

TUCSON GAS & ELECTRIC COMPANY

ATTEST:

M. J. Schwan
Assistant Secretary

By *M. M. Farrell*
Vice President

UNITED STATES DEPARTMENT OF THE INTERIOR

Washington, D.C. 20240

JUL 6 1966, 1966

The foregoing Supplemental and Additional Indenture of Lease, including the New Lease and the amendments, supplements, and revisions to the Original Lease, is hereby approved subject to the following understandings which the Lessees by entering into possession of the premises hereunder will be deemed to have accepted:

1. Section 14 is amended as follows:

- a) On page 32, line 17, between the word "materials" and the comma at the end of the line insert the words "or residue from burned fuel".
- b) On page 32, line 20, change the period after the word "construction" to a comma and insert thereafter "installation, removal or modification thereof".
- c) On page 33, lines 1 and 2, strike the words "initial or subsequent design or equipment" and substitute in their place and stead "aforesaid designs, plans, equipment or features, or the modification or supplementation thereof, or the feasibility of installing additional equipment or modifying existing equipment,".

2. Section 35 is amended as follows:

On page 55, lines 14 and 15, change the word "plan" to "plans"; strike the words "of facilities for these purposes"; and substitute in their place and stead ", and no such facilities shall be constructed or installed in the first instance, or thereafter modified or removed, without the prior written approval of the Secretary.".

3. Section 44 is amended as follows:

- a) On page 66, line 17, after "meeting," insert "or of either party to name an arbitrator,".
- b) On page 66, lines 19 and 20, strike "the third arbitrator.", and substitute "an arbitrator or arbitrators.".

In accordance with the authority vested in me, including without limitation my power set forth in 25 CFR § 1.2 to waive or make exceptions to my regulations, I hereby specifically waive and make exceptions to the application of any of the regulations of the Department of the Interior with regard to any provision of the foregoing Supplemental and Additional Indenture of Lease which is inconsistent with any of such regulations, and I find that this waiver and exception is permitted by law and is in the best interests of the Navajo Tribe of Indians.

Acting SECRETARY OF THE INTERIOR

By John A. Carver, Jr.
~~Stewart H. Wahl~~
John A. Carver, Jr.

1 STATE OF Arizona }
2 County of Apache } ss
3

4 The foregoing instrument was acknowledged before me
5 this 27th day of May, 1966, by RAYMOND NAKAI,
6 Chairman of the Navajo Tribal Council of The Navajo Tribe of
7 Indians, on behalf of The Navajo Tribe of Indians.

8
9 Phyllis Nakai
10 Notary Public

11 My Commission expires:
12 My Commission expires November 23, 1967
13
14

15 STATE OF New Mexico }
16 County of Bernalillo } ss
17

18 The foregoing instrument was acknowledged before me
19 this 27th day of May, 1966, by G. C. T. T.,
20 President of ARIZONA PUBLIC SERVICE COMPANY, a corporation, on
21 behalf of said corporation.

22
23 Bernice I. Lopez
24 Notary Public

25 My Commission expires:
26 MY COMMISSION EXPIRES JUNE 26, 1966
27
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32

1 STATE OF New Mexico }
2 County of Bernalillo } ss

3
4 The foregoing instrument was acknowledged before me
5 this 22 day of May, 1966, by F. S. Welch,
6 President of EL PASO ELECTRIC COMPANY, a corporation, on behalf
7 of said corporation.

8
9 My Commission expires:

Bernice F. Lopez
Notary Public

10 MY COMMISSION EXPIRES JUNE 24, 1968

11
12 STATE OF New Mexico }
13 County of Bernalillo } ss

14
15 The foregoing instrument was acknowledged before me
16 this 22 day of May, 1966, by E. J. Schroeder,
17 President of PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation,
18 on behalf of said corporation.

19
20 My Commission expires:

Bernice F. Lopez
Notary Public

21 MY COMMISSION EXPIRES JUNE 24, 1968

22
23 STATE OF New Mexico }
24 County of Bernalillo } ss

25
26 The foregoing instrument was acknowledged before me
27 this 22 day of May, 1966, by William R. Lovell,
28 Vice President of SOUTHERN CALIFORNIA EDISON COMPANY, a corpora-
29 tion, on behalf of said corporation.

30
31 My Commission expires:

Bernice F. Lopez
Notary Public

32 MY COMMISSION EXPIRES JUNE 24, 1968

1 STATE OF New Mexico }
2 County of Bernalillo } ss

3 The foregoing instrument was acknowledge before me
4 this 27 day of May, 1966, by J. L. Galt,
5 _____ President of SALT RIVER PROJECT AGRICULTURAL IMPROVE-
6 _____
7 MENT AND POWER DISTRICT, a political subdivision of the State of
8 Arizona, on behalf of said SALT RIVER PROJECT AGRICULTURAL
9 IMPROVEMENT AND POWER DISTRICT.

10

11

12

Bernice P. Lopez
Notary Public

13 My Commission expires:

14 MY COMMISSION EXPIRES JUNE 26, 1968

15

16 STATE OF New Mexico }
17 County of Bernalillo } ss

18

19 The foregoing instrument was acknowledged before me
20 this 27 day of May, 1966, by D. M. Lowell,
21 Vice President of TUCSON GAS AND ELECTRIC COMPANY, a corporation, on
22 behalf of said corporation.

23

24

25

Bernice P. Lopez
Notary Public

26 My Commission expires:

27 MY COMMISSION EXPIRES JUNE 26, 1968

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