

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF APACHE

THE HONORABLE MICHAEL C. NELSON, PRESIDING JUDGE

IN RE THE GENERAL ADJUDICATION	)	Civil No. 6417
OF ALL RIGHTS TO USE WATER IN	)	
THE LITTLE COLORADO RIVER	)	STIPULATION
SYSTEM AND SOURCE	)	
	)	(Assigned to the
	)	Honorable Edward L. Dawson)

STIPULATION BETWEEN THE CITY OF FLAGSTAFF AND THE UNITED STATES ON BEHALF OF THE NATIONAL PARK SERVICE AND THE FOREST SERVICE

The United States of America, on behalf of the National Park Service and the Forest Service ("United States") and the City of Flagstaff ("City") by and through the undersigned stipulate and agree as follows:

A. Definitions

"ADWR": Means the Arizona Department of Water Resources.

"CITY": Means the City of Flagstaff, a municipal corporation.

"DECREE COURT": Means the Superior Court for the State of Arizona designated by the Arizona Supreme Court with the responsibility for adjudicating the water rights in the Little Colorado River Basin, including the responsibility to enforce the terms of this Stipulation and the Little Colorado River Decree.

"EMERGENCY": An emergency shall be defined to exist when, in the City's sole judgment, the City's operational water production facilities unexpectedly produce less water than the forecasted daily demands of its customers.

"EXISTING WELL": Means any City well or United States well described in the attached abstracts.

"FUTURE WELL": Means any well which is drilled and/or developed in the future which is not described in the attached abstracts.

"LOWER LAKE MARY": Means the reservoir constructed in the Walnut Creek Watershed by the Arizona Lumber and Timber Company in 1903. This definition includes references to "Lake Mary Reservoir" in water right Certificate No. 1984.

"MUNICIPAL USE": Means any use for which potable or non-potable water is sold, distributed or stored by the City, with the exception of treated effluent.

"PERIOD OF RUNOFF": Means when melting snow and/or precipitation result in an weekly increase in the amount of water stored in Upper Lake Mary.

"REPLACEMENT WELL": Means a well that is drilled to replace an existing well or to replace a future well.

"UNITED STATES": Includes the National Park Service and the Forest Service.

"UPPER LAKE MARY": Means the reservoir constructed in the Walnut Creek Watershed by the City in 1941 and enlarged in 1951. This definition includes references to "Upper Lake Mary" in water rights Certificate No. 1984 and "Lake Mary" in water rights Certificate No. 3998.

"WALNUT CREEK WATERSHED": Shall be the area depicted on the attached map.

"WELL": Means a man-made opening in the earth through which water may be withdrawn and includes a combination of wells serving the same use.

#### B. National Park Service and Forest Service Claims

1. The United States has filed Claim Nos. 39-89220, 39-91447, 39-91448, 39-89222, 39-91437, 39-91438, 39-91439, 39-91440, 39-91444, 39-91445, 39-91451, 39-91452, and 39-89221 on behalf of the National Park Service for surface water, including subflow, arising on and/or flowing through, and underground water, for Walnut Canyon National Monument, Sunset Crater National Monument, Petrified Forest National Park, Wupatki National Monument, Hubbell Trading Post National Historic Site, and Grand Canyon National Park.<sup>1</sup> Abstracts 1 through 19 describing the attributes of these claims are set forth in the attached Appendix A, and are incorporated herein by

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<sup>1</sup> The United States has filed Claim No. 39-91450 (Black Falls Trading Post Well) for alluvial water of Deadman Wash for Wupatki National Monument. The Black Falls Trading Post Well was developed in 1963 by a contractor to provide water during construction of the Sunset Crater - Wupatki Loop Road and is no longer in use. The United States agrees to submit a letter to ADWR withdrawing this claim 60 days after the approval of this Stipulation by the Decree Court.

reference.

2. The United States has filed Claim Nos. 39-390789, 39-390847, 39-390791, 39-390790, 39-390749, 39-390753, 39-390699, 39-390842, 39-390849, 39-390851, 39-390795, 39-391195, 39-390793, 39-390794, 39-390852, 39-391400, 39-390792, 39-390752, 39-390944, 39-390747, 39-390761, 39-390751, 39-390750, 39-390804, 39-390802, 39-390777, 39-390835, 39-390834, 39-390803, 39-390836, 39-390716, 39-390833, 39-390709, 39-390772, 39-390715, 39-390711, 39-390710, 39-390786, 39-390712, 39-390768, 39-390717, 39-3910219, 39-390723, 39-390722, 39-390740, 39-390724, 39-390757, 39-390922, 39-390725, 39-390741, 39-390742, 39-390841, 39-390726, 39-390727, 39-390705, 39-390838, 39-390728, 39-390729, 39-390743, 39-390731, 39-390732, 39-390695, 39-390733, 39-390696, 39-390697, 39-390734, 39-390735, 39-390736, 39-390737, 39-390744, 39-390745, 39-390738, 39-390746, 39-390739, 39-390774, 39-390837, 39-390748, 39-390708, 39-391970, 39-390721, 39-390707, 39-390713, 39-390706, 39-390718, and 39-390787 on behalf of the United States Forest Service for surface water, including subflow, arising on and/or flowing through, and underground water, for Coconino National Forest. Abstracts 1 through 85 describing attributes of these claims are set forth in the attached Appendix B, and are incorporated herein by reference.

3. The parties stipulate and agree to the entry of a decree setting forth water rights and/or uses as described in the claims in paragraphs B.1 through B.2 with the attributes set forth in the abstracts attached hereto. However, the United States reserves the right to challenge and/or appeal the imposition by ADWR or a court of competent jurisdiction of attributes less favorable to the United States than those set forth in the attached abstracts. The City reserves the right to challenge and/or appeal the imposition by ADWR or a court of competent jurisdiction of attributes more favorable to the United States than those set forth in the attached abstracts.

4. The City will recognize the United States' right, as set forth in the Agreement dated January 8, 1941, between the United States and the City to store approximately 300,000,000 gallons of water in Lower Lake Mary up to an elevation of 6,789.5 feet. The use of the right shall be for public, domestic, and other beneficial uses. The United States agrees not to water livestock directly from Lower Lake Mary, but may pump or divert up to 4 acre-feet of water per year to off-site drinkers.

5. The City recognizes, confirms, and agrees not to object to, dispute, or challenge in the Little Colorado River Adjudication, or in any other judicial or administrative proceedings, the right of the United States to withdraw or divert water, as described in the attached abstracts, pursuant to this Stipulation, regardless of whether the water withdrawn or diverted, is legally appropriable or non-appropriable under state law or reserved under federal law.

### C. City's Claims

1. The City filed Claim Nos. 39-03-83947, 39-03-83948, 39-03-83949, and 39-05-40757 for surface water and underground water from various sources for municipal use within the corporate limits of the City. Abstracts 1 through 14 describing the attributes of these claims are set forth in the attached Appendix C, and are incorporated herein by reference.

2. The parties stipulate and agree to entry of a decree setting forth water uses and/or rights as described in the claims in paragraph C.1 above with the attributes set forth in the abstracts attached hereto. However, the City reserves the right to challenge and/or appeal the imposition by ADWR or a court of competent jurisdiction of attributes less favorable to the City than those set forth in the attached abstracts. The United States reserves the right to challenge and/or appeal the imposition by ADWR or a court of competent jurisdiction of attributes more favorable to the City than those set forth in the attached abstracts.

3. The United States recognizes and confirms the City's right, as set forth in the Agreement dated January 8, 1941, between the United States and the City, to temporarily take stored water from the United States' pool in Lower Lake Mary during an unusual water shortage in the municipal supply with the consent of the United States.

4. The City agrees not to utilize its storage right in Lower Lake Mary other than to temporarily take stored water from the United States' pool in Lower Lake Mary during an unusual water shortage in the municipal supply with the consent of the United States, as set forth in the Agreement dated January 8, 1941, between the United States and the City, provided, however, that the United States agrees not to object to the use of such water as may occur in Lower Lake Mary for recreational purposes. Subject to the Decree Court's final confirmation of the City's rights as set forth in this Stipulation, the City further agrees not to divert surface water from Lower Lake Mary pursuant to Certificate 1984.

5. The United States recognizes and confirms the City's storage right of 15,653 acre-feet in, and right to use, Upper Lake Mary to the maximum entitlement of Certificates 1984 and 3998 and Permit No. 33-87178 for a surface water diversion of 10,035.1 acre-feet per year.

6. The United States agrees that the City may continue to seek to adjudicate Permit No. 33-87178 in Claim No. 39-05-83948; provided, that the total decreed water storage rights in Upper Lake Mary does not exceed 15,653 acre-feet per year and the maximum decreed diversion and beneficial use of water from Upper Lake Mary does not exceed 10,035.1 acre-feet per year.

7. The City's storage rights in Upper Lake Mary shall include the right to continuous fills, subject to paragraphs C.16 and C.17.

8. The United States recognizes, confirms, and agrees not to object to the withdrawal and use by the City of 22,600 acre-feet per annum of underground water from existing and future

wells for municipal purposes, as described in abstracts 1 and 14.

9. The United States recognizes, confirms, and agrees not to object to, dispute, or challenge in the Little Colorado River Adjudication, or in any other judicial or administrative proceedings, the City's right to withdraw or divert water pursuant to the terms of this Stipulation, regardless of whether such water is legally appropriable, non-appropriable, or subject to claims based on federal law.

10. The United States will agree not to make a call against the City's priority and right to store, divert and use existing surface and groundwater rights for municipal purposes as identified in the attached abstracts and set forth in Section C.

11. This Stipulation shall not impair the City's right to initiate the diversion and use of new surface water rights beyond the terms of this Stipulation, nor does it limit in any way remedies available to the United States under state or federal law for injury to its interests from the use of new surface water rights not identified in the abstracts attached hereto.

12. The City agrees not to construct additional surface water reservoirs in the Walnut Creek Watershed above Walnut Canyon National Monument.

13. The City shall be permitted to modify, desilt, line and maintain the Upper Lake Mary Reservoir, so long as the existing storage capacity of 15,653 acre feet is not increased.

14. The City shall be permitted to construct, modify, relocate, and maintain surface conveyance facilities (pipelines, intakes, headgates, etc.).

15. The City shall be permitted to install, maintain, operate and repair portable and temporary pumps at Lower Lake Mary to use water from the lake during emergencies as authorized by C.3. and C.4.

16. The City agrees to reasonably maintain a minimum pool of approximately 2,350 acre-feet (reservoir level of 18.3 feet) in Upper Lake Mary for recreational and municipal management purposes, except in an emergency. The minimum pool may be modified subject to mutual approval of both the City and the United States, which approval of either party shall not be unreasonably withheld.

17. The City agrees to make its best effort to operate Upper Lake Mary in a manner such that no more than 4 million gallons per day (12.28 acre-feet per day) is diverted during periods of runoff into the Lake and when storage is at approximately 3,115 acre feet (reservoir level of 20.4 feet) or less, except in an emergency. This adjustment in reservoir operation shall go into effect at such time that the United States modifies the Lower Lake Mary Dam or spillway and when the City

and the United States agree that such modifications to the dam and spillway will probably improve the frequency of floodflows in Walnut Creek in Walnut Canyon National Monument. Any operational adjustment or modifications to the dam or spillway for the purpose of increasing the frequency of floodflows is subject to mutual approval of both the City and the United States, which approval shall not be unreasonably withheld.

18. The United States recognizes, confirms, and agrees not to object to the future withdrawal and use by the City for up to an additional 20,000 acre-feet per annum of underground water from existing and future wells for municipal purposes, as described in abstracts 1 and 14, subject to limitations on any replacement wells or mitigation as described in C.20., C.21., and C.22.

19. The withdrawal of less than 42,600 acre-feet of underground water in any year or series of years, both prior and after the date of this Stipulation, shall not affect the City's right to withdraw its full entitlement of 42,600 acre-feet of underground water in subsequent years, subject to limitations on any replacement wells or mitigation as described in C.20., C.21., and C.22. This Stipulation shall not impair the City's right to initiate new withdrawals of underground water, or to expand existing withdrawals of underground water, beyond the 42,600 acre-feet annual entitlement under the terms of this Stipulation, nor does it limit in any way remedies available to the United States under state or federal law for injury to its interests from such withdrawals not identified in the abstracts attached hereto.

20. The City shall be permitted to maintain, operate, repair, deepen and replace existing wells, and drill, maintain, operate, repair, deepen and replace future wells at any time after the effective date of this Stipulation. Replacement of existing wells or replacement of future wells in this Stipulation may be relocated anywhere in the Little Colorado River Basin; provided that any replacement well may not be located more than 1/8 mile nearer to Sunset Crater, Walnut Canyon and Wupatki National Monuments than the well being replaced.

21. If the City seeks to drill a well within a two mile zone of the exterior boundaries of the Pine Grove Campground, Wupatki National Monument, Sunset Crater National Monument, or Walnut Canyon National Monument ("United States lands", as depicted on maps attached to the abstracts in Appendices A and B), the City shall file a notice of intention to drill for the construction of any well used for municipal purposes with a combined pumping capacity in excess of 500 gallons per minute. A well having a pumping capacity of 500 gallons per minute or less may be drilled, used, and replaced as authorized by State law. The exterior boundaries of the monuments shall be those boundaries in place on the date of execution of this Stipulation.

a. The City's notice of intention to drill shall include a plan of operation and a hydrological study of the projected declines in static water levels due to the operation of the proposed well. The study shall delineate those areas surrounding the proposed well in which the projected decline in static water level would exceed 25

feet after the earlier of the proposed life of the well or its first fifty years of operation. The study shall take into account the drawdown impacts attributable to future wells but shall exclude drawdown impacts resulting from the withdrawal of the City's annual entitlement of 42,600 (or 22,600 acre-feet as this paragraph relates to Pine Grove Campground) acre-feet of ground water pursuant to this Stipulation, all other existing local wells, and wells that are located on United States lands.

b. The City's notice of intention to drill, which is subject to the above requirements, shall be filed with ADWR and a copy of the notice served at the same time on the National Park Service ("NPS") and the Forest Service. The United States may object to the construction of the well only on the grounds that the operation of the well would violate the conditions set forth in paragraph 21. c.

c. Prior to drilling the well, the City shall demonstrate to the NPS and/or the Forest Service, as applicable, that the operation of the well will not cause a decline in static water level of more than 25 feet after the earlier of the proposed life of the well or first fifty years at the site of any well existing on United States lands as of the date the notice is filed or upon any reasonably foreseeable well on the United States lands. The parties shall take into account the drawdown impacts attributable to future City wells but shall exclude drawdown impacts resulting from the withdrawal of the City's annual entitlement of 42,600 (or 22,600 acre-feet as this paragraph relates to Pine Grove Campground) acre-feet of ground water pursuant to this Stipulation, all other existing local wells, and wells located on United States lands.

d. In the event the operation of the well does not meet the conditions set forth in paragraph C.21.c, the City and the United States nonetheless may agree to the drilling of the well if the City agrees to be bound by a plan that the parties determine is adequate to mitigate the impact of the proposed well on the affected well located on United States lands, or the United States has consented to the construction and operation of the well. A mitigation plan including any of the following measures shall be deemed to be adequate:

- 1) The City has entered into an agreement with the United States to provide a water supply to the United States to offset the drawdown impacts projected to be caused by the proposed well.

- 2) The City has entered into an agreement with the United States to pay for the costs of drilling a new or replacement well for the United States well which will be impacted by the operation of the proposed well and has posted a bond or made other provision to secure the payment of such costs.

3) The City has entered into an agreement with the United States to pay the costs of operating, deepening, or refurbishing the affected well on United States lands so as to offset the impact of the proposed well and has posted a bond or made other provision securing the payment of such costs.

4) Approval of mitigation plans by the United States shall not be unreasonably withheld.

e. Any City well, which is authorized to be constructed by or in accordance with these requirements, shall be operated consistent with the plan of operation submitted at the time of the notice.

f. Any party aggrieved by the failure to reach agreement on any matter addressed in paragraph C.21, or who wishes to bring an action for failure to comply with any agreement reached pursuant to paragraph C.21, may bring an action in a court of competent jurisdiction.

22. In the event the Pine Grove Campground, Sunset Crater, Walnut Canyon, or Wupatki National Monuments hook up to a municipal water supply system, which meets the United States present and future consumptive uses, as set forth in the attached abstracts, the provisions in paragraph C.20. shall no longer apply to the Pine Grove Campground or that particular national monument or monuments.

#### D. Cooperative Efforts and Funding Contributions

1. The NPS may construct a pipeline from Walnut Canyon National Monument at its sole expense and hook up to the City's water supply system. The City agrees to waive the connection fee for the NPS. Thereafter, the City will treat the NPS as an ordinary customer with respect to payments for water delivery and service, and will bear operation and maintenance costs to the boundary of Walnut Canyon National Monument.

2. The City and the United States acknowledge the United States' ownership of the Lower Lake Mary Dam and Reservoir. The City agrees not to object to modifications of the Lower Lake Mary Dam or spillway if the modification is consistent with the 1941 Agreement and paragraph C.17 above. This paragraph shall not be construed so as to limit the City from exercising its right to use water for emergency purposes pursuant to the 1941 agreement between the United States and the City.

3. The United States acknowledges the importance of municipal values in the Walnut Creek Watershed, including the City's desire for the United States to use best management practices for livestock grazing, timber harvesting, road drainage, and recreational activities which maintain the quantity and quality of the municipal water supply. The United States and the City agree to identify best management practices consistent with municipal values and the Flagstaff/Lake Mary Ecosystem Assessment, and implement such practices where appropriate.

4. The City and the United States agree to cooperate to evaluate methods that may increase the likelihood of flood flows and improve the inner-canyon environment in Walnut Canyon National Monument. Except as provided in paragraph D.5.b, the City will not be obligated under this Stipulation to expend funds or otherwise dedicate City resources to increase the likelihood of flood flows and improve the inner-canyon environment in Walnut Canyon National Monument. Nothing in this Stipulation shall be construed to obligate or require the City to increase flood flows and improve the inner-canyon environment in Walnut Canyon National Monument.

5. Contributions by the United States and the City for Studies and Project Implementation:

a. The United States will seek funding of \$100,000, subject to appropriation by the United States Congress, which funds shall be used to study proposals and projects designed to accomplish the objectives of paragraphs D.3. and D.4. above.

b. The City shall make a one-time contribution of \$100,000 to a trust account managed by the National Park Foundation or like partner for Walnut Canyon National Monument. Interest and dividends from the trust may be used to fund studies to accomplish the objectives of paragraphs D.3. and D.4. above. Upon mutual agreement of the parties, the principal of the trust may be used to fund project implementation.

c. The City and the United States shall cooperate in developing study proposals and projects designed to evaluate best management practices, reservoir modifications, and/or operational criteria to address the objectives stated in paragraphs D.3. and D.4. above. Funds may be used to collect hydrologic data at Upper Lake Mary and Lower Lake Mary and in Walnut Canyon National Monument and the Walnut Creek Watershed to support these studies. The City and the United States will jointly approve all scopes of work, selection of contractors, and agree upon the implementation objectives and costs of projects prior to the expenditure of any appropriated or trust funds.

#### E. Other Provisions

1. This Stipulation shall be interpreted and enforced in accordance with the laws of the State of Arizona and the United States, and shall be enforceable in any court of competent jurisdiction.

2. If a municipal user, industrial user or other user of underground water within the Little Colorado River Basin, their instrumentalities or agents, or the State of Arizona or its agencies initiates administrative or judicial action to establish an Active Management Area, define rights to withdraw and use underground water, or regulate underground water pumping in part or all of the Little Colorado River Basin, the United States or the City may move to intervene in such proceedings to protect its interests.

3. Nothing contained herein shall be construed to waive the administrative special use permit process of the Forest Service, where applicable, nor the right of the United States to dispute or challenge the City's right to withdraw or divert water pursuant to the terms of this Stipulation on grounds other than adverse impacts to the uses of water by the United States recognized in this Stipulation. Specifically, this Stipulation does not preclude the United States from bringing an action against the City for environmental, endangered species, land use, and other statutes as a consequence of the City's use of surface water or withdrawal of underground water; provided, however, that the United States may not bring an action against the City for claims seeking to increase the likelihood of floodflows, protect or improve the inner-canyon environment, or for maintenance of natural conditions within the Walnut Creek Watershed and Walnut Canyon National Monument based on the parties' water rights set forth herein.

4. This Stipulation is the result of negotiation. None of the legal issues regarding the bases or attributes of the water rights involved in this matter have been briefed or tried. The parties agree that this Stipulation and any decree entered pursuant to this Stipulation shall have no precedential effect in this or any other pending or future general stream adjudication or case.

5. Notwithstanding the provisions of paragraph E.3., the United States agrees to waive claims for past and present damages to natural resources, if any, caused by the City's use of its existing water rights as set forth herein.

6. Notice of action taken pursuant to this agreement shall be provided as follows:

City Manager  
City of Flagstaff  
211 W. Aspen  
Flagstaff, AZ 86001

National Park Service  
c/o Flagstaff Area Office  
Attn: Superintendent  
6400 N. Highway 89  
Flagstaff, AZ 86004

United States Forest Service  
c/o Coconino National Forest  
Attn: Forest Supervisor  
2323 East Greenlaw Lane  
Flagstaff, AZ 86004

7. This Stipulation will become effective as between the parties upon both parties

signing this Stipulation. After execution by the parties, this Stipulation will be submitted to the Little Colorado River Adjudication Court for confirmation of its binding effect as between the parties to this Stipulation. This Stipulation may also be incorporated into a broader settlement agreement to be submitted to the Little Colorado River Adjudication Court for review, comment, and objection by other claimants pursuant to the Administrative Order issued by the Arizona Supreme Court on September 27, 2000, for the purpose of resolving any objection to the water rights claims of the National Park Service and issuance of a partial decree of water rights for the National Park Service in the Little Colorado River Adjudication.

In witness whereof, the parties have executed this Stipulation as of the dates written below.

Date: 8/30/01

**UNITED STATES OF AMERICA**

BY: 

**ANDREW F. WALCH**

Attorney

U.S. Department of Justice

Environment and Natural Resources

Division

999 18th Street, Suite 945

Denver, CO 80202

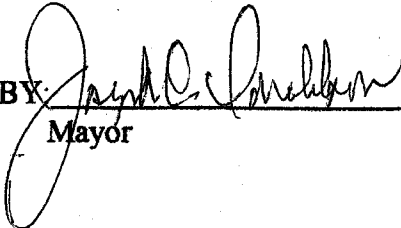
(303) 312-7341

**ATTORNEYS FOR THE**

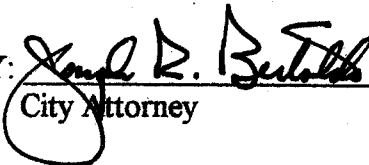
**UNITED STATES OF AMERICA**

Date: 12-10-01

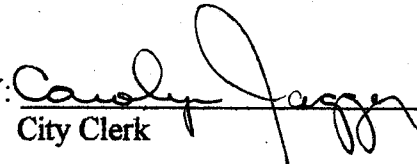
**CITY OF FLAGSTAFF**

BY:   
Mayor

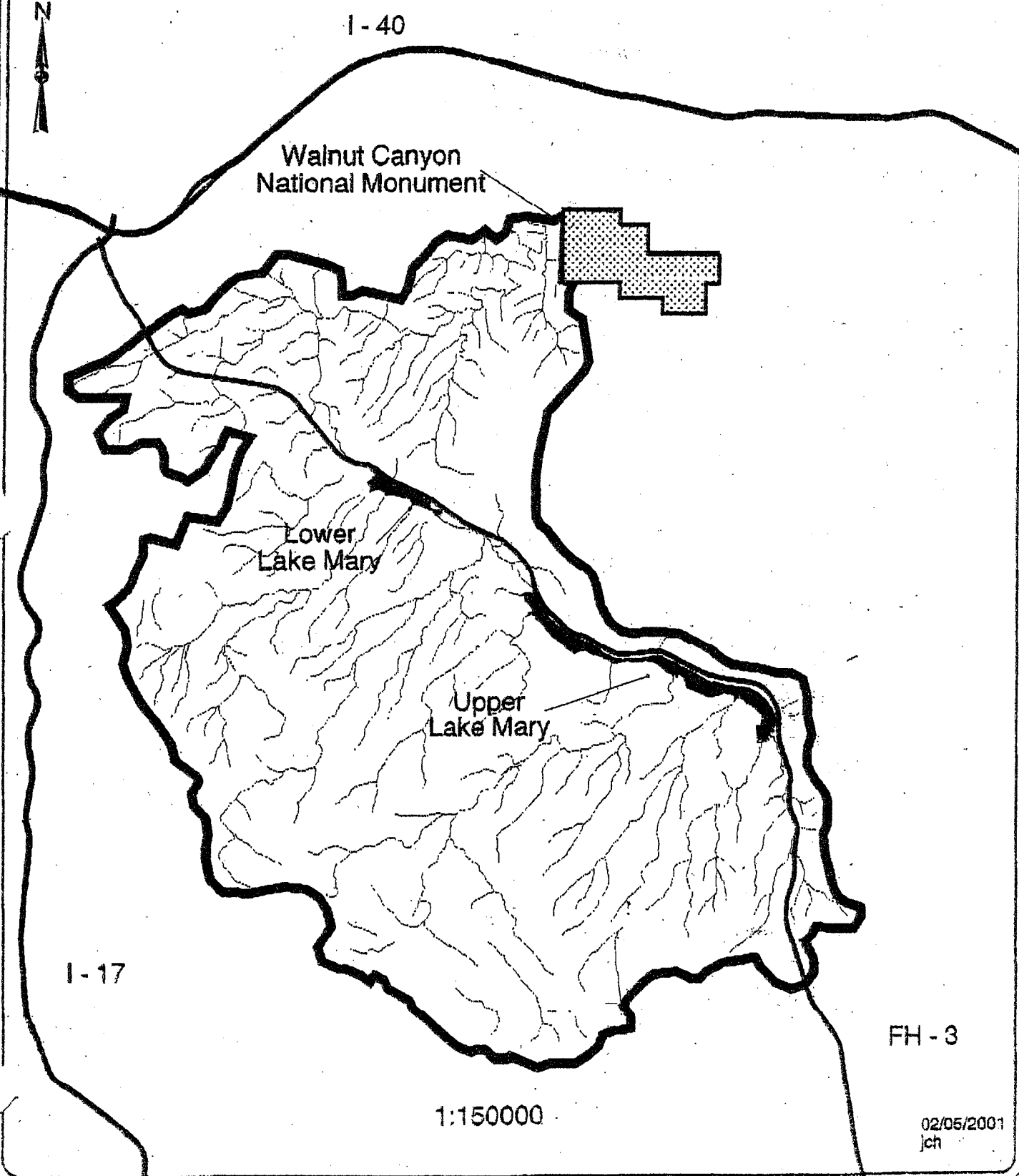
Approved as to form:

BY:   
City Attorney

Attest:

BY:   
City Clerk

# Figure 1 - Walnut Creek Watershed



I - 40

Walnut Canyon  
National Monument

Lower  
Lake Mary

Upper  
Lake Mary

I - 17

FH - 3

1:150000

02/05/2001  
jch