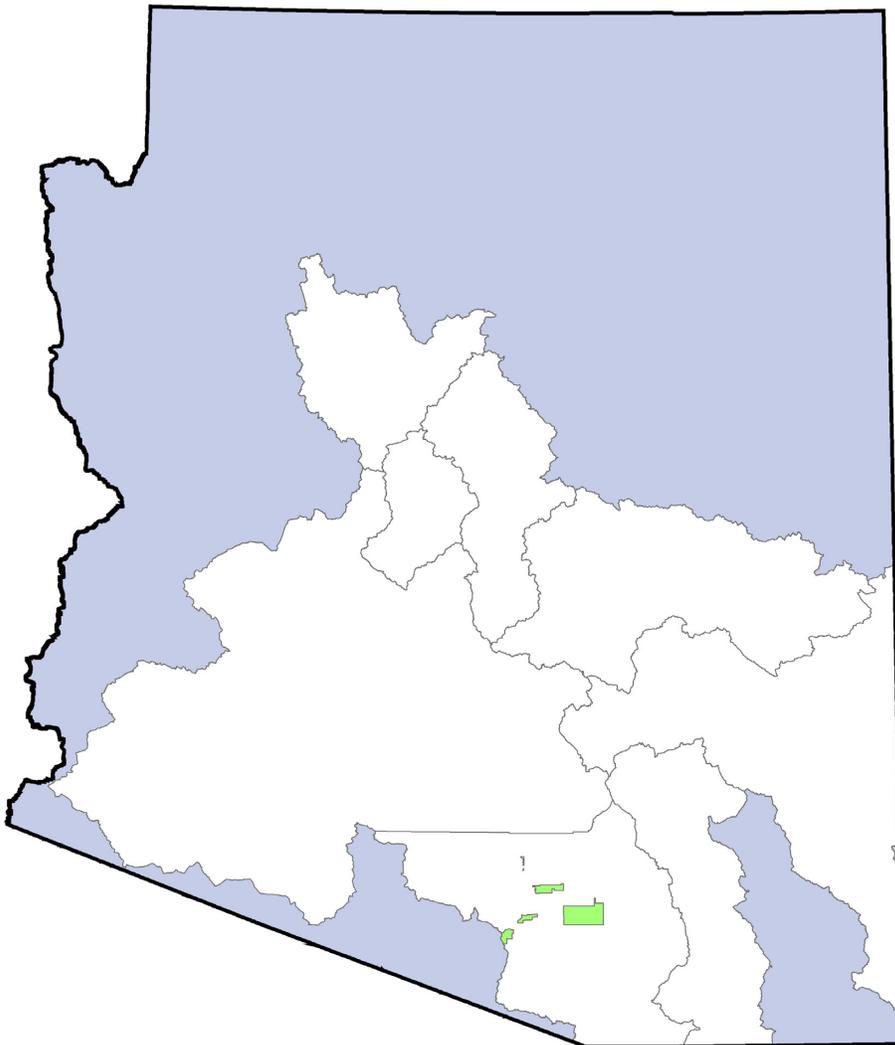


TECHNICAL ASSESSMENT OF THE TOHONO O'ODHAM NATION WATER RIGHTS SETTLEMENT (Southern Arizona Water Rights Settlement)

*In re The General Adjudication of the
Gila River System and Source*



Arizona Department of Water Resources

October 24, 2006

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LIST OF ACRONYMS AND TERMS OF ART

1980 CAP Contract	December 11, 1980 contract between the Nation and the United States for delivery of 37,800 AFY of CAP water
ADWR	Arizona Department of Water Resources
AFA or AFY	Acre-feet annually
Allottee(s)	A person holding a beneficial real property interest held in trust by the United States in an Indian allotment that is located within the San Xavier Reservation
Alvarez Case	<i>Alvarez v. City of Tucson</i> , Civ. No. 93-039 TUC FRZ
AMA	Active Management Area
Amended CAP Contract	Amendments to the 1980 CAP Contract, which becomes effective on the Enforceability Date (Exhibit 5.2, Appendix B)
Asarco	Asarco Incorporated
Asarco Agreement	Asarco Settlement Agreement (Exhibit 13.1, Appendix B)
AWBA	Arizona Water Banking Authority
AWPF	Arizona Water Protection Fund
BIA	U.S. Bureau of Indian Affairs
BOR	U.S. Bureau of Reclamation
CAP	Central Arizona Project
CAP NIA Priority Water	Non-Indian agriculture CAP priority water
CAP M&I Priority Water	Municipal and industrial CAP priority water
CAP Service Area	Geographical area in which the CAWCD delivers CAP water
CAVSARP	Central Avra Valley Storage and Recovery Project
CAWCD	Central Arizona Water Conservation District
cfs	Cubic Feet per Second
Consolidated Litigation	Consolidated Tucson Case and three of five counts of the Alvarez Case
Deferred Pumping Storage Account	Storage account for deferred pumping credits authorized by Paragraph 8.6.2
Direct Storage Account	Storage account for storage and recovery projects authorized by Paragraph 8.2
Eastern Schuk Toak	Portion of the Schuk Toak District of the Sells Papago Reservation located within the Tucson Active Management Area
Enforceability Date	The date upon which the Secretary publishes in the Federal Register the statement of facts required by Section 302 of the SAWRSA Amendments

FEIS	Final Environmental Impact Statement
FICO	Farmers Investment Co.
FICO Agreement	FICO Settlement Agreement (Exhibit 14.1, Appendix B)
Gila Court	Maricopa County Superior Court for the Gila River Adjudication (Gila River Adjudication Court)
Gila River Adjudication	Legal proceeding in the Maricopa County Superior Court entitled <i>In re the General Adjudication of All Rights to Use Water in the Gila River System and Source</i> , Nos. W-1, W-2, W-3, and W-4
GPCD	Gallons Per Capita Per Day
gpm	Gallons Per Minute
Groundwater Protection Program	Conditional legislation designed to protect groundwater levels at the San Xavier Reservation, A.R.S. § 45-2701 <i>et seq.</i> (Appendix F-2)
Judgment and Decree	Judgment and Decree to the Settlement Agreement (Exhibit 17.1)
MAF	Million Acre Feet
Marketable Credits	Storage credit that may be transferred for use outside the Nation's reservation if authorized by State law
Nation	Tohono O'odham Nation
NEA	Northwest Economic Associates
NRCS	Natural Resources Conservation Service
Order for Special Proceedings	Order for Special Proceedings for Consideration of the Tohono O'odham Nation Water Rights Settlement, dated July 11, 2006 by the Gila River Adjudication Court
Related Agreements	The Tucson Agreement; Asarco Agreement; FICO Agreement
San Xavier District	One of eleven political subdivisions of the Nation established under the Nation's Constitution – the San Xavier District is the governing body for those tribal members residing on the San Xavier Reservation
San Xavier Reservation	The San Xavier Indian Reservation established by Executive Order of July 1, 1874
SAVSARP	Southern Avra Valley Storage and Recovery Project
SAWRSA	Southern Arizona Water Rights Settlement Act of 1982 (Appendix C-1)
SAWRSA Amendments	Southern Arizona Water Rights Settlement Amendments Act of 2004 (Title III of the Settlements Act) (Appendix C-2)
SCS	Soil Conservation Service
Secretary	Secretary of the Interior
Settlement Agreement	Tohono O'odham Settlement Agreement (Appendix A)
Settlements Act	Arizona Water Settlements Act (Appendix C-2)
Settling Parties	Parties to the Settlement Agreement

SOC	Statement of Claimant
SXAA	San Xavier Allottees Association
SXCA	San Xavier Cooperative Association
TDS	Total Dissolved Solids
TON	Tohono O'odham Nation
TOUA	Tohono O'odham Utility Authority
Tucson Case	<i>United States et al. v. City of Tucson, et al.</i> , Civ. No. 75-39 TUC FRZ (consol. with Civ. No. 75-51 TUC FRZ)
Tucson Management Area	Includes the Tucson Active Management Area, the Santa Cruz Active Management Area and that portion of the Upper Santa Cruz Basin not within either of the Active Management Areas
USGS	United States Geological Survey

CHAPTER 1: INTRODUCTION

This report concerns a proposed settlement of water rights for a portion of the lands of the Tohono O’odham Nation (the “TON” or “Nation”); persons on those reservation lands holding a beneficial real property interest that is held in trust by the United States (“Allottees”); and the United States as trustee on behalf of both the Nation and Allottees (“United States”). The proposed settlement is embodied in the “Tohono O’odham Settlement Agreement” (“Settlement Agreement”), which has been submitted to the Maricopa County Superior Court for approval as part of a legal proceeding entitled *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Nos. W-1, W-2, W-3, and W-4 (“Gila River Adjudication”).¹ As requested by the Gila River Adjudication Court (“Gila Court”), this report contains a factual analysis and technical assessment of the Settlement Agreement.

As detailed in **Chapter 2**,² the Nation’s lands cover more than 2.8 million acres in south central Arizona, and are divided into four physically distinct areas – the Gila Bend Reservation, the Florence Village, the San Xavier Reservation, and the Sells Papago Reservation. Those lands are further subdivided into 11 districts that serve as the governing bodies for tribal members residing within each district’s geographical boundary. As depicted in **Figure 1-1**, the Schuk Toak District is one of the districts that comprise the Sells Papago Reservation, while the San Xavier District’s boundary is coterminous with that of the San Xavier Reservation.

The Settlement Agreement encompasses only those lands of the Nation that are within the “Tucson Management Area,” which is a geographic area comprised of the Tucson Active Management Area (AMA), the Santa Cruz Active Management Area, and

¹The Gila River Adjudication’s purpose is to determine the nature, extent, and relative priority of water rights for all water users in the Gila River System and Source which includes the watersheds of the Lower Gila River, Upper Gila River, San Pedro River, Verde River, Upper Salt River, Upper Santa Cruz River, and Agua Fria River.

²The bold term “**Chapter**” refers to chapters of this report, while the bold term “**Section**” refers to sections of chapters in this report.

that portion of the Upper Santa Cruz Basin not within either of the Active Management Areas. Included within the Tucson Management Area are the entire San Xavier Reservation and the eastern portion of the Schuk Toak District of the Sells Papago Reservation (“Eastern Schuk Toak”). The Nation’s lands that are subject to this settlement are depicted in **Figure 1-2**.

1.1 SETTLEMENT HISTORY

The Settlement Agreement, attached to this report as **Appendix A**, is the product of years of settlement negotiations related to a series of cases filed in the Federal District Court for the District of Arizona.³ In 1975 two lawsuits were filed, one by the United States in its own right and on behalf of the Nation and Allottees (CV 75-39 TUC FRZ), and one by the Nation and two Allottees individually and on behalf of all other Allottees similarly situated (CV 75-51 TUC FRZ). These lawsuits sought a declaration of water rights in the Upper Santa Cruz River Basin, damages resulting from surface water and groundwater withdrawals by the City of Tucson and other water users in the basin, and an injunction to prohibit further withdrawal of surface water and groundwater in derogation of plaintiffs’ rights. These two actions were later consolidated in December 1975 (“Tucson Case”).

The principal parties of the Tucson Case negotiated a federal legislative settlement, the Southern Arizona Water Rights Settlement Act of 1982 (“SAWRSA”) (**Appendix C-1**), which was approved on October 12, 1982, Public Law 97-293, 96 Stat. 1274, *et seq.* SAWRSA entitled the Nation to receive a delivery of 66,000 acre-feet of water annually (“AFA” or “AFY”), the right to pump 10,000 AFY of groundwater at the San Xavier Reservation, and a \$15 million trust fund. Of the 66,000 AFY, 37,800 AFY consisted of contracted Central Arizona Project (“CAP”) water for delivery to the San Xavier Reservation and Eastern Schuk Toak. The remaining 28,200 AFY was to be

³A more detailed history of the litigation leading up to this Settlement Agreement is attached as **Exhibit 1.4** to the Settlement Agreement. Unless otherwise stated, the term “Exhibit” refers to one or more Exhibits to the Settlement Agreement, all of which are contained in **Appendix B** to this report.

acquired by the Secretary of the Interior (“Secretary”) and delivered upon dismissal of the Tucson Case. The City of Tucson was to transfer 28,200 AFY of effluent water to the United States and, along with the State and other local entities, contribute a total of \$5.25 million to a cooperative fund that was to assist the United States in paying the ongoing costs of implementing the settlement.

Although legislatively approved, SAWRSA could not become enforceable until the settling parties met certain conditions set forth therein, including, as noted above, the dismissal of the Tucson Case. The City, State and local interests performed all of their obligations set forth in SAWRSA, and the Nation agreed to dismiss the Tucson Case. However, a dispute arose between the Allottees and the Nation concerning the ownership of settlement water and entitlement to financial benefits, which ultimately prevented the dismissal of the Tucson Case and the enforceability of SAWRSA.

In 1993, the Allottees filed a class action lawsuit (CV 93-0039 TUC FRZ) (“Alvarez Case”) seeking to enjoin groundwater pumping by the City of Tucson and others, and asserting more than \$200 million in damages. In September 1999, the Tucson Case was consolidated with three of the five counts of the Alvarez Case (collectively, the “Consolidated Litigation”). Dispositive motions have been pending before the court for several years while the parties worked to negotiate a settlement that would allow the implementation of SAWRSA.

After several more years, amendments to SAWRSA were negotiated that would allow full implementation of the settlement and provide clarification regarding the allocation of settlement water and benefits between the Nation and the Allottees. These amendments are included as Title III of the Arizona Water Settlements Act (“Settlements Act”), which was approved on December 10, 2004, Public Law 108-451, 118 Stat. 3478, *et seq.* (**Appendix C-2**). The Settlements Act consists of three Titles; the Central Arizona Project Settlement Act of 2004 (Title I); the Gila River Indian Community (GRIC) Water Rights Settlement Act of 2004 (Title II); and the Southern Arizona Water Rights Amendments Act of 2004 (Title III). Title III will be specifically referred to in this report as the “SAWRSA Amendments,” while Titles I and II will be referred to as the Settlements Act. The SAWRSA Amendments essentially replace SAWRSA but do not

become enforceable unless certain conditions are satisfied by December 31, 2007. In the event these conditions are not timely satisfied, the SAWRSA Amendments fail, in which case SAWRSA would remain in effect but unenforceable until all of the required conditions, including the dismissal of the Tucson Case, are satisfied.

Section 309(h) of the SAWRSA Amendments provides authority to the Secretary, on behalf of the United States, to execute the Settlement Agreement and three other agreements: the Tucson Agreement; the Asarco Settlement Agreement (“Asarco Agreement”); and the FICO Settlement Agreement (“FICO Agreement”) (collectively, the “Related Agreements”). While the SAWRSA Amendments provide the required legislative authority for the United States’ contribution to the settlement process, it is the Settlement Agreement (including the Related Agreements and other Exhibits) that binds the parties to this settlement. The parties to the Settlement Agreement include the United States, the State of Arizona, the Nation, the City of Tucson, Asarco Incorporated (“Asarco”), Farmers Investment Co. (“FICO”), and two Allottee classes from the Consolidated Litigation (collectively, the “Settling Parties”). **Figure 1-2** identifies the location of the parties to the Settlement Agreement.

1.2 ADWR’S REPORT

One of the conditions for enforceability of the SAWRSA Amendments is the Gila Court’s entry of the judgment and decree attached as **Exhibit 17.1** to the Settlement Agreement (“Judgment and Decree”), which approves the Settlement Agreement and adjudicates the water rights of the Nation, Allottees, and the United States within that portion of the Gila River System and Source identified as the Tucson Management Area. Accordingly, on July 11, 2006, the Settling Parties applied to the Gila Court to commence special proceedings to consider the Settlement Agreement and the Judgment and Decree. Copies of the Settling Parties’ application and stipulation related to these special proceedings are included in **Appendices D-1 and D-2**, respectively. That same date, the Gila Court entered the “Order for Special Proceedings for Consideration of the

Tohono O’odham Nation Water Rights Settlement” (“Order for Special Proceedings”), which is included in **Appendix E-1**.⁴

As part of the Order for Special Proceedings, the Gila Court requested that the Arizona Department of Water Resources (ADWR) prepare a technical report containing the following information concerning the proposed settlement: (1) a review of the terms of the Settlement Agreement; (2) a summary of the statements of claimant filed by or on behalf of the Nation and the Allottees within the Tucson Management Area; (3) a brief description of the history, physical characteristics, and natural resources of that portion of the Nation within the Tucson Management Area, including an estimate of arable acreage; (4) whether there is a reasonable basis for the Gila Court to conclude that the water rights of the Nation, the Allottees, and the United States under the Settlement Agreement are no more extensive than the water rights that could have been proven to a reasonable probability at trial in the Gila River Adjudication; (5) the probable depletion of water resources in the Gila River System and Source as a result of the proposed settlement; (6) the probable impact of the proposed settlement upon categories of other claimants in the Gila River Adjudication; (7) the probable impact of the proposed settlement upon groundwater rights and upon the groundwater regulatory program administered by ADWR; and (8) other important impacts or consequences. Order for Special Proceedings, ¶ 4. As requested by the Gila Court, ADWR prepared this technical report based on the documents filed by the Settling Parties, as well as additional information provided by the Settling Parties during ADWR’s preparation of the report.

This report sets forth the above information as follows: **Chapter 2** discusses the history, physical characteristics, and natural resources of those portions of the Nation located within the Tucson Management Area; **Chapter 3** discusses the Nation’s past, present, and potential future water uses within the Tucson Management Area; **Chapter 4** sets forth the water resources within the area subject to the Settlement Agreement;

⁴Attached to the Order are copies of the Description of the Proposed Water Rights as Agreed Upon in the Tohono O’odham Settlement Agreement and Set Forth in the Stipulation (**Appendix E-2**); an administrative order of the Arizona Supreme Court dated May 16, 2001 that authorizes special procedures for the approval of settlements of Indian water rights and water rights for other federal reservations or lands (**Appendix E-3**); and the Notice of Proposed Settlement required to be mailed by the Settling Parties to all claimants in the Gila River Adjudication (**Appendix E-4**).

Chapter 5 summarizes the Nation's adjudication claims for those portions of the Gila River System and Source located within the Tucson Management Area; **Chapter 6** summarizes the terms of the Settlement Agreement and Related Agreements; **Chapter 7** discusses the probable impacts of the settlement, including the impacts on water resources, other claimants in the Gila River adjudication, and groundwater rights; and **Chapter 8** compares the water rights available under the settlement versus those that could reasonably be proven at trial in the Gila River Adjudication.

CHAPTER 2: DESCRIPTION OF THE HISTORY, PHYSICAL CHARACTERISTICS, AND NATURAL RESOURCES OF THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK

This chapter provides background information on the San Xavier Reservation and Eastern Schuk Toak, and the O’odham Indians who have lived there. Described below is the geography and climate of the reservations, their population and early history, establishment of the reservations, and land development and current land uses.

2.1 GEOGRAPHY AND CLIMATE

The Tohono O’odham Nation (TON) covers more than 2.8 million acres in south central Arizona and includes 11 political districts and four, separate areas – the Gila Bend Reservation, the Florence Village, the San Xavier Reservation, and the Sells Papago Reservation (NAU, 2006). The San Xavier Reservation covers approximately 71,000 acres or about 110 square miles and is located adjacent to the Tucson metropolitan area in eastern Pima County. Eastern Schuk Toak covers approximately 38,000 acres or about 60 square miles and is located generally west of the San Xavier Reservation in central Pima County (**Figure 1-1**). The Nation’s capitol is in Sells and major roads in the area include Interstates 10 and 19 and U.S. Routes 86 and 286 (DeLorme Mapping, 1993).

The Nation lies in the Basin and Range physiographic province which is characterized by broad, gently sloping alluvial basins separated by north to northwest trending block-faulted mountains (BOR, 2005). The San Xavier Reservation straddles the divide between two sub-basins. Its eastern half lies in the Upper Santa Cruz Sub-basin and is drained by the Santa Cruz River, which crosses the reservation from south to north. Its western half lies in the Avra Valley Sub-basin and is drained by Brawley Wash, which flows from south to north a few miles west of the reservation. Most land on the San Xavier Reservation is gently sloping and covered with desert shrub. Exceptions

to this include the Del Bac Hills and Black Mountain area, which reach an elevation of almost 3,700 feet in the north central portion of the reservation, and the relatively flat valley floor of the Santa Cruz River floodplain with an average elevation of about 2,500 feet (Franzoy Corey, 1988a).

Eastern Schuk Toak lies in the Avra Valley Sub-basin and consists of several disconnected land areas - the Garcia and Vaya Strips, Alambra Valley Ranch, and a few small parcels south of the town of Silver Bell (**Figure 2-1**). Brawley Wash drains the sub-basin and flows from south to north across the eastern half of the Garcia Strip. Most of Eastern Schuk Toak is covered by mountains or hills, the highest being Kitt Peak where a national observatory was built at an elevation of 6,875 feet. Gently sloping lands and flood plains are found in the eastern half of the Garcia and Vaya Strips where the elevation ranges from 2,500 to 3,000 feet (DeLorme Mapping, 1993).

The climate of the region is typical of southwestern deserts with short, mild winters and long, hot summers. June through August is generally the hottest period when maximum temperatures average about 100 degrees Fahrenheit (°F). December is the coldest month and minimum temperatures at nearby Tucson occasionally drop below 32°F (Franzoy Corey, 1986). Local, heavy rainstorms occur during the summer, while winter storms are generally regional, gentle, and of longer duration. Average annual precipitation ranges from 10 to 12 inches at lower elevations on the reservation (Franzoy Corey, 1988a and 1990) to over 25 inches on Kitt Peak (NRCS, 1999).

2.2 POPULATION

The population of the San Xavier Reservation increased from 797 in 1977 to 1,940 in 2000. The population was relatively stable prior to that, and remained between 500 and 600 from 1863 through 1955 (**Table 2-1**). Most of the current population lives in the northeast corner of the reservation (**Figure 2-1**) and in 2000, a total of 756 housing units were counted in the San Xavier Reservation (Census, 2006). In 1997, it was estimated that about 380 tribal members lived outside of the reservation (BOR, 1999).

Population data are not available for Eastern Schuk Toak, but the population of the area is not expected to be large (Stetson, 1980). With the exception of a few ranch houses and the observatory on Kitt Peak, this portion of the Schuk Toak District has been largely undeveloped (USGS, 1979, 1992, and 1996).

2.3 EARLY HISTORY OF THE TRIBE

The O'odham (Papago) are thought to be descendants of the Hohokam Indians who flourished in the area around 1400 A.D. When Spanish explorers encountered the tribe in 1540, they were spread across a territory that extended from the Gila River south into what is now the north central part of Mexico. Their economy consisted of limited irrigated farming and the gathering of wild food. Most farming was simple with small fields located near the mouth of arroyos and base of hillsides to collect storm runoff. The largest concentration of Indians, an ethnic group known as the Sobaipuri, lived in the farming community of Bac near the present day San Xavier Mission. In this area, irrigation canals had been dug and fields planted along a perennial reach of the Santa Cruz River. Fields were tended during the spring and summer, and during the winter the Indians migrated into mountainous areas to hunt (BOR, 1989, Franzoy Corey, 1988a, and NRCS, 1999).

With Spanish exploration and occupation, the O'odham came under the rule of the Spanish Crown. A major contact between the tribe and the Spanish occurred with Father Kino's visit in 1692. This was followed in 1700 by the founding of the San Xavier Mission, which became the center of Catholic missionary activities in the region. At the time the mission was founded, the population of the village of Bac was estimated to total 800. The settlement reportedly increased in size to perhaps 1,300 with the influx of O'odham from surrounding areas. In his efforts to support the mission, Father Kino introduced cattle, sheep, goats, horses, and wheat to the area. Wheat is a winter crop that allowed year-round agriculture, and its cultivation eventually altered traditional subsistence patterns (BOR, 1999 and 2005).

In 1812, Mexico declared its independence from Spain, and until 1854, most of the current TON was under the political jurisdiction of Mexico. During this period the O’odham had little government contact and remained isolated. With the Gadsden Purchase in 1854, the O’odham came under the political jurisdiction of the United States but lacked the rights of full citizenship. Their lands were considered available for non-Indian settlement and, with the Homestead Act of 1867, encroachment occurred from non-Indian ranchers, farmers, and miners (BOR, 2005, Copper Dome, 2006, NEA, 1992, and NRCS, 1999).

2.4 ESTABLISHMENT OF THE RESERVATIONS

Encroachment on tribal lands ended when the reservations were established by Executive Order and Congressional Act. The San Xavier Reservation was established on July 1, 1874 and covered about 71,000 acres, including the area around San Xavier Mission. The Sells Papago Reservation was first established on May 28, 1912, and then expanded on July 14, 1916, to include the area of Eastern Schuk Toak. On February 1, 1917, the 1916 expansion of the Sells Papago Reservation was revoked, and some lands that had been added were removed. These lands, including the Garcia Strip, were eventually restored to the reservation through purchase and annexation in the 1930s (McGuire, 1987, Stetson, 1980, and Franzoy Corey, 1990).

In 1937, the constitution of the Papago Tribe was approved under the Indian Reorganization Act and established 11 political districts. A new constitution was approved on March 6, 1986 that superseded the original constitution and formally changed the name of the tribe to the Tohono O’odham Nation. Today, the Nation’s government is composed of three independent branches – the Legislative (Tribal Council), Executive (Tribal Chairman), and the Judicial. The Tribal Council is composed of two members from each of the 11 districts whose votes are weighed based on district population (Franzoy Corey, 1988a and 1990).

The Nation’s constitution grants the districts considerable autonomy in governing local affairs. In the case of the San Xavier District, this autonomy has been enhanced by

its historic independence, geographic separation from the Sells Papago Reservation, and nearby non-Indian communities in Tucson. In addition, under provisions of the Dawes Act of 1887, approximately 42,000 acres, or about 59%, of the San Xavier Reservation was allotted in 1890. This left 29,000 acres, or less than half of the reservation under Nation ownership (BOR, 1989). **Figure 2-2** shows the location of allotted lands on the San Xavier Reservation. There are currently 292 individual allotments and 1,000 Allottees (Ramon-Pierson, 2006). There are no allotments in Eastern Schuk Toak.

The use of allotted lands on the San Xavier Reservation, including leasing to non-Indians, has generally required an agreement among the individuals with ownership interest as well as the permission of the San Xavier District Council. The district council has historically also approved decisions involving Nation lands. In certain instances, further approvals regarding land use on the reservation has been required by the Tribal Council and by the Secretary of the Interior who holds the lands in trust (BOR, 1989). In 1991, the San Xavier Allottees Association (SXAA) was incorporated to assist and educate Allottees regarding use of land and water on the reservation (Ramon-Pierson, 2006).

2.5 LAND DEVELOPMENT

2.5.1 Irrigation

San Xavier Reservation

There is a relatively long record of irrigation on the San Xavier Reservation. Between 1450 and 1700, it is estimated that 1,500 acres were being irrigated in the area of the current San Xavier Mission. When Father Kino founded the San Xavier Mission in 1700, Indians were already diverting water from springs along the Santa Cruz River into irrigation ditches (Kupel, 1987). **Figure 2-3** shows the location of fields that were being irrigated near the mission in the late 1800s. The most frequently grown crops were corn, beans, barley, wheat, and cotton (Stetson, 1980).

The amount of irrigation on the San Xavier Reservation has varied considerably since 1890. The period of greatest irrigation occurred between 1915 and 1970 when

irrigated areas typically exceeded 1,000 acres, and sometimes approached 2,000 acres (**Figure 2-4**). Irrigation declined substantially after 1970, and during the late 1980s through the 1990s, the area irrigated covered less than 100 acres. Reasons for the decline include increasing depths to groundwater and decreased well production, poor condition of fields and irrigation systems, off-reservation and federal employment opportunities, and other economic factors (BOR, 1999 and McGuire and Worden, 1996).

Figure 2-5 shows how the availability of water for irrigation near the mission changed between 1910 and 1975. As shown in the figure, several water development measures have been used in the area including diverting and pumping surface water from the Santa Cruz River, construction of infiltration galleries to intercept river underflows, and completion of wells to pump shallow and deep groundwater. These measures were needed to address decreasing surface water flows and declining groundwater levels (**Chapter 4**). Since 1947 and until CAP water was first delivered in 2001, all water used for irrigation on the San Xavier Reservation has been pumped from wells.

Leasing of farmland to non-Indians began in the 1950s and ended in the early 1970s when the San Xavier Cooperative Association (SXCA) was established (Kupel, 1987). The association consolidated individual fields into a cooperative farm that now covers about 1,100 acres of land that is leased from Allottees. Most of the farm is located west of the Santa Cruz River and north of the mission (BOR, 1999 and Ramon-Pierson, 2006).

Under SAWRSA, the Bureau of Reclamation (BOR) was directed to rehabilitate and extend the existing cooperative farm. In addition to the reasons for declining irrigation described above, 80 acres of the farm had been lost to flooding in 1983 and another 45 acres were lost to flooding in 1993. BOR's first priority was to protect the existing farm from further erosion and in 1996 and 1998 bank stabilization structures were constructed. By 2001, a 5.2-mile pipeline that linked the CAP canal to the farm had been completed, and in 2004 work was underway to install new irrigation systems, level fields, and fill in pit-like holes or sinks that had formed on some fields (see **Chapter 4** for further discussion of sink formation on the reservation). It is estimated that rehabilitation

of the existing farm and construction of additional flood control measures will be completed by late 2006 (BOR, 2006 and SXCA, 2006). **Figure 2-6** shows the expected final layout of the irrigation system and flood control channels for the 900-acre rehabilitated farm.

The extension farm has not been built yet, but it is expected to be located on the south end of the existing farm and cover 1,400 acres of allotted lands between the Santa Cruz River and Interstate 19. Reportedly, the District and SXCA want to complete the rehabilitation project first and wait up to two years to see if the existing farm is efficient and returning a profit to the lessees. Design work on the extension farm is not expected to begin until fiscal year 2008 at the earliest (BOR, 2006).

Eastern Schuk Toak

The first record of irrigation in Eastern Schuk Toak is from the 1920s when Ramon Garcia attempted to farm along Brawley Wash near his ranch using floodwaters. He planted summer crops of corn, beans, melons, and squash but blamed the demise of his farming efforts on a decrease in rainfall in the late 1920s. Garcia's neighbors to the south, the Burrel family, also attempted to irrigate by digging a canal from the wash down to a pond dug adjacent to their fields. They too encountered a shortage of water and most homesteaders in this area of Avra Valley eventually sold out. Some time later, lands adjacent to the Garcia Strip were reportedly acquired by John Donaldson, who temporarily solved the water problem by building a dam across Brawley Wash and completing a network of deep wells (McGuire, 1987).

Until recently, there has apparently been no irrigation on the Garcia Strip or in Eastern Schuk Toak since Garcia's initial attempts during the 1920s. In 1982, BOR was directed under SAWRSA to design and construct an irrigation system on Eastern Schuk Toak. In 1997, design work was completed on a 2,000-acre farm on the Garcia Strip. The Schuk Toak New Farm consists of a series of level basin fields that are grouped into three blocks and irrigated using CAP water delivered to the reservation through a 2-mile pipeline. Construction of the pipeline began in 1998 and by 2002, all three blocks were

being irrigated and a variety of crops grown including cotton, alfalfa, and several vegetables (BOR, 2006). **Figure 2-7** shows the current layout of the Schuk Toak New Farm.

2.5.2 Mining

Asarco's Mission Complex currently covers about 23 square miles and includes several open pits and an underground copper mine; ore stockpiles and associated crushing, milling, and flotation facilities; tailings ponds and waste rock dumps; and warehouses and maintenance and administrative offices. The portion of the complex north of Pima Mine Road is on the San Xavier Reservation. The remainder of the complex is located immediately south of the road and primarily owned by Asarco (EPA, 2003).

Mining in the area began with prospectors in the 1900s and continued with development of underground mines during the 1920s through the 1940s (EPA, 2003). Asarco was awarded the right to lease reservation lands from the San Xavier Allottees in 1957, and the Bureau of Indian Affairs (BIA) authorized mineral exploration of the area during the same year. In 1966, large-scale mining operations on the reservation began and the first royalties from copper production were distributed shortly thereafter (McGuire and Worden, 1996). Asarco's present lease covers about 2,500 acres of reservation lands and includes mining and groundwater pumping rights. The mine is reportedly a source of employment for some tribal members (BOR, 1989 and 1999).

In addition to hardrock mining, gravel production has occurred on the San Xavier Reservation. Topographic maps show three gravel pits in the northeast corner of the reservation along the Santa Cruz River and gravel and borrow pits were located near the Interstate 19 corridor (USGS, 1996). ADWR did not determine the current status of these pits or whether additional gravel mining has occurred on the San Xavier Reservation. There is no evidence of hardrock or gravel mining on Eastern Schuk Toak.

2.5.3 Ranching

In terms of acreage, livestock grazing is still the predominant land use on the San Xavier Reservation and in Eastern Schuk Toak (BOR, 1999 and Franzoy Corey, 1986). Beginning with Father Kino's introduction of livestock in the early 1700s, Spanish ranchers spread across the region over the next 100 years and some O'odham took jobs as ranch hands. In 1855, the Punta de Aqua Ranch was established near the San Xavier Mission and, by 1874, four more ranches were reportedly operating in the area (Kupel, 1987). By the 20th century, ranching had become a critical component of O'odham life (Franzoy Corey, 1988a) and in 1959, it was estimated that 50% of all Tohono O'odham families owned cattle (McGuire and Worden, 1996).

On the San Xavier Reservation, cattle production peaked in 1890 and expanded again during the 1930s. During this period, the federal Indian Service drilled stock wells, and stockpounds known as "charcos" were constructed along washes. This led to increased herds, and range management became necessary to deal with overgrazing (Kupel, 1987). In 1953, the San Xavier Cattleman's Association was established and a land use code enacted. A drought in the 1960s and 1970s decimated the Nation's cattle industry as the charcos dried up and stock wells proved insufficient (Brown and Ingram, 1987). There were reportedly 250 cattle and 130 horses on the San Xavier Reservation during 1963 (McGuire and Worden, 1996) and about 200 cattle on the reservation in 1994 (SWCA, 2001).

Ranching has historically also been important in and around Eastern Schuk Toak, with the establishment of Avra Ranch on or before 1893 and Garcia Ranch around 1915 (McGuire, 1987 and SDCP, 2006). Current data on the number of livestock in Eastern Schuk Toak and on the San Xavier Reservation were not available to ADWR, but it is reported that ranching is still a source of employment for some tribal members (BOR, 1999).

2.5.4 Commercial and Light Industrial

A 120-acre industrial park is located in the northeast corner of the San Xavier Reservation adjacent to the Tucson Airport. The industrial property contains a 23-acre

Foreign Trade Zone and various businesses including Desert Diamond I, a casino that opened in 1993. Empire Machinery, a Caterpillar demonstration center, is one of the 13 industrial tenants. A second casino (Desert Diamond II), opened in 2001, is located in the southeastern corner of the reservation, near the intersection of Interstate 19 and Pima Mine Road (NAU, 2006, SXD, 2006, and SWCA, 2001).

The only known commercial/industrial development on Eastern Schuk Toak appears to be the Kitt Peak National Observatory where several large telescopes and associated buildings and facilities are located. The National Science Foundation has operated the 200-acre observatory under a 1958 lease with the Nation, which allows scientific research on up to 2,400 acres of reservation land (Arizona Daily Star, 2005).

2.5.5 Municipal

Municipal development on the San Xavier Reservation has occurred near its northeastern border, adjacent to the non-Indian communities of Tucson. Most homes are located in this portion of the reservation, as well as Nation and District government offices and an Indian Health Services clinic (BOR, 1999). A total of 756 housing units were counted within the District during 2000 (Census, 2006). With the exception of a few ranch houses, there are apparently no other homes in Eastern Schuk Toak.

2.5.6 Riparian Restoration

A riparian restoration project was recently completed on the San Xavier Reservation under Water Protection Fund Grant 96-026. The 12.5-acre project was approved by the San Xavier District Council and is located on a terrace of the Santa Cruz River about one mile southeast of the San Xavier Mission. Project features include a riparian woodland and mesquite bosque, 2 one-quarter acre constructed wetlands, a shallow stream and fish filter, a drip irrigation system for new plantings, fencing to keep out off-road vehicles and livestock, bank stabilization to protect the site from erosion, an access road, and a 7,900-foot pipeline to deliver CAP water to the project from the CAP Link Pipeline (**Figure 2-8**). The project was completed in 2003 and has an estimated

water demand between 500 to 750 acre-feet per year (AWPF, 2006 and SWCA, 2001). The ADWR is not aware of any riparian restoration projects planned in Eastern Schuk Toak.

2.6 CURRENT LAND USE

Figure 2-1 shows the location of current land uses on the San Xavier Reservation and Eastern Schuk Toak, as determined by ADWR for this report. To identify current agricultural and non-agricultural areas, ADWR analyzed land classification data from the Southwest Regional Gap Analysis Project (SWReGAP, 2004) in combination with 2005 aerial photography from the National Agricultural Imagery Program (NAIP) and 2003-2006 imagery from Google Earth. The 2004 land classification was updated with the more recent imagery and final acreages were calculated from the new land use dataset. Note that most lands on both reservations have been used for livestock grazing, but this land use is not shown in the figure. Note also that the irrigated areas that are shown include irrigation ditches, service roads, and farm buildings located immediately adjacent to the fields but are not used as cropland.

Summarized below is the acreage of current land use on the San Xavier Reservation and Eastern Schuk Toak. With the exception of grazing, the largest land use on the San Xavier Reservation is mining, which currently covers almost 3,800 acres. The largest land use in Eastern Schuk Toak other than grazing is irrigated agriculture, which currently covers about 2,400 acres.

**CURRENT LAND USE ON THE SAN XAVIER RESERVATION
AND EASTERN SCHUK TOAK
(IN ACRES)¹**

LAND USE	SAN XAVIER RESERVATION	EASTERN SCHUK TOAK
Irrigation ²	940	2,400
Commercial/Industrial	210	40
Mining	3,760	0
Municipal	555	0
<i>Total Acreage</i>	5,465	2,440

¹Does not include lands used for livestock grazing, which cover much of the Reservation.

²Irrigation acreage includes irrigation ditches, service roads, and immediately adjacent farm buildings.

CHAPTER 3: WATER USE ON THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK

This chapter describes recent and current water uses on the San Xavier Reservation and Eastern Schuk Toak and the potential for future water development. Recent and current water uses are presented first and include well pumpage for irrigation and industrial and municipal purposes, deliveries of CAP water for irrigation, and surface water diversions for livestock. Future water development on the reservations is described next and includes potential use for both irrigation and non-agricultural purposes. This information is used for the analyses in **Chapters 7 and 8**.

3.1 RECENT AND CURRENT WATER USES

Table 3-1 summarizes water use by the Settling Parties since 1980, including water use on the San Xavier Reservation and Eastern Schuk Toak. **Figure 2-1**, presented earlier in **Chapter 2**, shows where the major water uses are currently occurring on the reservations.

3.1.1 Wells

Most well pumpage on the San Xavier Reservation has been by Asarco for industrial use at its Mission Complex, by the San Xavier Cooperative Farm for irrigation, and by the Tohono O’odham Utility Authority (TOUA) for municipal purposes. Since 1980, Asarco’s well pumpage on the reservation has ranged from a low of 400 acre-feet in 1980 to a high of 4,700 acre-feet in 1994. The San Xavier Cooperative Farm reportedly pumped a total of 4,500 acre-feet in 1980 and 1,100 acre-feet in 2001. Additional pumpage data for the farm were requested by ADWR but not provided (TON and others, 2006). Available data indicate that the total water pumped by TOUA since 1980 has remained between 100 and 300 AFA.

On Eastern Schuk Toak, ADWR identified nine stock and/or domestic wells through inspection of topographic maps of the area published by the USGS (1979, 1992, and 1996). Pumpage from these wells is not considered significant and probably has totaled less than 10 AFA.

3.1.2 CAP Water

CAP water first reached the Garcia Strip in Eastern Schuk Toak and the San Xavier Reservation in 2000 and 2001, respectively. **Figure 1-1** shows the location of the canals that convey CAP water to the reservations. Since 2002, CAP deliveries to the Garcia Strip have ranged between 10,000 to 11,000 AFA and deliveries to the San Xavier Reservation have ranged between 1,000 and 3,000 AFA. Most of this CAP water has been used for irrigation, although a portion (about 500 to 750 acre-feet) was used near the San Xavier Mission for a riparian restoration project (AWPF, 2006 and SWCA, 2001).

3.1.3 Surface Water

Topographic maps show the location of several small ponds on the San Xavier Reservation and Eastern Schuk Toak that presumably have been used to water livestock (USGS, 1979, 1992, and 1996). Not including the tailings and retention ponds associated with Asarco's Mission Complex, a total of 20 ponds were identified on maps of the San Xavier Reservation and 16 ponds were identified on maps of Eastern Schuk Toak. The ponds are located along or near ephemeral washes to capture storm runoff. ADWR did not verify their current condition, but based on surface area, the total capacity of the ponds is expected to be less than 400 acre-feet on the San Xavier Reservation and less than 200 acre-feet in Eastern Schuk Toak.

Three of the ponds in Eastern Schuk Toak are relatively small catch basins located near Kitt Peak. The basins collect snowmelt and are used for the observatory water supply, which totals 700,000 gallons or about 2 acre-feet (NOAO, 2003).

3.2 POTENTIAL WATER DEVELOPMENT

This section describes the water development potential of the San Xavier Reservation and Eastern Schuk Toak for agricultural and non-agricultural uses. The potential for agricultural development is based on the irrigable acreage of the reservations. Non-agricultural development is based on the potential for municipal, commercial and industrial, mining, and other non-agricultural uses.

3.2.1 Agriculture

To evaluate the irrigable acreage on the San Xavier Reservation and Eastern Schuk Toak, ADWR reviewed information from several soil surveys, land classifications, and estimates of irrigable land. These studies covered all or portions of each reservation and some lands outside of the reservations. Most of the studies were completed by or for federal agencies that were evaluating irrigation projects. These agencies include the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS); the United States Department of the Interior, Bureau of Indian Affairs (BIA) and its predecessor agencies the Indian Service and Office of Indian Affairs; and the United States Department of the Interior, Bureau of Reclamation (BOR). Summarized below are the surveys, classifications, and irrigable acreage estimates pertinent to each reservation.

Irrigable Acreage Studies of the San Xavier Reservation

Described below, in chronological order, are the irrigable acreage studies and estimates for the San Xavier Reservation. Note that most of these studies did not cover the entire reservation so, as a result, the irrigable acreages presented below appear variable over time.

1892 Commissioner of Indian Affairs Annual Report

The Indian Agent for the Pima Agency estimated that there were about 9,000 acres of “good land” on the reservation.

1911 Indian Service Report on Water Development on the Papago Indian Reservation

The Superintendent of Irrigation stated in his report that there were about 1,580 acres of allotted land on the San Xavier Reservation that consist of First Class farming land, most of which was under cultivation at that time. An additional 6,440 acres of allotted land, called timberland, was also considered First Class farming land if irrigation water could be delivered. The estimated total acreage of First Class farming land on the reservation was 8,020 acres.

1919 Indian Service Report on the Southern California and Southern Arizona Reservations

This report estimated that there were about 5,000 acres of irrigable land on the reservation of which 1,530 acres have been under cultivation and the remainder covered by dense mesquite.

1944 Office of Indian Affairs Irrigation Data for the Long Range Program

This report describes a 1934 soil survey and land classification of the area on both sides of the Santa Cruz River. A total of 3,528 acres of reservation land were found to be irrigable including:

- 2,254 acres on the west side of the river (2,155 acres of First Class land and 99 acres of Second, Third, and Temporary Class lands);
- 513 acres northeast of the river (160 acres of First Class land and 353 acres of Second, Third, and Temporary Class lands); and
- 761 acres southeast of the river (231 acres of First Class land and 530 acres of Second, Third, and Temporary Class lands).

1958 BIA (?) Engineering Studies of Land and Water Resources

This report was Special Master's Exhibit No. 17 in *Arizona v. California*, and indicated that there were 1,600 acres currently irrigated on the San Xavier Reservation. Another 2,367 acres on the reservation were estimated as potentially irrigable, for a total irrigable area of 3,967 acres.

1975 U.S. Senate Hearings on Indian Water Rights of the Five Central Tribes of Arizona

In hearings before the Senate Committee on Interior and Insular Affairs, it was reported that the irrigable acreage on the San Xavier Reservation was about 9,000 acres.

1977 U.S. Senate Hearings on S. 905

In hearings before the Senate Committee on Indian Affairs, it was reported that there were 23,700 acres of irrigable acreage on the San Xavier Reservation. This estimate was based on a 1976 BIA land classification study (**Figure 3-1**).

1980 Stetson Report

This report was prepared by Stetson Engineers, Inc. for the BIA and evaluated the potential agricultural and non-agricultural water use on four areas within the TON. The report references a BIA/SCS study that estimated a total 49,960 acres of irrigable land on the San Xavier Reservation.

1988 Franzoy Corey Environmental Assessment (EA) of the San Xavier Farm Rehabilitation Project

An environmental assessment was prepared for BOR by Franzoy Corey Engineers and Architects and included a land classification of the area near the San Xavier Mission. Great Western Research, Inc. (Great Western) was contracted to complete the land classification and mapped a total 1,321 acres west of the Santa Cruz River. Results from its study are shown in **Figure 3-2** and summarized below:

- Class 1 (“lands well suited for irrigation”) – 751 acres;
- Class 2 (“lands moderately well suited for irrigation”) – 471 acres; and
- Class 6 (“lands unsuitable for irrigation development”) – 99 acres.

No lands were mapped as Class 3 (“lands less suited for irrigation development”).

1989 BOR Final Environmental Impact Statement (FEIS) for the San Xavier Development Project (New or 9B Farm)

As part of its evaluation of a proposed irrigation project (the New or 9B Farm) in the northwestern portion of the San Xavier Reservation, BOR estimated the amount of irrigable land using a second land classification study by Great Western. In this study, a total of 13,824 acres were mapped of which 13,737 acres were found to be irrigable by either sprinkler or surface irrigation. Results from the study are shown in **Figure 3-3** and summarized below:

Sprinkler Irrigation

- Class 1 – 219 acres
- Class 2 – 3,406 acres
- Class 3 – 113 acres

Surface Irrigation

- Class 2 – 9,999 acres.

A total of 87 acres were mapped as non-arable (Class 6).

Figure 3-4 shows the proposed irrigation system for the proposed “New” or “9B” Farm, which would cover about 11,000 acres at full development. Due to initial opposition from the District and Nation, construction of this project has not yet begun.

1992 NEA Economic Damages Assessment

As part of its assessment of damages suffered by the San Xavier Allottees from insufficient water supplies, Northwest Economic Associates (NEA) evaluated the potential for agricultural development on the reservation using gravity and sprinkler irrigation. Of the total area of the reservation, an estimated 56,152 acres were suitable for gravity irrigation (**Figure 3-5a**) and 58,478 acres were suitable for sprinkler irrigation (**Figure 3-5b**). Results from the land classification study are summarized in the following table.

**1992 NEA LAND CLASSIFICATION OF THE
SAN XAVIER RESERVATION**

LAND CLASS	ACREAGE USING DIFFERENT IRRIGATION SYSTEM	
	GRAVITY	SPRINKLER
I	13,687	17,520
II	34,998	36,523
III	5,942	3,715
IV (Marginally Arable)	1,525	720
<i>Subtotal</i>	<i>56,152</i>	<i>58,478</i>
VI (Non-arable)	15,773	13,449
<i>Total</i>	<i>71,925</i>	<i>71,927</i>

2003 BOR Draft Irrigation Suitability Land Classification Report for the Papago Water Supply Project

This land classification was completed at the request of the San Xavier District and supplements a previous land study by Great Western that was presented in BOR's 1989 FEIS. The 2003 land classification covered 1,200 acres along the west side of the Santa Cruz and east of Interstate 19. The study indicated that 934 acres would be suitable for sprinkler irrigation and another 247 acres would also be suitable for irrigation, but due to higher salinity, the latter may be limited to salt tolerant crops.

Based on this and previous land classifications, BOR (2006) plans to eventually construct a 2,300-acre Rehabilitation and Extension Farm on lands surrounding the San Xavier Mission in the northeastern portion of the reservation. As described in **Section 2.5.1**, work on the Rehabilitation Farm should be completed later this year (**Figure 2-6**), and design of the Extension Farm is expected to begin by fiscal year 2008 or later.

Potential Agricultural Development on the San Xavier Reservation

ADWR analyzed the potential for agricultural development on the San Xavier Reservation based on its review of the above soil surveys and land classifications, and by considering the following factors:

- When the irrigable acreage study was completed. Due to advances in mapping techniques, recent studies are generally considered more accurate than prior work;
- Whether the study included all or only a portion of the reservation. Studies that covered the entire reservation are considered more representative of the total agricultural potential of the area since consistent mapping procedures were utilized and the work was generally completed over one or a few consecutive field seasons; and
- Whether a farm project was ultimately proposed or completed in the area. The level of effort required to plan, design, and complete a farm suggests the project would be practically or economically feasible.

Historic agricultural lands on the reservation are estimated to have covered a total composite area of approximately 4,800 to 5,900 acres (NEA, 1992 and Wade and Griffin, 1980). Using the factors listed above, ADWR believes that the 2,300 acres of agricultural lands proposed for the Rehabilitation and Extension Farms and the 11,000 acres of lands proposed for full development of the New or 9B Farm comprise a reasonable *lower limit* of the irrigable acreage on the San Xavier Reservation. The BOR (1989 and 2006) has already planned and/or designed these projects which would total 13,300 acres.

ADWR believes a potential *upper limit* of the irrigable acres on the San Xavier Reservation is about 53,200 acres. This limit is based on NEA's 1992 study of the total reservation lands that would be suitable for sprinkler irrigation (58,478 acres). The total was reduced by 9% to account for farm roads, water delivery systems, farm support structures, etc (ADWR, 2006b).

The final step in determining the water development potential of agricultural lands on the San Xavier Reservation is to apply a reasonable water duty to these lands. ADWR identified three water duties that could be used for this purpose:

- 4.5 acre-feet per acre, based on the 1989 BOR FEIS;
- 5.3 acre-feet per acre, based on the 1992 NEA Report; or
- 5.4 acre-feet per acre, based on the 1980 Stetson Report.

Summarized in the table that follows are potential water requirements for the San Xavier Reservation based on the three water duties and the range of irrigable land described above.

**SUMMARY OF POTENTIAL SAN XAVIER RESERVATION
IRRIGATION WATER REQUIREMENTS
(IN ACRE-FEET)**

IRRIGABLE AREA	WATER DUTIES		
	1989 BOR FEIS (4.5 ACRE-FEET/ACRE)	1992 NEA REPORT (5.3 ACRE-FEET/ACRE)	1980 STETSON REPORT (5.4 ACRE-FEET/ACRE)
53,200 acres ("upper limit")	239,400	281,950	287,300
13,300 acres ("lower limit")	59,850	70,490	71,820

Irrigable Acreage Studies of Eastern Schuk Toak

Described below, in chronological order, are the irrigable acreage studies and estimates for Eastern Schuk Toak.

1980 Stetson Report

The 1980 Stetson report prepared for the BIA referenced an SCS study of the irrigable area on the Garcia Strip portion of Eastern Schuk Toak. The study estimated that there are a total of 7,041 acres of irrigable land in this area including 6,056 acres of Class I land and 985 acres of Class III land. Non-irrigable lands totaled 7,439 acres.

The Stetson report also estimated that there could be an additional 4,000 acres of irrigable land on another portion of Eastern Schuk Toak (probably the Vaya Strip) located south of the Garcia Strip.

1988 Franzoy Corey Environmental Assessment (EA) of the Schuk Toak Development Plan

This EA was prepared for BOR by Franzoy Corey and included a land classification of the Garcia Strip. Great Western was contracted to complete the land classification and mapped a total 6,912 acres in the area, of which 6,549 acres were found to be irrigable. Results from its study are shown in **Figure 3-6** and summarized below:

- Class 1 (“lands well suited for irrigation”) – 6,230 acres;
- Class 2 (“lands moderately well suited for irrigation”) – 246 acres;
- Class 3 (“lands less suited for irrigation development”) – 73 acres; and
- Class 6 (“lands unsuitable for irrigation development”) – 363 acres.

Based in part on this land classification, Franzoy Corey (1990) designed a farm on the Garcia Strip. Construction of the 2,000-acre “Schuk Toak New Farm” was completed in 2002. **Figure 2-7**, presented previously, shows its current layout.

1999 NRCS Soil Survey of the Tohono O’odham Nation

In 1999, NRCS published a soil survey for a major portion of the Tohono O’odham Nation, including the lands in Eastern Schuk Toak. ADWR obtained a copy of the soil maps in digital format and correlated these with soil unit descriptions that included land capability classifications for irrigated cropland. The NRCS land capability classes are listed below:

- Class I - few limitations restricting their use;
- Class II - moderate limitations that reduce the choice of plants or that require moderate conservation practices;
- Class III - severe limitations that reduce the choice of plants or that require special conservation practices, or both;
- Class IV - very severe limitations that reduce the choice of plants or that require very careful management, or both;
- Class V - not likely to erode but have other limitations, impractical to remove, that limit their use;
- Class VI - severe limitations that make them unsuitable to cultivation;

- Class VII - very severe limitations that make them unsuitable for cultivation; and
- Class VIII - miscellaneous areas, which have limitations that nearly preclude their use for crop production.

Using this information, ADWR determined that there are 10,703 acres of arable lands (Classes I through IV) and 26,758 acres of non-arable lands (Classes V and above) in Eastern Schuk Toak. **Figure 3-7** shows the distribution of these arable and non-arable lands.

Potential Agricultural Development on Eastern Schuk Toak

ADWR analyzed the potential for agricultural development on Eastern Schuk Toak based on its review of the above soil surveys and land classifications and by considering the same factors that were used to analyze the San Xavier Reservation:

- When the irrigable acreage study was completed;
- Whether the study included all or only a portion of the reservation; and
- Whether a farm project was ultimately proposed or completed in the area.

Using the above factors, ADWR believes that the 2,000 acres of agricultural land on the Garcia Strip used for the Schuk Toak New Farm represents a *lower limit* of the irrigable acreage in Eastern Schuk Toak. The farm was completed in 2002.

ADWR believes a potential *upper limit* of the irrigable acres in Eastern Schuk Toak is about 9,750 acres. This limit is based on NRCS's 1999 soil survey of the Sells Papago Reservation that indicated a total of 10,703 acres of arable land in Eastern Schuk Toak. The total was reduced by 9% to account for farm roads, water delivery systems, farm support structures, etc (ADWR, 2006b).

The final step in determining the water development potential of agricultural lands in Eastern Schuk Toak is to apply a reasonable water duty to these lands. ADWR only identified one water duty that could be used for this purpose, 4.9 acre-feet per acre, proposed by Franzoy Corey in their Schuk Toak Development Plan. Summarized in the following table are potential water requirements for Eastern Schuk Toak based on this water duty and the range of irrigable land described above.

**SUMMARY OF POTENTIAL EASTERN SCHUK TOAK
IRRIGATION WATER REQUIREMENTS
(IN ACRE-FEET)**

IRRIGABLE AREA	WATER DUTY
	1988 FRANZOY COREY EA (4.9 ACRE-FEET/ACRE)
9,750 acres ("upper limit")	47,775
2,000 acres ("lower limit")	9,800

3.2.2 Non-Agricultural Uses

ADWR has limited information on potential future water development on the San Xavier Reservation and Eastern Schuk Toak for non-agricultural uses. The Statements of Claimant (SOCs) filed by the United States on behalf of the San Xavier and Schuk Toak Districts in 1987 do not provide specific plans or a time schedule for future water use (**Chapter 5**). ADWR requested this information from the settling parties and was told that Master Plans are not currently available for either district (TON and others, 2006). Summarized below is the information that was available to ADWR to estimate future water use on the reservations.

San Xavier Reservation

In 1986, BIA issued a report on a proposed planned community for the San Xavier Reservation. The community would be built by an off-reservation developer and include over 16,000 acres of residential, industrial, commercial, and public land use. When complete, it was estimated that the project would have a total potable water demand of 15,400 AFA and generate 10,400 AFA of wastewater. It was planned that the wastewater be reused to meet the project’s non-potable water demand of 9,700 AFA. The District and Allottees ultimately rejected the BIA proposal and a few years later, in

1991, SXAA was formed to assist and educate Allottees regarding land and water use on the reservation (Ramon-Pierson, 2006).

In 1992, NEA prepared an assessment for the SXAA, district council, and farm cooperative regarding the economic damages that had been suffered by Allottees from a loss of surface water and groundwater supplies. This assessment provides an indication of the potential for future water development on the San Xavier Reservation for non-agricultural uses. In the report, the Allottees claim a total water use of 5,000 AFA for present and future non-agricultural purposes including residential, commercial/industrial, and recreation. Another 3,000 AFA were claimed by the Allottees for present and future water leases to Asarco for mining.

Past water use on the San Xavier Reservation also provides some indication of future water use for non-agricultural purposes. As described in **Section 3.1**, on-reservation well pumpage by Asarco has ranged from 400 to 4,700 AFA since 1980, and well pumpage by TOUA for municipal purposes has remained between 100 and 300 AFA over the period. In addition, about 500 to 750 AFA of CAP water has apparently been used for a riparian restoration project recently completed near the Mission, and it is estimated that another 350 AFA may be needed for new restoration projects in the future (AWPF, 2006). Finally, it is estimated that less than 400 AFA has been used to water livestock on the reservation through construction of stock ponds and pumpage from stock wells.

Eastern Schuk Toak

Other than past water use, ADWR has no indication of future water use on Eastern Schuk Toak for non-agricultural purposes. Pumpage from stock and/or domestic wells on the reservation are estimated to have totaled less than 10 AFA, and existing stock ponds are estimated to have a combined capacity of less than 200 acre-feet. ADWR is unaware of any plans to develop the area for municipal or commercial/industrial uses or to begin large-scale mining operations.

Potential Future Use

Based on the preceding discussion and as shown below, ADWR estimates that future water use for non-agricultural purposes could total 9,900 AFA on the San Xavier Reservation and 420 AFA in Eastern Schuk Toak. Estimates of future water use on the San Xavier Reservation for mining and municipal, commercial/industrial, and recreation purposes were taken from NEA (1992), and estimates for riparian restoration were taken from AWPf (2006). To account for a potential increase in herd size, ADWR assumed that future water use for livestock on both reservations would equal twice the estimate of current use. The ADWR has little information related to the water development potential on Eastern Schuk Toak for non-agricultural purposes, so it assumed that existing water uses for these purposes would double in the future.

**POTENTIAL FUTURE WATER USES FOR
NON-AGRICULTURAL PURPOSES
(IN AFA)**

TYPE OF USE	SAN XAVIER RESERVATION	EASTERN SCHUK TOAK
Municipal, Commercial/Industrial, and Recreation	5,000	20
Mining	3,000	0
Riparian Restoration	1,100	0
Livestock	800	400
<i>Total</i>	<i>9,900</i>	<i>420</i>

CHAPTER 4: WATER RESOURCES

This chapter describes water resources that could be available for use on the San Xavier Reservation and Eastern Schuk Toak. Included are surface water supplies, effluent (wastewater), CAP water, and groundwater supplies.

4.1 SURFACE WATER

Figure 4-1 shows the location of major surface water features in the area of the Settling Parties. The Santa Cruz River flows from south to north across the eastern side of the San Xavier Reservation and Brawley Wash flows from south to north across the eastern side of the Garcia Strip on Eastern Schuk Toak. Each stream is discussed further below.

4.1.1 Santa Cruz River

Historic Flow Conditions

Flow in the Santa Cruz River was previously perennial along a reach that began about two miles south of the San Xavier Mission and ended just north of it (Brown and others, 1981). When the Mission was established around 1700, the Spanish, like the Native Americans before them, took advantage of the perennial flows to irrigate nearby fields (**Section 2.3**). The Indian village in the area of the Mission was originally referred to as Wa:k or Wahk (“where the water rises”) and is now named San Xavier del Bac (Rosen, 2001).

River flows near the Mission were maintained year around by two springs – *Aqua de la Mision* and *Punta de Aqua* (**Figure 4-2**). *Aqua de la Mision* fed a marsh and the East or Spring Branch of the Santa Cruz River. *Punta de Aqua* fed the West Branch, which was previously the main channel of the river. Beginning in the late 1800s, a series of events occurred that eventually, either directly or indirectly, caused the springs and this reach of the Santa Cruz River to go dry (Lacher, 1996).

During the 1870s, headcutting (progressive upstream lowering of the channel bed) had begun to affect streams across the southwest, probably in response to an increase in the frequency, duration, and magnitude of flood flows (Bentacourt and Turner, 1988 and Parker, 1993). Along the Santa Cruz River, this regional impact was first noted near the San Xavier Mission in 1871 and apparently was made worse by several local events:

- In 1883, the Santa Cruz River was dammed about six miles north of the Mission, where a second marsh and perennial reach were located near the growing town of Tucson. The dam formed Warner's Lake, which was used to run a nearby flour mill. Five years later, in 1888, Sam Hughes completed a diversion ditch across the river about a mile downstream of Warner's Lake to intercept subsurface flows. Severe headcutting began the next year upstream of the ditch and eventually worked its way south to the Mission (Tellman and others, 1997).
- By 1912, flooding had caused headcutting along the Santa Cruz River to extend 18 miles upstream of Hughes ditch. Near *Punta de Aqua*, the eroded channel was 60 to 100 feet wide, 6 to 20 feet deep, and 2 miles long (Brown and Ingram, 1987). By 1914, the marsh south of San Xavier that was fed by *Aqua de la Mision* had dried up (Wood and Others, 1996).
- In 1915, to prevent floods from destroying farmland near Tucson, engineers constructed an artificial channel about a mile south of the marsh and diverted flows out of the West Branch, the main channel of the river at the time, into the East Branch (Rosen, 2001).
- Between 1915 and 1925, the rerouted Santa Cruz River became more entrenched and direct diversion of surface water became less practical. As a result and in response to growing demand, water was pumped from the river and shallow wells were completed near its banks. As the water table dropped locally and these measures became less effective, infiltration galleries were constructed along the river and operated between 1925 and 1947. Deeper wells also began to be drilled in the area with significant pumping beginning in 1935 (Kupel, 1987).

By 1949/50, perennial flows near the San Xavier Mission had reportedly ceased. The Santa Cruz River had evolved from an ill-defined arroyo with marshes and a wide, active floodplain into a deeply (up to 20 to 30 feet) incised channel with ephemeral flow (Parker, 1993 and Tellman and Yarde, 1996).

Streamflow Data

The United States Geological Survey (USGS) established two streamflow gages on the Santa Cruz River in the vicinity of the San Xavier Reservation. **Figure 4-1** shows the location of the “Continental” and “Tucson” gaging stations, and **Table 4-1** summarizes the streamflow data that have been collected from these stations since the early to mid 1900s. The table lists the identification number of each station along with its contributing drainage and period of record, annual streamflow statistics, years of annual flow record, average seasonal flows as a percentage of annual flows, and the average number of days each year with no flow. The data provide an indication of baseline streamflow conditions along this reach of the Santa Cruz River, but since flow conditions can vary dramatically from year to year, average streamflows may not represent the flow in the river during any given year or month.

As listed in **Table 4-1**, an average of about 16,000 acre-feet of Santa Cruz River water has flowed across the San Xavier Reservation each year, and typically about 80% of this flow has occurred during the summer and fall. During most of the year, the river is dry and only flows in response to storm events. However, due to its relatively large drainage area above the reservation (about 2,000 square miles), the Santa Cruz River can flow at high rates during storms and has caused extensive flood damage in the Tucson area (USGS, 1988).

On October 2, 1983, a peak flow of 45,000 cubic feet per second (cfs) were measured at the Continental gage and 52,700 cfs were measured at the Tucson gage. About ten years later, on January 19, 1993, flow at the gages exceeded 32,000 cfs (USGS, 1998). These and prior flood events on the Santa Cruz River have caused bank erosion and, as a result, the main river channel in the area of the San Xavier Reservation has migrated and widened by almost three times since 1936 (Parker, 1993).

The 1983 flood reportedly removed about 80 acres of farmland near the Mission, and another 45 acres were lost during the 1993 flood (SXCA, 2006). These losses in farmland were attributed to flooding along the main channel of the Santa Cruz River and its West Branch, previously the main channel. Subsequent armoring of the main channel with riprap has stabilized the west side of the river in this area (Franzoy Corey, 1988a), but flooding and bank erosion along the West Branch is still a concern (BOR, 2005).

4.1.2 Brawley Wash

Brawley Wash drains Avra Valley and collects streamflow from Altar Valley, which is located upstream of it and drained by Altar Wash. Flows in Brawley Wash have historically been ephemeral and only occurred in response to storm events (Brown and others, 1981). The USGS established a streamflow gage on Brawley Wash about nine miles upstream of the Garcia Strip. **Figure 4-1** shows the location of the “Three Points” gaging station, and **Table 4-1** summarizes the streamflow data that have been collected from the station.

Since 1993, an average of about 4,000 acre-feet of Brawley Wash water have flowed past Three Points each year, and almost 90% of this flow has occurred during the summer. Like the Santa Cruz River, storms can cause relatively large flows to occur in the wash. During the storm of October 1983, a peak flow of 19,100 cfs were measured at Three Points (USGS, 2006), and in September 1962, a peak flow of 38,800 cfs were measured about two miles downstream of the Garcia Strip at Mile Wide Road (Franzoy Corey, 1990 and USGS, 2006). Where Brawley Wash crosses the Garcia Strip, there previously was no clearly defined stream channel, and flooding would cause sheet flow to spread over a four to five mile wide area (Franzoy Corey, 1990). As described in **Chapter 3**, a farm was completed in this area in 2002, and flood flows in Brawley Wash are now conveyed across Eastern Schuk Toak in three flood channels (**Figure 3-8**).

4.2 EFFLUENT

The Tohono O'odham Utility Authority currently provides water and sewer service to approximately 800 homes on the San Xavier Reservation (TOUA, 2006). About 600 of these homes are permanent residences, and each household uses an average of 350 gallons per day, or about 0.4 AFA. Gallon per capita per day (GPCD) data for the reservation were not provided to ADWR. Seasonal visitors reportedly use the remaining homes.

If it were assumed that 50% of residential water use occurs indoors and most of this water ends up in the sewer, then the permanent residences on the reservation probably generate about 120 acre-feet of wastewater each year. Wastewater from the homes and a 120-acre industrial park near the Mission is treated off-reservation by Pima County and is currently not available for reuse on the reservation. The County provides water and sewer service to the industrial park, and ADWR estimates that this area generates another 40 to 130 AFA of wastewater based on water use by a similar commercial and industrial area on the Gila River Indian Reservation (ADWR, 2006b).

Wastewater generated from Asarco's Mission Complex, located on and adjacent to the San Xavier Reservation, is contained in impoundments and most of it is eventually reused on-site. With the exception of stormwater, no wastewater is currently permitted to be discharged from the complex (EPA, 2003).

Neither municipal nor industrial wastewater is believed to be generated on Eastern Schuk Toak.

4.3 CAP WATER

Arizona has an annual allocation of 2.8 million acre-feet (MAF) of water from the Colorado River. Of this, nearly 1.3 MAF is available to Indian, municipal, industrial, and agricultural water users located along the river. The remainder is diverted via the CAP delivery system to water users in Maricopa, Pinal, and Pima Counties, including certain Indian tribes. CAP water is diverted from the Colorado River at Lake Havasu and delivered through an aqueduct that lifts the water over 2,900 feet and transports it over

330 miles to central and southern Arizona. The CAWCD operates and maintains the CAP (ADWR, 2006b).

In order for an Indian tribe to receive deliveries of CAP water, the Secretary must allocate water to, and enter into a contract with, the tribe. The San Xavier District is currently entitled to 27,000 AFA of Colorado River water and Eastern Schuk Toak is entitled to 10,800 AFA of Colorado River water under an existing CAP contract with the Secretary dated December 11, 1980.

Summarized below are annual diversions of CAP water from the Colorado River from 1985 through 2005. The amount of water delivered has varied over the years for several reasons including demand by users, availability of supply, and the creation of the Arizona Water Banking Authority (AWBA), which stores unused Colorado River water to meet future needs.

**SUMMARY OF CENTRAL ARIZONA PROJECT DIVERSIONS
FROM 1985 THROUGH 2005
(ADWR, 2006b)**

YEAR	DIVERSION (IN 1000s of ACRE-FEET)	YEAR	DIVERSION (IN 1000s of ACRE-FEET)
1985	34	1996	1,196
1986	108	1997	1,414
1987	355	1998	1,228
1988	499	1999	1,388
1989	759	2000	1,424
1990	779	2001	1,523
1991	454	2002	1,582
1992	592	2003	1,685
1993	1,025	2004	1,668
1994	732	2005	1,320
1995	785	2006	---

4.4 GROUNDWATER

This section describes the hydrogeology of the San Xavier Reservation and Eastern Schuk Toak, and includes a general discussion of the local geology and aquifer system beneath and adjacent to the reservation lands, sources of water into and out of the aquifer, the ability of the aquifer to transmit and store water, and well capacities. This is followed by a description of aquifer water levels and directions of flow, water quality conditions, changes in aquifer storage, and land subsidence and sink formation. The section concludes with an analysis of historic and recent groundwater budgets for the reservations.

4.4.1 Hydrogeology

Local Geology

The San Xavier Reservation crosses two sub-basins of the Tucson Active Management Area. The eastern side of the reservation lies in the Upper Santa Cruz Sub-basin and the western side lies in the Avra Valley Sub-basin. All of Eastern Schuk Toak lies in the Avra Valley Sub-basin.

The surface geology of the reservation lands is shown in **Figure 4-3**. On the San Xavier Reservation, bedrock is at or near the surface along a zone that extends from the Sierrita Mountains in the southwest to the Tucson Mountains in the northeast. The zone forms the boundary between the sub-basins and basin-fill deposits flank either side of it. Bedrock is at or near the surface of most lands in Eastern Schuk Toak with the exception of the east side of Garcia Strip where thick deposits of basin-fill are encountered.

Figure 4-4 shows two hydrogeologic cross sections for the region. Cross Section A-A' cuts through the Upper Santa Cruz Sub-basin and includes the east side of the San Xavier Reservation. Cross Section B-B' cuts through Avra Valley and passes about five miles north of the Garcia Strip. Locations of the cross sections are shown in **Figure 4-1**.

The cross sections illustrate how basin-fill deposits thicken toward the center of the two sub-basins. The deposits reach over 2,500 feet thick on the east side of the San Xavier Reservation and over 1,500 feet thick near the east side of the Garcia Strip. Geologists have divided the deposits into several distinct geologic units. The upper

basin-fill consists, from youngest to oldest, of Holocene stream deposits, the Fort Lowell Formation, and upper Tinaja beds. The lower basin-fill consists of the middle and lower Tinaja beds and underlying Pantano Formation. The units vary lithologically from well-cemented conglomerate to unconsolidated gravel, sand, silt, and clay with the clay content generally increasing with depth. Further description of the units is provided on **Figure 4-4**.

Aquifers

Where saturated, the upper and lower units form a basin-fill aquifer system that is the primary source of groundwater in the region. Groundwater is also found locally in the granitic and sedimentary rocks that underlie and are adjacent to the basin-fill. However, due to their relatively low permeability and storage capacity, these rocks are generally not considered an important aquifer in the area (Hollett and Garrett, 1984) and will not be further discussed here. A shallow, perched aquifer has also been identified on the San Xavier Reservation near the Santa Cruz River (SWCA, 2001). The perched aquifer reportedly forms over a clay layer that impedes infiltration of recharge from the river. Depending on river flows, depths to water in the perched aquifer have ranged from 8 to 27 feet below ground surface. By comparison, recent depths to water in the basin-fill aquifer have ranged from 100 to 800 feet beneath the San Xavier Reservation and from 100 to 800 feet below the Garcia Strip in Eastern Schuk Toak (ADWR, 1996).

Aquifer Inflows and Outflows

Inflow to the basin-fill aquifer system occurs in several areas. On the San Xavier Reservation, natural recharge occurs from infiltration of flood flows along the Santa Cruz River and mountain front recharge from the Black and Sierrita Mountains. Underflow enters the reservation from the south via the Upper Santa Cruz and Avra Valley groundwater sub-basins. Cultural recharge also occurs on and near the San Xavier Reservation via seepage from Asarco's tailings ponds, the cooperative farm, and from CAWCD's Pima Mine Road recharge facility located immediately southeast of the reservation. On the Garcia Strip, natural recharge of the basin-fill aquifer occurs from

infiltration of flood flows along Brawley Wash and mountain front recharge from the Roskuge Mountains. Underflow enters the aquifer from the south via the Avra Valley sub-basin. Cultural recharge near the Garcia Strip occurs from Tucson's Central Avra Valley Storage and Recovery Project (CAVSARP) facility located immediately north of the reservation (ADWR, 2006a).

Outflows from the aquifer beneath the San Xavier Reservation occur via wells pumped by Asarco and nearby municipal providers, and through underflow that leaves the reservation to the north. No significant well pumpage is occurring on the Garcia Strip at this time, but outflows from the aquifer in this area result from underflow leaving the reservation to the north (ADWR, 2006a).

Aquifer Transmissivity and Storage

The ability of an aquifer to transmit and store water is described by its transmissivity and specific yield. Transmissivity is a measure of the capability of the entire thickness of an aquifer to transmit water. Transmissivity values for the basin-fill aquifer system beneath the reservation lands vary depending on location. Beneath the Garcia Strip, ADWR estimated the transmissivity of the aquifer through groundwater modeling to range from 10,000 to 30,000 square feet per day (ft²/day). The transmissivity of the aquifer beneath the San Xavier Reservation was estimated to range from 30 to 10,000 ft²/day on the west side of the reservation and from 30 to 30,000 ft²/day on the east side. The highest transmissivity values appear to occur along or immediately adjacent to the Santa Cruz River and Brawley Wash (ADWR, 2006a).

Specific yield is the ratio, expressed here as a percentage, of the volume of stored water that will drain from a porous medium by gravity to the volume of the porous medium. Depending on location and depth, ADWR estimated the specific yield of the basin-fill aquifer through groundwater flow modeling to range from 3% to 15% beneath the Garcia Strip and from 3% to 18% beneath the San Xavier Reservation (ADWR, 2006a).

Well Capacities

Well capacities give a general indication of the quantity of water that can be produced from an aquifer under optimal well conditions. Franzoy Corey (1988s) reported that the capacity of 12 irrigation wells on the east side of the San Xavier Reservation ranged from 200 to 1,170 gallons per minute (gpm). Four wells in the area with the highest discharge had a combined capacity of about 3,500 gpm, but this production was expected to decrease in the future due to declining groundwater levels and well efficiencies. Stetson (1980) reported that water wells completed in the Avra Valley sub-basin had capacities that ranged from over 200 gpm to nearly 3,000 gpm. Several factors can affect well capacities, including local and regional aquifer properties, well design, the size and condition of the pump, and the age of the well.

4.4.2 Water Levels and Flow Directions

Figure 4-5 shows 2005 water level elevations in the basin-fill aquifer beneath and adjacent to the San Xavier Reservation and Garcia Strip on Eastern Schuk Toak. Also shown in the figure are directions of aquifer flow and the quantities of underflow that cross the reservation.

Prior to large-scale development of the aquifer, underflow from the Upper Santa Cruz sub-basin entered and left the San Xavier Reservation along the Santa Cruz River. A cone of depression has formed on the southeast side of the reservation due to well pumpage by Asarco. Adjacent to the cone is a groundwater mound that recently formed due to artificial recharge at the Pima Mine Road Facility. As a result, groundwater flow directions have changed locally and the overall amount of underflow that enters this part of the reservation has declined. The direction of underflow entering the San Xavier Reservation from Avra Valley has not changed substantially since predevelopment time, however, water levels in the area have locally declined due to well pumpage for irrigation and, more recently for municipal use by the City of Tucson. Well pumpage by the City of Tucson in Avra Valley has also caused groundwater levels to decline beneath the Garcia Strip, decreasing the amount of underflow entering this part of Eastern Schuk Toak (ADWR, 2006a and 2006c).

Historic and recent water level data and transmissivity values from ADWR's groundwater model of the Tucson Active Management Area were used to evaluate how the quantity of underflow has changed over time. It is estimated that the total underflow entering the basin-fill aquifer beneath the San Xavier Reservation has decreased from about 11,200 acre-feet in 1940 to about 5,350 acre-feet in 2000. Beneath the Garcia Strip, the total underflow is estimated to have decreased from about 12,225 acre-feet in 1940 to 4,825 acre-feet in 2000. Further discussion of how groundwater budgets have changed over time is presented in **Section 4.4.6**.

4.4.3 Water Quality

The quality of groundwater beneath the San Xavier Reservation and Eastern Schuk Toak is generally good, with concentrations of total dissolved solids (TDS) typically below 500 milligrams per liter (mg/l). TDS concentrations greater than 500 mg/l may make water unsuitable for drinking and some industrial uses, and concentrations greater than about 2,000 mg/l may make it unsuitable for irrigation (Todd, 1980). **Figure 4-3** shows TDS concentrations for several wells that were sampled on reservation lands between 1978 and 1981.

Portions of the aquifer beneath the San Xavier Reservation have been degraded by natural and man-made contaminants. **Figure 4-6** shows that groundwater downgradient of Asarco's tailings ponds, near the southeastern corner of the reservation, had elevated TDS and sulfate concentrations when sampled in 1982. Along the northeastern border of the reservation, groundwater has been contaminated by volatile organic compounds used at a nearby industrial facility (Air Force Plant 44). **Figure 4-7** shows the concentrations of trichloroethylene (TCE) and 1,1-dichloroethylene (1,1-DCE) in groundwater downgradient of the plant in 1999. On and near the reservation, the concentration of these contaminants has exceeded the drinking water standard of 5 micrograms per liter (ug/l) for TCE and 10 ug/l for 1,1-DCE.

Also identified on the San Xavier Reservation, as well as portions of Eastern Schuk Toak, are relatively small areas where the fluoride concentrations in groundwater have exceeded the drinking water standard of 1.4 mg/l (see **Figure 4-3**). The elevated

fluoride concentrations are probably a result of natural sources since some of the affected areas are undeveloped. In addition, elevated nitrate concentrations were measured in 1998 in two wells located along the Santa Cruz River less than a mile from the eastern border of the San Xavier Reservation. The nitrate concentrations in the wells (12.2 and 14.0 mg/l) exceeded the drinking water standard of 10 mg/l and are probably a result of fertilizers applied to irrigated fields in the area (Coes and others, 2000).

Drinking water supplied by wells on the San Xavier Reservation reportedly meet all water quality standards established by the Environmental Protection Agency (BOR, 2005). The TOUA operates four drinking water wells on the reservation that provide water to residential users, school and District offices, and an Indian Health Service clinic.

4.4.4 Changes in Aquifer Storage

Using 2005 water level data and an assumed range of specific yield values from ADWR's Tucson Active Management Area groundwater flow model, ADWR estimates that approximately 5.9 to 7.2 MAF are presently stored in the basin-fill aquifer beneath the San Xavier Reservation. Of this, 4.5 to 5.5 MAF is stored beneath the east side of the reservation and 1.4 to 1.7 MAF is stored beneath the west side. Approximately 0.7 to 0.8 MAF is estimated to be presently stored in the basin-fill aquifer beneath the Garcia Strip (ADWR, 2006c).

To assess how groundwater development on and off reservation lands have affected water levels and storage in the aquifer, ADWR compared its recent water level map (**Figure 4-5**) to historic water level maps of the region. **Figure 4-8** shows the change in aquifer water levels since 1940, and **Figure 4-9** shows the change in aquifer levels since 1983. Based on these water level changes and modeled values for specific yield, changes in storage since 1983 and the total change in storage since 1940 were calculated and are summarized below.

**ESTIMATED CHANGE IN BASIN-FILL AQUIFER STORAGE
(IN ACRE-FEET)^{1,2}**

LOCATION	PERIOD	
	1940 to 2005	1983 to 2005
San Xavier Reservation (East Side)	-190,000 to -227,000	+66,000 to +86,000
San Xavier Reservation (West Side)	-79,000 to -93,000	-55,000 to -67,000
San Xavier Reservation (Total)	-269,000 to -320,000 (average of -4,150 to -4,925 per year)	-1,000 to +31,000
Eastern Schuk Toak (Garcia Strip)	-77,000 to -94,000 (average of -1,175 to -1,450 per year)	-14,000 to -17,000

¹ Positive (+) values indicate an increase in storage, and negative (-) values indicate a loss in storage.

² Source: ADWR, 2006c.

4.4.5 Land Subsidence and Sink Formation

Pit-like holes were reportedly first noted on and near the San Xavier Reservation during the early 1900s, and their number and size apparently increased during the mid-1980s. Hoffman and others (1997) investigated the formation of the sinks and mapped more than 1,750 of them on the reservation. A copy of their report is provided in **Appendix I**. They found that the sinks had variable widths and depths, ranging from a few inches to more than 20 feet. It was concluded from the investigation that possible mechanisms for sink formation include land subsidence related to aquifer compaction and erosion of near-surface materials.

The groundwater level declines described in **Section 4.4.4** have caused measurable land subsidence in the area. Land subsidence apparently occurs when silt and clay deposits in the basin-fill aquifer are dewatered and then compacted (Evans and Pool, 1999). Between 1953 and 1994, from two to six inches of subsidence were measured within two miles east of the reservation. **Figure 4-10** shows sediment compaction and groundwater depths measured at a well near the reservation from 1980 through 1996.

With assistance from BOR, many of the sinks on reservation farmlands have recently been filled and the land reclaimed. Further reclamation of sinks on the reservation is provided for under the Settlement Agreement and discussed in **Section 6.3.1**. The ADWR is not aware of any sinks being mapped in Eastern Schuk Toak.

4.4.6 Water Budgets

This section concludes with a discussion of water budgets for the basin-fill aquifer that underlies the San Xavier Reservation and the Garcia Strip in Eastern Schuk Toak. Historic (1940) and recent (2000) water budgets are presented for both areas and account for water development activities that have occurred on and near these reservation lands.

In this context, a water budget is an annual accounting of the total inflows and outflows to and from an aquifer system. By comparing inflows to outflows, it can be determined whether aquifer storage beneath an area is increasing (inflows exceed outflows) or decreasing (outflows exceed inflows). This, in turn, provides an indication of the volume of well water that can be pumped from an area without overdrafting its aquifer.

Inflow and Outflow Components

Table 4-2 lists the aquifer inflow and outflow components for areas on and near the San Xavier Reservation and Garcia Strip in 1940, and **Table 4-3** lists the flow components for these areas in 2000. Inflows that have contributed water to the basin-fill aquifer beneath the reservation lands include:

- Natural recharge along the mountain fronts and through streambeds of the Santa Cruz River and Brawley Wash;
- Underflow from the Avra Valley and Upper Santa Cruz Sub-basins; and
- Recently, cultural recharge from artificial (managed) recharge facilities and seepage from mine tailings ponds.

Outflows that have removed water from the aquifer include:

- Well pumpage for irrigation and more recently for municipal and industrial purposes;

- Underflow into the Avra Valley and Upper Santa Cruz Sub-basins; and
- Previously, natural discharge by riparian vegetation along the Santa Cruz River near the San Xavier Mission.

The difference between these inflows and outflows is change in aquifer storage.

Pre-1940 Aquifer Conditions

Prior to 1900, the aquifer system beneath the Tucson Active Management Area was in a state of “dynamic equilibrium,” with long-term natural recharge balanced by long-term natural discharge (ADWR, 2006a). Well pumpage was relatively minor and generally limited to stock and domestic uses. Groundwater development in the region began in the early 1900s when the first irrigation wells were constructed in the Upper Santa Cruz Sub-basin to supplement surface water diverted from the Santa Cruz River. Many of these early irrigation wells were drilled close to the river where depths to water were shallow. High capacity irrigation wells were not drilled in the Avra Valley Sub-basin until after 1937.

It has generally been assumed by hydrologists that the regional aquifer system in the Tucson Active Management Area was still in dynamic equilibrium until about 1940 (ADWR, 2006a). Although well pumpage in the region had increased from about 7,000 to 10,000 AFA between 1915 to 1920 to an average of about 35,000 AFA between 1920 to 1940, it is believed that the balance between aquifer inflows and outflows was maintained during the period by a decrease in evapotranspiration from riparian areas that approximately equaled the amount of well pumpage plus a small loss of aquifer storage from areas near the pumping centers. Declines in water levels and losses in aquifer storage were assumed to be relatively small and concentrated in the saturated Holocene alluvium along the Santa Cruz River where most of the irrigation and municipal wells were located. As described in **Section 4.1.1**, this assumption is consistent with the observed transition of the Santa Cruz River near the San Xavier Mission during the period from a perennial to ephemeral stream.

1940 Water Budget

The 1940 water budget presented in **Table 4-2** for the San Xavier Reservation and Garcia Strip is based on a steady-state flow model developed by ADWR (2006a). Based on the above discussion, it was assumed that aquifer inflows equaled aquifer outflows and there was no substantial loss in aquifer storage at that time. For the San Xavier Reservation, aquifer inflows and outflows in 1940 are estimated to have each totaled 15,300 AFA. The inflows consisted of 73% underflow, 21% recharge from the Santa Cruz River, and 6% mountain front recharge. The outflows consisted of 63% underflow, 22% well pumpage, and 15% riparian evapotranspiration.

Beneath the Garcia Strip, aquifer inflows and outflows in 1940 are estimated to have each totaled 12,475 AFA. The inflows consisted of 98% underflow and 2% mountain front recharge, and all of the outflows at that time were underflow.

2000 Water Budget

Since 1940, groundwater budgets for the San Xavier Reservation and Garcia Strip have changed substantially with less underflow entering the reservation lands due to off-reservation well pumpage. The losses in underflow have been partly offset by increases in cultural recharge on and near the reservation lands and less underflow leaving the areas.

In 2000, there was an estimated 17,350 acre-feet of inflow to the aquifer beneath the San Xavier Reservation of which 46% was cultural recharge, 31% was underflow, and 23% was streambed and mountain-front recharge. By comparison, outflows from the aquifer were estimated to total 22,300 acre-feet in 2000 of which 62% was underflow and 38% was well pumpage. By subtracting total outflows by total inflows, it is estimated that the storage in the aquifer beneath the San Xavier Reservation decreased by 4,950 acre-feet in 2000. This compares to an average annual storage loss since 1940 of about 4,150 to 4,925 acre-feet (**Section 4.4.4**). As described in **Chapter 7**, this recent deficit in aquifer storage is expected to change to a surplus in the future with greater use of CAP water on and off the reservation.

Beneath the Garcia Strip, there was an estimated 8,225 acre-feet of total inflow to the aquifer in 2000 consisting of 59% underflow, 38% cultural recharge from a nearby artificial recharge facility, and 3% streambed and mountain-front recharge. All of the outflows from the aquifer that year, estimated to total 6,850 acre-feet, were from underflow. Unlike the San Xavier Reservation, the aquifer beneath the Garcia Strip is estimated to have increased its water in storage during 2000 by 1,375 acre-feet and is expected to reach near steady state flow conditions by year 2025. Since 1940, the average annual storage loss beneath the Garcia Strip is estimated at between 1,175 and 1,450 acre-feet (**Section 4.4.4**).

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CHAPTER 5: SUMMARY OF ADJUDICATION CLAIMS

This chapter summarizes the Statements of Claimant (SOCs) filed by the United States on behalf of the San Xavier and Eastern Schuk Toak Districts of the Tohono O’odham Nation. A copy of the claims and supporting documentation that were submitted by the United States is provided in **Appendix H**. The Nation did not file an SOC for either district.

In both SOCs, the United States claims sufficient water to fulfill the purposes of the San Xavier and the Sells Papago Reservations and to maintain the reservations as permanent tribal homeland for the Tohono O’odham. Among the present and future water uses claimed were agriculture, recreation, municipal/domestic, industry, power, development, wildlife, stockwatering, and other uses. Specific plans and time schedules related to future water use were not provided. The United States indicated that, due to a variety of circumstances, this information was not available at the time that the SOCs were submitted, but it would be provided to the Court when available.

Note that the amounts of water claimed in the SOCs only represent the amounts confirmed by SAWRSA. The SOCs do not represent the total amount of water that could be claimed by the Nation, or the United States on their behalf, in the absence of SAWRSA.

5.1 UNITED STATES’ ADJUDICATION CLAIM ON BEHALF OF THE SAN XAVIER DISTRICT

The United States filed SOC 39-74335 on behalf of the San Xavier District of the Tohono O’odham Nation on July 29, 1987. The claim is summarized below and has not been amended since it was originally filed.

5.1.1 Basis of Claim

The SOC lists the following as the basis of claim for the San Xavier District:

- *Winters* Doctrine Federal Reserved Right
- Southern Arizona Water Rights Settlement Act of 1982 (Public Law 97-293).

5.1.2 Claimed Priority Date

The priority date claimed by the United States for the district is “Time Immemorial.”

5.1.3 Types of Water Uses

Types of water uses claimed include municipal, commercial and industrial, mining, stockwatering (other than from a stockpond), recreation, fish and wildlife, and “other” described as domestic.

5.1.4 Source of Water

The claimed source of water is “Groundwater.”

5.1.5 Point(s) of Diversion

The claim specifies that the points of diversion are “wells within the boundaries of the San Xavier Reservation.”

5.1.6 Other Uses Supplied by the Points of Diversion

Irrigation, domestic, and stockponds are listed as other uses supplied by the claimed points of diversion.

5.1.7 Means of Diversion

The means of diversion is listed as “Other” and described as “wells within the boundaries of the San Xavier Reservation.”

5.1.8 Means of Conveyance

The means of conveyance is also listed as “Other” and described as “wells and conveyance facilities.”

5.1.9 Places of Use

The place of use is claimed as being within Pima County and in Townships 15 through 16 South, Ranges 12 through 13 East (see map attached to SOC in **Appendix H**).

5.1.10 Claimed Right

The United States claims an annual water use of 10,000 acre-feet and “such additional wells having a capacity of less than 35 gallons per minute for domestic and livestock.” This quantity is the limit on the San Xavier District’s groundwater use as specified in Section 306(a) of SAWRSA.

5.2 UNITED STATES’ ADJUDICATION CLAIM ON BEHALF OF THE EASTERN SCHUK TOAK DISTRICT

The United States filed SOC 39-74336 on behalf of the Eastern Schuk Toak District of the Tohono O’odham Nation on July 29, 1987. The claim is summarized below and has not been amended since it was originally filed.

5.2.1 Basis of Claim

The SOC lists the following as the basis of claim for the Schuk Toak District:

- *Winters* Doctrine Federal Reserved Right
- Southern Arizona Water Rights Settlement Act of 1982 (Public Law 97-293).

5.2.2 Claimed Priority Date

The priority date claimed by the United States for the district is “Time Immemorial.”

5.2.3 Types of Water Uses

Types of water uses claimed include municipal, commercial and industrial, stockwatering (other than from a stockpond), and “other” described as domestic.

5.2.4 Source of Water

The claimed source of water is “Groundwater.”

5.2.5 Point(s) of Diversion

The claim specifies that the points of diversion are “wells within the boundaries of the Eastern Schuk Toak District of the Sells Papago Reservation.”

5.2.6 Other Uses Supplied by the Points of Diversion

Domestic and stockponds are listed as other uses supplied by the claimed points of diversion.

5.2.7 Means of Diversion

The means of diversion is listed as “Other” and described as “wells within the boundaries of the Eastern Schuk Toak District of the Sells Papago Reservation.”

5.2.8 Means of Conveyance

The means of conveyance is also listed as “Other” and described as “wells and conveyance facilities.”

5.2.9 Places of Use

The place of use is claimed as being within Pima County and in Townships 12 through 17 South, Ranges 5 through 11 East (see map attached to SOC in **Appendix H**).

5.2.10 Claimed Right

The United States indicates in its attachment to the SOC that SAWRSA settled the Tohono O’odham Nation water right claims for Eastern Schuk Toak and limited the annual water use in the area. Its claim is for that quantity of water being withdrawn on January 1, 1981 for domestic, stockwatering, and commercial/industrial purposes, and for such additional water from wells having a capacity of less than 35 gallons per minute for domestic and livestock purposes.

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CHAPTER 6: SUMMARY OF THE SETTLEMENT AGREEMENT

As discussed in **Chapter 1**, a series of cases filed by the Nation, the Allottees, and the United States in the Federal District Court for the District of Arizona ultimately resulted in two federal legislative settlements – first SAWRSA in 1982, followed by the SAWRSA Amendments in 2004. The Settlement Agreement (including the Related Agreements and other Exhibits) incorporates much of the SAWRSA Amendments and binds all of the Settling Parties to the settlement. The Settlement Agreement becomes effective on the Enforceability Date, which is the date of publication by the Secretary of certain findings in the Federal Register that must occur on or before December 31, 2007. The enforceability conditions that must be satisfied are described below in **Section 6.5**. This chapter summarizes the significant provisions of the Settlement Agreement and those portions of the SAWRSA Amendments incorporated therein. Accordingly, in addition to citations to the Settlement Agreement, parallel citations to the SAWRSA Amendments are provided where appropriate.¹

6.1 SUMMARY OF PROPOSED WATER RIGHTS AND USES

Pursuant to Paragraph 4.1 of the Settlement Agreement, the Nation is entitled to the following water rights within the Tucson Management Area.

¹Unless otherwise indicated in this chapter, “Paragraph” and the symbol “¶” refer to paragraphs or subparagraphs of the Settlement Agreement, and “Section” and the symbol “§” refer to sections or subsections of the SAWRSA Amendments. The bold term “**Section**” refers to sections of chapters of this report.

SOURCE		AMOUNT (AFY)
Groundwater ¹		13,200
	San Xavier Reservation	10,000
	Eastern Schuk Toak	3,200
Contracted CAP Indian Priority Water		37,800
	San Xavier Reservation	27,000
	Eastern Schuk Toak	10,800
New CAP Non Indian Agricultural Priority Water		28,200
	San Xavier Reservation	23,000
	Eastern Schuk Toak	5,200
TOTAL		79,200

¹As set forth in **Section 6.2.2**, groundwater made available under the Settlement Agreement is limited by both physical availability and recoverability.

The Nation may use the water identified above for any use, and at any location within the Nation’s reservation boundaries² except to the extent that use of storage credits and deferred storage credits (**Section 6.2.2**) causes a withdrawal of groundwater in violation of Federal law. ¶¶ 4.2, 4.3, § 309. The water may be used outside the reservation boundaries and within the State only as follows: (1) groundwater may be used as allowed by the Asarco Agreement (**Section 6.3.2**); (2) CAP water may be used within the CAP service area (**Section 6.2.1**); and (3) marketable groundwater credits earned by the Nation (**Section 6.2.2**) may be used only in accordance with State law. ¶ 4.4. The Nation may not lease, exchange, forbear or transfer CAP water for direct or indirect use outside the State. ¶ 4.5.

²The reservation boundaries are identified Paragraph 2.58 of the Settlement Agreement and extend well outside the Tucson Management Area. *See also* **Figure 1-1**.

6.2 SETTLEMENT WATER

6.2.1 CAP Water

The CAP is a reclamation project that was authorized and constructed by the United States under the Colorado River Basin Project Act. *See* 43 U.S.C. §§ 1521 *et seq.* (1968). The Secretary allocates CAP water for delivery under certain contracts and subcontracts upon consultation with ADWR. *See* A.R.S. § 45-107. The CAP is managed and operated by the Central Arizona Water Conservation District (“CAWCD”), which is the State agency responsible for making water deliveries from the CAP system.

The Settlement Agreement requires the Secretary to deliver a total of 66,000 AFY of CAP water, which is divided into the two categories discussed below. This CAP water may be used for any use within the Nation’s reservation boundaries, and for uses outside the Nation’s reservation boundaries as discussed herein. The Allottees, the San Xavier District, and other persons within the San Xavier Reservation receive the first right of beneficial use to 35,000 AFY of delivered CAP water (*see* § 307(a)(1)(G)(i)); however, unused portions of this 35,000 AFY may be used by the Nation as allowed by the Settlement Agreement subject to call-back by the Allottees and the San Xavier District. *Id.*

As noted, the 66,000 AFY is separated into two categories. First, the Secretary is required to deliver 37,800 AFY of CAP water suitable for agriculture pursuant to an existing contract between the Nation and the United States dated December 11, 1980 (“1980 CAP Contract”). ¶ 5.1.1. Originally confirmed by SAWRSA, the 1980 CAP Contract will be superseded by an amended version (“Amended CAP Contract,” attached to the Settlement Agreement at **Exhibit 5.2**), which becomes effective on the Enforceability Date.³

Second, the Secretary is obligated to deliver 28,200 AFY of CAP non-Indian agricultural priority water (“CAP NIA Priority Water”). ¶ 5.1.2. Pursuant to Paragraph 5.10.1 and Section 105(b) of the Settlements Act, the Secretary is obligated to firm this

³Pursuant to Paragraph 5.2, the Amended CAP Contract incorporates required amendments listed in Section 309(g) of the SAWRSA Amendments, which are designed to bring the 1980 CAP Contract into conformity with the Settlements Act and the SAWRSA Amendments.

amount to the equivalent of CAP municipal and industrial priority water (“CAP M&I Priority Water”) (which, as discussed below, is a higher priority than CAP NIA Priority Water, and therefore of higher reliability) for a period of 100 years after the Enforceability Date. The State is obligated to assist in this firming obligation by providing \$3,000,000 in cash or in-kind goods and services. ¶ 5.10.2, § 306(b), Settlements Act, § 105(b)(2). In 2006, the Arizona Legislature enacted A.R.S. § 45-2491 (**Appendix F-1**), which provides authority to the AWBA to enter into contracts or agreements to satisfy Indian firming commitments. According to the AWBA, it is currently working with the Secretary to fulfill the firming requirements set forth in the Settlement Agreement.

The Secretary is required to deliver 66,000 AFY regardless of declarations by the Secretary of a water shortage on the Colorado River. ¶ 5.1.3. If CAP water is not available, then the Secretary may deliver an equivalent quantity from “any appropriate source,” so long as alternate sources do not cause depletion of either the groundwater supplies or aquifers in either the San Xavier District or Eastern Schuk Toak. *Id.*, § 305(b)(1). If the Secretary is unable to satisfy its delivery obligation, then the Secretary shall provide monetary compensation as set forth in Section 304(a) of the SAWRSA Amendments. ¶ 5.14. Additionally, the Nation may be entitled to withdraw additional groundwater to compensate for the deficiency (**Section 6.2.2**).

Of the 37,800 AFY deliverable pursuant to the Amended CAP Contract, 27,000 is to be delivered to the San Xavier Reservation and 10,800 AFY is to be delivered to Eastern Schuk Toak. ¶¶ 5.1.1.1, 5.1.1.2. Of the 28,200 AFY of CAP NIA Priority Water, 23,000 AFY is to be delivered to the San Xavier Reservation, and 5,200 AFY is to be delivered to Eastern Schuk Toak. ¶¶ 5.1.2.1, 5.1.2.2. However, the Nation and the Secretary may agree to alternative delivery amounts and locations anywhere within the area that CAWCD delivers CAP water (“CAP Service Area”).⁴ ¶¶ 5.1.1-5.1.2, § 309(b).

⁴Alternative deliveries may be made provided that the first right of beneficial use requirements of Section 307(a)(1)(G)(i) of the SAWRSA Amendments are satisfied – 35,000 AFY must first be made available to the Allottees and other persons within the San Xavier Reservation.

The Nation may lease CAP water within the CAP Service Area for a term of up to 100 years for uses authorized under applicable law. ¶¶ 11.1, 11.3, § 309(c). The Nation may not lease, exchange, forbear or otherwise transfer CAP water for any direct or indirect use outside of the State. ¶ 4.5, § 309(b)(1)(E). Additionally, leased CAP water may not be transferred, assigned, or subleased by the lessee. ¶ 11.3.5. Any lease agreement for CAP water must be accepted by the Nation, approved by the United States, ratified by the Nation’s Legislative Council, and allow the contracting party to bring suit against the Secretary and the United States for any breach of contract by the Secretary or the United States. § 309(c)(4). Additionally, the lease must contain certain terms and conditions that are contained in the standard CAP subcontract form attached to the Settlement Agreement at **Exhibit 11.3**. ¶ 11.3.6.

Any lease for CAP water with a term exceeding 25 years must comply with the provisions of Paragraph 11.3.7, which require the Nation to first solicit proposals for such leases from users within the Tucson Management Area. If the Nation does not receive a proposal to its initial offer from users within the Tucson Management Area, it may solicit proposals from outside the Tucson Management Area, and may accept such proposals under the conditions listed in Paragraph 11.3.7.2. Generally, Paragraph 11.3.7.2 requires the Nation to notice such proposed transactions and accept matching or superior counteroffers from users within the Tucson Active Management Area.

In the event that there is a shortage of water in the CAP system to satisfy certain entitlements, deliveries of CAP water will be reduced according to a complex system of shortage sharing criteria described in Paragraph 5.3 of the Settlement Agreement. Under these criteria, the highest priority is a shared priority for certain Indian and CAP M&I Priority Water, and the lowest priority is CAP NIA Priority Water. ¶¶ 5.3.2, 5.3.3.3. The Secretary must include similar shortage sharing provisions in new Indian contracts or any amended contracts that increase the term or quantity of water. ¶ 5.3.4.5. These provisions will not apply, however, to the renewal of any Indian contract existing on December 10, 2004, or certain water acquired for the Ak-Chin and Salt River Pima-Maricopa water rights settlements. ¶¶ 5.3.4.5, 5.3.4.6.

6.2.2 Groundwater

Other than in accordance with the exceptions discussed below, the Nation agrees to limit its groundwater pumping from non-exempt wells⁵ to 10,000 AFY from beneath the San Xavier Reservation, and to 3,200 AFY from beneath Eastern Schuk Toak. ¶¶ 8.1.1, 8.1.2. However, the right to pump this groundwater is considered a “blind pumping right” in that the Nation receives no guarantee that amounts agreed to in the Settlement Agreement either physically exist or are actually recoverable. § 308(f)(3). Pumped groundwater may be used for any purpose inside the Nation’s reservation boundaries, and certain storage credits may be transferred to persons outside the Nation’s reservation boundaries as discussed below. The Allottees, the San Xavier District, and other persons within the San Xavier Reservation receive the first right of beneficial use to the 10,000 AFY of groundwater pumped from the San Xavier Reservation. § 307(a)(1)(G)(i).

The Nation is entitled to additional groundwater pumping under certain circumstances. First, the Nation may store and recover deferred pumping storage credits on both the San Xavier Reservation and Eastern Schuk Toak in accordance with Paragraphs 8.5 and 8.6.2. The Nation receives initial credits in deferred storage accounts (“Deferred Pumping Storage Account(s)”) in the amount of 50,000 for the San Xavier Reservation, and 16,000 for Eastern Schuk Toak. ¶¶ 8.6.2.1.1, 8.6.2.2.1. Any part of the 10,000 AFY or 3,200 AFY allowed under the Settlement Agreement that is not pumped in any particular year from the San Xavier Reservation or Eastern Schuk Toak, respectively, is credited to the appropriate Deferred Pumping Storage Account. ¶¶ 8.6.2.1.2.1.1, 8.6.2.2.2.1.1. These deferred storage credits may be recovered at any time in addition to groundwater pumped in accordance with Paragraph 8.1, except that recovery of deferred storage credits may not exceed 10,000 acre-feet in any one year or 50,000 acre-feet over a ten-year period from the San Xavier Reservation, or 3,200

⁵Wells that pump less than 35 gallons per minute for domestic, livestock, irrigation of less than two acres, or human consumption purposes are exempt from the groundwater limitations of the Settlement Agreement. ¶¶ 8.1, 2.45, § 308(g).

acre-feet in any one year or 16,000 acre-feet over a ten year period from Eastern Schuk Toak. ¶¶ 8.5.1.2, 8.5.2.2.

Second, the Nation may establish storage and recovery projects within the San Xavier Reservation and Eastern Schuk Toak. ¶ 8.2, § 308(e). Water stored and recovered from these projects shall be credited and debited to and from storage accounts (“Direct Storage Account(s)”) as set forth in Paragraph 8.6.1. The Nation may transfer or assign credits from the Direct Storage Accounts to persons outside the Nation’s reservation for recovery only in accordance with State law⁶ (“Marketable Credits”). ¶¶ 8.4.2, 11.2, § 309(b)(2)(C).⁷ The Allottees, the San Xavier District, and other persons within the San Xavier Reservation retain the first right of beneficial use of all non-Marketable Credits in the Direct Storage Accounts. ¶ 8.4.1.

Finally, Paragraph 8.7 delineates the circumstances under which the Nation may pump additional groundwater (if physically available) from the San Xavier Reservation and Eastern Schuk Toak in any year in which the Secretary fails to deliver 66,000 AFY, as required by Paragraph 5.1.3, and no groundwater credits remain for use. Examples of groundwater pumping allowances under Paragraph 8.7 are contained in **Exhibit 8.7**.

Groundwater Protection Program

The Settling Parties stipulate in Paragraph 8.8 to support the enactment of State legislation designed to protect groundwater in the vicinity of the San Xavier Reservation. In 2005, the State Legislature conditionally enacted the “Tohono O’odham Water Settlement Program,” Article 2 of which is the “San Xavier Reservation Water Protection Program” (“Groundwater Protection Program”). A.R.S. § 45-2701 *et seq.* (**Appendix F-2**). The legislation is conditional in that it only becomes effective if both the

⁶Applicable State law is not identified in either the Settlement Agreement or the SAWRSA Amendments.

⁷Groundwater credits may also be earned and transferred in accordance with the Asarco Agreement discussed in **Section 6.3.2**.

SAWRSA Amendments and the GRIC Water Rights Settlement Act of 2004 (Title II of the Settlements Act) become enforceable.⁸

Once the Groundwater Protection Program becomes effective, any application for a well or group of wells within two miles of the San Xavier Reservation boundary that collectively pump 500 gallons per minute or more shall be denied by ADWR's Director unless the applicant can satisfy certain conditions set forth in A.R.S. § 45-2711(B). Additionally, before making a determination on the application, A.R.S. § 45-2712 requires that ADWR provide the Nation notice of the application and an opportunity to object. Applications for all other non-exempt wells⁹ within the Tucson Active Management Area will be denied if ADWR's Director determines, as set forth in Section 45-2711(A), that the well will cause a ten foot or more water level decline at any point on the exterior boundary of the San Xavier Reservation during the first five years of withdrawals.

Additionally, the legislation makes clear that the Gila Court has jurisdiction over "all civil actions relating to the interpretation and enforcement" of the Groundwater Protection Program, the SAWRSA Amendments, and the Settlement Agreement. A.R.S. § 45-2702. This satisfies the requirement of Paragraph 17.2, which requires the Settlement Parties to support the enactment of legislation confirming the jurisdiction of the Gila Court over the SAWRSA Amendments.

6.3 RELATED AGREEMENTS

6.3.1 Tucson Agreement

The Tucson Agreement (**Exhibit 12.1**) was entered into between the Nation, the San Xavier Allottee classes of the Consolidated Litigation, the City of Tucson, and the United States, and becomes effective on the Enforceability Date. The Tucson Agreement

⁸**Section 6.5** of this report discusses enforceability of the SAWRSA Amendments and the Settlement Agreement, while the requirements for enforceability of the GRIC Water Rights Settlement Act of 2004 are located in Section 207(c)(1) of the Settlements Act.

⁹Generally, wells that pump less than 35 gallons per minute are not subject to this legislation, provided they meet all the requirements of A.R.S. § 45-454.

becomes void and unenforceable if the Settlement Agreement fails to become enforceable (**Section 6.5**). Tucson Agreement, Recital G, ¶ 3.5.¹⁰ The Tucson Agreement addresses the issues of “Land Subsidence”¹¹ and “Sinkhole(s),”¹² and is enforceable in either the Gila Court or the Federal District Court. ¶ 4.1.

The City of Tucson agrees to pay \$300,000.00 to the San Xavier District in five annual \$60,000.00 installments, beginning 180 days or sooner after the Enforceability Date, for the repair of sinkholes. ¶ 2.1. Within 90 days of the Enforceability Date, the San Xavier District must adopt a resolution specifying the procedure by which the Nation and beneficial owners of land within the San Xavier Reservation may obtain funds to repair sinkholes on their land. ¶ 2.2. The resolution must also allow the use of sinkhole repair funds for purposes other than sinkhole repair under certain circumstances. *Id.*

Article 3 of the Tucson Agreement deals with the release and limitations of claims by the parties. The Nation and the United States on their behalf waive all past, present, and future claims against the City of Tucson for injury to land within the Tucson Management Area resulting from sinkholes. ¶¶ 3.1.1, 3.3.1. The San Xavier Allottees and the United States on their behalf waive all past, present, and future claims against the City of Tucson for injury to land within the Tucson Management Area resulting from sinkholes, land subsidence or erosion. ¶¶ 3.2.1, 3.4. Claims by the Nation for injury to land within San Xavier Reservation and Eastern Schuk Toak resulting from land subsidence or erosion against the City of Tucson are preserved if the administrative procedures specified in Paragraph 3.6.1 are followed.

¹⁰In this **Section 6.3.1**, the term “Paragraph” and the symbol “¶” refer to sections of the Tucson Agreement.

¹¹Land subsidence is defined in Paragraph 1.1 as “injury to land, water or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling is caused by the pumping of water; land subsidence shall not include ‘Sinkholes’ as defined [in Paragraph 1.2].”

¹²Sinkhole(s) is defined in Paragraph 1.2 as “sinks, sinkholes or depressions occurring within the San Xavier Reservation and thought to be caused by several types of compaction and erosion of near surface materials. Sinkholes typically range in size and depth from shallow depressions of a few inches to 20 feet with steep sides.”

6.3.2 Asarco Agreement

The Asarco Agreement was entered into among the Nation, the San Xavier District, the San Xavier Allottee classes of the Consolidated Litigation, the United States and Asarco, and becomes effective on the Enforceability Date. Asarco Agreement, ¶ 1.9.¹³ The Asarco Agreement mainly concerns the delivery of CAP water to Asarco by the Nation and a contingent settlement of the groundwater contamination claim against Asarco that is included in the Alvarez Case.

Under the Asarco Agreement, the Nation will deliver up to 10,000 AFY of CAP water to Asarco for use at its mine related facilities located on and near the San Xavier Reservation, which Asarco agrees to use in lieu of groundwater withdrawals at those locations. ¶ 2.1. Asarco agrees to pay \$15 per acre-foot for CAP water delivered for use on lands located on the San Xavier Reservation, and \$20 per acre-foot for CAP water used elsewhere for a period of five years after the first deliveries of CAP water by the Nation (the “Accrual Date”). ¶ 2.2. Every five years after the Accrual Date, the price for delivery increases by 13%. *Id.* These delivery obligations terminate at the earlier of either the completion of use by Asarco or 25 years after the Enforceability Date, although the Nation may choose to continue deliveries for an additional 10-25 years after the Enforceability Date if Asarco continues to mine and process ore. ¶¶ 1.17, 2.6.

Under legislation passed by the State, A.R.S. § 45-841.01 “Accrual of Long-Term Storage Credits; Indian Water Rights Settlements” (**Appendix F-3**), the Nation may be entitled to earn long-term storage credits by delivering CAP water to Asarco that is used in lieu of grandfathered groundwater withdrawals. A.R.S. § 45- 841.01 is conditional in that it only becomes effective if the both the SAWRSA Amendments and the GRIC Water Rights Settlement Act of 2004 (Title II of the Settlements Act) become enforceable.¹⁴ Storage credits earned under this legislation will be owned by the Nation and shall be allocated between the Nation and the San Xavier District by internal

¹³In this **Section 6.3.2**, unless otherwise stated, the term “Paragraph” and the symbol “¶” refer to sections of the Asarco Agreement.

¹⁴**Section 6.5** of this report discusses enforceability of the SAWRSA Amendments and the Settlement Agreement, while the requirements for enforceability of the GRIC Water Rights Settlement Act of 2004 are located in Section 207(c)(1) of the Settlements Act.

agreement.¹⁵ ¶¶ 5.1, 5.3. These credits would constitute Marketable Credits, and could therefore be sold, leased, or transferred off-reservation under the Settlement Agreement. Settlement Agreement at ¶¶ 8.4.2, 11.2, § 309(b)(2)(C).

The Nation, the San Xavier Allottees, the United States in its capacity as trustee, and the San Xavier District waive and release all claims against Asarco: (1) arising from withdrawals of groundwater from the Tucson Management Area on or before the Enforceability Date; and (2) all claims against Asarco arising from the withdrawal of groundwater from the Tucson Management Area after the Enforceability Date to the extent that such withdrawals are made pursuant to certain State law water rights and in accordance with the Asarco Agreement. ¶¶ 6.2, 6.3. Asarco waives all claims against the Nation, the San Xavier Allottees, the San Xavier District, and the United States arising from the withdrawal of groundwater on or before the Enforceability Date from the Nation’s reservation lands inside the Tucson Management Area. ¶ 6.4. Finally, Asarco waives all claims against the Nation, the San Xavier Allottees, the San Xavier District, and the United States arising from the withdrawal of groundwater after the Enforceability Date to the extent that the Settlement Agreement authorizes such withdrawals. ¶ 6.5.

The Asarco Agreement also provides for a contingent settlement of the groundwater contamination claim against Asarco included in the Alvarez Case, which goes into effect only if Asarco begins to use the Nation’s CAP water in lieu of groundwater withdrawals within three years of the Enforceability Date. ¶¶ 7.5.1, 7.5.2. If Asarco does begin to use the Nation’s CAP water, then the Nation, the San Xavier District, the San Xavier Allottees, and the United States waive and release Asarco from certain claims for damages arising out of the degradation of groundwater, but not claims for damages to groundwater based on exceedences of Federal or State standards for toxic or hazardous substances. ¶¶ 7.5, 7.5.4. Additionally, the named class representatives agree to file a motion for the court to certify a “non-opt-out” subclass including all owners of interests in trust allotments on the San Xavier Reservation, and to dismiss the

¹⁵Before allocation between the Nation and the San Xavier District, these credits must first be used to repay any loan made by the Nation to Asarco for construction of CAP water delivery infrastructure as authorized by Paragraphs 4.2, 5.2, and 5.3.

Alvarez Case’s Fourth Cause of Action with prejudice within 30 days of the Accrual Period. ¶ 7.5.3. Finally, Asarco will make certain payments into a settlement fund as described and administered in Paragraphs 7.1 through 7.4, concurrent with delivery of CAP water.

6.3.3 FICO Agreement

The FICO Agreement (**Exhibit 14.1**) was entered into between the Nation, the San Xavier District, the San Xavier Allottee classes of the Consolidated Litigation, FICO, and the United States, and becomes effective on the Enforceability Date. FICO Agreement, ¶ 1.1.¹⁶ The FICO Agreement addresses the issue of groundwater pumping by FICO and contains certain specific waivers and releases between the parties. Remedies for breach of the FICO Agreement are limited to equitable, declaratory, and injunctive relief, and do not include payment of damages. ¶ 4.2.

Under the FICO Agreement, FICO agrees to limit withdrawal of its State law grandfathered groundwater rights on its lands¹⁷ that are located within two miles of the San Xavier Reservation to no more than 850 AFY¹⁸ on a three-year rolling average. ¶ 2.1. Additionally, FICO agrees to limit groundwater withdrawals on all of its lands to 36,000 AFY¹⁹ on a three-year rolling average. ¶ 2.2. Finally, FICO agrees to refrain from selling groundwater credits accumulated under A.R.S. § 45-467 to third parties for withdrawal at any location within three miles of the Nation’s reservation boundaries. ¶ 2.3.

The Nation, the San Xavier Allottees, and the United States in its capacity as trustee waive and release all claims against FICO arising from withdrawals of groundwater from the Tucson Management Area on or before the Enforceability Date. ¶¶ 3.1, 3.3. Additionally, the Nation, the San Xavier Allottees, and the United States in

¹⁶In this **Section 6.3.3**, the term “Paragraph” and the symbol “¶” refer to sections of the FICO Agreement.

¹⁷FICO owned lands are listed in Exhibit A to the FICO Agreement, and FICO owned lands within two miles of the San Xavier Reservation are listed in Exhibit B to the FICO Agreement.

¹⁸This amount does not include certain withdrawals from underwater storage facilities. *See* ¶ 2.1.

¹⁹This amount does not include the withdrawal of “stored water” as that term is defined in A.R.S. § 45-801.01, which has been stored on FICO lands as of the Enforceability Date. ¶ 2.2.

its capacity as trustee waive all claims against FICO arising from the withdrawal of groundwater from the Tucson Management Area after the Enforceability Date to the extent that such withdrawals are made pursuant to certain State law water rights and in accordance with the FICO Agreement. ¶¶ 3.2, 3.3. FICO waives all claims against the Nation, the San Xavier Allottees and the United States arising from the withdrawal of groundwater on or before the Enforceability Date from the Nation's reservation lands inside the Tucson Management Area. ¶ 3.4. Finally, FICO waives all claims against the Nation, the San Xavier Allottees, and the United States arising from the withdrawal of groundwater after the Enforceability Date to the extent that the Settlement Agreement authorizes such withdrawals. ¶ 3.5.

6.4 WAIVERS AND RETENTIONS OF CLAIMS

Paragraph 15 of the Settlement Agreement sets forth the waivers and releases of claims by the Nation, the Allottees, and the United States in its capacity as trustee for the Nation and the Allottees. Additional waivers and limitations of claims between certain Settling Parties are contained in the Related Agreements as discussed in **Sections 6.3.1** through **6.3.3** above. Furthermore, the Settling Parties retain the right to bring claims for declaratory and injunctive relief to enforce the terms, conditions, and limitations of the Settlement Agreement, and for monetary relief as limited by Section 312(h) of the SAWRSA Amendments. ¶ 18.17. The waivers contained in Paragraph 15 are set forth below.

6.4.1 Waivers by the Nation

Except as retained under the Groundwater Protection Program (**Section 6.4.4**), the Nation waives and releases the following claims, which become effective on the Enforceability Date:²⁰

²⁰Unless specifically stated otherwise, the waivers by the Nation apply to the United States (including agencies and political subdivisions), the State of Arizona, municipal corporations, and any other person or entity.

- Past, present, and future claims for water rights (including claims based on aboriginal occupancy and Federal groundwater claims) for lands within the Tucson Management Area. ¶¶ 8.9, 15.1.1.1, 15.1.1.2.
- Past and present (through the Enforceability Date) claims for injury to water rights to lands within the Tucson Management Area. ¶¶ 15.1.1.1, 15.1.1.2.
- Future claims (arising after the Enforceability Date) for injury to water rights on the San Xavier Reservation and Eastern Schuk Toak resulting from off-reservation diversion or use of water in accordance with State law or the Settlement Agreement. ¶ 15.1.1.3.
- Past and present (through the Enforceability Date) claims against the United States for failure to protect, acquire, or develop water rights for the San Xavier Reservation and Eastern Schuk Toak. ¶ 15.1.1.2.
- Past, present, and future claims arising out of or relating to the negotiation, execution or enactment of the Settlement Agreement, and the SAWRSA Amendments. ¶ 15.1.1.4.

6.4.2 Waivers by the Allottees

The Allottee classes of the Consolidated Litigation waive and release the following claims, which become effective on the Enforceability Date:²¹

- Past, present, and future claims for water rights (including claims based on aboriginal occupancy) for lands within the San Xavier Reservation.²² ¶¶ 15.2.1.1, 15.2.1.2.
- Past, present, and future²³ claims for injury to water rights to lands within the San Xavier Reservation. ¶¶ 15.2.1.1, 15.2.1.2.

²¹Unless specifically stated otherwise, the waivers by the Allottees apply to the United States, the State of Arizona (including agencies and political subdivisions), municipal corporations, and any other person or entity.

²²The waivers in Paragraph 15.2.1.1 do not apply to the Nation. Waivers against the Nation are set forth in Paragraph 15.2.1.5.

²³The waiver by the Allottees of all future claims for injury to water rights set forth in Paragraph 15.2.1.1 is broader than waivers contained in the SAWRSA Amendments. *See* § 312(b)(1), (3).

- Future claims (arising after the Enforceability Date) for injury to water rights on the San Xavier Reservation resulting from off-reservation diversion or use of water in accordance with State law or the Settlement Agreement. ¶ 15.2.1.3.
- Past and present (through the Enforceability Date) claims against the United States for failure to protect, acquire, or develop water rights for the San Xavier Reservation. ¶ 15.2.1.2.
- Past, present and future claims arising out of or relating to the negotiation, execution, or enactment of the Settlement Agreement and the SAWRSA Amendments. ¶ 15.2.1.4.
- Past, present, and future claims for water rights and past and present (through the Enforceability Date) claims for injury to water rights against the Nation. ¶ 15.2.1.5. However, the Allottees specifically retain the right to enforce water rights provided in the SAWRSA Amendments against the Nation. *Id.*

6.4.3 Waivers by the United States

Except as retained under the Groundwater Protection Program (**Section 6.4.4**), the United States on behalf of the Nation and the Allottees waives and releases the following claims:²⁴

- Past, present, and future claims for water rights (including claims based on aboriginal occupancy and Federal groundwater claims) for land within the Tucson Management Area. ¶¶ 8.9, 15.3.1.1.
- Past and present (through the Enforceability Date) claims for injury to water rights for land within the Tucson Management Area, and future claims for injury to water rights on the San Xavier Reservation and Eastern Schuk Toak resulting from the off-reservation diversion or use of water in accordance with State law or the Settlement Agreement. ¶ 15.3.1.2.

²⁴Unless specifically stated otherwise, the waivers by the United States apply to the Nation (*i.e.*, claims by the United States on behalf of the Allottees against the Nation), the State of Arizona (including agencies and political subdivisions), municipal corporations, and any other person or entity.

- Claims on behalf of the Allottees for injury to water rights arising on or after the Enforceability Date against the Nation. ¶ 15.3.1.3. However, the United States on behalf of the Allottees specifically retain the right to enforce water rights provided in the SAWRSA Amendments against the Nation. *Id.*
- The cause of action against Asarco described in the Asarco Agreement (**Section 6.3.2**), contingent upon the satisfaction of the appropriate conditions contained therein. ¶ 15.3.1.4.

6.4.4 Retained Claims under the Groundwater Protection Program

The Nation, and the United States on behalf of the Nation, reserve the right to assert any claim arising under the Groundwater Protection Program (**Section 6.2.2**). ¶ 15.4.1. Additionally, if the Groundwater Protection Program is changed in a manner detrimental to the Nation by legislation at any time after the Enforceability Date, the Nation and the United States on its behalf may bring certain claims in the Gila Court against an owner of a non-exempt well that interferes with groundwater pumping on the San Xavier Reservation. ¶ 15.4.2.

6.5 ENFORCEABILITY

As noted, the Settlement Agreement becomes enforceable on the Enforceability Date, which is defined as the date the Secretary publishes a statement of findings in the Federal Register.²⁵ ¶ 2.44, § 302(b).²⁶ Prior to the Enforceability Date, the Settling Parties generally are not bound by, and cannot enforce, the provisions of the Settlement

²⁵In addition to the enforceability requirements set forth herein, Paragraph 10.1 obligates the Nation to agree to comply with certain requirements set forth in Section 307(a)(1) of the SAWRSA Amendments. See Section 307(a)(1) for a complete list of requirements, several of which are discussed in various portions of this report. These obligations are not covered in length here because they are neither prerequisites nor conditions precedent to enforceability of the Settlement Agreement or the SAWRSA Amendments.

²⁶Section 302 of Title III of the Settlements Act is the implementation vehicle for the SAWRSA Amendments, and is located after the amendments contained in Section 301 (the amendments themselves are contained within the quotations). Should the SAWRSA Amendments ultimately become enforceable, Section 302 would not be codified with the rest of Title III.

Agreement. ¶ 18.3. If the statement of findings is not published by December 31, 2007, then the SAWRSA Amendments and the Settlement Agreement fail, but SAWRSA itself would remain in effect (but unenforceable until all of the required conditions, including the dismissal of the Tucson Case, were satisfied). § 302(c). Pursuant to Section 302(b), the Secretary must publish a statement of findings that the following conditions have occurred (“**Status:**” refers to the status of the particular condition as of the date of this report, *as reported to ADWR by the Settling Parties*):

(1) Any conflicts between the SAWRSA Amendments and the Settlement Agreement have been resolved by amendment of the Settlement Agreement eliminating the conflicts, and that the amended Settlement Agreement has been executed by the Settling Parties (including the Secretary). § 302(b)(1). **Status: Complete.** All of the Settling Parties have executed the Settlement Agreement as approved by the Secretary.

(2) The following agreements have been executed: (1) the Settlement Agreement (as amended, if necessary, to conform to the SAWRSA Amendments); (2) the Tucson Agreement; (3) the FICO Agreement; and (4) the Asarco Agreement, including: (i) lease No. H54-0916-0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and (ii) any new well site lease as provided for in the Asarco Agreement. §§ 302(b)(2), 309(h)(2). **Status: Complete.** The Settlement Agreement and the Related Agreements (including lease No. H54-0916-0972) have all been executed. A new well site lease is not required under the Asarco Agreement.

(3) The Secretary has approved the interim Allottee water rights code (**Section 6.6.4**). §§ 302(b)(3), 308(b)(3)(A). **Status: Pending.** The Nation intends to submit the water rights code to the Secretary for review in January 2007.

(4) Final dismissal with prejudice has been entered in the Tucson Case, and three counts of the Alvarez Case on the sole condition that the Secretary publishes the statement of findings. § 302(b)(4). **Status: Complete.** *See* Order dated 14 June 2006, **Exhibit 16.2.**

(5) The Judgment and Decree attached as **Exhibit 17.1** has been approved by the Gila Court and is final and non-appealable. § 302(b)(5). **Status: Pending.**

(6) Certain implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund (specifically, costs identified in §§ 308(d), 311(d), 311(c)(1), 311(c)(2), and 311(f)). § 302(b)(6). **Status: Complete.** See chart at **Appendix G**.

(7) The State of Arizona has enacted legislation that: (1) qualifies the Nation to earn long-term storage credits under the Asarco Agreement; (2) implements the San Xavier groundwater protection program in accordance with Paragraph 8.8; (3) enables the State to carry out its firming obligations set forth in § 306(b); and (4) confirms jurisdiction of the Gila Court over claims brought pursuant to the Groundwater Protection Program, the SAWRSA Amendments, and the Settlement Agreement. § 302(b)(7). **Status: Complete.** The required State legislation is attached as **Appendices F-1 through F-3** and discussed in **Sections 6.2.1, 6.2.2 and 6.3.2**.

(8) The Secretary and the State of Arizona have agreed to an acceptable firming schedule referred to in Section 105(b)(2)(C) of the Settlements Act (*i.e.*, assisting the Secretary by carrying out its firming obligations under Section 306(b)). § 302(b)(8). **Status: Pending.** The State (through AWBA) and the Secretary are currently negotiating a firming schedule.

(9) A final judgment has been entered in the *Central Arizona Water Conservation District v. United States* (No. CIV 95-625-TUC WDB(EHC), No. CIV 95-1720-PHX EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in Section 207 of the Settlements Act. § 302(b)(9). **Status: Complete, contingent on final enforcement of SAWRSA Amendments.**

6.6 ADDITIONAL PROVISIONS

6.6.1 Design and Construction of Delivery Distribution Systems

Paragraph 6.1 of the Settlement Agreement obligates the Secretary to design and construct the delivery and distribution system necessary to deliver the 37,800 AFY of CAP water allocated to the Nation under Paragraph 5.1. Within eight years of the Enforceability Date, the Secretary must extend the delivery system and improve the

irrigation system that serves a portion of the San Xavier Reservation known as the “cooperative farm.” ¶ 6.2.1, §§ 304(c)(1) and (2). The Settling Parties indicated to ADWR that the construction of delivery and irrigation systems serving Eastern Schuk Toak required under Paragraph 6.2.2 are currently in operation.

6.6.2 New Farm Provisions

The Secretary is obligated to either construct a CAP water delivery system and irrigation works for a new farm facility on the San Xavier Reservation, or pay the San Xavier District \$18,300,000 (plus interest as set forth in § 317(a)(2)) in lieu of constructing the facilities. ¶ 7.1, § 304(c)(3). The San Xavier District may select one of these two options and notify the Secretary by the later of 180 days after the Enforceability Date or January 1, 2010. ¶ 7.2. If the San Xavier District either fails to make a decision by the dates noted above or chooses payment in lieu of construction, then the Secretary shall make full payment of the \$18,300,000 to the San Xavier District as set forth in Paragraph 7.2.1. The San Xavier District shall hold the funds in trust in interest-bearing deposits and securities and may expend the funds as set forth in Paragraph 7.3 and Section 304(f).

6.6.3 Water Management Plans

The Secretary shall establish water management plans for both the San Xavier Reservation and Eastern Schuk Toak. ¶ 9.1, § 308(d). The Secretary shall contract with the San Xavier District (for the San Xavier Reservation water management plan) and the Nation (for Eastern Schuk Toak water management plan) pursuant to the contracting authority provided in Section 311. *Id.* The Secretary is authorized to provide up to \$891,200 for the San Xavier Reservation water management plan, and up to \$237,200 for Eastern Schuk Toak water management plan. *Id.* Among other things, the water management plans must provide for the measurement of all groundwater withdrawals, and provide for recordkeeping of water use and withdrawals from non-exempt wells and storage projects. § 308(d)(2)(B).

6.6.4 Water Code and Water Rights Allocations

Paragraph 10.2 requires the Nation to enact and maintain both interim and comprehensive water rights codes in accordance with Section 308(b) of the SAWRSA Amendments. Section 308(b) provides the Nation with the authority to regulate and control water available under the Settlement Agreement and the SAWRSA Amendments, and sets forth specific items that must be addressed in both the interim water code and the comprehensive water code, including specific provisions to protect the Allottees, the San Xavier District, and other persons within the San Xavier Reservation. §§ 307, 308(a)(1)(G). The comprehensive water code must be submitted to the Secretary for approval of certain portions dealing with Allottee rights thereunder. § 308(b)(5) and (c).²⁷

6.6.5 Dismissal of the Tucson Case and Alvarez Case

Pursuant to Paragraph 16, the Settling parties have sought approval of the Settlement Agreement by the Federal District Court for the District of Arizona, before which the Consolidated Litigation is pending. The Court has approved the Settlement Agreement and has conditionally (pending the Secretary's publishing the findings of fact in accordance with Section 302(b)) dismissed the Tucson Case and Counts One through Three of the Alvarez Case. A copy of the judgment dated 14 June 2006 is contained in **Exhibit 16.2**.

²⁷Additionally, the interim water code must be submitted to the Secretary for approval as set forth in Section 302(b)(3). See **Section 6.5** for the status of this obligation.

CHAPTER 7: PROBABLE IMPACTS OF THE SETTLEMENT AGREEMENT

This chapter describes the probable impacts of the Settlement Agreement on water resources, groundwater rights and ADWR's groundwater regulatory program, and categories of other claimants in the Gila River adjudication. The discussion relies on information presented in **Chapters 2, 3, 4, and 6**.

7.1 PROBABLE IMPACTS ON WATER RESOURCES

This section describes probable impacts from the Settlement Agreement on water resources including:

- Surface water (the Santa Cruz River and Brawley Wash);
- Effluent;
- CAP water; and
- Groundwater in the basin-fill aquifer beneath and adjacent to the San Xavier Reservation and the Garcia Strip of Eastern Schuk Toak.

Note that several impacts to water resources have already occurred, or are anticipated to occur soon, as a result of SAWRSA and related projects. These impacts are described below and distinguished from the impacts to water resources that potentially would occur as a result of the Settlement Agreement.

7.1.1 Surface Water

Santa Cruz River

The amount of streamflow in the Santa Cruz River is not expected to change substantially under the Settlement Agreement. As discussed in **Section 4.1.1**, the Santa Cruz River has been ephemeral where it crosses the San Xavier Reservation since the late 1940s and most of its flows, which average about 16,000 AFA, occur in the summer and

fall. However, recent and potential future riparian restoration projects may change local flow conditions in the river near the San Xavier Mission.

Unrelated to the Settlement Agreement, a 12.5-acre riparian restoration project was completed in 2003 on a terrace of the Santa Cruz River about one mile southeast of the mission. The Water Protection Fund project (Grant 96-026) includes two one-quarter acre constructed wetlands, a mesquite bosque and woodlands. It will reportedly use about 500 to 750 AFA of the San Xavier Reservation's current CAP allocation of 27,000 AFA to maintain the wetlands and associated vegetation. Other riparian restoration projects are being evaluated along this reach of the river under Water Protection Fund Grant 05-130 (AWPF, 2006), and Pima County has considered establishing a park or reserve along a section of the West Branch of the Santa Cruz River near the mission (Rosen, 2001). If these projects are built, it is likely that they would also utilize water from the reservation's current CAP allocation.

In addition to riparian restoration, rehabilitation and expansion of the cooperative farm may change local flow conditions along the Santa Cruz River if irrigation return flows are significant. As described in **Section 2.5.1**, BOR was directed under SAWRSA to rehabilitate and extend the cooperative farm. The rehabilitation project is expected to be completed by late 2006, and the 900-acre farm should eventually use about 4,500 AFA of CAP water for irrigation. Design of the expansion farm is not expected to begin until 2008, but its completion is required under the Settlement Act (**Section 6.6.1**). The expansion farm would probably use another 5,500 AFA of CAP water (ADWR, 2006c). The amount of irrigation return flows generated by the farm will depend on the design and operation of the irrigation system, the amount of water applied, and recovery of tailwater.

Completion of the farm rehabilitation project is also expected to change flooding along the West Branch of the Santa Cruz River. **Figure 7-1** shows how flood inundation boundaries will change after construction of a dike along the east side of the West Branch. Flooding along the main stem of the Santa Cruz River is less of a concern to the farm due to the addition of riprap along its banks in the 1980s and 1990s (BOR, 2005).

Brawley Wash

The amount of streamflow in Brawley Wash is not expected to change substantially under the Settlement Agreement. As discussed in **Section 4.1.2**, Brawley Wash is ephemeral where it crosses the Garcia Strip and most of its flows, which have averaged about 4,000 AFA since 1993, occur in the summer. However, recent completion of a farm on the Garcia Strip has already changed flooding in the area and may generate irrigation return flows.

BOR was directed under SAWRSA to construct an irrigation system on Eastern Schuk Toak and, in 2002, the 2,000-acre Schuk Toak New Farm was completed. Since its completion, the farm has been using all or nearly all of Eastern Schuk Toak's current CAP allocation of 10,800 AFA. **Figure 2-7** shows the farm layout and the location of three flood control channels that border the fields. Before the farm was built, there was no clearly defined channel along this reach of Brawley Wash and flood flows reportedly spread as sheet flow across a four- to five-mile wide area. In the area of the farm, flood flows are now confined to the control channels.

Under the Settlement Agreement, Eastern Schuk Toak would receive an additional 5,200 AFA of CAP water that potentially could be used to expand the Schuk Toak New Farm or presumably build a second farm on the Vaya Strip, located to south of the Garcia Strip. Although ADWR is unaware of plans for additional irrigation in Eastern Schuk Toak, if such projects were built, they potentially could also change flood patterns in the area and result in irrigation return flows in the wash.

7.1.2 Effluent

As described in **Section 4.2**, ADWR estimates that less than 300 acre-feet of wastewater is currently generated each year on the San Xavier Reservation through residential and commercial/light industrial water use. The wastewater is treated by Pima County and currently unavailable for reuse on the reservation. With the exception of stormwater, wastewater generated by Asarco's Mission Complex is contained in impoundments and most of it is reused by the mine. Eastern Schuk Toak is not known to be generating any significant quantity of wastewater at this time.

ADWR is unaware of plans to use effluent on the San Xavier Reservation or Eastern Schuk Toak in the future, and neither area would receive effluent under the Settlement Agreement.

7.1.3 CAP Water

The Settlement Agreement could change the amount of CAP water used on reservation lands, as well as the amount of CAP water available to the Nation for lease off-reservation. **Table 7-1** lists recent, anticipated, and potential future uses of CAP water on the San Xavier Reservation and Eastern Schuk Toak, and expected quantities of reserved CAP water. Effects of the Settlement Agreement on CAP water use are further discussed below, including whether the agreement would change the total use of CAP water by the State of Arizona.

San Xavier Reservation

Under a 1980 contract with the Secretary, the San Xavier Reservation currently has a 27,000 AFA allocation of Indian Priority CAP water. Since 2001, only 800 to 2,600 AFA of this allocation has been used. However, it is anticipated that 19,000 to 21,000 AFA of the current allocation will eventually be used on and near the reservation through leases to Asarco, to irrigate the rehabilitation and extension of the cooperative farm, and for riparian restoration projects along the Santa Cruz River. That would leave from 6,000 to 8,000 AFA of CAP water reserved for future use or available for off-reservation lease.

Under the Settlement Agreement, the San Xavier Reservation would receive an additional 23,000 AFA of Non-Indian Agricultural Priority CAP water. As detailed in **Section 6.2.1**, the CAP water could be used for any purpose within the Nation's boundaries or leased anywhere within the CAP Service Area for up to 100 years. Potentially 12,000 AFA of this new allocation will be used on-reservation at the North Borrow Pit recharge site. That would leave another 11,000 AFA of CAP water reserved for future use or available for off-reservation lease.

The total CAP allocation for the San Xavier Reservation would increase from 27,000 AFA to 50,000 AFA under the Settlement Agreement. As explained above, from 17,000 to 19,000 AFA of this total allocation would potentially be reserved or available for lease. Note, however, that the Allottees, the San Xavier District, and other persons within the San Xavier Reservation have the right to use the first 35,000 AFA of the total allocation (**Section 6.2.1**).

Eastern Schuk Toak

Under the 1980 contract with the Secretary, Eastern Schuk Toak received a 10,800 AFA allocation of Indian Priority CAP water. Since 2000, from 700 to 11,000 AFA of CAP water has been used on the Schuk Toak New Farm, located on the Garcia Strip. The fact that more than 10,800 AFA of CAP water has been delivered to Eastern Schuk Toak reflects the Nation's flexibility in how it uses its allocation. It is anticipated that future use of CAP water on the farm will range from 10,000 to 10,800 AFA. That would leave from 0 to 800 AFA of their current allocation reserved for future use or available for off-reservation leases.

Under the Settlement Agreement, Eastern Schuk Toak would receive an additional 5,200 AFA of Non-Indian Agricultural Priority CAP water. As with the San Xavier Reservation, CAP water may be used for any purpose within the Nation's boundaries or leased anywhere within the CAP Service Area for up to 100 years. ADWR is unaware of plans to use this new allocation in the future, which would leave another 5,200 AFA of CAP water reserved for future use or available for off-reservation lease.

The total CAP allocation for Eastern Schuk Toak would increase from 10,800 AFA to 16,000 AFA under the Settlement Agreement. As indicated above, from 5,200 to 6,000 AFA of this total allocation would potentially be reserved or available for lease.

State of Arizona

The total use of CAP water by the State of Arizona is not expected to be changed by the Settlement Agreement. Since the year 2000, Arizona has been fully utilizing, or nearly so, its annual Lower Colorado River Basin consumptive use entitlement of 2.8

MAF of Colorado River Water. The CAP component of the overall Colorado River use has been as high as 1.685 MAF (ADWR, 2006b). As the Nation and entities who lease CAP water from the Nation begin to use the water made available through the Settlement Agreement, the new uses will not result in increased diversions from the Colorado River. Rather, the new uses will redistribute existing CAP supplies away from uses that are now occurring on an interim basis.

The AWBA is the primary user of interim CAP water under excess water contracts. The AWBA program was established in recognition that a supply of excess water would be available for short-term use until permanent water uses are commenced by Indian communities and by other CAP subcontractors. As these entities increase their CAP water use, the AWBA and other similarly situated interim water users will correspondingly be phased out.

7.1.4 Basin-fill Aquifer

San Xavier Reservation

Several provisions of the Settlement Agreement are expected to stabilize and/or increase water levels in the basin-fill aquifer beneath and adjacent to the San Xavier Reservation. These provisions are described below and include:

- Restrictions on new non-exempt wells near the reservation boundary;
- Delivery of CAP water to Asarco;
- Limits on future well pumpage by FICO; and
- Increased availability of CAP water for on-reservation underground storage projects.

The Groundwater Protection Program (**Section 6.2.2**) will require an applicant for a new non-exempt well within the Tucson Active Management Area to demonstrate that the well will not cause a ten-foot decline in the groundwater level at any point beneath the boundary of the San Xavier Reservation. In addition, generally no new well or group of wells that collectively pump 500 gpm or more will be allowed within two miles of the reservation. These restrictions should prevent new, large cones of depression from forming beneath and near the reservation. Without the Settlement Agreement and

considering population pressures near the reservation boundary, formation of new cones of depression in this area could be possible.

Under the Asarco Agreement (**Section 6.3.2**), the Nation may deliver up to 10,000 AFA of CAP water to Asarco for use at its Mission Complex located on and near the San Xavier Reservation. Asarco may agree to use the CAP water in lieu of water pumped from wells. Since 1980, Asarco's total well pumpage for the mine has ranged from 4,200 to 14,700 AFA. Of this total, 400 to 4,700 AFA have been pumped from on-reservation wells and 3,800 to 10,900 AFA have been pumped from off-reservation wells (**Table 3-1**). Delivery of CAP water to Asarco and reduced mine pumpage should allow water levels in the cone of depression currently beneath the Mission Complex to begin to recover (**Figures 4-5 and 7-2**). Without the Settlement Agreement, Asarco's on- and off-reservation well pumpage would likely continue and perhaps increase, and the current cone of depression would likely become deeper and broader.

Under the FICO Agreement (**Section 6.3.3**), FICO agrees to limit well pumpage on its lands located within two miles of the reservation to 850 AFA, and limit well pumpage on all of its lands to 36,000 AFA, both on a three-year rolling average. Since 1983, FICO's well pumpage within two miles of the reservation has ranged from about 300 to 1,100 AFA and, since 1980, its total well pumpage has ranged from 25,300 to 39,500 AFA (**Table 3-1**). FICO also agrees to refrain from selling its groundwater credits to a third party for withdrawal at any location within three miles of the Nation's reservation boundaries, including the San Xavier Reservation. These provisions of the Settlement Agreement should allow groundwater levels near the reservation that have been affected by FICO wells to either stabilize or not decline at an increased rate.

As described in **Section 7.1.3**, the San Xavier Reservation would receive an additional 23,000 AFA of CAP water under the Settlement Agreement. Up to 12,000 AFA of the new allocation will potentially be used on-reservation at the proposed North Borrow Pit recharge site. This use of CAP water would cause water levels to rise beneath the reservation and cause a groundwater mound to form beneath and adjacent to the recharge facility (**Figure 7-2**).

The Settlement Agreement would also allow up to 10,000 AFA of well pumpage on the San Xavier Reservation. However, in light of past water use, it is unlikely that anything near this amount would be pumped on the reservation in the future. Since 1980, less than 300 AFA have been pumped from TOUA wells for municipal and light industrial purposes. Reportedly, well pumpage for irrigation on the reservation has previously exceeded 4,000 AFA (**Table 3-1** and Stetson, 1980), but it is expected that future irrigation of the cooperative farm will replace the pumpage with CAP water.

Garcia Strip

The Settlement Agreement is not expected to substantially affect water levels in the basin-fill aquifer beneath Eastern Schuk Toak. CAP water is currently being used to irrigate the Schuk Toak New Farm and incidental recharge associated with this irrigation should eventually reach the aquifer underlying the Garcia Strip. Although Eastern Schuk Toak would receive an additional 5,200 AFA of CAP water under the Settlement Agreement, ADWR is not aware of plans by the Nation to use the new allocation for irrigation or other water development projects.

The Settlement Agreement would also allow up to 3,200 AFA of well pumpage on Eastern Schuk Toak. ADWR identified nine stock or domestic wells in the area that are estimated to have a combined pumpage of less than 10 AFA. ADWR is not aware of plans by the Nation to increase well pumpage on Eastern Schuk Toak in the future.

Projected Groundwater Level Changes

Figure 7-2 shows how water levels in the basin-fill aquifer beneath the San Xavier Reservation and Eastern Schuk Toak are projected to change between 2000 and 2025 and **Table 7-1** presents a projected groundwater budget for these areas in 2025. These projections are based on a regional groundwater flow model of the Tucson Active Management Area developed by ADWR (2006a). To simulate future conditions, ADWR assumed that the Settlement Agreement becomes enforceable and based future water uses on estimates provided from local stakeholders including, but not limited to, Asarco, CAWCD, FICO, the San Xavier District, and the City of Tucson.

The following future water uses were simulated in the model to occur on or near the San Xavier Reservation and Eastern Schuk Toak:

San Xavier Reservation

- Asarco's total water use at the Mission Complex would remain at 9,000 AFA between 2000 and 2025, of which 8,000 AFA could eventually be met with CAP water leased from the Nation. The remaining 1,000 AFA of Asarco's demand would be met by off-reservation well pumpage;
- Recharge at CAWCD's Pima Mine Road facility would range from 12,500 AFA to 14,000 AFA between 2000 and 2025;
- FICO's total well pumpage would decrease from about 23,000 AFA in 2000 to about 18,000 AFA by 2025;
- Use of CAP water on the rehabilitation and expansion of the cooperative farm would increase from 2,700 AFA in 2000 to 10,000 AFA by 2010, and then remain at 10,000 AFA through 2025;
- Beginning in 2010 and continuing thereafter, up to 12,000 AFA of CAP water would be recharged on the reservation at the North Borrow Pit site; and
- Riparian restoration along the Santa Cruz River would begin in 2005 and use 500 AFA of CAP water through 2025.

Eastern Schuk Toak

- Use of CAP water on the Schuk Toak New Farm would increase from 5,400 AFA in 2005 to 10,800 AFA by 2010 and remain at 10,800 AFA through 2025;
- Recharge at the City of Tucson's CAVSARP facility located north of the Garcia Strip would increase from 38,000 AFA in 2000 to nearly 100,000 AFA by 2025;
- Recovery of recharge at CAVSARP would increase from about 21,000 in 2000 to 100,000 by 2020 and remain at 100,000 AFA thereafter; and
- Well pumpage from the City of Tucson's Southern Avra Valley well field, located south of the Garcia Strip, would increase from 17,000 AFA to 19,000 AFA between 2000 and 2025.

Although some of the simulated water uses may or may not actually occur, ADWR's model does provide a general indication of how water levels in the basin-fill aquifer and

groundwater budgets for the reservation lands will likely change in the future. Several of the simulated water uses are expected to occur regardless of whether the Settlement Agreement is approved.

Figure 7-2 shows that, between 2000 and 2025, water levels beneath the eastern side of the San Xavier Reservation could increase by as much as 175 to 200 feet, mostly as a result of reduced well pumpage by Asarco, operation of the two recharge facilities, and incidental recharge from on-reservation irrigation. However, beneath the west side of the reservation, water levels may decline from 25 to 50 feet over the same period as a result of off-reservation well pumpage by the City of Tucson. Water levels are also expected to decline beneath the Garcia Strip and may drop from 75 to 100 feet over the period due to Tucson's off-reservation well pumpage from its Southern Avra Valley well field and recovery of recharge at CAVSARP. However, these projected declines may be mitigated through a proposed recharge project in the area that was not simulated by ADWR. Recharge at the proposed Southern Avra Valley Storage and Recovery Project (SAVSARP) is expected to begin in 2008 and increase from 30,000 AFA to 60,000 AFA (ADWR, 2006c).

Using results from the model, it is projected that by 2025, aquifer inflows beneath the San Xavier Reservation could exceed aquifer outflows by 3,700 acre-feet. By comparison, ADWR estimated that in 2000, aquifer outflows exceeded aquifer inflows in this area by 4,950 acre-feet. Beneath the Garcia Strip on Eastern Schuk Toak, aquifer inflows are projected to exceed aquifer outflows by 375 AFA by 2025 (ADWR, 2006c). This is a decrease from 2000, when aquifer inflows were estimated by ADWR to exceed aquifer outflows by 1,375 acre-feet.

7.2 PROBABLE IMPACTS ON GROUNDWATER RIGHTS AND ADWR'S REGULATORY PROGRAM

Currently, under the 1980 Groundwater Code, ADWR is responsible for administering a groundwater regulatory program that applies to most of the

non-reservation lands within the Tucson Management Area.¹ See Chapter 2, Title 45 (A.R.S. § 45-401 *et seq.*). Within the Tucson and Santa Cruz Active Management Areas, the ability to withdraw groundwater is subject to a system of rights and permits designed to control groundwater overdraft. For those areas of the Tucson Management Area located in the Upper Santa Cruz Basin but outside of either of the active management areas, groundwater may generally be withdrawn and used under State law for reasonable and beneficial uses. A.R.S. § 45-453. Statewide, all wells must be registered with ADWR, drilled by a licensed well driller, and comply with well construction standards.

As part of the Settlement Agreement and Related Agreements, the Settling Parties have agreed among themselves to certain restrictions related to future groundwater withdrawals. See **Sections 6.2.2, 6.3.2, and 6.3.3**. Additionally, future non-exempt wells within the Tucson Active Management Area will be subject to the Groundwater Protection Code as discussed in **Section 6.2.2**. It is important to note that the Groundwater Protection Code applies to neither existing wells as of the Enforceability Date (regardless of capacity) nor future exempt wells.² The Settlement Agreement will have no other impact on groundwater rights.

Regarding ADWR's regulatory program, ADWR's Tucson Active Management Area office ("Tucson Office") will have primary responsibility for implementation of the Groundwater Protection Program (**Section 6.2.2**). To ensure compliance with the Groundwater Protection Program, provisions will be incorporated by the Tucson Office into existing procedures for reviewing applications for non-exempt wells within the Tucson Active Management Area. Upon enforceability of the Settlement Agreement, new non-exempt wells will be identified and a determination will be made whether the well will cause a ten-foot or greater water level decline at any point on the exterior boundary of the San Xavier Reservation within the initial five-year period of

¹As stated previously, the Tucson Management Area includes the Tucson Active Management Area, the Santa Cruz Active Management Area and that portion of the Upper Santa Cruz Basin not within either of the Active Management Areas.

²Generally, exempt wells are wells that pump less than 35 gallons per minute provided they meet all the requirements of A.R.S. § 45-454.

withdrawals.³ Additionally, a proposed new well or group of wells that pump 500 gallons per minute or more and are located within two miles of the San Xavier Reservation will be identified as part of the application review and will be denied unless the applicant can satisfy certain conditions set forth in A.R.S. § 45-2711(B). The Tucson Office will also handle noticing requirements set forth in A.R.S. § 45-2712.

7.3 PROBABLE IMPACT ON OTHER CATEGORIES OF OTHER CLAIMANTS IN THE GILA RIVER ADJUDICATION

The Settlement Agreement does not adjudicate any claims to water of any of the Settling Parties other than the Nation's claims in the Tucson Management Area, nor does it adjudicate the claims to water of any other claimant in the Gila River Adjudication. Additionally, the water made available to the Nation under the Settlement Agreement (CAP water and groundwater⁴) is generally not appropriable water subject to the jurisdiction of the Gila Court.⁵ **Section 7.1** discusses the probable impacts to water resources, which may impact certain claimants (either positively or negatively) depending on their water use and location. Finally, claimants in the Gila River Adjudication receive the benefit of the waivers and releases by the Nation, the Allottees, and the United States, as set forth in **Section 6.4**.

³The Tucson Office is currently responsible for examining the impact of non-exempt wells on other wells utilizing hydrologic impact contours generated by ADWR's Hydrology Division. The exterior boundaries of the San Xavier Reservation will be incorporated into that review.

⁴As set forth in **Section 6.2.2**, groundwater made available under the Settlement Agreement is not guaranteed and is limited by both physical availability and recoverability.

⁵However, upon enforceability, A.R.S. § 45-2702 mandates that Gila Court has jurisdiction over "all civil actions relating to the interpretation and enforcement" of the Groundwater Protection Program, the SAWRSA Amendments, and the Settlement Agreement.

CHAPTER 8: COMPARISON OF SETTLEMENT AGREEMENT WATER RIGHTS WITH WATER RIGHTS THAT COULD REASONABLY BE PROVEN AT TRIAL

As required by the Order for Special Proceedings, this chapter compares the water rights available to the Nation and the United States on its behalf under the Settlement Agreement with the water rights that could be proven “to a degree of reasonable probability at trial” in the Gila River Adjudication. In order to make the required analyses, ADWR compared the water rights as presented in the Settlement Agreement (**Chapter 6**) with those water rights that might reasonably be proven at trial under the federal reserved water rights doctrine. To determine what might reasonably be proven at trial, ADWR reviewed the past, present, and potential future water uses by the Nation (**Chapter 3**).

This chapter first discusses the Arizona Supreme Court case that defines Federal reserved water rights principles as they apply to Indian reservations in Arizona and then provides the comparative analysis required by the Order for Special Proceedings. As discussed below, the actual quantification of a federal reserved water right is a fact-intensive process that must take into consideration numerous factors, some of which were not available to ADWR for various reasons during the preparation of this report. The comparative analysis in this chapter is based on the limited information available to ADWR concerning water uses by the Nation. ADWR believes that the analysis presented provides a basis for the quantification of water rights that could be proven to a degree of reasonable probability at trial.

8.1 PRINCIPLES OF FEDERAL RESERVED WATER RIGHTS FOR INDIAN RESERVATIONS

In a decision known as *Gila V*, the Arizona Supreme Court set forth certain standards for quantifying Indian water rights under the federal reserved water rights

doctrine.¹ The Court reiterated the familiar principle that a federal reserved water right impliedly reserves enough water to fulfill the purpose for which the reservation was created. 201 Ariz. at 311, 35 P.3d at 72. For Indian reservations, the Court further held that the purpose of an Indian reservation is to provide a “permanent home and abiding place” and a “livable environment.” 201 Ariz. at 313, 315, 35 P.3d at 74, 76. This is often referred to as a homeland purpose.

In order to quantify the amount of water necessary for the homeland purpose of a reservation, the Court rejected the traditional PIA standard developed in *Arizona v. California*, 373 U.S. 546 (1963). Instead, the Court held that determining the amount of water necessary to accomplish the purpose of a reservation is a fact-intensive inquiry that must be made on a reservation-by-reservation basis. 201 Ariz. at 318, 35 P.3d at 79. The Court listed several factors that may be considered: (1) history, including historical practices requiring water uses; (2) past water uses of a cultural nature; (3) the tribal land’s geography, topography, natural resources, and groundwater availability; (4) tribal economic base and economic development plans; (5) past water use on the reservation and proposed water projects that are practical and economical; and (6) present and projected future population. 201 Ariz. at 319, 35 P.3d at 80.

The Court emphasized that the preceding list is not exhaustive, and that courts adjudicating reserved water rights should be given latitude to consider all information deemed relevant in quantifying federal reserved water rights. Finally, the Court held that in considering future development projects, such projects must be both practical and economically sound. 201 Ariz. at 320, 35 P.3d at 81.

8.2 COMPARATIVE ANALYSIS CONSIDERING THE TOTAL QUANTITY OF WATER AVAILABLE UNDER THE SETTLEMENT AGREEMENT

This section addresses whether ADWR’s analysis of water uses on the San Xavier Reservation and Eastern Schuk Toak provides a reasonable basis for the Gila Court to

¹*In re the General Adjudication of all Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001).

conclude that the total quantity of water provided to the Nation and the United States under the Settlement Agreement is no more extensive than the federal reserved water rights that could be reasonably proven at trial in the Gila River Adjudication. The following table lists the total quantity of water that the Nation would receive under the Settlement Agreement and the quantity of water that the Nation and the United States might reasonably prove at trial based on ADWR’s analysis in **Chapter 3** of the Nation’s past, present, and future water uses in the Tucson Active Management Area.

COMPARISON OF QUANTITIES ANALYZED AND SETTLED

SOURCE	AGRICULTURAL USE (AFY)	NON-AGRICULTURAL USE (AFY)	TOTAL QUANTITY (AFY)
ADWR Analysis	69,650 – 335,075 ¹	10,320 ²	79,970 – 345,395
Settlement Agreement	66,000 (CAP water) ³		79,200
	13,200 (Groundwater) ⁴		

¹These numbers are derived from **Section 3.2.1** and the tables entitled “Summary of Potential San Xavier Reservation Irrigation Water Requirements,” and “Summary of Potential Eastern Schuk Toak Irrigation Water Requirements” contained therein.

²This number is derived from **Section 3.2.2** and the table entitled “Potential Future Water Use for Non-Agricultural Purposes” contained therein.

³See **Sections 6.1 and 6.2.1** for explanations of quantities and use of CAP water under the Settlement Agreement.

⁴See **Sections 6.1 and 6.2.2** for explanations of quantities and use of groundwater under the Settlement Agreement.

As reflected in the table above, under the Settlement Agreement, the Nation and the United States would receive an estimated average of 79,200 AFY of water, consisting of 13,200 AFY of groundwater and 66,000 AFY of CAP water. As set forth in **Chapter 3**, ADWR estimates that future water uses on the San Xavier Reservation and Eastern Schuk Toak for agricultural and non-agricultural purposes could range between 79,970 and 345,395 AFY. This estimate comes from an analysis of existing water uses in

these areas, as well as the potential for future agricultural and non-agricultural development.

Based on this analysis, ADWR believes that there is a basis for the Gila Court to conclude that the Nation could prove to a reasonable probability at trial a Federal reserved water right in the quantity of between 79,970 to 345,395 AFY. This range is more than the quantity of water (79,200 AFY) received by the Nation under the Settlement Agreement.

TABLE 2-1. POPULATION DATA FOR THE SAN XAVIER RESERVATION

Year	Population	Source
circa 1700	800	BOR, 1989
1772	170	NEA, 1992
1863	500	Stetson, 1980
1895	517	
1900	519	
1906	523	
1909	523	
1930	565	
1935	525	
1940	513	
1945	527	
1950	496	
1955	500	
1977	797	
circa 1980	847	
1987	1,017	BOR, 1989
1990	1,172	Census, 2006
circa 1997	1,622	BOR, 1999
2000	1,940	BOR, 2005

TABLE 3-1. RECENT AND CURRENT WATER USE BY THE SETTLING PARTIES (in 1000s of acre-feet)^{1,2}

YEAR	ASARCO (Mission Mine) ³				EASTERN SCHUK TOAK ⁴			FICO ⁵		SAN XAVIER RESERVATION ^{6,7}					
	CAP Deliveries	Off-Reservation Well Pumpage	On-Reservation Well Pumpage	Total Well Pumpage	CAP Deliveries	Surface Water Diversions	Total Well Pumpage	Well Pumpage Within 2 Miles of Reservation	Total Well Pumpage	CAP Deliveries	Surface Water Diversions	Irrigation Well Pumpage	Municipal/Industrial Well Pumpage		
1980	0.0	3.8	0.4	4.2	0.0				32.8	0.0		4.5	0.1		
1981	0.0	5.8	0.6	6.4	0.0			Not evaluated by ADWR	39.5	0.0		Data requested by ADWR, but not provided.			
1982	0.0	5.8	0.6	6.4	0.0				36.8	0.0					
1983	0.0	5.2	0.6	5.8	0.0				29.8	0.0					
1984	0.0	4.8	1.4	6.2	0.0				1.1	28.0	0.0				
1985	0.0	5.3	0.2	5.5	0.0			1.0	31.7	0.0					
1986	0.0	4.9	1.0	5.9	0.0			0.9	35.4	0.0					
1987	0.0	5.3	0.7	6.0	0.0			0.8	28.2	0.0					
1988	0.0	6.0	0.8	6.8	0.0			0.7	25.4	0.0					
1989	0.0	6.9	2.0	8.9	0.0			0.5	27.4	0.0					
1990	0.0	7.1	1.4	8.5	0.0			0.6	26.1	0.0			Data requested by ADWR, but not provided.	0.16	
1991	0.0	7.9	1.5	9.4	0.0	less than 0.2 (storm runoff collected in 16 stockponds covering a total area of about 20 acres)	Data requested by ADWR, but not provided ⁸	0.6	29.0	0.0	less than 0.4 (storm runoff collected in 20 ponds covering a total area of about 40 acres)		0.14		
1992	0.0	9.0	3.7	12.7	0.0				0.6	30.0		0.0			0.15
1993	0.0	9.4	4.3	13.7	0.0				0.5	26.6		0.0			0.14
1994	0.0	10.0	4.7	14.7	0.0				0.5	29.5		0.0			0.15
1995	0.0	10.8	3.0	13.8	0.0				0.5	29.8		0.0			0.14
1996	0.0	9.2	3.5	12.7	0.0				0.4	27.9		0.0			0.14
1997	0.0	10.9	2.1	13.0	0.0				0.4	28.0		0.0			0.15
1998	0.0	9.8	2.9	12.7	0.0				0.3	25.3		0.0			
1999	0.0	9.4	3.6	13.0	0.0				0.4	26.0		0.0			
2000	0.0	9.4	3.1	12.5	0.7				0.4	27.9		0.0			
2001	1.6	7.0	1.9	8.9	8.3		0.4	26.8	0.8			1.1	Data requested by ADWR, but not provided.		
2002	0.0	5.3	1.5	6.8	9.9		0.4	25.5	1.2						
2003	0.0	3.8	0.8	4.6	10.8		0.4	27.7	1.5			Data requested by ADWR, but not provided.			
2004	0.0	4.5	1.4	5.9	11.1		0.5	30.8	1.6						
2005	0.0	4.3	0.8	5.1	10.7		0.6	29.4	2.6				0.25		

Notes:

¹ Data Sources: ADWR (2006a,d), BOR (2005), Franzoy Corey (1988), Stetson (1980), SWCA (2001), TOUA (2006), and USGS (1979, 1992, and 1996).

² Does not include water use by the City of Tucson.

³ Asarco's 'on-reservation' well pumpage has occurred in the southeastern portion of the San Xavier Reservation.

⁴ CAP water delivered to Eastern Schuk Toak has been used for irrigation in the Garcia Strip.

⁵ Well pumpage by FICO has been used for irrigation and municipal/industrial purposes.

⁶ CAP water delivered to the San Xavier Reservation has been used for irrigation and riparian restoration.

⁷ Does not include on-reservation well pumpage by Asarco.

⁸ Nine stock and/or domestic wells were identified on topographic maps and are estimated to have a total pumpage of less than 10 AFA.

TABLE 4-1. STREAMFLOW DATA IN THE VICINITY OF THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK¹

Location Name ²	USGS Station Number	Contributing Drainage Area, in square miles	Period of Record (# of years) Used for Annual Flow Statistics	Annual Flow, in 1000s of acre-feet (Year) ³				Average Seasonal Flow, as a percentage (%) of annual flow ⁴				Average Annual Days of Zero Flow
				Minimum	Median	Mean	Maximum	Winter	Spring	Summer	Fall	
Santa Cruz River at Continental	09482000	1,682	1941-2005 (53)	0.2 (1965)	6.2	16.8	149 (1984)	24	<1	44	32	>300
Santa Cruz River at Tucson	09482500	2,222	1906-2005 (86)	0.9 (1965)	9.4 ⁵	15.6	81.1 (1915)	14	<1	66	20	>300
Brawley Wash near Three Points	09487000	776	1993-2005 (13)	0.02 (1994)	2.1	3.9	13.6 (1999)	2	2	89	7	>330

Notes:

¹ Data Sources: USGS (1998 and 2006).

² Location of USGS stream gages shown in **Figure 4-1**.

³ Statistics based on Water Year (WY) data.

⁴ Calculated using average monthly streamflows measured over station's available period of record. Winter season assumed to include months of January, February, and March; Spring includes April, May, and June; and so on. Due to rounding, sum of seasonal flows may not equal 100%. For Station 09482500, monthly statistics based on data collected through WY 1996.

⁵ Median annual flow for Station 09482500 calculated based on data collected through WY 1996.

TABLE 4-2. HISTORIC (circa 1940) GROUNDWATER BUDGETS FOR THE AREAS ON AND NEAR THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK^{1,2}

ANNUAL AQUIFER INFLOWS (in acre-feet)					ANNUAL AQUIFER OUTFLOWS (in acre-feet)						
Budget Component	Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)	Budget Component	Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)
		Eastern Half	Western Half	Total				Eastern Half	Western Half	Total	
Cultural Recharge	Artificial (managed recharge facilities)	0	0	0	0	Well Pumpage	Industrial	0	0	0	0
	Irrigation	0	0	0	0		Irrigation	3,300	0	3,300	0
	Tailings Pond Seepage	0	0	0	0		Municipal	0	0	0	0
Natural Recharge	Brawley Wash	0	0	0	175	Natural Discharge	Riparian Evapotranspiration along the Santa Cruz River	2,300	0	2,300	0
	Santa Cruz River	3,150	0	3,150	0						
	Mountain Front	450	500	950	75						
Underflow In	Avra Valley Subbasin	0	2,950	2,950	12,225	Underflow Out	Avra Valley Subbasin	0	3,450	3,450	12,475
	Upper Santa Cruz Subbasin	8,250	0	8,250	0		Upper Santa Cruz Subbasin	6,250	0	6,250	0
Total:		11,850	3,450	15,300	12,475	Total:		11,850	3,450	15,300	12,475

CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE SAN XAVIER RESERVATION CIRCA 1940: 15,300 AF (INFLOW) - 15,300 AF (OUTFLOW) = 0 AF³

CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE GARCIA STRIP CIRCA 1940: 12,475 AF (INFLOW) - 12,475 AF (OUTFLOW) = 0 AF³

Notes:

¹ Data Source: ADWR, 2006a,c.

² Budgets were estimated using a numerical (MODFLOW) groundwater flow model of the basin-fill aquifer system developed by ADWR. Due to the size and location of the model cells, the budgets include a 1/2- to 1-mile buffer area around the reservation lands. Within Eastern Schuk Toak, only the Garcia Strip was considered to have a sufficient thickness of saturated basin-fill to be included in the model.

³ It was assumed that, circa 1940, aquifer inflows equaled aquifer outflows (steady-state conditions).

TABLE 4-3. RECENT (2000) GROUNDWATER BUDGETS FOR THE AREAS ON AND NEAR THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK^{1,2}

ANNUAL AQUIFER INFLOWS (in acre-feet)					ANNUAL AQUIFER OUTFLOWS (in acre-feet)						
Budget Component	Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)	Budget Component	Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)
		Eastern Half	Western Half	Total				Eastern Half	Western Half	Total	
Cultural Recharge	Artificial (managed recharge facilities)	7,000	0	7,000	3,150	Well Pumpage	Industrial	4,300	0	4,300	0
	Irrigation	0	0	0	0		Irrigation	0	0	0	0
	Tailings Pond Seepage	900	0	900	0		Municipal	3,150	1,125	4,275	0
Natural Recharge	Brawley Wash	0	0	0	175	Natural Discharge	Riparian Evapotranspiration along the Santa Cruz River	0	0	0	0
	Santa Cruz River	3,150	0	3,150	0						
	Mountain Front	450	500	950	75						
Underflow In	Avra Valley Subbasin	0	3,150	3,150	4,825	Underflow Out	Avra Valley Subbasin	0	5,150	5,150	6,850
	Upper Santa Cruz Subbasin	2,200	0	2,200	0		Upper Santa Cruz Subbasin	8,575	0	8,575	0
Total:		13,700	3,650	17,350	8,225	Total:		16,025	6,275	22,300	6,850

CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE SAN XAVIER RESERVATION DURING 2000: 17,350 AF (INFLOW) - 22,300 AF (OUTFLOW) = -4,950 AF

CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE GARCIA STRIP DURING 2000: 8,225 AF (INFLOW) - 6,850 AF (OUTFLOW) = 1,375 AF

Notes:

¹ Data Source: ADWR, 2006a,c.

² Budgets were estimated using a numerical (MODFLOW) groundwater flow model of the basin-fill aquifer system developed by ADWR. Due to the size and location of the model cells, the budgets include a 1/2- to 1-mile buffer area around the reservation lands. Within Eastern Schuk Toak, only the Garcia Strip was considered to have a sufficient thickness of saturated basin-fill to be included in the model.

TABLE 7-1. RECENT AND FUTURE CAP WATER USE ON THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK

	CATEGORY	SAN XAVIER RESERVATION	EASTERN SCHUK TOAK	REFERENCE
1	Allocation of Indian Priority water received under the current CAP contract ¹	27,000 AFA	10,800 AFA	Section 6.1 (this report)
2	Year CAP water first delivered	2001	2000	Table 3-1 (this report)
3	Range of CAP water deliveries through 2005	800 to 2,600 AFA	700 to 11,100 AFA	
4a	Anticipated future CAP water uses under the current contract	8,000 to 10,000 AFA (Asarco)	10,000 to 10,800 AFA (Schuk Toak New Farm)	ADWR (2006a,c) and Sections 3.2.2 and 6.3.2 (this report)
4b		5,500 AFA (Extension Farm)		
4c		4,500 AFA (Rehabilitation Farm)		
4d		1,000 AFA (Riparian Restoration)		
5	Anticipated total CAP water use under the current contract	19,000 to 21,000 AFA	10,000 to 10,800 AFA	Row 4a + Row 4b + Row 4c + Row 4d
6	Anticipated reserved CAP water under the current contract ²	6,000 to 8,000 AFA	0 to 800 AFA	Row 1 - Row 5
7	Allocation of Non-Indian Agricultural Priority CAP Water received under the Settlement Agreement ¹	23,000 AFA	5,200 AFA	Section 6.1 (this report)
8	Potential future use of CAP Settlement Agreement water	12,000 AFA (North Borrow Pit Recharge Site)	0 AFA	ADWR (2006a,c)
9	Potential reserved CAP Settlement Agreement water ²	11,000 AFA	5,200 AFA	Row 7 - Row 8
10	Total CAP contract and Settlement Agreement water ^{1,3}	50,000 AFA	16,000 AFA	Row 1 + Row 7
11	Potential reserved CAP contract and Settlement Agreement water ²	17,000 to 19,000 AFA	5,200 to 6,000 AFA	Row 6 + Row 9

Notes:

¹ The Nation and the Secretary could agree to alternative delivery amounts and locations anywhere within the CAP Service Area

² The Nation may lease CAP water within the CAP Service Area for a term of up to 100 years for authorized uses. See **Section 6.2.1** for further details.

³ The Allottees, San Xavier District, and other persons within the San Xavier Reservation receive the first right to beneficial use of 35,000 AFA of the total CAP allocation of 66,000 AFA. Reserved portions of the 35,000 AFA may be used by the Nation subject to call-back. See **Section 6.2.1** for further details.

TABLE 7-2. PROJECTED FUTURE (2025) GROUNDWATER BUDGETS FOR THE AREAS ON AND NEAR THE SAN XAVIER RESERVATION AND EASTERN SCHUK TOAK^{1,2}

Budget Component	ANNUAL AQUIFER INFLOWS (in acre-feet)					Budget Component	ANNUAL AQUIFER OUTFLOWS (in acre-feet)				
	Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)		Type/Location	San Xavier Reservation			Eastern Schuk Toak (Garcia Strip only)
		Eastern Half	Western Half	Total				Eastern Half	Western Half	Total	
Cultural Recharge	Artificial (managed recharge facilities)	24,825	0	24,825	27,100	Well Pumpage	Industrial	3,475	0	3,475	0
	Irrigation	2,500	0	2,500	2,275		Irrigation	0	0	0	0
	Tailings Pond Seepage	900	0	900	0		Municipal	0	875	875	40,050
Natural Recharge	Brawley Wash	0	0	0	175	Natural Discharge	Riparian Evapotranspiration along the Santa Cruz River	0	0	0	0
	Santa Cruz River	3,150	0	3,150	0						
	Mountain Front	450	500	950	75						
Underflow In	Avra Valley Subbasin	0	3,275	3,275	12,350	Underflow Out	Avra Valley Subbasin	0	5,300	5,300	1,550
	Upper Santa Cruz Subbasin	200	0	200	0		Upper Santa Cruz Subbasin	22,450	0	22,450	0
Total:		32,025	3,775	35,800	41,975	Total:		25,925	6,175	32,100	41,600

PROJECTED CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE SAN XAVIER RESERVATION DURING 2025: 35,800 AF (INFLOW) - 32,100 AF (OUTFLOW) = 3,700 AF

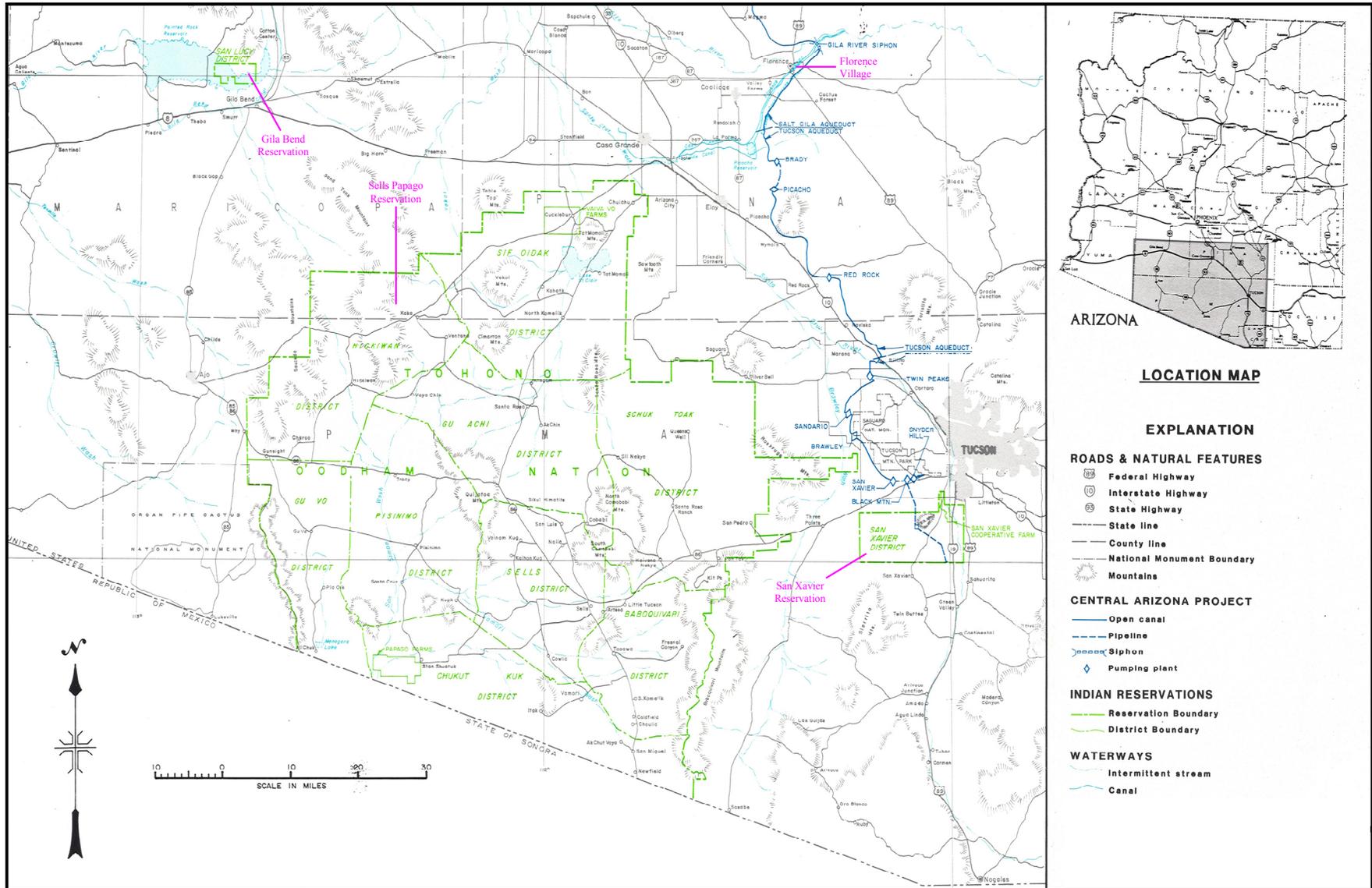
PROJECTED CHANGE IN BASIN-FILL AQUIFER STORAGE ON AND NEAR THE GARCIA STRIP DURING 2025: 41,975 AF (INFLOW) - 41,600 AF (OUTFLOW) = 375 AF

Notes:

¹ Data Source: ADWR, 2006a,c.

² Budgets were estimated using a numerical (MODFLOW) groundwater flow model of the basin-fill aquifer system developed by ADWR. Due to the size and location of the model cells, the budgets include a 1/2- to 1-mile buffer area around the reservation lands. Within Eastern Schuk Toak, only the Garcia Strip was considered to have a sufficient thickness of saturated basin-fill to be included in the model.

Figure 1-1. General Location of the Tohono O'odham Nation



Source: Franzoy Corey, 1988a.

Figure 1-2. Location of Settling Parties

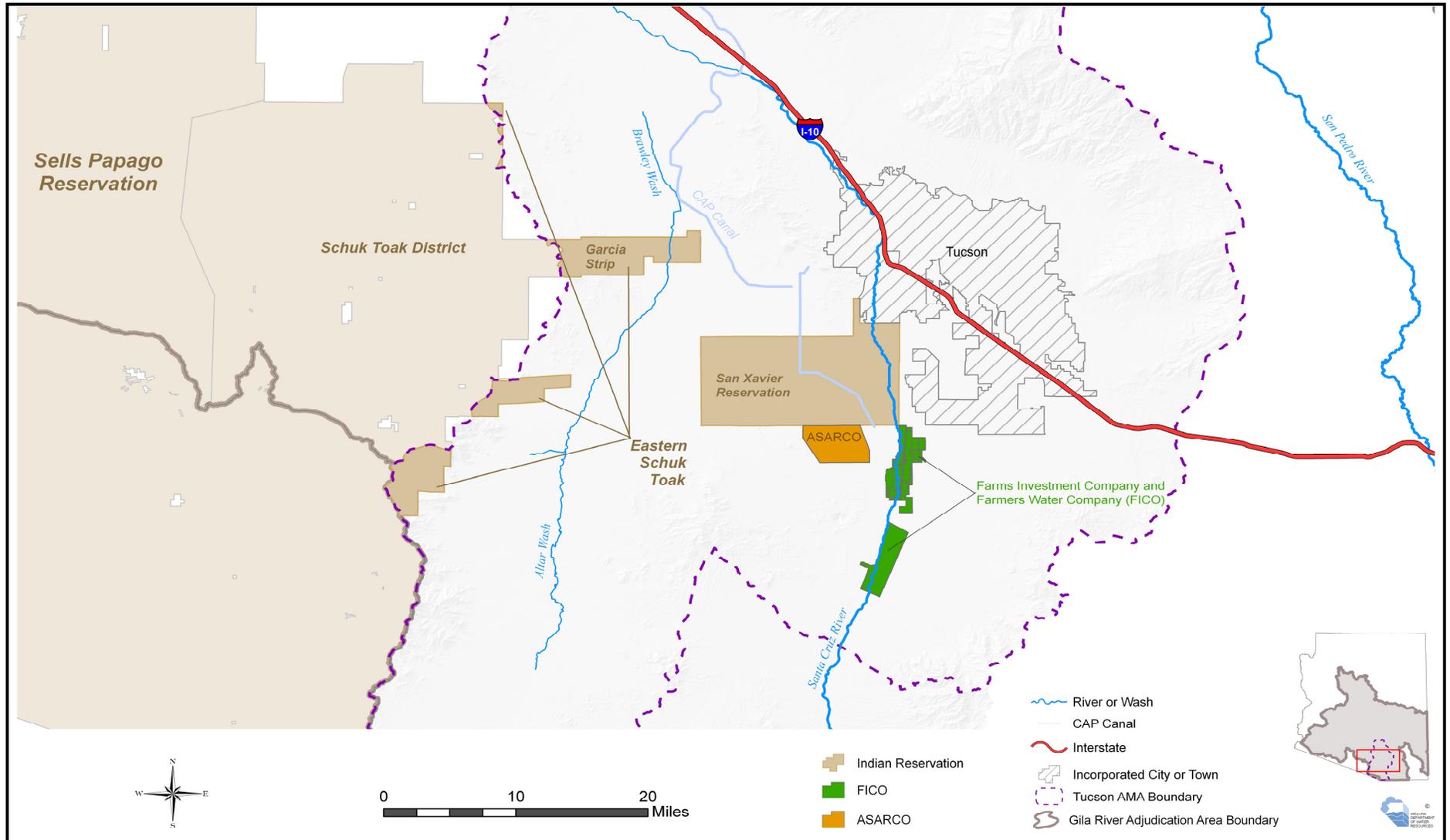
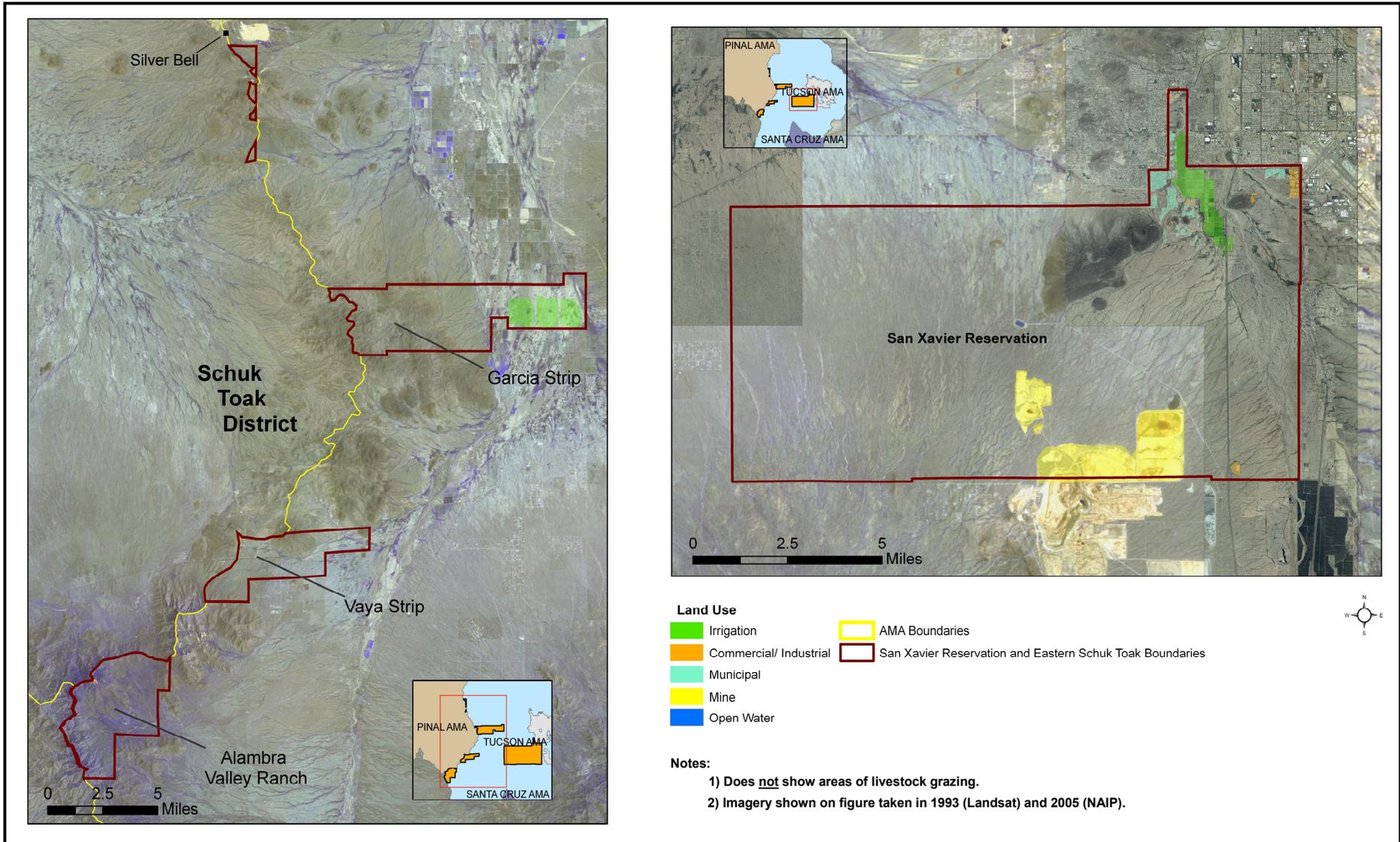
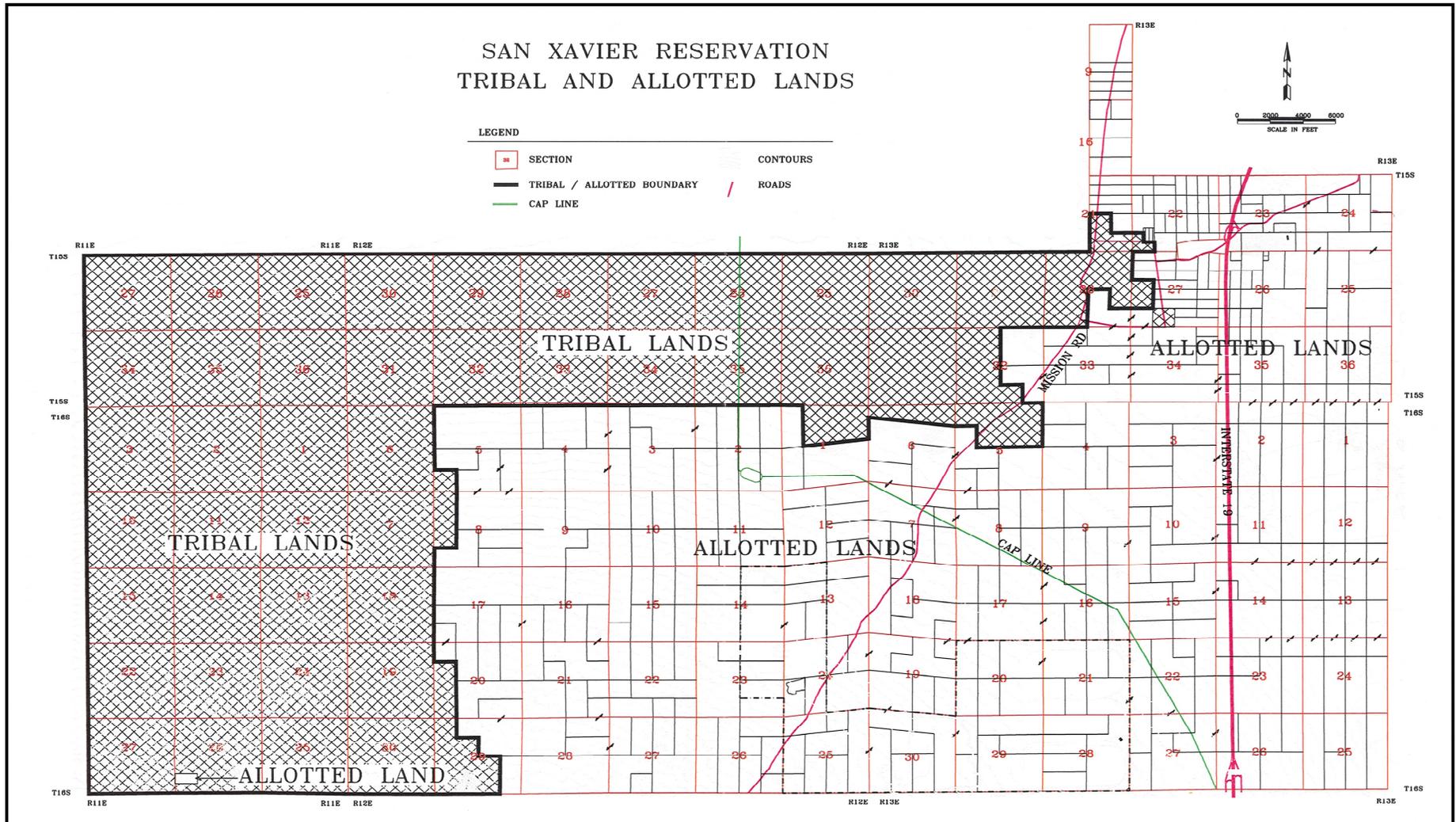


Figure 2-1. Current Land Use on the San Xavier Reservation and Eastern Schuk Toak



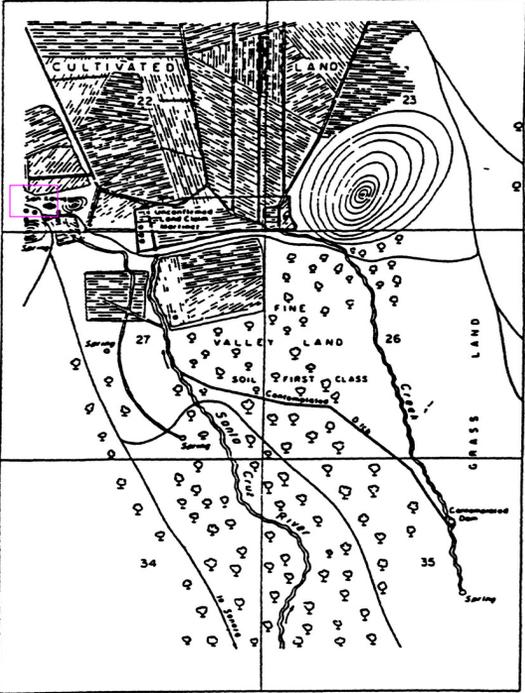
Sources: ADWR (2006e), Google Earth Photos (2003-2006), NAIP (2005), and SWReGAP (2004).

Figure 2-2. Land Ownership on the San Xavier Reservation

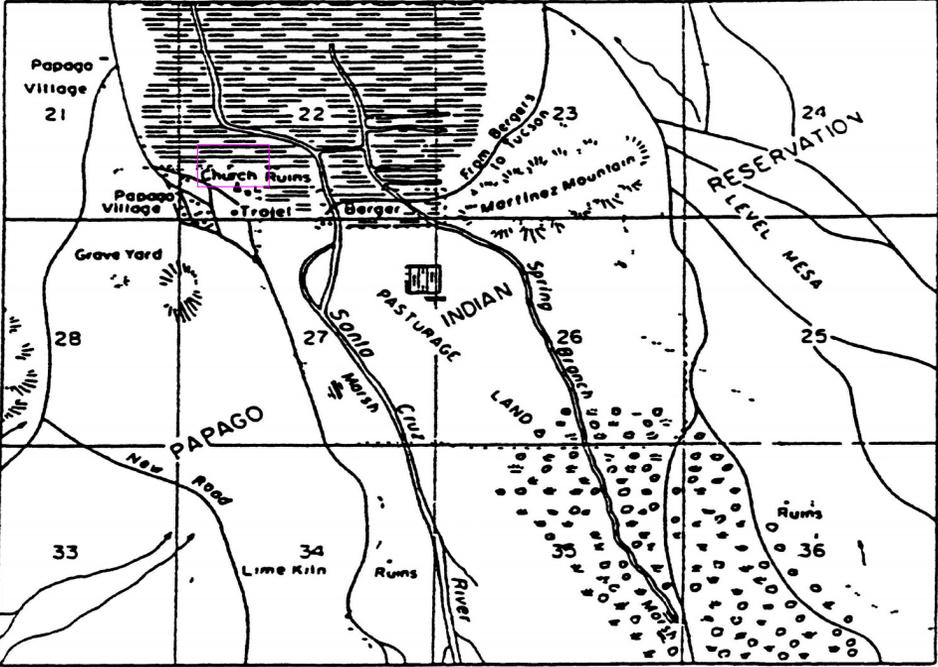


Source: SXAA, 2006.

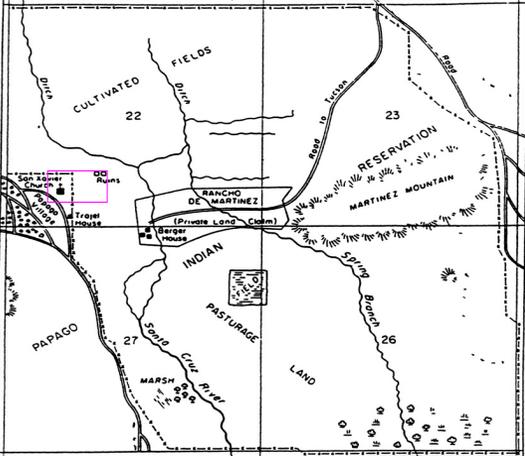
Figure 2-3. Early Irrigation on the San Xavier Reservation Near the San Xavier Mission



1882



1888

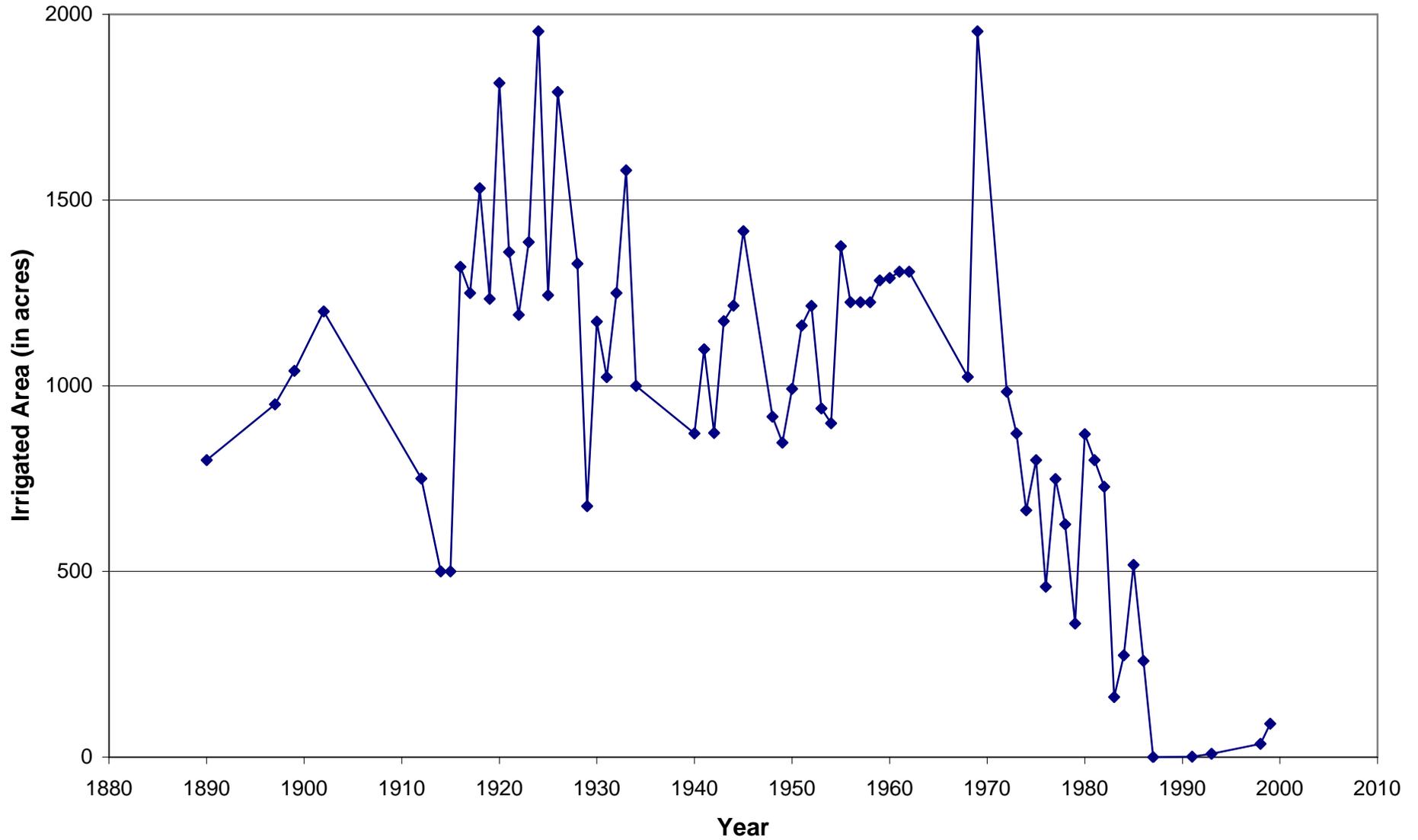


1891



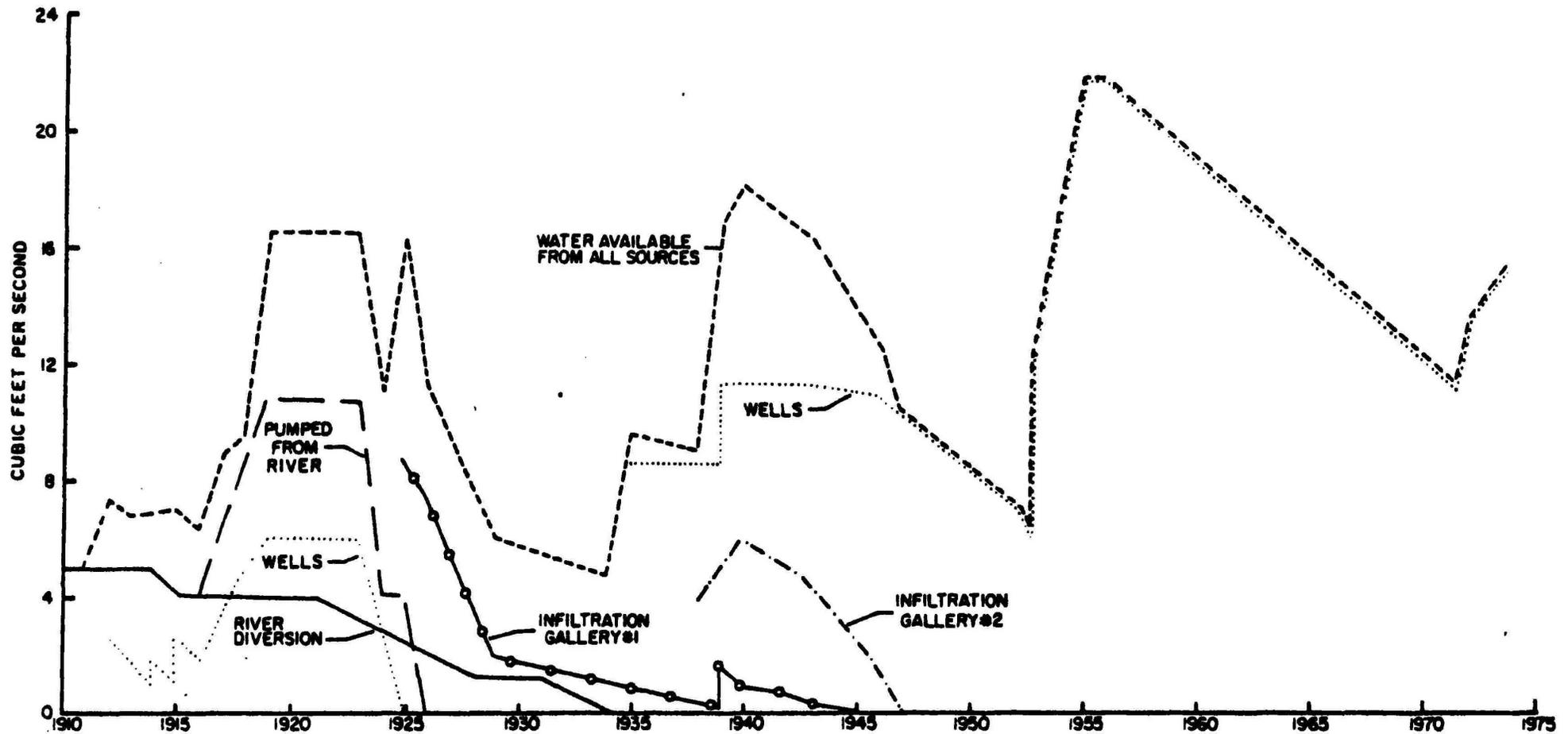
Source: Tellman and Yarde, 1996.

Figure 2-4. Acreage Historically Irrigated on the San Xavier Reservation



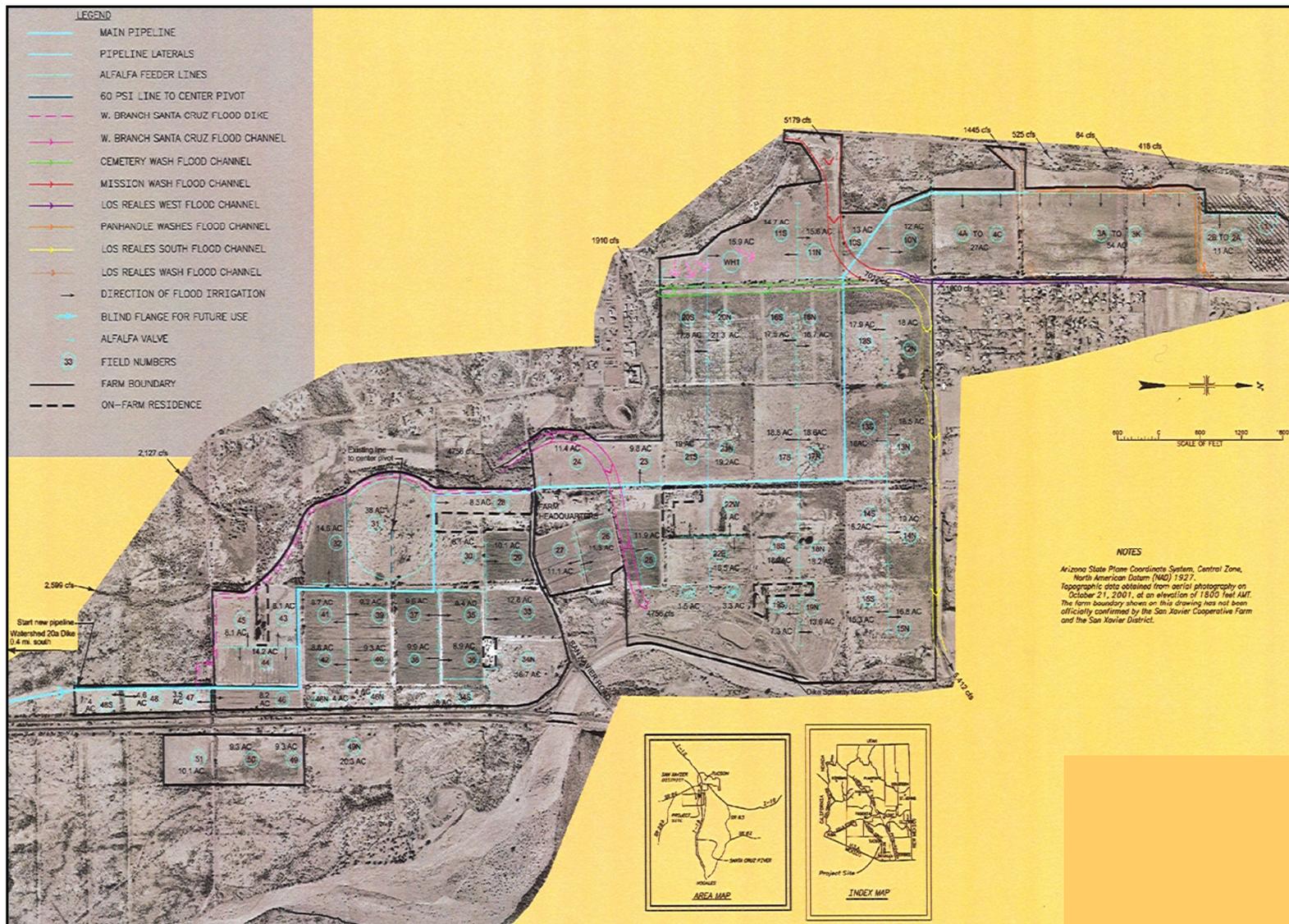
Sources: BOR (2005), Kupel (1987), NEA (1992), and SXCA (2006).

Figure 2-5. Changes in Water Availability Near the San Xavier Mission, 1910-1975.



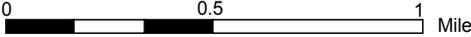
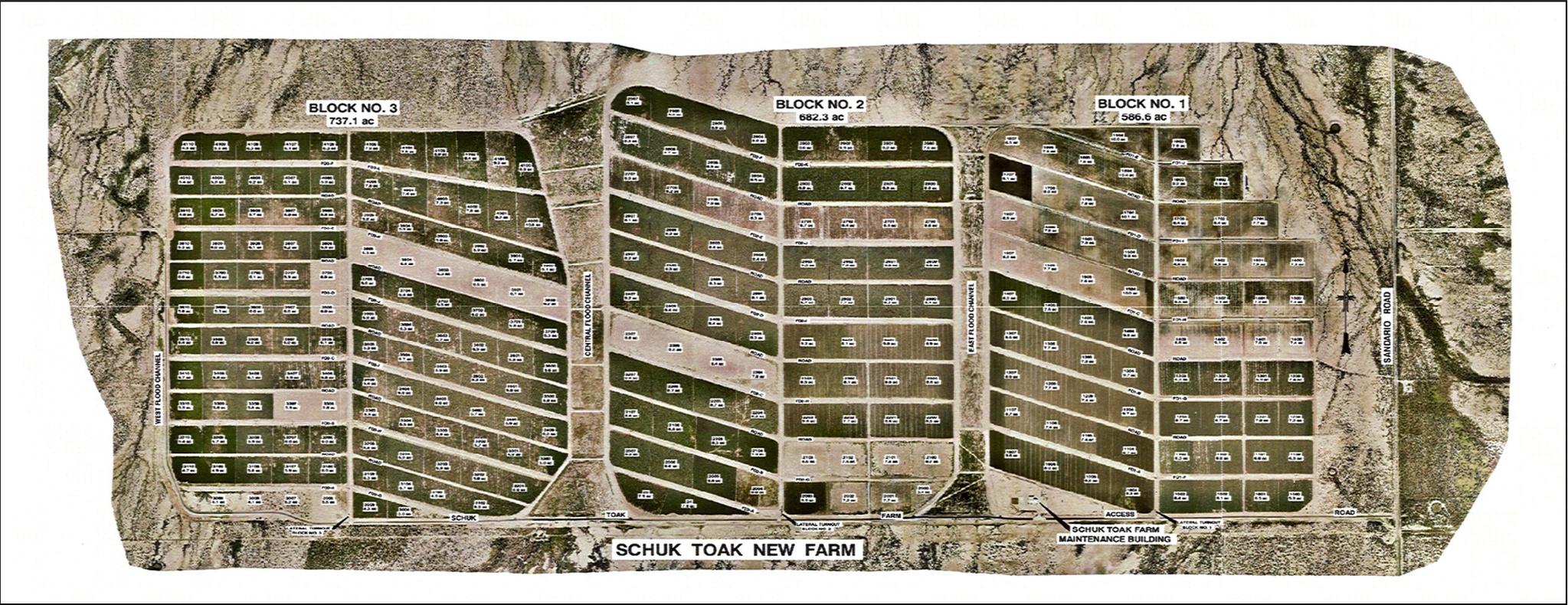
Source: Kupel, 1987.

Figure 2-6. Irrigation System and Flood Control Channels for the San Xavier Cooperative Farm Rehabilitation



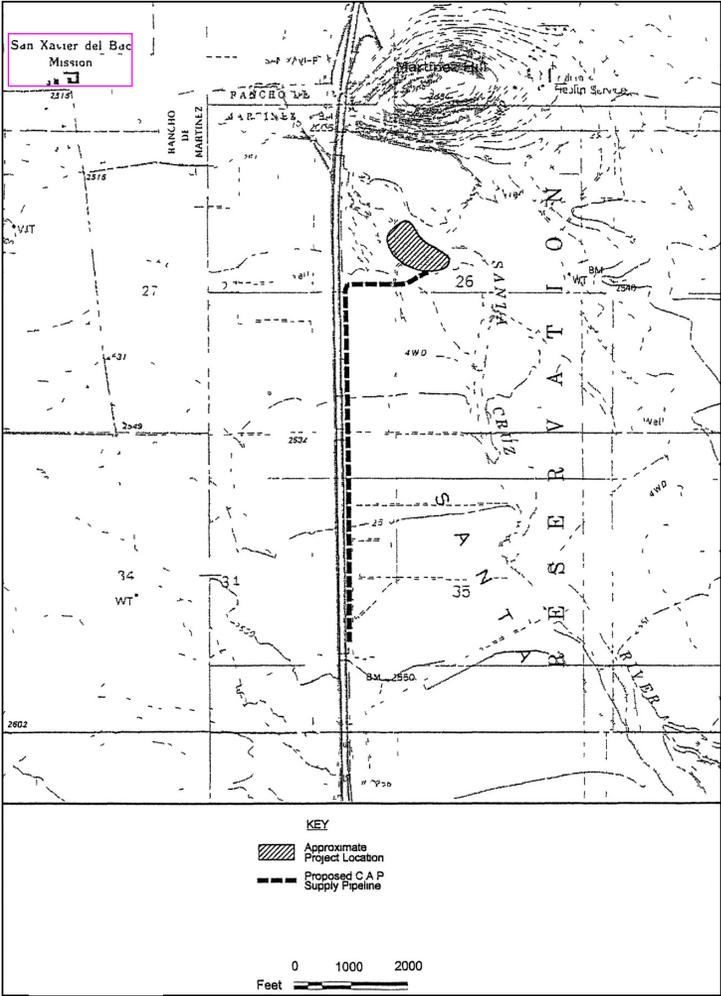
Source: BOR, 2006.

Figure 2-7. Schuk Toak New Farm on the Garcia Strip

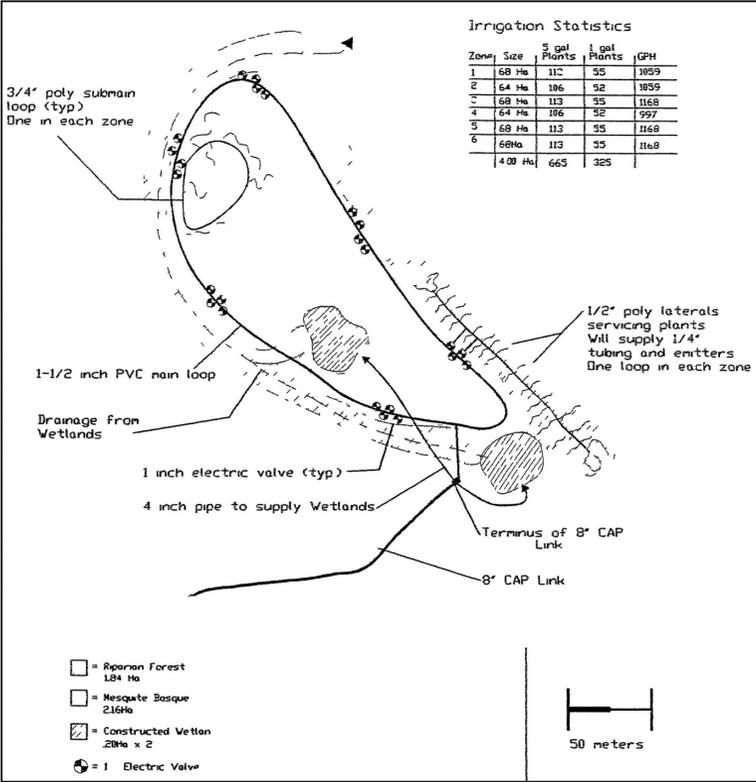


Source: BOR, 2006.

Figure 2-8. Irrigation System for the Santa Cruz Riparian Restoration Project, San Xavier Reservation



Project Location

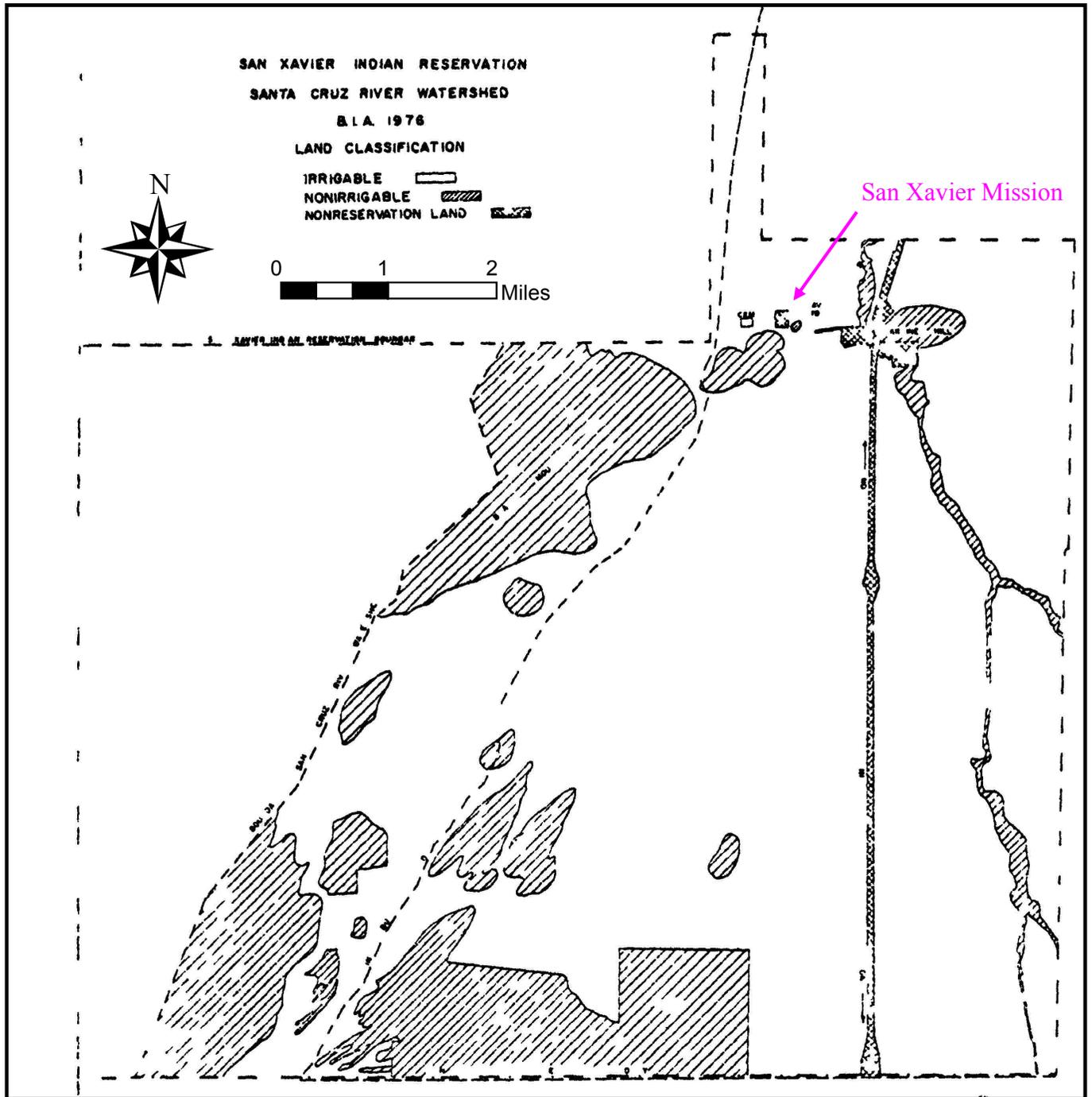


Irrigation System

Source: SWCA, 2001.

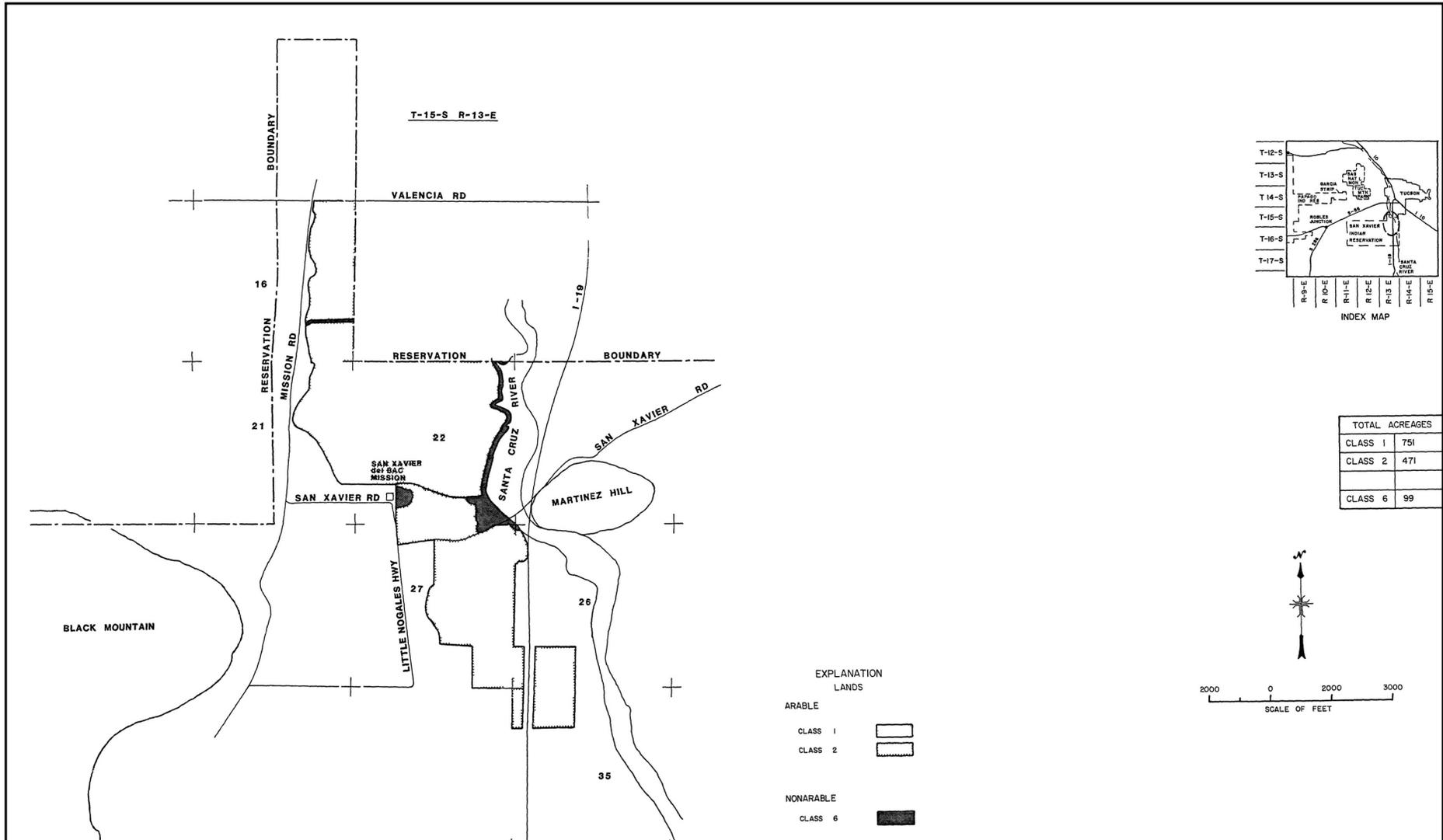


Figure 3-1. 1979 BIA Land Classification of the San Xavier Reservation



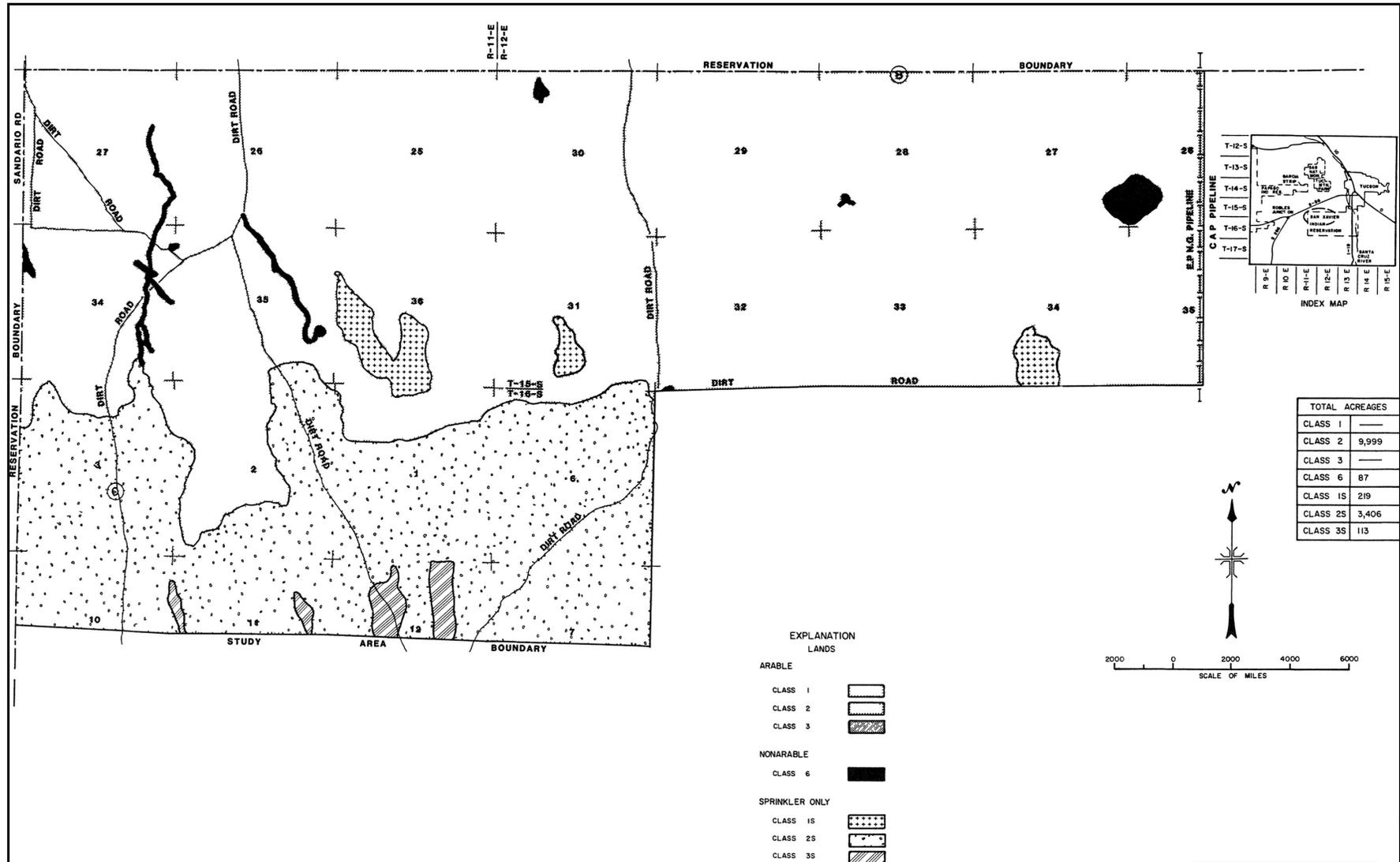
Source: U.S. Senate, 1977.

Figure 3-2. 1988 Land Classification for the San Xavier Farm Rehabilitation Project



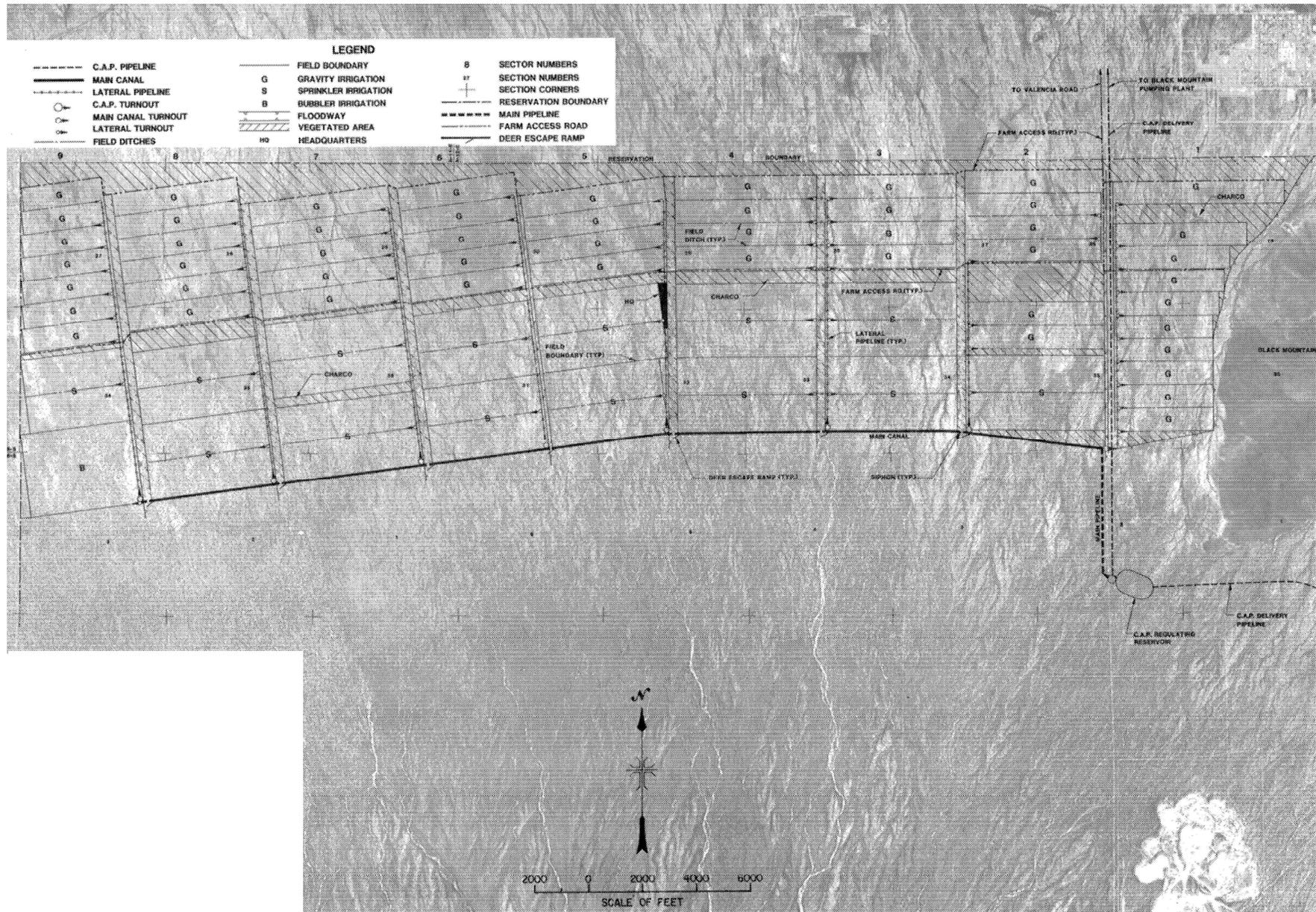
Source: Franzoy Corey, 1988a.

Figure 3-3. 1989 Land Classification for the San Xavier Development Project, Area of the Proposed New or 9B Farm



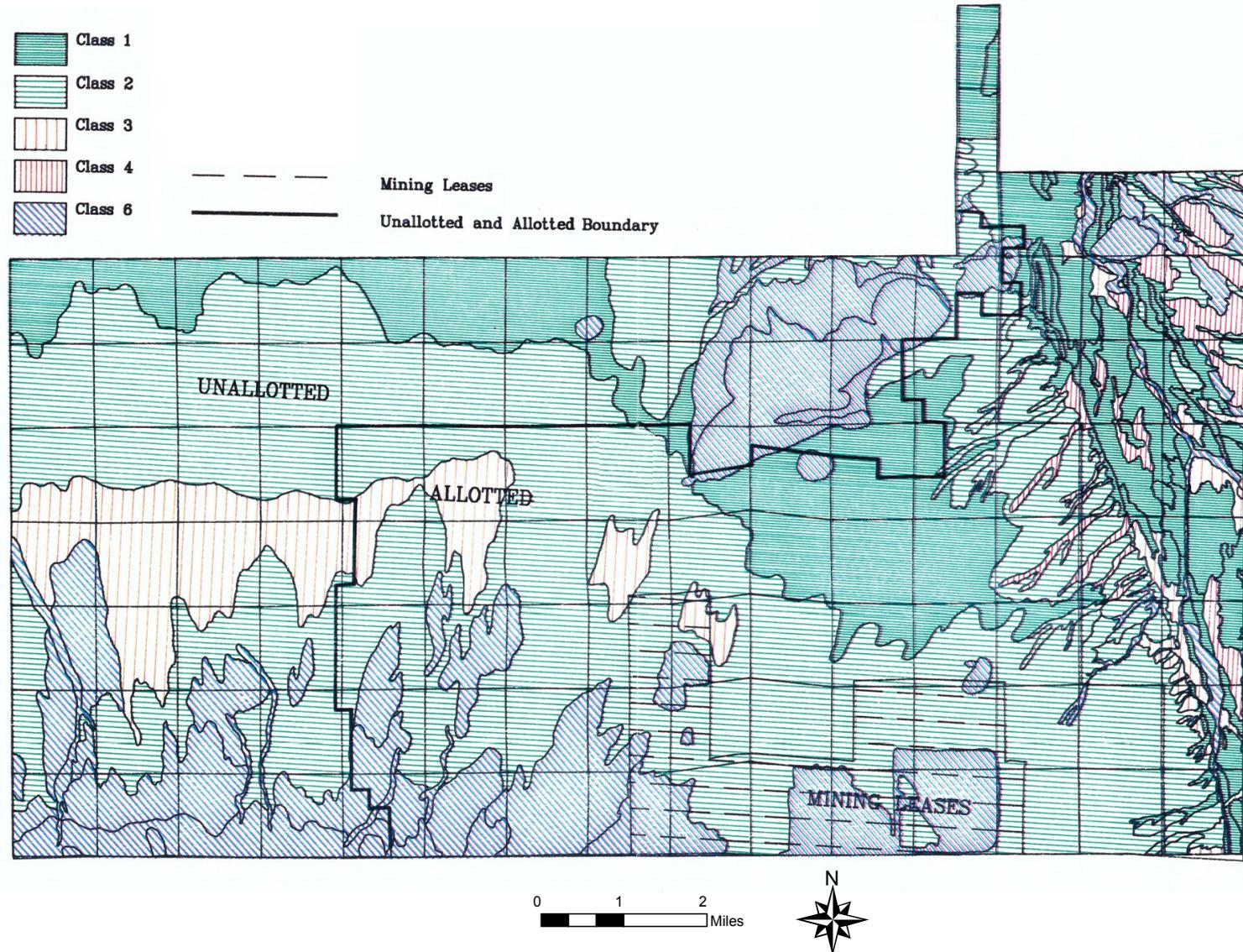
Source: BOR, 1989.

Figure 3-4. Proposed Irrigation System for the New or 9B Farm, San Xavier Reservation



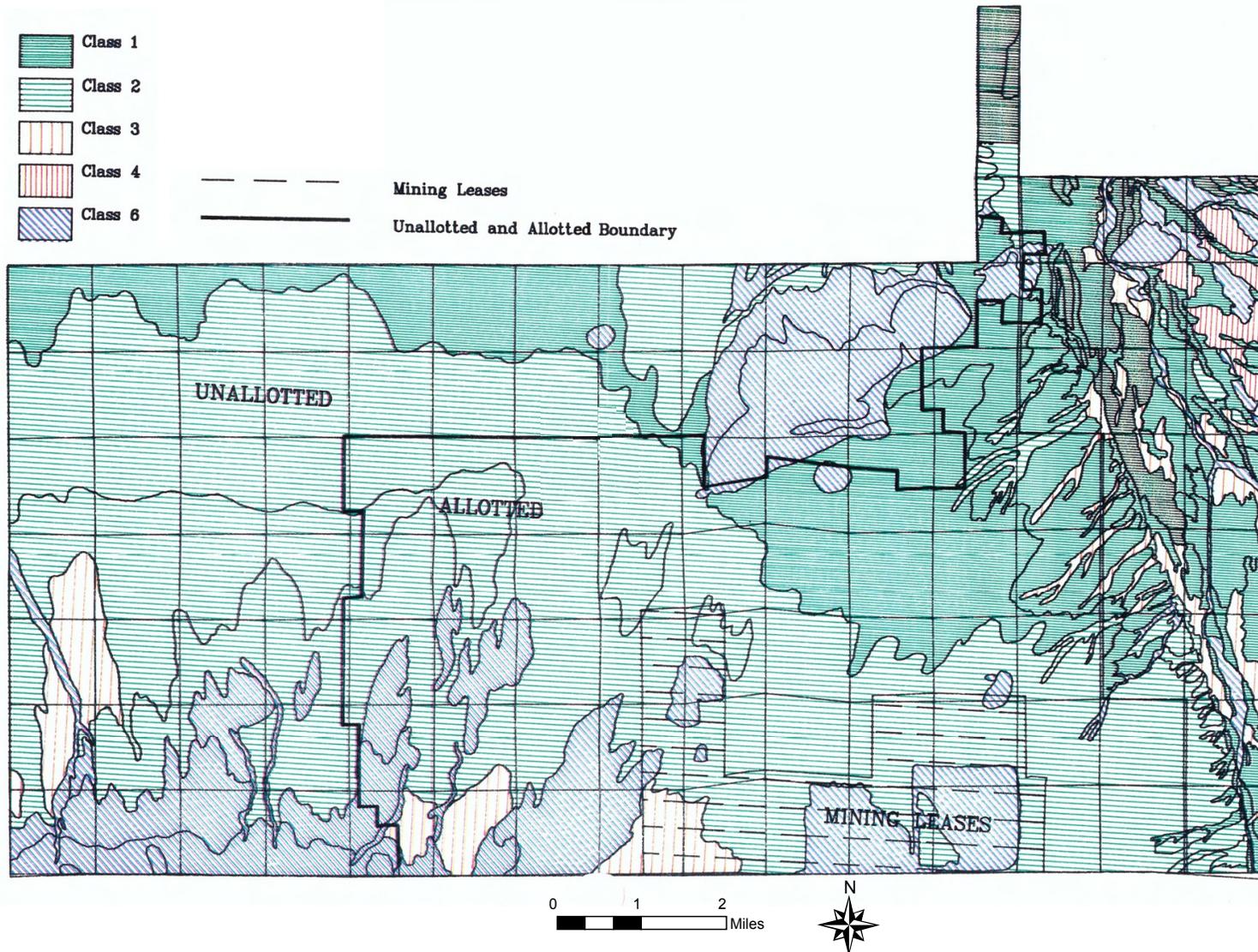
Source: BOR, 1989.

Figure 3-5a. 1992 San Xavier Reservation Land Classification Using Gravity Irrigation



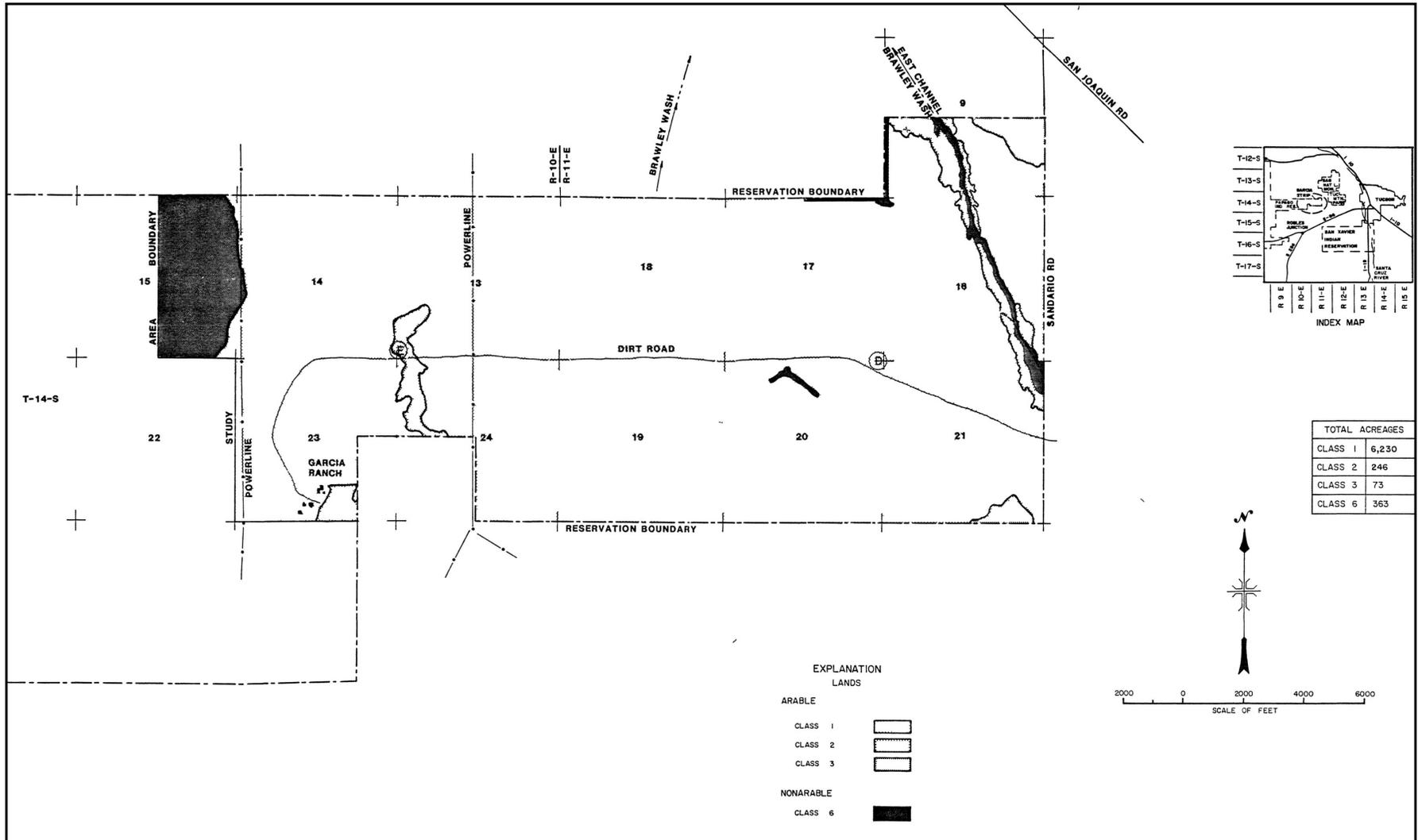
Source: Northwest Economic Associates (1992).

Figure 3-5b. 1992 San Xavier Reservation Land Classification Using Sprinkler Irrigation



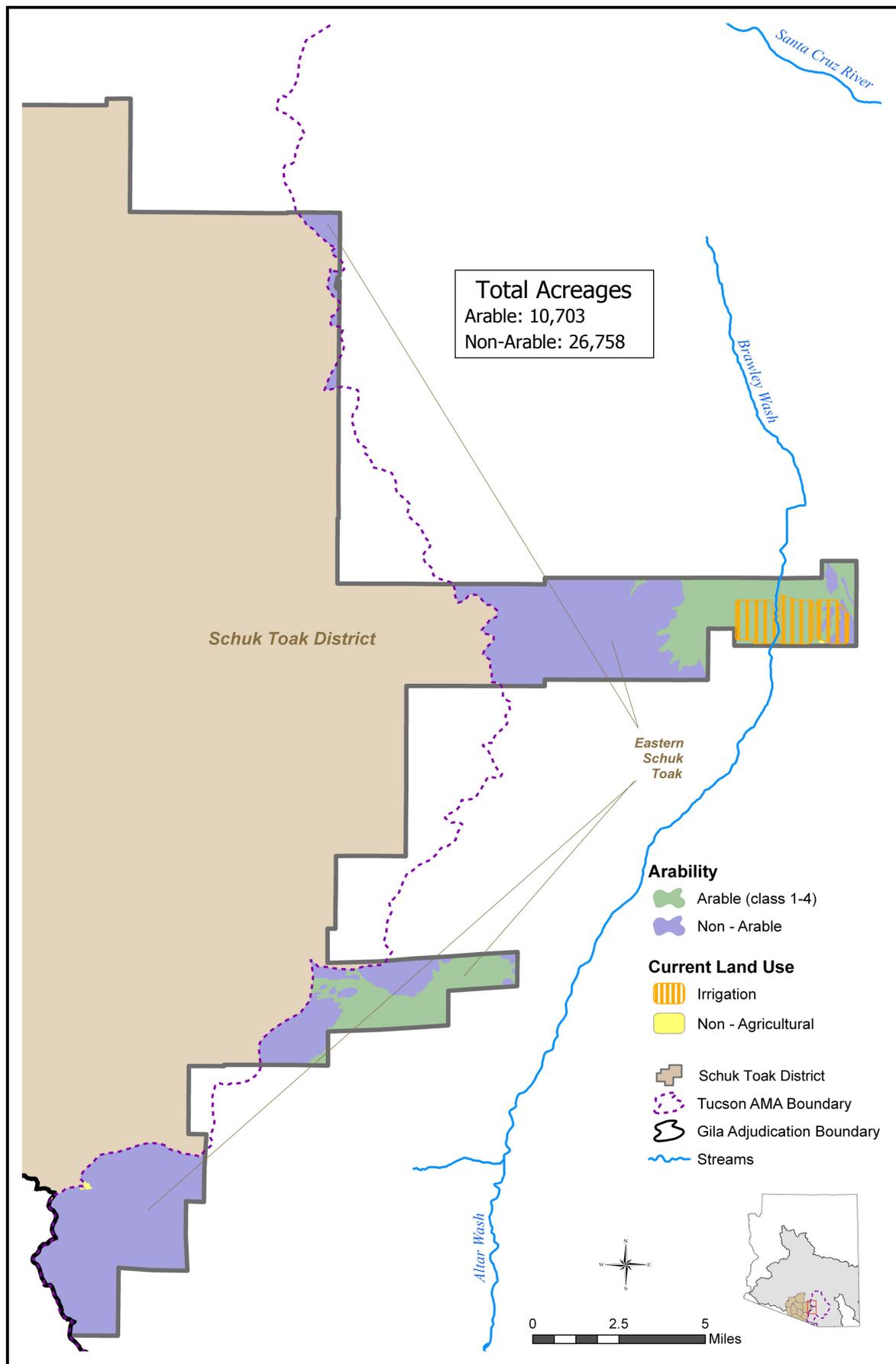
Source: Northwest Economic Associates (1992).

Figure 3-6. 1988 Land Classification of the Garcia Strip



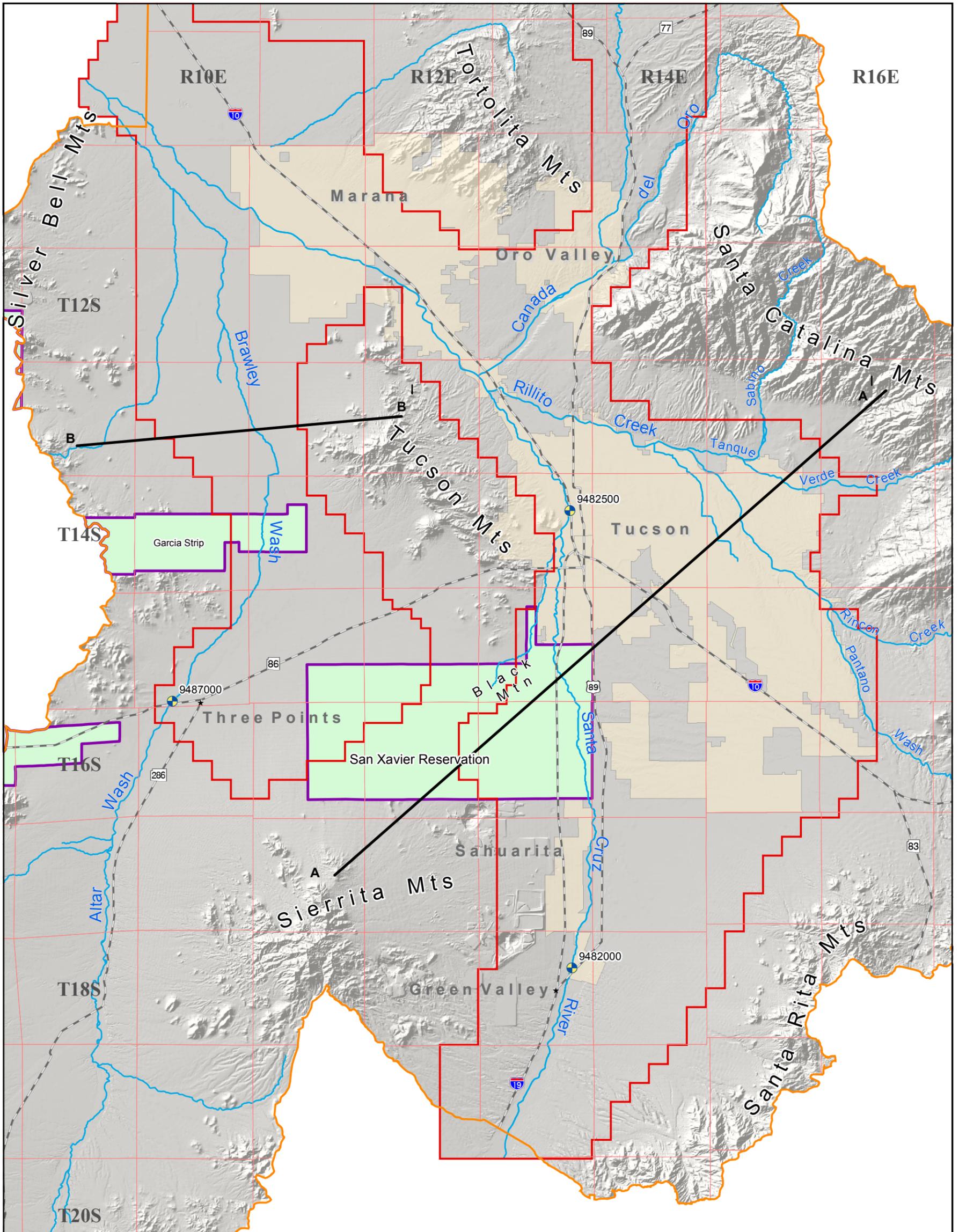
Source: Franzoy Corey, 1988a.

Figure 3-7. 1999 NRCS Land Classification and Current Land Use on Eastern Schuk Toak



Source: NRCS (1999) and Figure 2-1 (this report).

Figure 4-1. Surface Water Resources and ADWR's Groundwater Model Boundary for the Tucson AMA

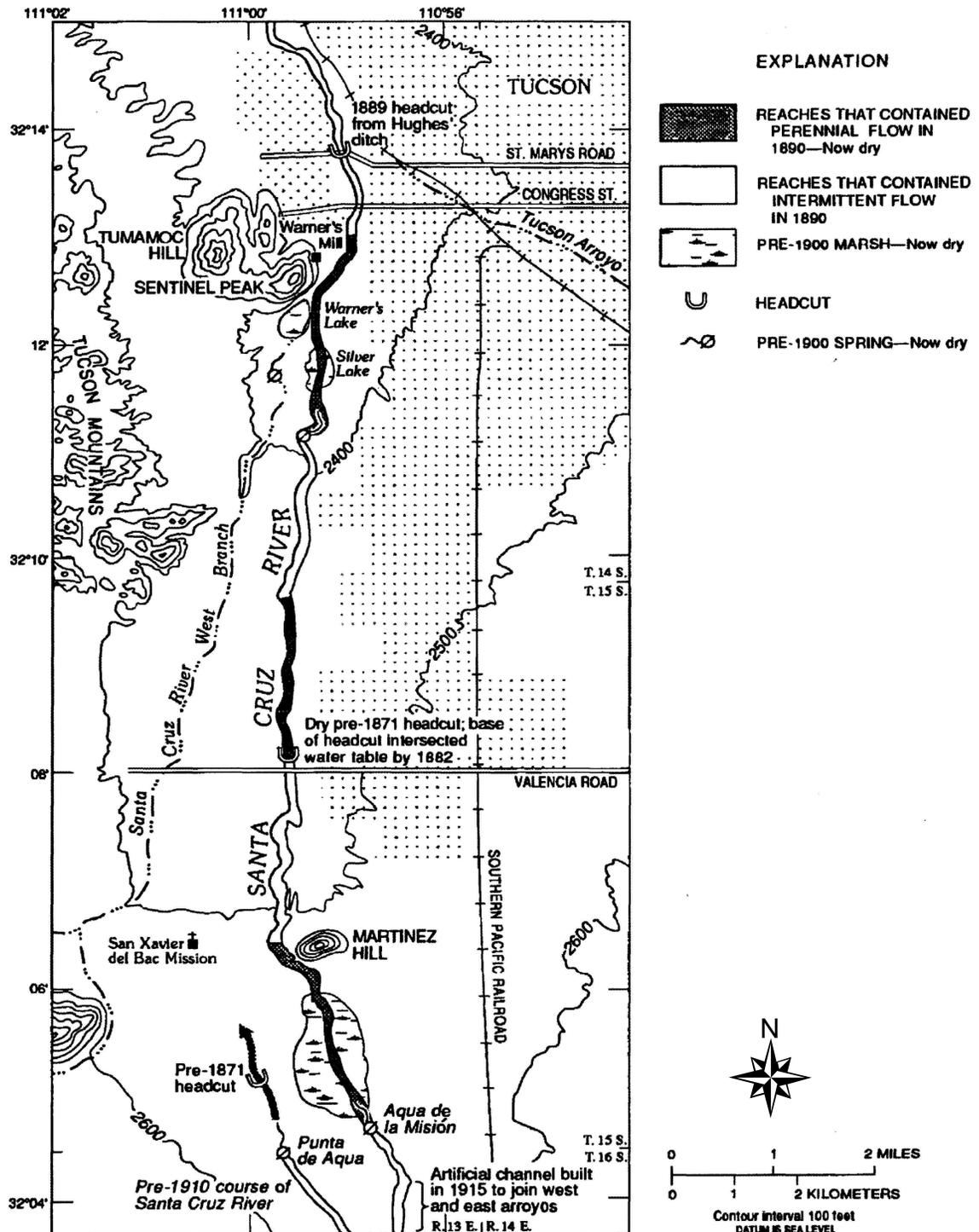


- USGS Stream Gage
- Town
- Road
- Stream
- Reservation Lands
- City Boundary
- Active Groundwater Model Boundary
- A-A' Hydrologic Cross Section
- Township & Range
- Tucson AMA Boundary



Source: ADWR, 2006c.

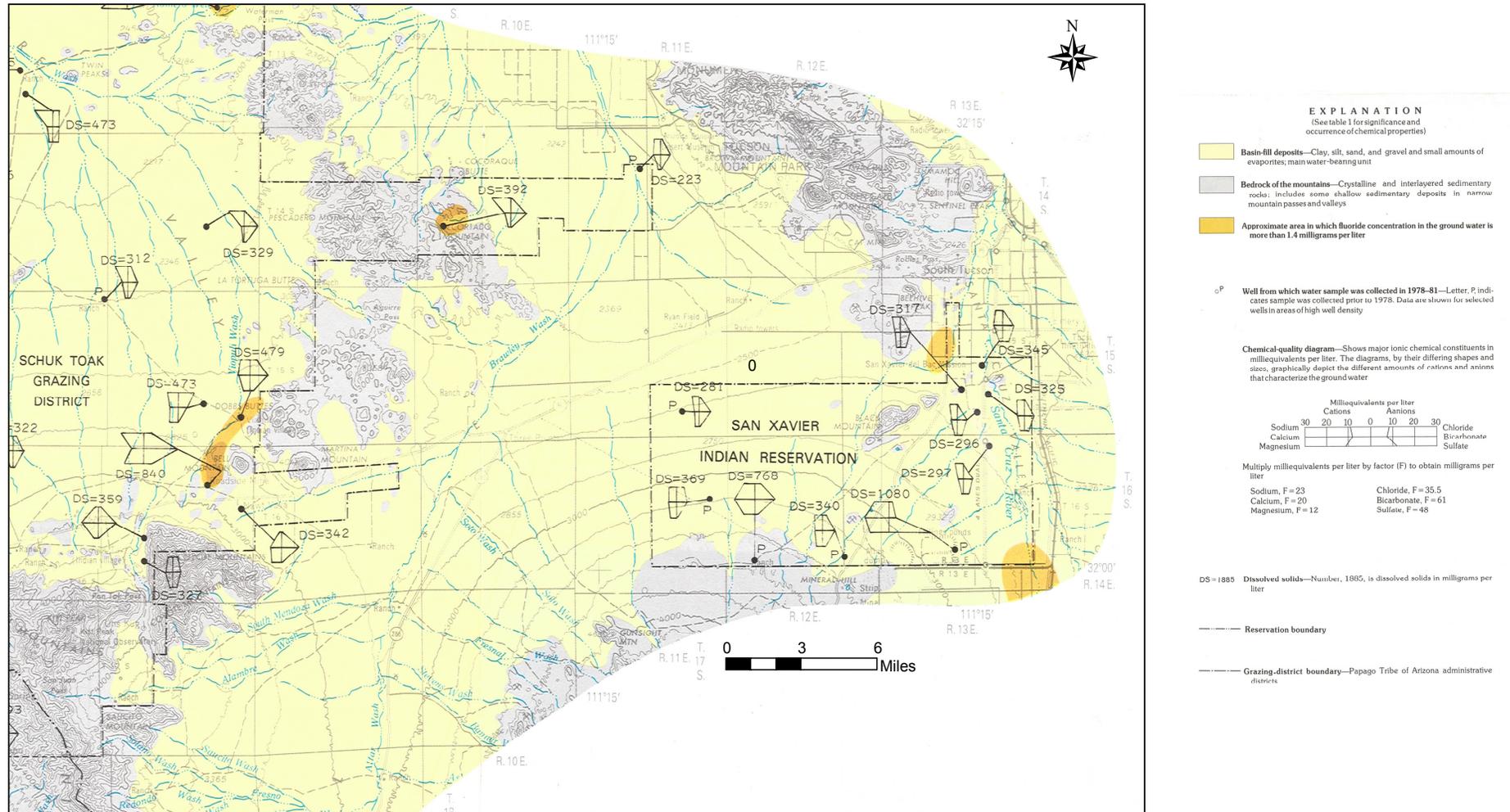
Figure 4-2. Changes in Surface Water Flow Conditions Near the San Xavier Mission, 1890 and 1988



Source: Parker, 1993.

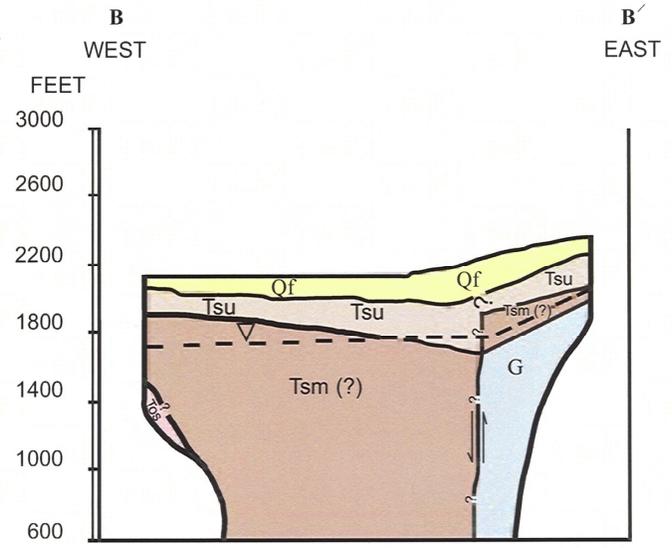
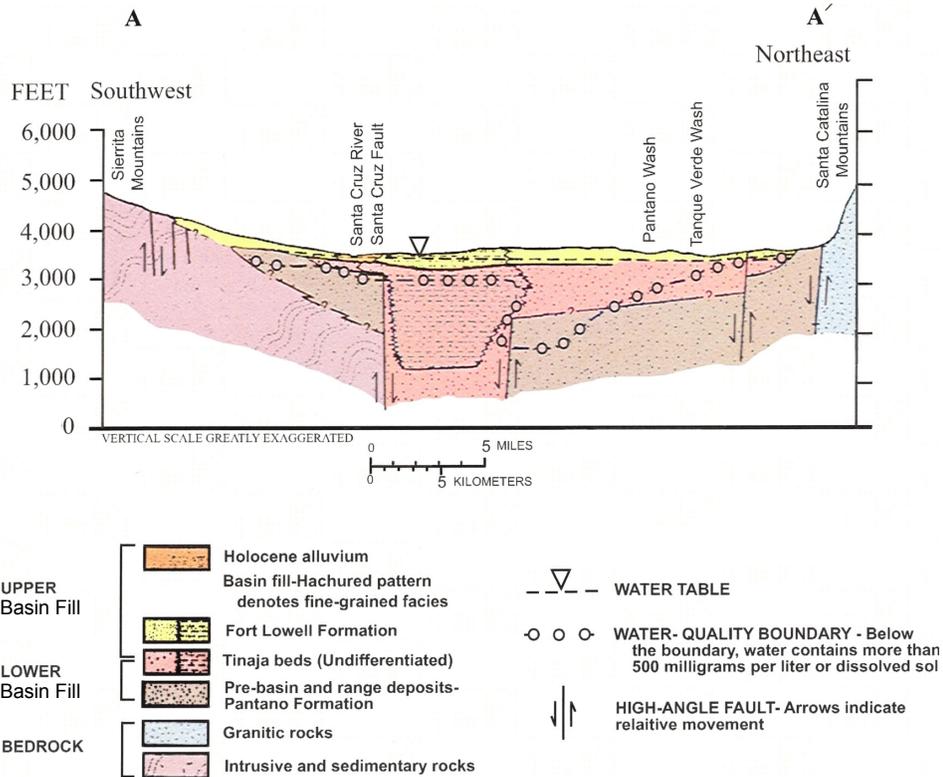


Figure 4-3. Surface Geology and Concentration of Major Ions in Groundwater Beneath the San Xavier Reservation and Eastern Schuk Toak, 1978-1981



Source: Hollett and Garrett, 1984.

Figure 4-4. Hydrogeologic Cross Sections A-A' and B-B'



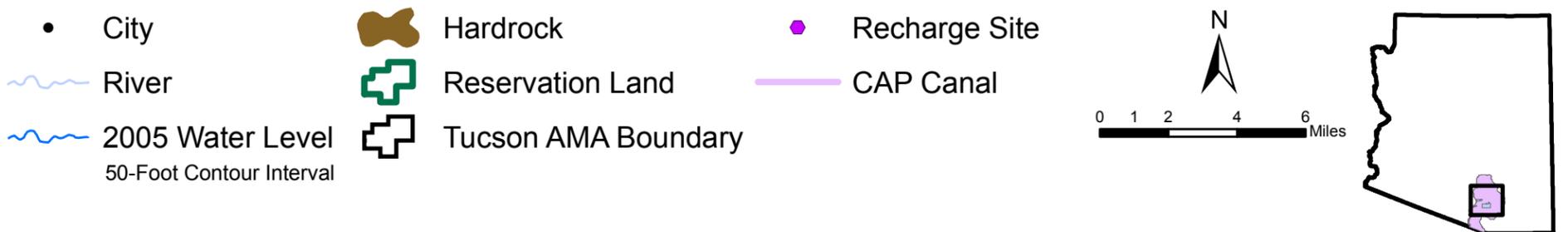
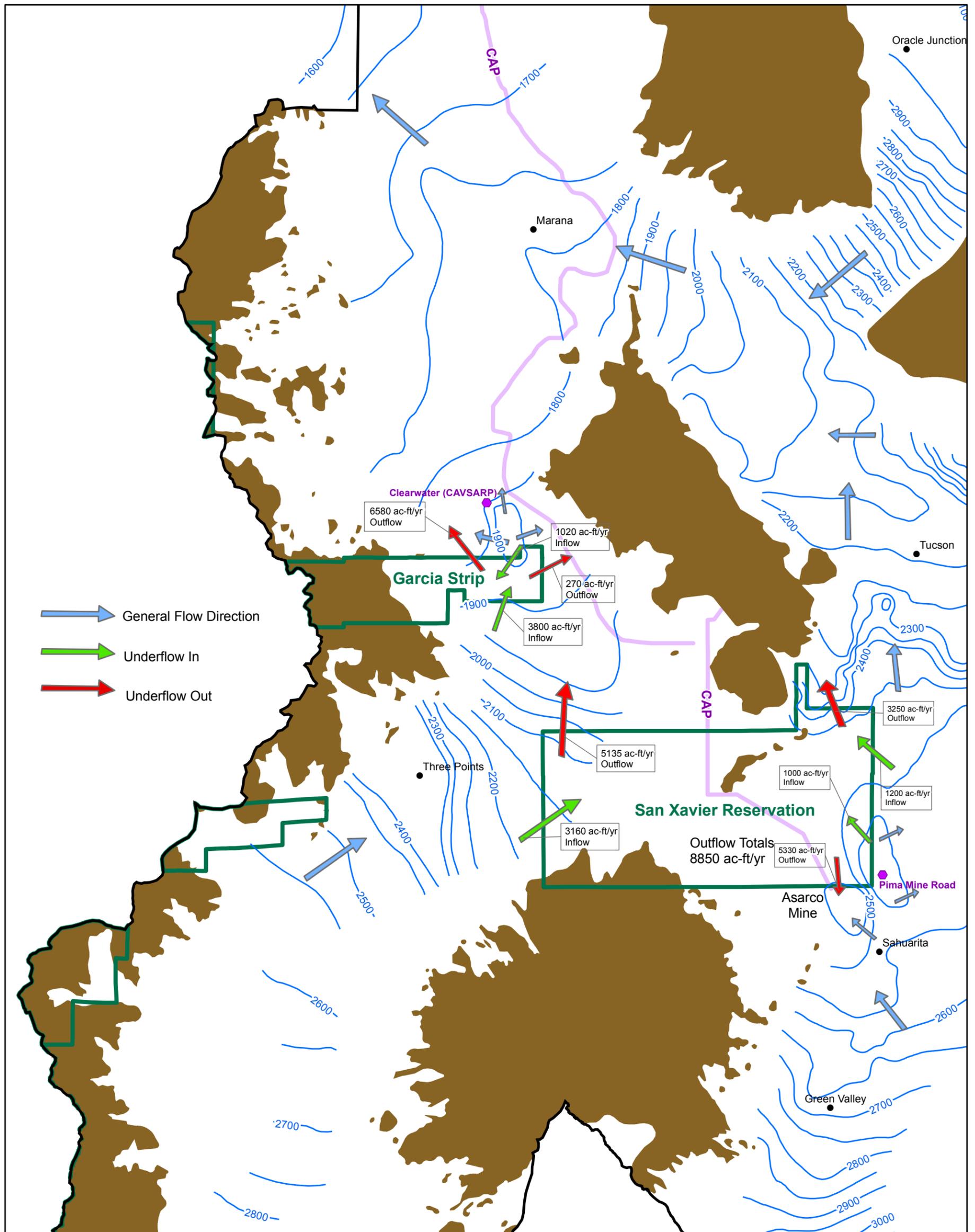
EXPLANATION

	WATER TABLE		
	HIGH-ANGLE FAULT- Arrows indicate relative movement		
	WATER- QUALITY BOUNDARY - Below the boundary, water contains more than 500 milligrams per liter or dissolved sol		
	HIGH-ANGLE FAULT- Arrows indicate relative movement		
	FORT LOWELL FORMATION-- Gravel to clayey silt; also includes thin surficial alluvial deposits of late Pleistocene and Holocene age		Pleistocene QUATERNARY
	TINAJA BEDS, UNDIFFERENTIATED--Gravel and conglomerate to gypsiferous and anhydritic clayey silt and mudstone. Includes tuff beds and interbedded volcanic flows		Miocene and Pliocene TERTIARY
	Upper Tinaja beds--Gravel to clayey silt		
	Middle Tinaja beds--Gravel and conglomerate to gypsiferous and anhydritic clayey silt and mudstone. Queried where uncertain		
	Lower Tinaja beds--Gravel and conglomerate to clayey silt and mudstone. Queried where uncertain		
	PANTANO FORMATION-- Conglomerate, mudstone, and gypsiferous sandstone, mudstone. Includes megabreccia, tuff beds, and interbedded volcanic flows. Queried where uncertain		Oligocene
	Granitic rocks		

Cross Section Locations Shown on Figure 4-1

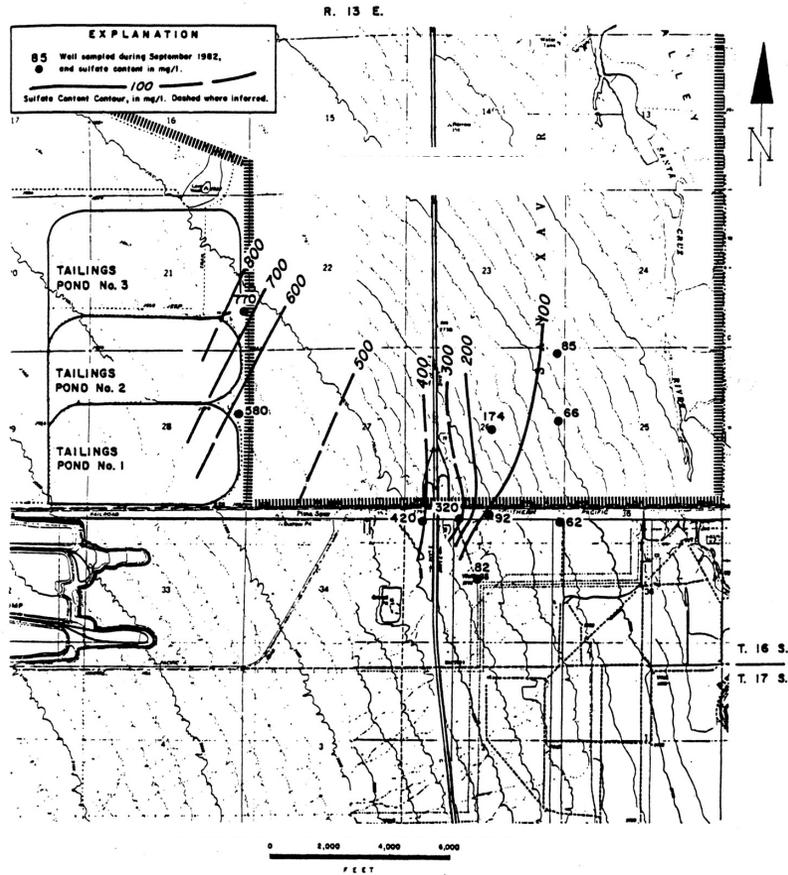
Source: ADWR, 2006a.

Figure 4-5. 2005 Water Level Elevations and Recent (2000) Underflow Conditions in the Basin Fill Aquifer Beneath and Adjacent to Reservation Lands



Source: ADWR, 2006c.

Figure 4-6. Concentration of Sulfate and Total Dissolved Solids in Groundwater Downgradient of Asarco's Tailings Ponds on the San Xavier Reservation, September 1982



Sulfate, in mg/l

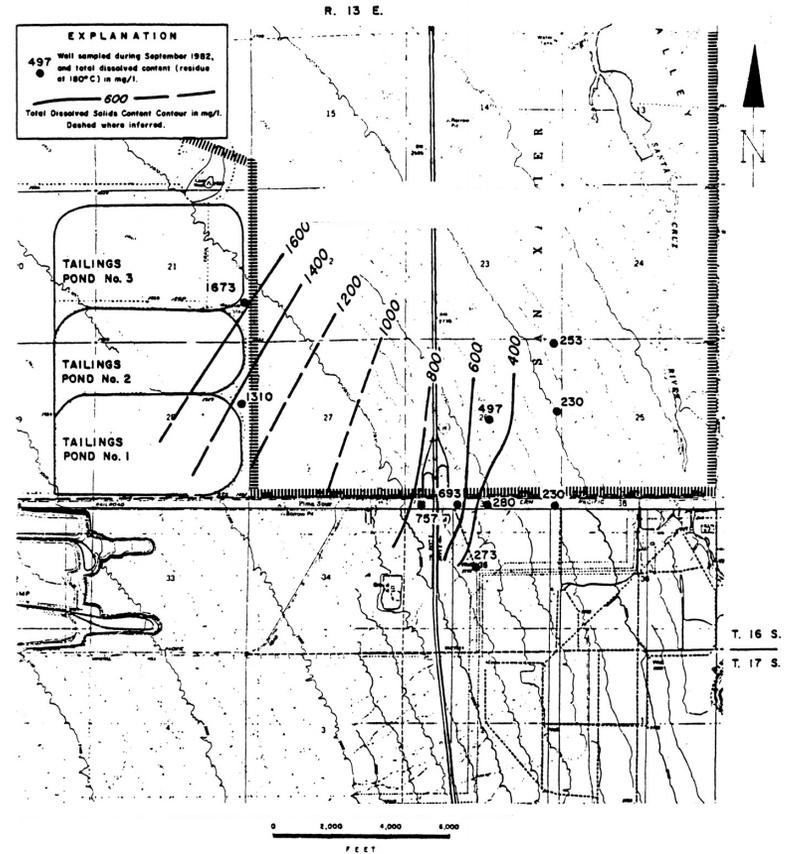
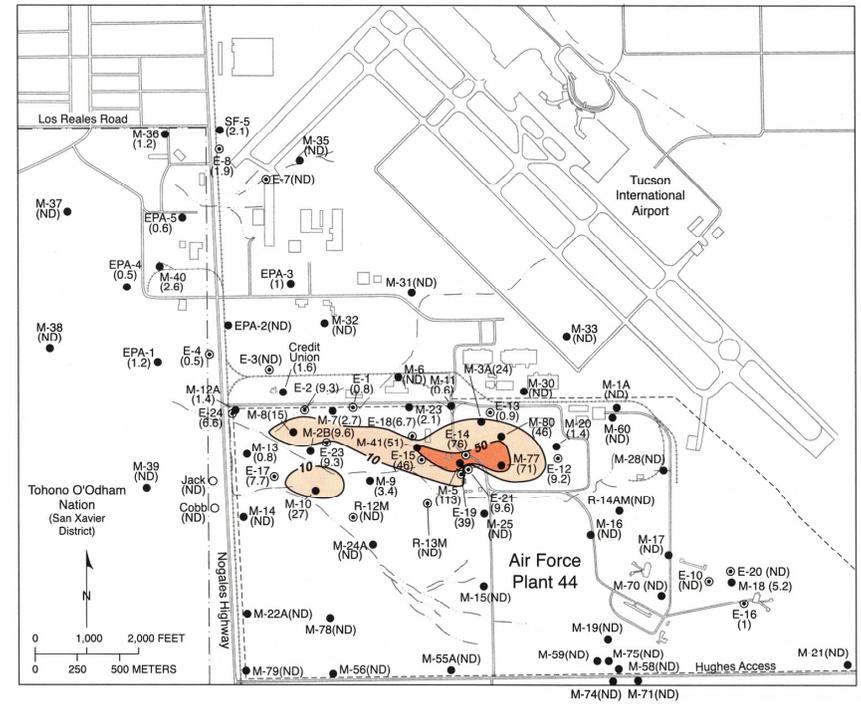
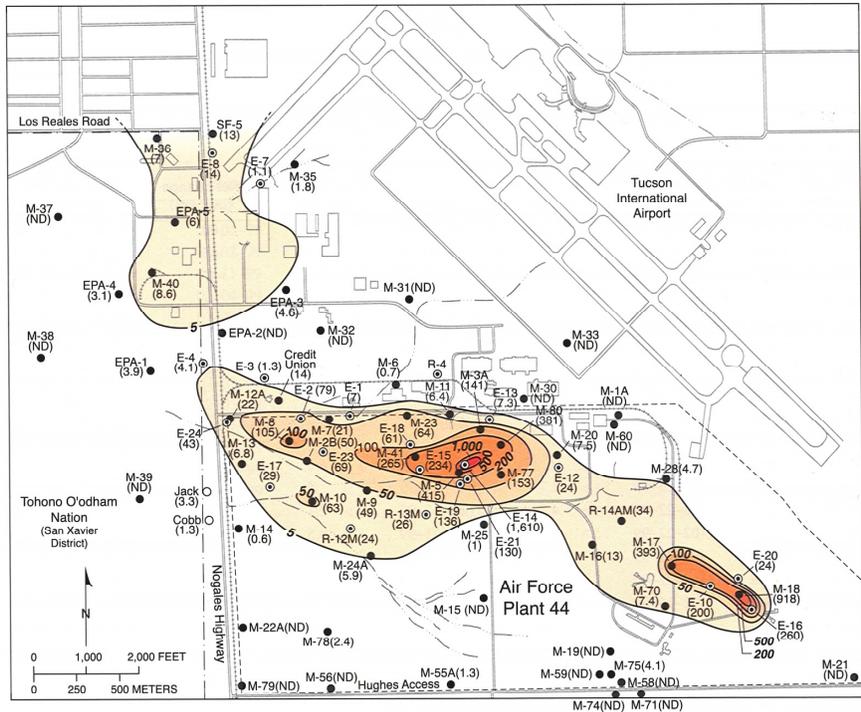


Figure 4-7. Concentration of Volatile Organic Contaminants in Groundwater Beneath the Northeast Portion of the San Xavier Reservation, May, 1999



EXPLANATION

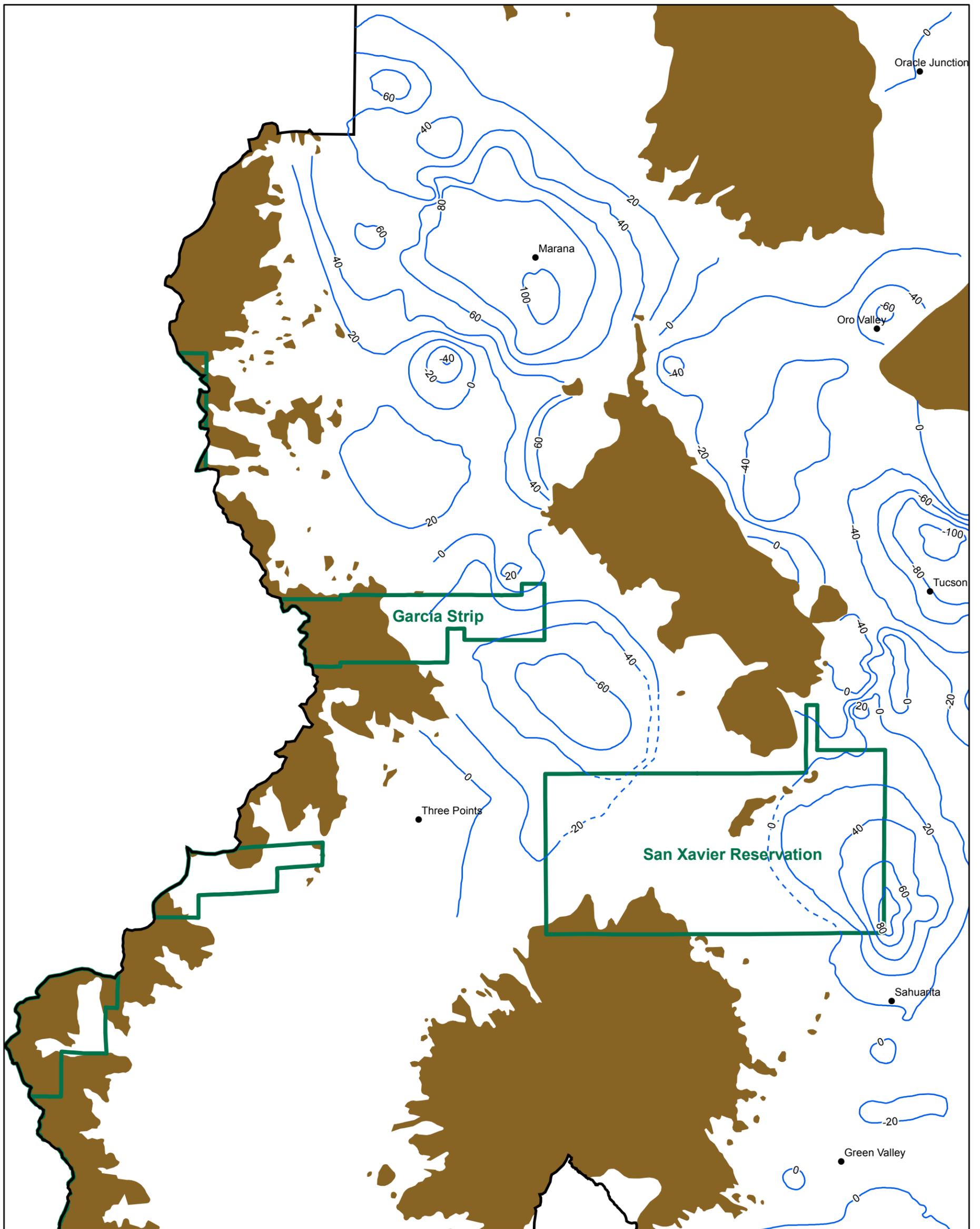
- — BOUNDARY OF TOHONO O'ODHAM NATION
- - - - BOUNDARY OF AIR FORCE PLANT 44
- 50 - CONTOUR OF EQUAL TRICHLOROETHYLENE CONCENTRATIONS, IN MICROGRAMS PER LITER—Interval variable
- CONCENTRATIONS OF TRICHLOROETHYLENE, IN MICROGRAMS PER LITER
- 1,000
- 500
- 200
- 100
- 50
- 5
- M-32 MONITOR WELL IN UPPER ZONE OF REGIONAL AQUIFER — Letter and number are well identifier
- (2.4) TRICHLOROETHYLENE CONCENTRATION, IN MICROGRAMS PER LITER
- (ND) LESS THAN MINIMUM REPORTING LIMIT (0.5 MICROGRAMS PER LITER)
- Jack ○ PRIVATE WELL IN UPPER ZONE OF REGIONAL AQUIFER — Name is well identifier
- E-4 ⊕ RECLAMATION WELL — Letter and number are well identifier; "E" denotes extraction well, "R" denotes recharge well

EXPLANATION

- — BOUNDARY OF TOHONO O'ODHAM NATION
- - - - BOUNDARY OF AIR FORCE PLANT 44
- 10 - CONTOUR OF EQUAL 1,1-DICHLOROETHYLENE CONCENTRATIONS, IN MICROGRAMS PER LITER—Interval 40 micrograms per liter
- CONCENTRATIONS OF 1,1-DICHLOROETHYLENE, IN MICROGRAMS PER LITER
- 50
- 10
- M-9 MONITOR WELL IN UPPER ZONE OF REGIONAL AQUIFER — Letter and number are well identifier
- (27) 1,1-DICHLOROETHYLENE CONCENTRATION, IN MICROGRAMS PER LITER
- (ND) LESS THAN MINIMUM REPORTING LIMIT (0.5 MICROGRAMS PER LITER)
- Cobb ○ PRIVATE WELL IN UPPER ZONE OF REGIONAL AQUIFER — Name is well identifier
- E-4 ⊕ RECLAMATION WELL — Letter and number are well identifier; "E" denotes extraction well, "R" denotes recharge well

Source: Graham and others, 2001.

Figure 4-8. Water Level Changes in the Basin-Fill Aquifer Beneath the San Xavier Reservation and Eastern Schuk Toak, 1983 to 2005



- City
- ⬮ Hardrock
- ⬮ Tucson AMA Boundary
- ⬮ River
- ⬮ Reservation Land
- ⬮ 1983-2005 Water Level Change
- Contour Interval = 20ft
- Dashed Where Uncertain
- (-) Indicates Decline Since 1983

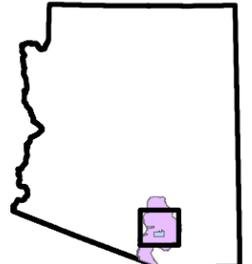
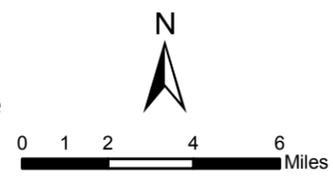
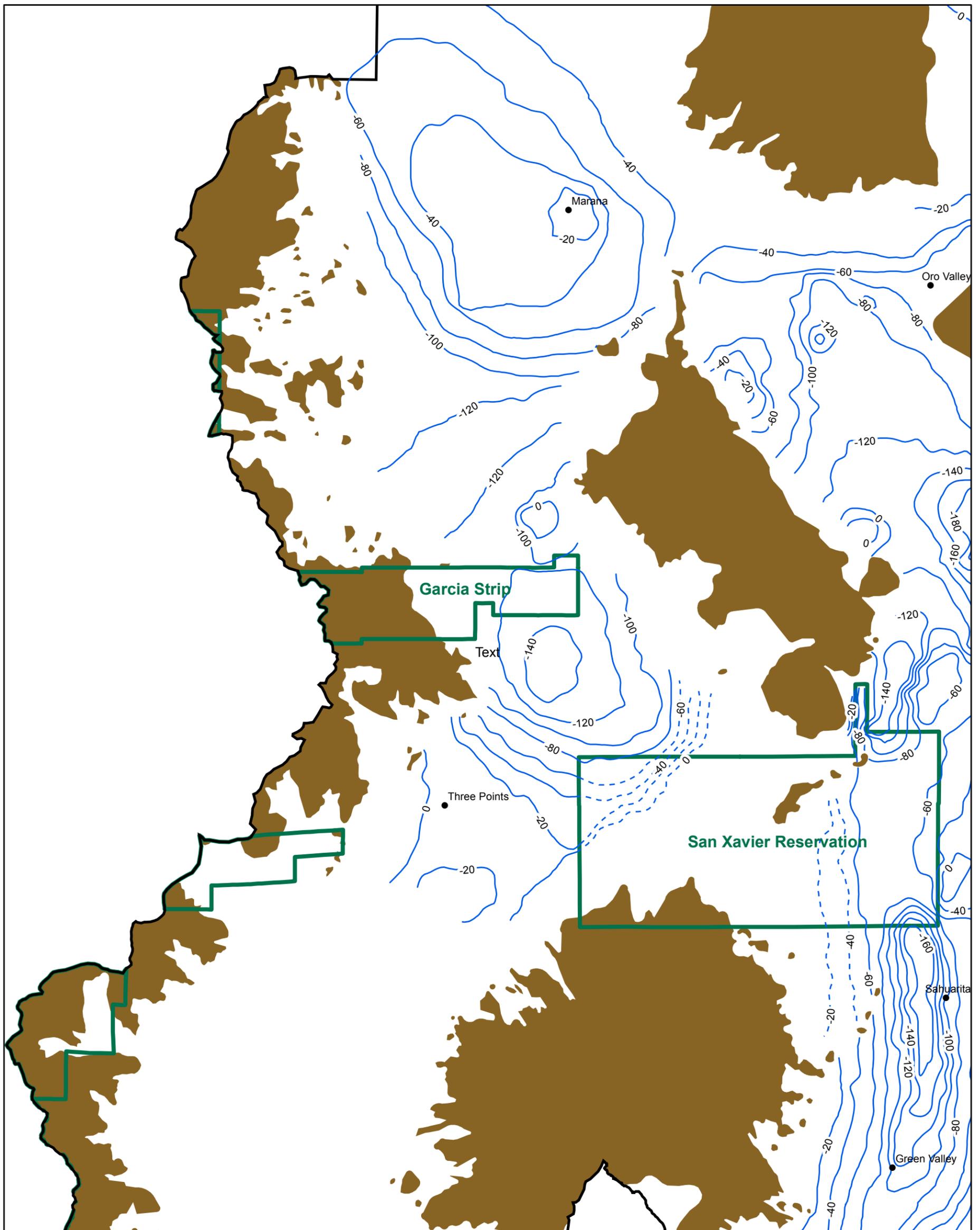
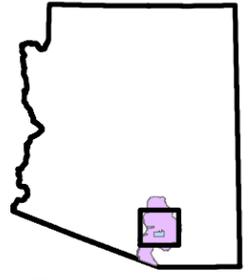
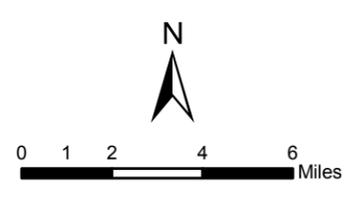


Figure 4-9. Water Level Changes in the Basin-Fill Aquifer Beneath the San Xavier Reservation and Eastern Schuk Toak, 1940 to 2005

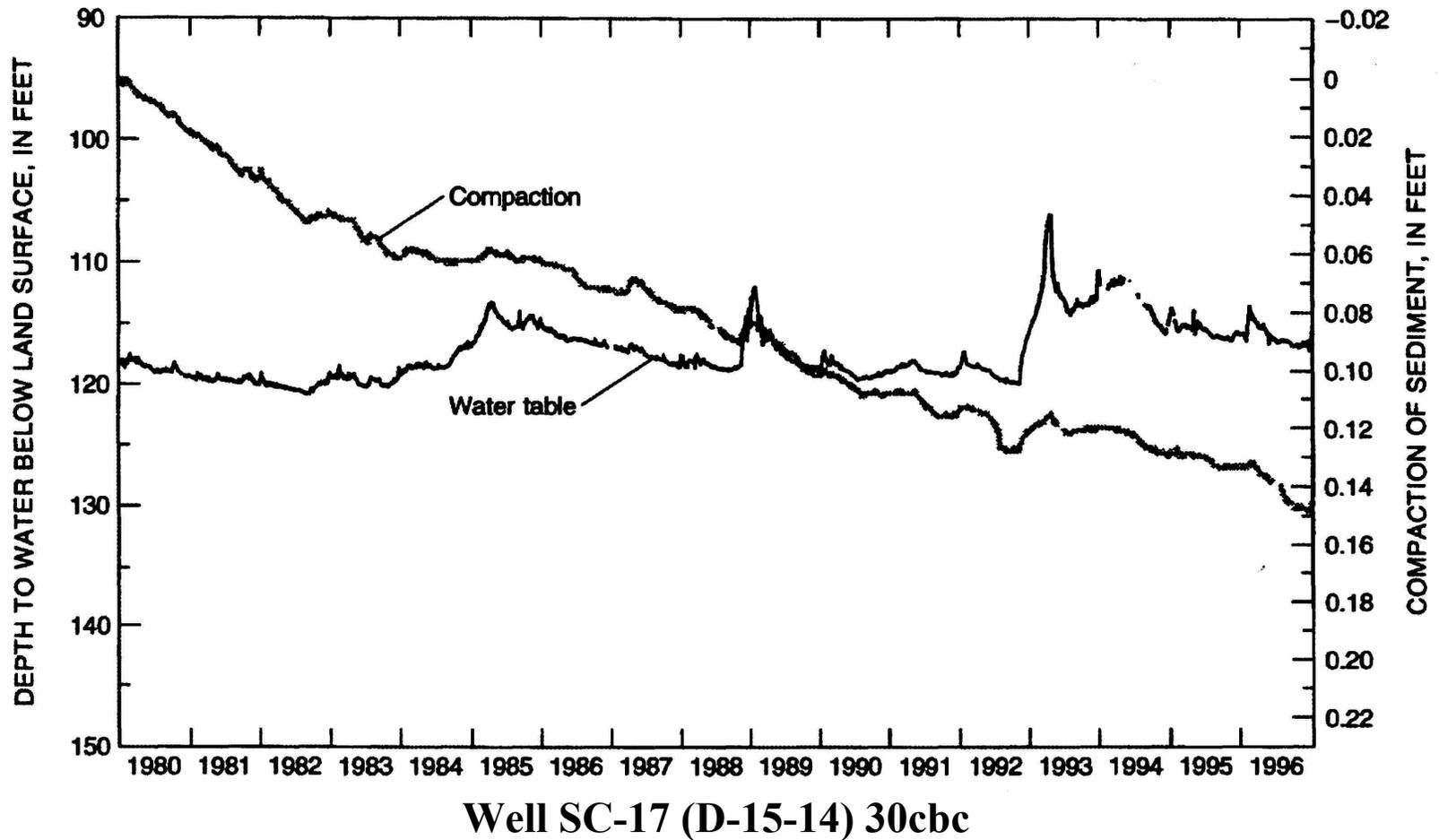


- City
- ⬮ Hardrock
- ⬮ Tucson AMA Boundary
- ⬮ River
- ⬮ Reservation Land
- ⬮ 1940-2005 Water Level Change
- 20-Foot Contour Interval
- Dashed Where Uncertain
- (-) Indicates Decline Since 1940



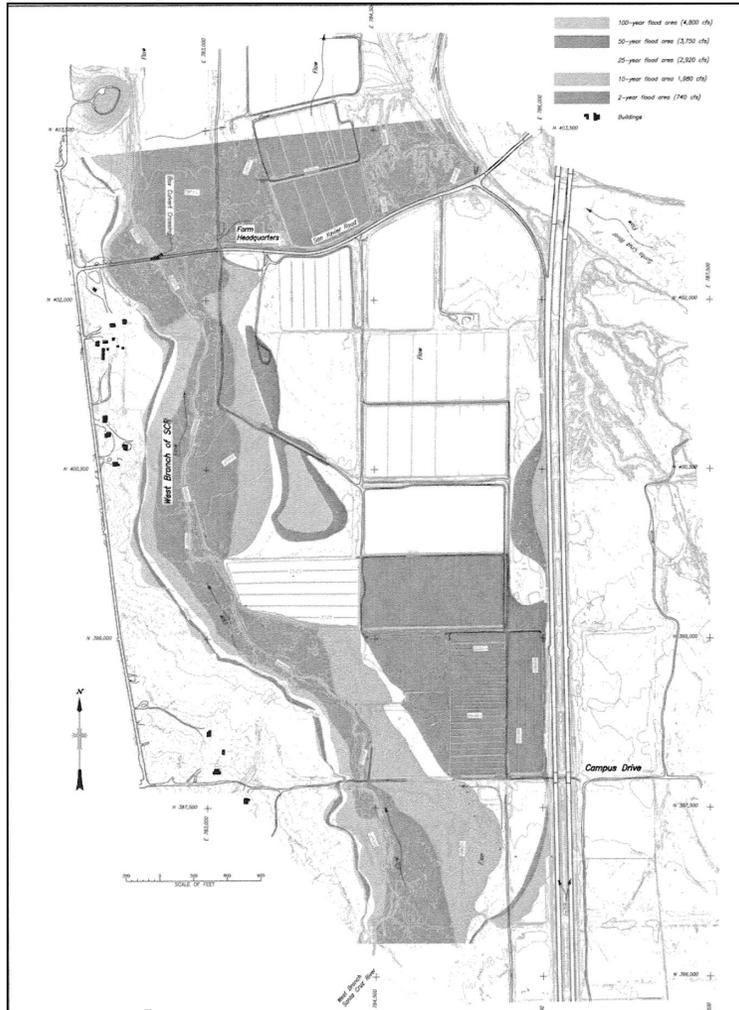
Source: ADWR, 2006c.

Figure 4-10. Sediment Compaction and Groundwater Depths Measured in Well SC-17 Near the San Xavier Reservation, 1980-1996

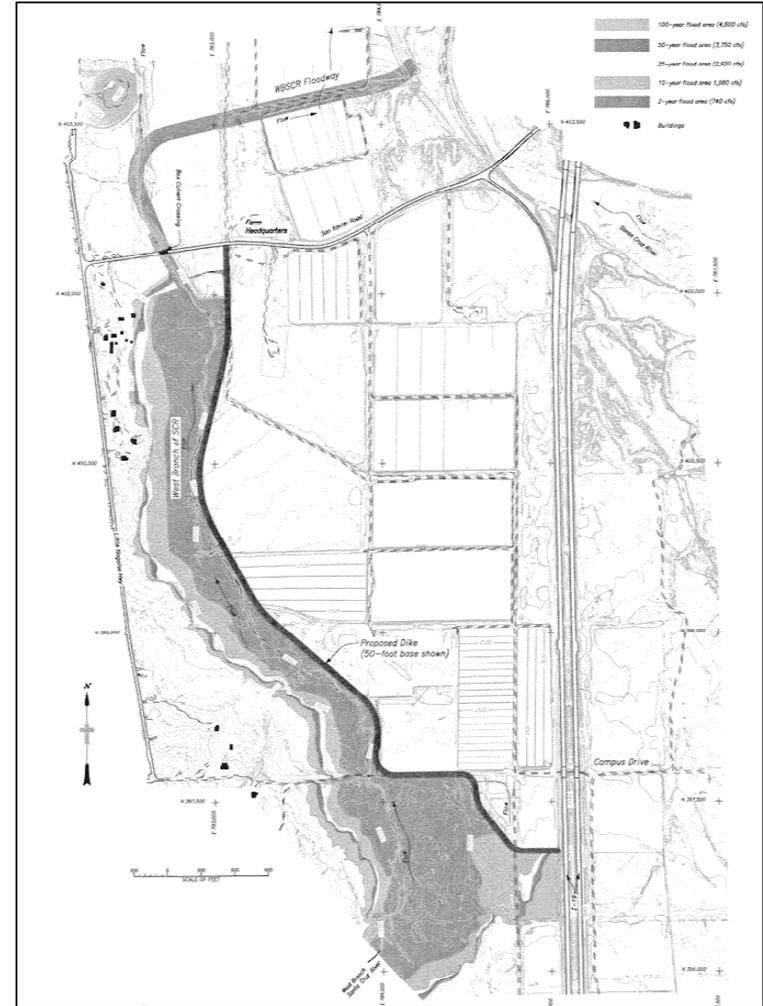


Source: Evans and Pool, 2000.

Figure 7-1. Changes in Flood Inundation Boundaries with Completion of the San Xavier Rehabilitation Project



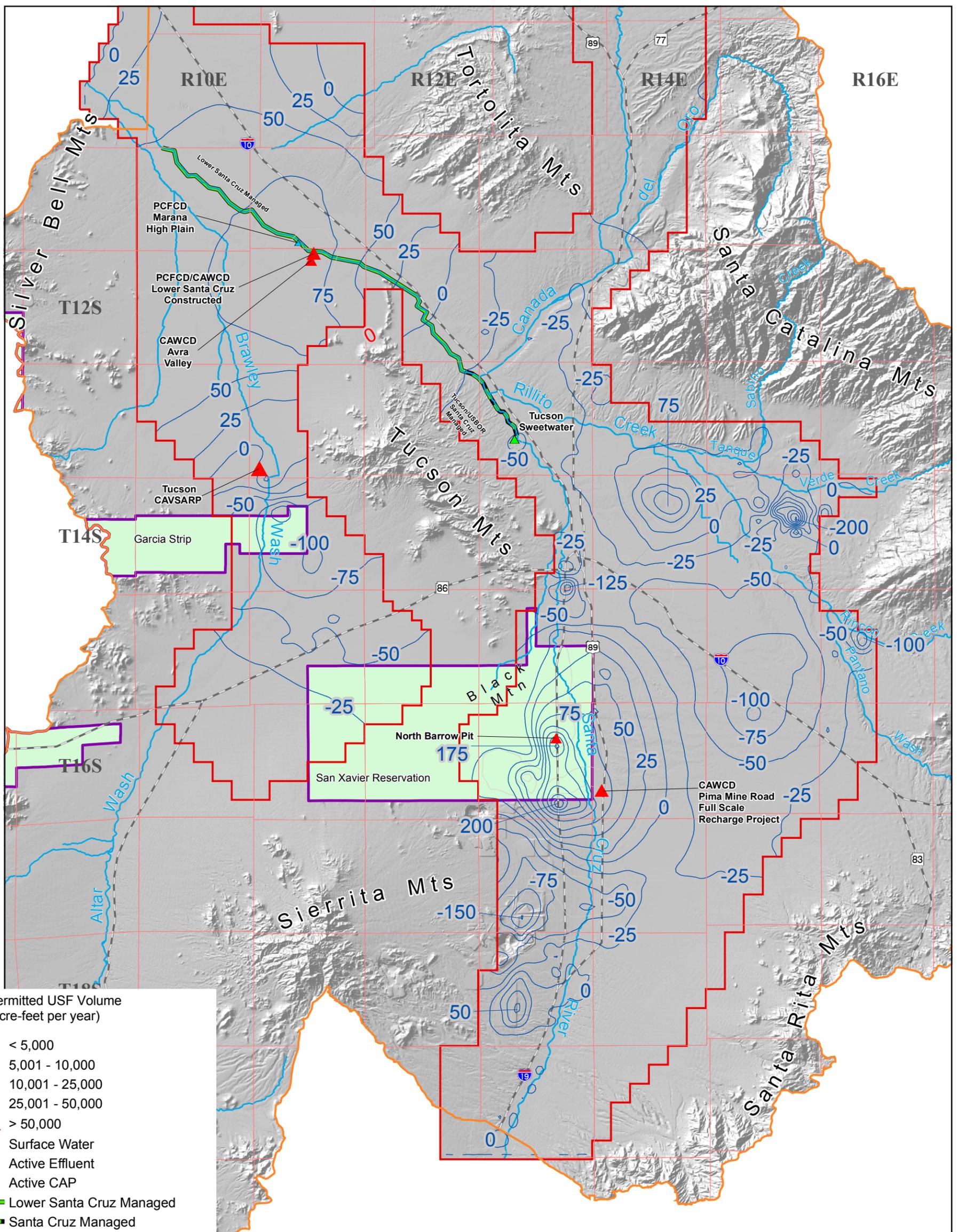
Before Dike Construction



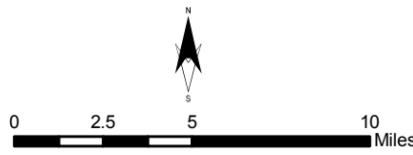
After Dike Construction

Source: BOR, 2005.

Figure 7-2. Projected Groundwater Level Changes Beneath and Adjacent to the San Xavier Reservation and Eastern Schuk Toak, 2000 to 2025



- Permitted USF Volume (acre-feet per year)
- ▲ < 5,000
 - ▲ 5,001 - 10,000
 - ▲ 10,001 - 25,000
 - ▲ 25,001 - 50,000
 - ▲ > 50,000
 - ▲ Surface Water
 - ▲ Active Effluent
 - ▲ Active CAP
 - Lower Santa Cruz Managed
 - Santa Cruz Managed
 - Water Level Change, 2000 to 2025
 - Road
 - contour interval 25 ft.
 - + = Rise - = Decline
 - Stream
 - Active Groundwater Model Boundary
 - Reservation Boundary
 - Tucson AMA Boundary
 - Township & Range



Source: ADWR, 2006c.

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APPENDIX A: Settlement Agreement

TOHONO O'ODHAM
SETTLEMENT AGREEMENT

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AGREEMENT

THIS AGREEMENT, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478, is executed by each party on the date shown next to the party's signature, among the United States of America, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two Allottee Classes in the Consolidated Litigation.

1. RECITALS

1.1. Proceedings to determine the nature and extent of the rights to water of the Nation, allottees, the United States in all its capacities, and other claimants are pending in the Gila River Adjudication Proceedings.

1.2. Recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all parties, the Tohono O'odham Nation, its neighboring non-Indian communities and others have agreed to settle permanently the disputes as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this settlement.

1.3. In keeping with its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

1.4. A chronology of events leading up to this Agreement can be found in Exhibit 1.4.

NOW, THEREFORE, the Parties agree as follows:

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1. "Acre-foot" means the quantity of water necessary to cover one acre of land to a depth of one foot.

2.2. "Act" means the Arizona Water Settlements Act of 2004.

2.3. "After-Acquired Trust Land" means land that is located within the State, but outside the exterior boundaries of the Nation's Reservation, and is taken into trust by the United States for the benefit of the Nation after the Enforceability Date.

2.4. "Agreement" or "Tohono O'odham Settlement Agreement" means the Agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478 (including all the exhibits of and attachments to the Agreement).

2.5. "Agreement of December 11, 1980" means the contract entered into by the United States and the Nation on December 11, 1980.

2.6. "Agreement of October 11, 1983" means the contract entered into by the United States and the Nation on October 11, 1983.

2.7. "Allottee" means a person that holds a beneficial real property interest in an Indian allotment that is located within the San Xavier Reservation and is held in trust by the United States.

2.8. "Allottee Class" means an applicable plaintiff class certified by the court of jurisdiction in the Alvarez Case or the Tucson Case.

2.9. "Alvarez Case" means the first through third causes of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (defined as Civ. No. 93-09039 in Public Law 108-451, 118 Stat. 3478)(D. Ariz., filed April 21, 1993)).

2.10. "*Alvarez v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Alvarez Case.

2.11. "*Alvarez v. Tucson* Plaintiff Class" means a class of plaintiff Allottees certified for the first through third causes of action in the Alvarez Case.

2.12. "Applicable Law" means any applicable federal, State, tribal, or local law.

2.13. "Arizona Department of Water Resources" or "ADWR" means the entity established pursuant to Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.14. "Arizona Water Banking Authority" means the entity established pursuant to Chapter 14 of Title 45 of the Arizona Revised Statutes, or its successor agency or entity.

2.15. "Asarco" means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

2.16. "Asarco Agreement" means the agreement by that name attached to this Agreement as Exhibit 13.1.

2.17. "Available CAP Supply" means for any given Year any Fourth Priority Water available for delivery through the CAP System, water available from CAP dams

and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

2.18. "CAP" or "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

2.19. "CAP Contract" means a long term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.20. "CAP Contractor" means any person or entity that has entered into a long-term contract (as that term is used in the CAP Repayment Stipulation) with the United States for delivery of water through the CAP system.

2.21. "CAP Indian Irrigation Water" means water allocated as Indian irrigation water pursuant to the Secretarial Record of Decision of March 24, 1983 published in the Federal Register at volume 48, number 58, pages 12446 through 12452.

2.22. "CAP Indian Priority Water" means that water having an Indian delivery priority.

2.23. "CAP Link Pipeline" or "Central Arizona Project Link Pipeline" means the pipeline extending from the Tucson Aqueduct of the CAP to Station 293+36.

2.24. "CAP M&I Priority Water" or "M&I Priority Water" means CAP water that has municipal and industrial priority.

2.25. "CAP NIA Priority Water" or "NIA Priority Water" means CAP water that has non-Indian agricultural priority.

2.26. "CAP Operating Agency" means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the date of this Agreement, CAWCD is the CAP Operating Agency.

2.27. "CAP Repayment Contract" means the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1 (defined as Contract No. 14-0906-09W-09245, Amendment No. 1 in Public Law 108-451, 118 Stat. 3478) between the United States and the CAWCD for the delivery of water and the repayment of costs of the CAP. The term includes all amendments to and revisions of that contract.

2.28. "CAP Repayment Stipulation" means the "Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions," filed with the United States District Court for the District of Arizona on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX (EHC) (Consolidated Action) (defined as No. CIV 95-09625-09TUC-09WDB(EHC), No. CIV 95-091720-09PHX-09EHC (Consolidated Action) in Public Law 108-451, 118 Stat. 3478), including all amendments to and revisions of that Stipulation.

2.29. "CAP Service Area" or "Central Arizona Project Service Area" means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the CAWCD delivers CAP water; and any expansion of that area under Applicable Law.

2.30. "CAP Subcontract" means a long term subcontract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.31. "CAP Subcontractor" means a person or entity that has entered into a long-term subcontract (as that term is used in the CAP Repayment Stipulation) with the United States and the CAWCD for the delivery of water through the CAP System.

2.32. "CAP System" means the Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants, and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described herein and any extensions of, additions to, or replacements for the features described herein.

2.33. "CAWCD" or the "Central Arizona Water Conservation District" means the political subdivision of the State that is the contractor under the CAP repayment contract.

2.34. "Community" means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.35. "Consolidated Litigation" means the consolidated Tucson Case and Alvarez Case.

2.36. "Cooperative Farm" means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c) of the SAWRSA Amendments.

2.37. "Cooperative Fund" means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the SAWRSA Amendments.

2.38. "Deferred Pumping Storage Credit" means a pumping credit recoverable as authorized by section 308(f)(1)(B) of the SAWRSA Amendments and accounted for under paragraph 8.6.2 of this Agreement.

2.39. "Deficiency Year" means a Year in which the Secretary is unable to fulfill the obligations of the Secretary under sections 304(a) and 306(a) of the SAWRSA Amendments.

2.40. "Delivery And Distribution System" means the CAP aqueduct, the CAP Link Pipeline and the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the CAP. The term includes pumping facilities, power plants, and electric power transmission facilities, external to the boundaries of any farm to which the water is distributed.

2.41. "Direct Storage and Recovery Project" means a facility that uses CAP water or effluent for underground storage or that recovers stored water.

2.42. "eastern Schuk Toak District" means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson Management Area.

2.43. "eastern Schuk Toak District Maximum Demand" means the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use (other than direct groundwater recharge) and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.44. "Enforceability Date" means the date on which Title III of the Act (defined herein as the SAWRSA Amendments) takes effect as defined in section 302(b) of the SAWRSA Amendments.

2.45. "Exempt Well" means a water well, the maximum pumping capacity of which is not more than 35 gallons per minute and the water from which is used for the supply, service, or activities of households or private residences; landscaping; livestock watering; or the irrigation of not more than two acres of land for the production of one or more agricultural or other commodities for sale; human consumption; or use as feed for livestock or poultry.

2.46. "Fee Owner of Allotted Land" means a person that holds fee simple title in real property on the San Xavier Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

2.47. "Fourth Priority Water" means Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water for the Central Arizona Project, including use of Colorado River water on Indian lands.

2.48. "Gila River Adjudication Court" means the Superior Court of the State of Arizona in and for the county of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

2.49. "Gila River Adjudication Proceedings" means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

2.50. "Indian Tribe" means that term as used in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

2.51. "Injury To Water Quality" means any contamination, diminution, or deprivation of water quality under Applicable Law.

2.52. "Injury To Water Rights" means an interference with, diminution of, or deprivation of water rights under Applicable Law. The term includes a change in the underground water table and any effect of such a change. The term does not include Subsidence Damage or Injury to Water Quality.

2.53. "Interim Allottee Water Rights Code" means the code described in section 308(b) of the SAWRSA Amendments.

2.54. "Irrigation System" means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm. The term, with respect to the Cooperative Farm, includes activities, procedures, works, and devices for rehabilitation of fields; remediation of sinkholes, sinks, depressions, and fissures; and stabilization of the banks of the Santa Cruz River.

2.55. "Lower Colorado River Basin Development Fund" means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

2.56. "Marketable Credit" means a storage credit that can be transferred for use outside the Nation's Reservation if the transfer is authorized by State law.

2.57. "Nation" means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.58. "Nation's Reservation" means all land within the exterior boundaries of (A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (B) the San Xavier Reservation established by the Executive order of July 1, 1874; (C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by Executive order of June 17, 1909; (D) the Florence Village established by Public Law 95-361 (92 Stat. 595); (E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798) if title to the land is held in trust by the Secretary for the benefit of the Nation; and all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable federal law before the Enforceability Date.

2.59. "Net Irrigable Acres" means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

2.60. "Non-Exempt Well" means any well that is not an Exempt Well.

2.61. "Party" means any signatory to this Agreement; the State's participation as a Party shall be as described in paragraph 18.4.

2.62. "Qualified Entity" means any CAP Contractor or CAP Subcontractor within the Tucson Management Area, any municipal provider that has a member service area in the Central Arizona Groundwater Replenishment District within the Tucson Management Area, or any other entity that agrees to use the leased water within the Tucson Management Area and demonstrates the financial and physical ability to utilize that water.

2.63. "San Xavier Allottees Association" means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of Allottees .

2.64. "San Xavier Cooperative Association" means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the Cooperative Farm.

2.65. "San Xavier District" means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

2.66. "San Xavier District Council" means the governing body of the San Xavier District, as established under the constitution of the Nation.

2.67. "San Xavier District Maximum Demand" means the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use (other than direct groundwater recharge or use by Asarco), and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years (exclusive of water pumped from Exempt Wells).

2.68. "San Xavier Reservation" or "Reservation" means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

2.69. "SAWRSA Amendments" means the Southern Arizona Water Rights Settlement Amendments Act of 2004, Title III of the Act.

2.70. "Schuk Toak Farm" means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4) of the SAWRSA Amendments.

2.71. "Secretary" means the Secretary of the Interior.

2.72. "State" means the State of Arizona.

2.73. "Subjugate" means to prepare land for agricultural use through irrigation.

2.74. "Subsidence Damage" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

2.75. "Surface Water" means all water that is appropriable under State law.

2.76. "Transaction Date" means the date designated by the Nation on which the Nation intends to enter into an assignment, exchange, lease, option to lease or temporary disposal of water pursuant to section 309(c) of the SAWRSA Amendments.

2.77. "Tucson Case" means *United States et al. v. City of Tucson, et al.* (Civ. No. 75-39 TUC consol. with Civ. No. 75-51 TUC FRZ (defined as Civ. No. 75-0939 TUC consol. With Civ. No. 75-0951 TUC-FRZ in Public Law 108-451, 118 Stat. 3478) (D. Ariz., filed February 20, 1975)).

2.78. "Tucson Interim Water Lease" means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the City of Tucson, Arizona, and the Nation, dated October 24, 1992.

2.79. "Tucson Management Area" means the area in the State comprised of (A)(i) the area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and (A)(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and (B) the portion of the Upper Santa Cruz Basin that is not located within the area described in (A)(i) above.

2.80. "Turnout" means a point of water delivery on the CAP aqueduct.

2.81. "Underground Storage" means storage of water accomplished under a project authorized under section 308(e) of the SAWRSA Amendments.

2.82. "United States" or "United States of America" in any given reference herein means the United States acting in the capacity as set forth in said reference. When the term "United States" or "United States of America" is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

2.83. "*United States v. Tucson* Named Plaintiff Allottees" means the Allottees who are named plaintiffs in the Tucson Case.

2.84. "*United States v. Tucson* Plaintiff Class" means a class of plaintiff Allottees certified in the Tucson Case.

2.85. "Value" means the value attributed to water based on the greater of (A) the anticipated or actual use of the water; or (B) the fair market value of the water.

2.86. "Water Code" means the comprehensive water code described in section 308(b) of the SAWRSA Amendments.

2.87. "Water Right" means any right in or to groundwater, Surface Water, or effluent under Applicable Law.

2.88. "Year" means a calendar year; when not capitalized, the term "year" shall have the meaning set forth in the paragraph in which the term is used.

2.89. "1982 Act" means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the Enforceability Date.

3. EXHIBITS

3.1. The following is a list of Exhibits attached to this Agreement and incorporated herein by this reference:

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	1.4	A Chronology of Events Leading up to the Tohono O'odham Settlement Agreement
	5.2	The Tohono O'odham Nation's CAP Contract, as amended under this Agreement
	5.3.4.1	Secretary's Shortage Sharing Approach Under the 1980 Contract
	8.6	Storage Account Form
	8.7	Examples of Calculations for Additional Groundwater Pumping
	8.8	Concept for Groundwater Protection Program
	11.3	Standard Form of CAP Subcontract for CAP M&I Use
	12.1	Tucson Agreement
	13.1	Asarco Agreement
	14.1	FICO Agreement

3.2	<u>Exhibit/Paragraph No.</u>	<u>Description of the Exhibit</u>
	16.2	Stipulation and Form of Conditional Order of Dismissal with Prejudice
	17.1	Stipulation and Form of Judgment by Gila River Adjudication Court

4. NATION'S WATER RIGHTS

4.1. The Nation shall have the following rights to water in the Tucson Management Area, which shall be held in trust by the United States on behalf of the Nation and the Allottees :

<u>SOURCE</u>	<u>AMOUNT</u>	<u>REFERENCE</u>
<u>Underground water</u>	<u>13,200 Acre-feet/yr*</u>	
San Xavier Reservation	10,000 Acre-feet/yr*	Paragraph 8.1.1
eastern Schuk Toak District	3,200 Acre-feet/yr*	Paragraph 8.1.2
<u>Total CAP Indian Priority Water</u>		
<u>Currently Under Contract</u>	<u>37,800 Acre-feet/yr</u>	
San Xavier Reservation	27,000 Acre-feet/yr	Paragraph 5.1.1.1
eastern Schuk Toak District	10,800 Acre-feet/yr	Paragraph 5.1.1.2
<u>Total New CAP NIA Priority Water</u>	<u>28,200 Acre-feet/yr</u>	
San Xavier Reservation	23,000 Acre-feet/yr	Paragraph 5.1.2.1
eastern Schuk Toak District	5,200 Acre-feet/yr	Paragraph 5.1.2.2
TOTAL	<u>79,200 Acre-feet/yr*</u>	

*The availability of groundwater is subject to the provisions of paragraph 8.6.

4.2. The Nation may use water listed in paragraph 4.1 for any use.

4.3. Except as provided in Section 309(b)(1)(C) of the SAWRSA Amendments, the Nation may use water listed in paragraph 4.1 at any location within the Nation's Reservation.

4.4. The Nation may use water listed in paragraph 4.1 outside the Nation's Reservation and within the State as follows:

4.4.1. Groundwater supplies may be used pursuant to the Asarco Agreement;

4.4.2. CAP water may be used within the CAP service area; and

4.4.3. Water derived from Marketable Credits may be used only in accordance with State law.

4.5. No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State.

5. WATER DELIVERY

5.1. The Secretary's Obligation to Acquire and Deliver Water.

5.1.1. Pursuant to section 304(a) of the SAWRSA Amendments and the Agreement of December 11, 1980, as amended, and this Agreement, the Secretary shall deliver 37,800 Acre-feet per Year of CAP water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to any other point of delivery agreed to by the Secretary and the Nation, of which:

5.1.1.1. 27,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.1.2. 10,800 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.2. Pursuant to section 306(a) of the SAWRSA Amendments, the Secretary shall deliver 28,200 Acre-feet per Year of CAP NIA Priority Water suitable for agriculture to the Cooperative Farm and the eastern Schuk Toak District Turnouts and to

any other point of delivery agreed to by the Secretary, CAWCD and the Nation, of which:

5.1.2.1. 23,000 Acre-feet per Year shall be deliverable to the San Xavier Reservation or in accordance with section 309 of the SAWRSA Amendments; and

5.1.2.2. 5,200 Acre-feet per Year shall be deliverable to the eastern Schuk Toak District or in accordance with section 309 of the SAWRSA Amendments.

5.1.3. Pursuant to section 305 of the SAWRSA Amendments, the Secretary shall deliver the 66,000 Acre-feet per Year of CAP water described above, or an equivalent quantity of water from a source identified in section 305(b)(1) of the SAWRSA Amendments, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence described in section 305(a)(2)(B) of the SAWRSA Amendments.

5.1.4. In accordance with the provisions of section 305(d) of the SAWRSA Amendments, the Secretary shall provide compensation if the Secretary is unable to acquire and deliver sufficient quantities of water under sections 304(a) and 306(a) of the SAWRSA Amendments.

5.2. CAP Contract Amendments. The Nation's CAP Contract shall be amended to conform to the provisions of section 309(g) of the SAWRSA Amendments. The form of the Nation's CAP contract as amended is set forth in Exhibit 5.2.

5.3. Shortage Sharing Criteria

5.3.1. On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

5.3.1.1. Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in paragraphs 5.3.1.1.1 through 5.3.1.1.3 below:

5.3.1.1.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.1.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water; and

5.3.1.1.3. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.1.2. On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in paragraphs 5.3.1.2.1 through 5.3.1.2.4 below:

5.3.1.2.1. Three hundred forty-three thousand seventy-nine (343,079) Acre-feet of CAP Indian Priority Water;

5.3.1.2.2. Six hundred thirty-eight thousand eight hundred twenty-three (638,823) Acre-feet of CAP M&I Priority Water;

5.3.1.2.3. Up to forty-seven thousand three hundred three (47,303) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and

5.3.1.2.4. Up to one hundred eighteen (118) Acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.3.2. Initial Distribution of Water in Time of Shortage.

5.3.2.1. If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

5.3.2.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraphs 5.3.1.1 or 5.3.1.2, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.1 were nine

hundred eighty-one thousand nine hundred two (981,902) Acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) Acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in paragraph 5.3.1.2 were one million twenty-nine thousand three hundred twenty-three (1,029,323) Acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) Acre-feet plus 18.59354% of the Available CAP Supply.

5.3.3. Redistribution of Unscheduled Water in Time of Shortage.

In time of shortage unscheduled CAP Water shall be distributed as follows:

5.3.3.1. Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

5.3.3.2. CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

5.3.3.3. Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

5.3.3.4. Nothing in this paragraph 5.3 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

5.3.4. Distribution of CAP Indian Priority Water among CAP Indian Priority Water Users.

5.3.4.1. In consideration of the agreement by the Community to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit 5.3.4.1, the Secretary shall first make available to the Community any water made available for delivery as CAP Indian Priority Water under paragraph 5.3.3.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community. After the additional shortages borne by the Community have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in proportion to their contractual entitlements to CAP Indian Priority Water.

5.3.4.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet but less than the sum of the entitlements described in paragraphs 5.3.2.1 or 5.3.2.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with paragraph 5.3.3.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit 5.3.4.1.

5.3.4.3. If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) Acre-feet, up to fifty-one thousand five hundred five (51,505) Acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community, the Nation and the San Carlos Apache Tribe. During a time of shortage described in this paragraph 5.3.4.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit 5.3.4.1, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

5.3.4.4. If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) Acre-feet, then the CAP Indian Priority Water determined to be available pursuant to paragraph 5.3.2.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at the time of the shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only

fifteen thousand (15,000) Acre-feet of its entitlement because the Nation's CAP distribution system was only partially completed and would permit the delivery of only fifteen thousand (15,000) Acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) Acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) Acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

5.3.4.5. If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or exchange of CAP water, then the Secretary shall require such Indian tribe to include in such new contract or amendment, a provision to share, on a proportional basis¹ with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to paragraphs 5.3.4.2 and 5.3.4.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation and the Secretary shall modify the Nation's CAP Contract to reflect such sharing of shortages by the other Indian tribes. This subparagraph 5.3.4.5 shall not apply to the renewal of any contract existing on December 10, 2004 with an Indian Tribe that the

1. The proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian Irrigation Water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian Irrigation Water.

Secretary entered into pursuant to an Indian water settlement approved by an Act of Congress.

5.3.4.6. The shortage sharing criteria in subparagraph 5.3.4 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community water Rights Settlement Act, Pub. L. 98-530, or water acquired from the Welton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Pub. L. 100-512, both of which have a higher priority than Fourth Priority Water.

5.4. Distribution of CAP NIA Priority Water. If the available CAP Supply is insufficient to meet the fixed quantity water service contracts or subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority water to the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA priority water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA priority water. However, if during the last such Year the Nation had not completed construction of the distribution system necessary to take and use its entire entitlement to CAP NIA Priority Water, the Secretary shall impute in the calculation the quantity of CAP NIA Priority Water that the Nation would have been expected to take had the distribution system, as it exists in the then current Year, been in place during the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water.

5.5. The Secretary and the CAP Operating Agency shall not unreasonably withhold permission or authorization to construct Turnouts on the CAP System to deliver

the Nation's CAP water that are necessary for the Nation either to use its water on or off the Nation's Reservation or to implement leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.6. Pursuant to section 314(a) of the SAWRSA Amendments, for purposes of determining the allocation and repayment of costs of any stages of the CAP, the costs associated with the delivery of the Nation's CAP water, whether such water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease, exchanges or options to exchange the Nation's CAP water entered into by the Nation shall be nonreimbursable, and such costs shall not be included in the CAWCD's repayment obligation.

5.7. Pursuant to section 314(b) of the SAWRSA Amendments, the costs associated with the construction of the CAP shall be nonreimbursable by the Nation and no CAP water service capital charges shall be due or payable for the Nation's CAP water, whether such water is delivered for use by the Nation or is delivered pursuant to any leases of or options to lease, exchanges or options to exchange the Nation's CAP water.

5.8. The Nation shall be entitled to enter into contracts for excess CAP water as provided in the CAP Repayment Stipulation.

5.9. Nothing in this Agreement shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

5.10. Firming.

5.10.1. The Secretary shall firm 28,200 Acre-feet per Year of CAP NIA Priority Water for the benefit of the Nation, to the equivalent of CAP M&I Priority Water

for a period of 100 Years after the Enforceability Date, as provided in section 105 of the Act.

5.10.2. The State shall assist the Secretary in firming the 28,200 Acre-feet as provided in section 306(b) of the SAWRSA Amendments.

6. DESIGN AND CONSTRUCTION OF FACILITIES

6.1. The Secretary shall (without cost to the Nation, any Allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the CAP, design and construct the Delivery and Distribution System necessary to deliver the water described in paragraph 5.1.

6.2. Pursuant to sections 304(b) and (c) of the SAWRSA Amendments, the Secretary shall complete:

6.2.1. Not later than eight years after the Enforceability Date, the improvements to the irrigation systems that serve the Cooperative Farm and the extension to the Cooperative Farm. On completion of the extension, the extended Cooperative Farm irrigation system shall serve 2,300 Net Irrigable Acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree to fewer Net Irrigable Acres.

6.2.2. Not later than one year after the Enforceability Date, the design and construction of an irrigation system and Delivery and Distribution System to serve the farm in the eastern Schuk Toak District.

6.3. Pursuant to the provisions of section 304(d) of the SAWRSA Amendments, the Secretary may extend a deadline referred to in paragraphs 6.2.1 and

6.2.2. If the Secretary extends a deadline, the Secretary shall comply with the notice provision of section 304(d)(2) of the SAWRSA Amendments.

7. NEW FARM PROVISIONS

7.1. In accordance with section 304(c)(3) of the SAWRSA Amendments, and in accordance with paragraph 7.2, the Secretary shall either:

7.1.1. Pay to the San Xavier District \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) in lieu of designing and constructing the canals, laterals, farm ditches and irrigation works for a new farm within the San Xavier Reservation; or

7.1.2. Design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet of water that is not required for the irrigation systems that serve the Cooperative Farm and the extension to the Cooperative Farm.

7.2. The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under paragraphs 7.1.1 or 7.1.2 by notifying the Secretary after the Enforceability Date, but not later than 180 days thereafter or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council. If the Secretary does not receive such a resolution by the deadline specified herein, the Secretary shall pay the \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) to the San Xavier District in lieu of constructing the new farm.

7.2.1. Payment of the \$18,300,000 (adjusted as provided in section 317(a)(2) of the SAWRSA Amendments) shall be made by the Secretary from the Lower Colorado River Basin Development Fund:

7.2.1.1. Not later than 60 days after the election described in paragraph 7.2, but in no event earlier than the enforceability date or January 1, 2010, whichever is later, or

7.2.1.2. If no timely election is made, then not later than 240 days after the Enforceability Date or January 1, 2010, whichever is later.

7.2.2. Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches and irrigation works as described in section 304(c)(3)(A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if the election is to receive the benefits under paragraph 7.1.2.

7.3. Pursuant to section 304(f) of the SAWRSA Amendments, the San Xavier District Council shall hold the funds in trust in interest bearing deposits and securities and may expend the principal and interest in accordance with a budget authorized by the San Xavier District Council and approved by the Nation's Legislative Council and for the purposes specified in section 304(f)(1)(C) of the SAWRSA Amendments.

8. USE OF PUMPED WATER

8.1. Right to Pump Groundwater. The Nation agrees, except as provided in sections 308(e), 308(f), 308(g) and 308(h) of the SAWRSA Amendments:

8.1.1. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the San Xavier Reservation to not more than 10,000 Acre-feet per Year; and

8.1.2. To limit the quantity of groundwater withdrawn by Non-Exempt Wells from beneath the eastern Schuk Toak District to not more than 3,200 Acre-feet per Year.

8.2. Storage and Recovery Projects. Pursuant to section 308(e) of the SAWRSA Amendments, the Nation may establish and maintain one or more Direct Storage and Recovery Projects within the San Xavier Reservation or the eastern Schuk Toak District.

8.3. [Intentionally omitted.]

8.4. Allocation and Transfer of Storage Credits.

8.4.1. The Nation shall allocate as a first right of beneficial use by Allottees, the San Xavier District, and other persons within the San Xavier Reservation, the storage credits resulting from a project authorized in section 308(e) of the SAWRSA Amendments that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.4.2. The Nation has the exclusive right, subject to section 308 of the SAWRSA Amendments, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation.

8.5. Deferred Pumping.

8.5.1. Pursuant to section 308(f)(1)(B) of the SAWRSA Amendments, within the San Xavier Reservation:

8.5.1.1. All or any portion of the 10,000 Acre-feet of water not pumped under paragraph 8.1.1 in any Year—

8.5.1.1.1. may be withdrawn in any subsequent Year;

and

8.5.1.1.2. shall be accounted for in accordance with paragraph 8.6.

8.5.1.2. The quantity of water authorized to be recovered as Deferred Pumping Storage Credits under this section shall not exceed--

8.5.1.2.1. 50,000 Acre-feet for any ten-Year period; or

8.5.1.2.2. 10,000 Acre-feet in any year.

8.5.2. Pursuant to section 308(f)(2)(B) of the SAWRSA Amendments, within the eastern Schuk Toak District:

8.5.2.1. All or any portion of the 3,200 Acre-feet of water not pumped under paragraph 8.1.2 in any Year—

8.5.2.1.1. may be withdrawn in any subsequent Year;

and

8.5.2.1.2. shall be accounted for in accordance with paragraph 8.6.

8.5.2.2. The quantity of water authorized to be recovered as Deferred Pumping Storage Credits under this section shall not exceed--

8.5.2.2.1. 16,000 Acre-feet for any ten-Year period; or

8.5.2.2.2. 3,200 Acre-feet in any Year.

8.6. Accounting. Attached as Exhibit 8.6 is a form to maintain the Storage Accounts.

8.6.1. Direct Storage Accounts.

8.6.1.1. For each Direct Storage and Recovery Project an account shall be maintained to credit the quantities of water stored underground and to debit the water recovered.

8.6.1.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.1.2.1. Credit the quantity of water stored underground within the San Xavier Reservation and within the eastern Schuk Toak District during the Year; and

8.6.1.3. Debit the quantity of water recovered from direct storage or transferred as Marketable Credits during the Year.

8.6.2. Deferred Pumping Storage Accounts. Deferred pumping storage accounts shall be established to credit the quantities of water stored underground in lieu of pumping and to debit the water recovered. Such accounts shall be maintained as follows:

8.6.2.1. Within the San Xavier Reservation:

8.6.2.1.1. To initiate the account, the Nation shall credit 50,000 Acre-feet;

8.6.2.1.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.1.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 10,000 Acre-feet, credit to the account the difference between 10,000 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.1.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 10,000 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 10,000 Acre-feet.

8.6.2.2. Within the eastern Schuk Toak District:

8.6.2.2.1. To initiate the account, the Nation shall credit 16,000 Acre-feet;

8.6.2.2.2. As of the end of the Year that includes the Enforceability Date and as of the end of each Year thereafter, the Nation shall:

8.6.2.2.2.1.1. If the quantity of groundwater withdrawn from all Non-Exempt Wells is less than 3,200 Acre-feet, credit to the account the difference between 3,200 Acre-feet and the quantity of groundwater withdrawn that Year by all Non-Exempt Wells; or

8.6.2.2.2.1.2. If the quantity of groundwater withdrawn from all Non-Exempt Wells is more than 3,200 Acre-feet, debit to the account the difference between the groundwater withdrawn from all Non-Exempt wells and 3,200 Acre-feet.

8.7. Additional groundwater pumping. Pursuant to section 308(h) of the SAWRSA Amendments and subject to the conditions of this paragraph, in any Deficiency Year, the Nation may, for then existing beneficial uses on the San Xavier Reservation and within the eastern Schuk Toak District, respectively, pump an additional amount of groundwater. Examples of the calculations for additional groundwater pumping pursuant to this paragraph are provided in Exhibit 8.7.

8.7.1. With respect to the San Xavier Reservation, the additional amount may be equal to the San Xavier District Maximum Demand; less:

8.7.1.1. The quantity of water delivered by the Secretary to the Reservation during the Deficiency Year; and

8.7.1.2. 10,000 Acre-feet (the groundwater referred to in section 307(a)(1)(A) of the SAWRSA Amendments); and

8.7.1.3. All storage credits, except for Marketable Credits; and

8.7.1.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.2. With respect to the eastern Schuk Toak District, the additional amount may be equal to the eastern Schuk Toak District Maximum Demand; less:

8.7.2.1. The quantity of water delivered to the eastern Schuk Toak District during the Deficiency Year; and

8.7.2.2. 3,200 Acre-feet (the groundwater referred to in section 307(a)(1)(B) of the SAWRSA Amendments); and

8.7.2.3. All storage credits, except for Marketable Credits; and

8.7.2.4. All Deferred Pumping Storage Credits acquired pursuant to paragraph 8.5.

8.7.3. The operation of this paragraph 8.7 shall be subject to the following conditions:

8.7.3.1. As to the San Xavier Reservation:

8.7.3.1.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the

quantity of groundwater that may be pumped pursuant to paragraph 8.7.1 only to the extent that the total of such credits subtracted for any Year does not exceed 20% of the San Xavier District Maximum Demand; and

8.7.3.1.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.1 shall be debited to the San Xavier Reservation account on a one-for-one basis without discount.

8.7.3.2. As to the eastern Schuk Toak District:

8.7.3.2.1. Deferred Pumping Storage Credits and storage credits referred to in paragraphs 8.7.1.3 and 8.7.1.4 shall be subtracted to determine the quantity of groundwater that may be pumped pursuant to paragraph 8.7.2 only to the extent that the total of such credits subtracted for any Year does not exceed 20% of the eastern Schuk Toak District Maximum Demand; and

8.7.3.2.2. Deferred Pumping Storage Credits that are subtracted as required by this paragraph 8.7.3.2 shall be debited to the eastern Schuk Toak account on a one-for-one basis without discount.

8.8. Groundwater Protection Program. The Parties agree to support the enactment of legislation by the State that would implement the groundwater protection program for the San Xavier Reservation as described in Exhibit 8.8.

8.9. Consistent with section 308(f)(3)(B) of the SAWRSA Amendments, the Nation and the United States on behalf of the Nation agree not to assert a reserved right claim for groundwater for the San Xavier District or the eastern Schuk Toak District portion of the Schuk Toak District.

8.10. Exempt Wells may be drilled on the San Xavier Reservation and the eastern Schuk Toak District and their use shall be exempt from pumping limitations in the SAWRSA Amendments and this Agreement.

9. WATER MANAGEMENT PLANS

9.1. Pursuant to section 308(d) of the SAWRSA Amendments, the Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans under contracts executed under section 311 of the SAWRSA Amendments between the Secretary and the San Xavier District for the San Xavier Reservation for a sum not to exceed \$891,200, and between the Secretary and the Nation for the eastern Schuk Toak District for a sum not to exceed \$237,200.

10. WATER RIGHTS ALLOCATION; WATER CODE; INTERIM ALLOTTEE
WATER RIGHTS CODE

10.1. The Nation agrees to comply with section 307(a)(1) of the SAWRSA Amendments.

10.2. The Nation shall enact and maintain an interim Allottee water rights code and a comprehensive water code in accordance with section 308(b) of the SAWRSA Amendments.

11. LEASING; ASSIGNMENT OF CREDITS

11.1. With respect to uses outside of the Nation's Reservation, the Nation may, for a term not to exceed 100 years, assign, exchange, lease, provide an option to lease or otherwise temporarily dispose of CAP water and direct storage credits in accordance with section 309(c) of the SAWRSA Amendments.

11.2. Assignment of Credits. Pursuant to section 309(b)(2)(C) of the SAWRSA Amendments, the Nation may assign Marketable Credits only in accordance with State law.

11.3. Leasing of CAP Water.

11.3.1. A lease of CAP water shall be in accordance with the requirements of section 309(c)(4) and section 309(j) of the SAWRSA Amendments.

11.3.2. The Secretary shall deliver leased CAP water to the lessee as further provided herein. The Secretary shall not be obligated to make deliveries to such lessee if, in the judgment of the Secretary, such deliveries would limit deliveries of water to other CAP Contractors or CAP Subcontractors to a degree greater than would deliveries of such CAP water to the Nation's Reservation.

11.3.3. Subject to the provisions of the lease, the Secretary shall deliver CAP water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in article 4.4 of the standard form of CAP Subcontract for CAP M&I Use that is attached as Exhibit 11.3.

11.3.4. The CAP water to be delivered to the lessee pursuant to the lease shall be delivered at such Turnouts as are agreed by the Secretary, the CAP Operating Agency and the lessee.

11.3.5. The lessee may not transfer assign or sublease its leased CAP water.

11.3.6. The lease shall impose upon the lessee terms and conditions equivalent to those contained in subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and

4.5(d), and articles 4.6, 4.10, and 6.9 of the standard form of CAP Subcontract that is attached as Exhibit 11.3. Although Exhibit 11.3 is the standard form of CAP Subcontract for CAP M&I use, nothing in this Agreement is intended to preclude leases of CAP water for irrigation use.

11.3.7. The Nation may enter into leases of CAP water for terms in excess of 25 years subject to the following terms and conditions:

11.3.7.1. The Nation shall initially make an offer for a lease term in excess of 25 years to users within the Tucson Management Area. The offer shall include the substantive terms of the lease.

11.3.7.2. In the event that the Nation receives no proposal for the use of the water within the Tucson Management Area, the Nation's offer may be extended for use of the water outside the Tucson Management Area, subject to the following provisions:

11.3.7.2.1. On or before the 180th day prior to the Transaction Date on which the Nation desires to enter into a transaction under section 309(c)(4) of the SAWRSA Amendments with an entity intending to use the water acquired pursuant to section 304(a) and section 306(a) of the SAWRSA Amendments outside of the Nation's Reservation and the Tucson Management Area, the Nation shall submit to the Secretary, the proposed transaction and all related exhibits and agreements.

11.3.7.2.2. On or before the 150th day prior to the Transaction Date, the Nation, shall provide notice of the proposed transaction by mail to all Qualified Entities and by publication in a newspaper of general circulation in the City of Tucson, Arizona, once a week for two consecutive weeks. The notice shall contain

any changes from the substantive terms of the offer provided in paragraph 11.3.7.1 of this Tohono O'odham Settlement Agreement.

11.3.7.2.3. On or before the 90th day prior to the Transaction Date, any Qualified Entity may submit a counteroffer to the Nation. If the Nation does not receive any counteroffers from a Qualified Entity, it may submit the proposed transaction for approval under section 309(c)(4)(C) of the SAWRSA Amendments.

11.3.7.2.4. If the Nation has received one or more counteroffers from Qualified Entities, the Nation may either select one or more of such counteroffers that match or are superior to the proposed transaction or reject the proposed transaction and all counteroffers. A counteroffer matches or is superior to the proposed transaction if it matches the price and other substantive terms of the proposed transaction.

11.3.7.2.5. If no counteroffer from a Qualified Entity matches or is superior to the proposed transaction, the Nation may either select or reject the proposed transaction.

11.3.7.2.6. The Nation shall notify all parties who submitted a proposed transaction or counteroffer of its selection and shall submit the proposed transaction or counteroffer for approval under section 309(c)(4) of the SAWRSA Amendments.

12. TUCSON AGREEMENT

12.1. The City of Tucson, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the Tucson Agreement, an executed copy of which is attached as Exhibit 12.1.

13. ASARCO AGREEMENT

13.1. Asarco, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the Asarco Agreement, an executed copy of which is attached as Exhibit 13.1.

14. FICO AGREEMENT

14.1. FICO, the Nation, the Allottees and the United States on behalf of the Nation and the Allottees have entered into the FICO Agreement, an executed copy of which is attached as Exhibit 14.1.

15. WAIVERS OF CLAIMS.

15.1. Waiver of claims by the Nation.

15.1.1. Except as provided in paragraph 15.4, the Nation hereby waives and releases:

15.1.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity;

15.1.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, and claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the Enforceability Date, against the United

States, in any capacity, (including any agency, officer, and employee of the United States);

15.1.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.1.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement, or the negotiation or enactment of the SAWRSA Amendments against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity.

15.1.2. The waiver and release of claims described in paragraph 15.1 shall become effective upon the Enforceability Date.

15.2. Waiver of Claims by the Allottee Classes.

15.2.1. Each Allottee Class hereby waives and releases:

15.2.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights from time immemorial through the Enforceability Date, and claims for future Injury to Water Rights for land within the San Xavier Reservation, against the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity (other than the Nation);

15.2.1.2. Any and all claims for Water Rights arising from time immemorial and, thereafter, forever, claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, claims for failure to protect, acquire, or develop Water Rights for land within the San Xavier Reservation from time immemorial through the Enforceability Date, against the United States, in any capacity, (including any agency, officer, and employee of the United States);

15.2.1.3. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the United States, in any capacity, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity; and

15.2.1.4. Any and all past, present, and future claims arising out of or relating to the negotiation or execution of this Agreement or the negotiation or enactment of the SAWRSA Amendments, against the United States, the State (or any agency or political subdivision of the State), any municipal corporation; and any other person or entity; and

15.2.1.5. Any and all past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, against the Nation (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall retain rights to share in the water resources granted or confirmed under the SAWRSA

Amendments and this Agreement with respect to uses within the San Xavier Reservation).

15.2.2. The waiver and release of claims described in paragraph 15.2 shall become effective upon the Enforceability Date.

15.3. Waiver of Claims by the United States on behalf of the Nation and the Allottees.

15.3.1. Except as provided in paragraph 15.4, the United States, on behalf of the Nation and the Allottees, hereby waives and releases:

15.3.1.1. Any and all past, present, and future claims for Water Rights (including claims based on aboriginal occupancy) arising from time immemorial and thereafter, forever, and claims for Injury to Water Rights arising from time immemorial through the Enforceability Date, for land within the Tucson Management Area, against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.2. Any and all claims for Injury to Water Rights arising after the Enforceability Date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of this Agreement or State law against the Nation, the State (or any agency or political subdivision of the State), any municipal corporation, and any other person or entity;

15.3.1.3. On and after the Enforceability Date, any and all claims on behalf of the Allottees for Injury to Water Rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308 of the SAWRSA

Amendments, the Allottees shall retain rights to share in the water resources granted or confirmed under the SAWRSA Amendments and this Agreement with respect to uses within the San Xavier Reservation); and

15.3.1.4. Contingent on the effectiveness of a waiver of such claims as are provided for in the Asarco Agreement, claims against Asarco on behalf of a plaintiff class comprised of plaintiff allottees in the fourth cause of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (D. Ariz., filed April 21, 1993)).

15.4. Claims Related to Groundwater Protection Program -- The Nation and the United States, on behalf of the Nation, shall:

15.4.1. Have the right to assert any claims provided for in the State legislation implementing the groundwater protection program described in paragraph 8.8 of this Agreement; and

15.4.2. If after the Enforceability Date the State legislation implementing the groundwater protection program described in Exhibit 8.8 is changed so as to have a material adverse effect upon the Nation, assert a claim in the Gila River Adjudication Court against an owner of any non-exempt well drilled after such change becomes effective if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation for the incremental effect of such pumping that exceeds that which would have been allowable had the State legislation not changed. It is agreed that the remedy upon proof of such a claim would be damages or any other remedy then permitted under State law for a similar claim.

16. PROCEDURES FOR DISMISSAL OF TUCSON CASE AND ALVAREZ CASE

16.1. After the deadline for opting out of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Classes has passed, the Parties, including the United States in all its capacities except as trustee for Indian tribes other than the Nation, agree to seek approval of this Agreement by the Court in the Tucson Case and the Alvarez Case.

16.2. After the Court has approved this Agreement, the Parties, including the United States in all its capacities except as trustee for Indian tribes other than the Nation, the *United States v. Tucson* Named Plaintiff Allottees as representatives of the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Named Plaintiff Allottees as representatives of the *Alvarez v. Tucson* Plaintiff Class agree to join in a stipulation for dismissal of the Tucson Case and the Alvarez Case conditioned solely on the Secretary publishing findings under section 302 of the SAWRSA Amendments. A copy of the stipulation and form of judgment are attached as Exhibit 16.2

17. APPROVAL OF THE SETTLEMENT AGREEMENT BY THE GILA RIVER ADJUDICATION COURT

17.1. All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Nation, agree to seek approval of this Agreement by the Gila River Adjudication Court. The Parties shall file a stipulation and form of judgment and decree in the Gila River Adjudication Proceedings in the form of Exhibit 17.1.

17.2. The Parties, other than the United States in any capacity, agree to support the enactment of legislation by the State to confirm the jurisdiction of the Gila River

Adjudication Court to carry out the provisions of sections 312(d) and 312(h) of the SAWRSA Amendments.

18. OTHER PROVISIONS

18.1. Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims or any other Indian claims to water in any judicial or administrative proceeding.

18.2. This Agreement constitutes the entire understanding among the Parties and supercedes the Agreement of October 11, 1983. Evidence of conduct or statements made in the course of negotiating this Agreement, including but not limited to previous drafts of this Agreement is inadmissible in any legal proceedings other than for approval or confirmation of this Agreement.

18.3. Each Party to this Agreement shall have the obligation to work in good faith as provided in paragraphs 8.8, 16.1, 17, and 18.4 in order to satisfy the conditions set forth in Section 302 of the SAWRSA Amendments. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

18.4. No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the Parties to such Exhibits in accordance with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the SAWRSA Amendments or this

Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

18.5. Execution of this Agreement by the Governor of the State constitutes a commitment to use good faith efforts to work with the State legislature to enact legislation necessary to carry out the provisions of paragraphs 5.10.2, 8.8 and 17.2 of this Agreement. These provisions will not be binding upon the State until the State legislation is enacted and the SAWRSA Amendments are effective as provided in the SAWRSA Amendments. It is not intended that this Agreement shall be determinative of any decision to be made by any State agency in any administrative adjudicatory, rule making, or other proceeding or matter. Except as provided in this Agreement, nothing herein shall be construed as a waiver of any rights that the State has to its natural resources.

18.6. By signing this Agreement each person represents that he or she has the authority to execute it.

18.7. This Agreement shall be construed in accordance with applicable State and Federal law.

18.8. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

18.9. The expenditure or advance of any money or the performance of any obligation by the United States in any of its capacities, under this Agreement shall be contingent upon the authorization of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not authorized.

18.10. This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

18.11. No part of this Agreement should be construed, in whole or in part, as providing consent by any of the non-Indian Parties to the legislative, executive or judicial jurisdiction or authority of the Nation in connection with activities, rights, or duties contemplated by the Agreement and conducted by any of those Parties outside the exterior boundaries of the Nation's Reservation. This Agreement should not be construed as a commercial dealing, contract, lease or other arrangement that creates a consensual relationship between any non-Indian Party and the Nation so as to provide a basis for the Nation's legislative, executive or judicial jurisdiction or authority over non-Indian Parties to this Agreement under *Montana v. United States*, 450 U.S. 544 (1981), for activities conducted outside the exterior boundaries of the Nation's Reservation. The activities, rights or duties conducted or undertaken by the non-Indian Parties pursuant to the Agreement outside the exterior boundaries of the Nation's Reservation shall not be construed as conduct that threatens or affects the political integrity, economic security or health and welfare of the Nation so as to provide a basis for the exercise of the Nation's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to this Agreement under *Montana v. United States*, 450 U.S. 544 (1981). Benefits and rights accruing to the non-Indian Parties to this Agreement are provided as consideration for benefits and rights accruing to the Nation, and shall not be construed as privileges, benefits, tribal services or other advantages of civilized society provided by the Nation that would justify the imposition of the Nation's legislative, executive or judicial authority over those Parties in regard to the activities, rights and duties conducted outside

the exterior boundaries of the Nation's Reservation. The enactment of legislation authorizing or ratifying this Agreement shall not be construed as a congressional delegation of authority to the Nation of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

18.12. Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to water of the Nation outside the Tucson Management Area.

18.13. Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to water of any tribe, band or community other than the Nation.

18.14. Nothing in this Agreement shall affect the rights of the Parties under the Well Site Lease or the New Well Site Lease, as defined in the Asarco Agreement.

18.15. In the event that differences between the language of the SAWRSA Amendments and this Agreement result in ambiguity or confusion or the provisions are inconsistent, the language of the SAWRSA Amendments shall govern.

18.16. The Parties are aware of canons of interpretation whereby ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties who have worked together in preparing the final version of this Agreement.

18.17. Any party shall have the right to petition the Gila River Adjudication Court or a court of the United States having jurisdiction, for such declaratory and

injunctive relief as may be necessary to enforce the terms, conditions and limitations of this Agreement and monetary relief as provided in this Agreement and as limited by section 312(h) of the SAWRSA Amendments. Nothing contained herein shall grant or give the right to any Party to petition any court of the Nation or any state court other than the Gila River Adjudication Court for monetary relief or for any declaratory or injunctive relief to enforce the terms, conditions and limitations provided in this Agreement, except as provided in section 312(i) of the SAWRSA Amendments.

18.18. All notices required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing.

United States of America;

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

**Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634**

The State of Arizona:

**Office of the Governor
1700 W. Washington Street
Phoenix, Arizona 85007**

With a copy to:

**Director
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004**

The Tohono O'odham Nation:

**Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634**

With copies to:

**Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, Arizona 85634**

**Chairperson San Xavier District
San Xavier District
2018 W. San Xavier Road
Tucson, Arizona 85746**

**Louis W. Barassi
Barassi & Curl PLC
485 South Main Avenue
Tucson, Arizona 85701**

**Chairperson Schuk Toak District
Schuk Toak District
P.O. Box 368
Sells, Arizona 85634**

The City of Tucson:

**City Manager
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210**

With copies to:

**Director
Tucson Water
P.O. Box 27210
Tucson, Arizona 85726-7210**

**City Attorney
P.O. Box 27210
Tucson, Arizona 85726-7210**

Asarco Incorporated:

**General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629**

With a copy to:

**Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001**

Farmers Investment Co.:

**Richard S. Walden, President
Farmers Investment Co.
1525 Helmet Peak Road
Sahuarita, Arizona 85629**

With a copy to:

Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001

San Xavier Allottees:

President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746

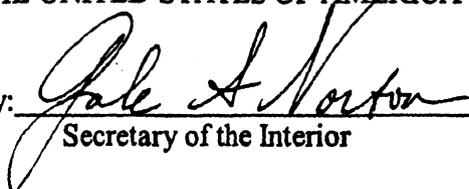
With a copy to:

Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87102

or addressed to such other address as the Party to receive such notice shall have designated by written notice as required by this paragraph 18.18.

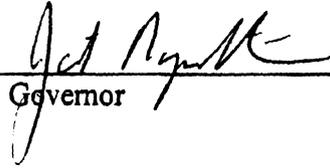
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year below.

THE UNITED STATES OF AMERICA

By: 
Secretary of the Interior

Date: March 28, 2006

THE STATE OF ARIZONA

By: 
Governor

Date: 5-5-06

THE TOHONO O'ODHAM NATION

By: *William J. Saunders* Date: 5/5/06
Chairperson

Approved as to Form: *Dell Dennis* Date: 5/5/06
Attorney General

CITY OF TUCSON

By: *Bob O'Neil* Date: 5-5-06
Mayor

Attest: *Kathleen S. Hestrich* Date: 6-12-06
City Clerk

Approved as to Form: *Cliff Hestrich* Date: 6/12/06
City Attorney

ASARCO INCORPORATED

By: *R. E. Macalister* Date: 6/12/06
President
Th. J. Allen
UP Env. Affair
6/12/06

FARMERS INVESTMENT CO.

By: *Richard Walker* Date: 6/12/2006
President

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: *AS* Date: 5/5/06

By: *Lorraine Corly* Date: 5/5/06

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: Luzinda Nuñez Date: 5/5/06
By: Quint Lucuis Date: 5/5/06
By: April [unclear] Date: 5-5-06
By: Yehona O. Higuera Date: 5-5-06
By: Celestine Pablo Date: 5/5/06
By: Dorly [unclear] Date: 5-5-06
By: Jocelyne [unclear] Date: 5-5-06
By: Juliana Nuñez Date: 5-5-06
By: Rafael [unclear] Date: 5/5/06
By: Jose [unclear] Date: 5/5/06
By: _____ Date: _____
By: _____ Date: _____

Its Class Representatives

By: Julian Ramon-Perez Date: 5/5/06

By: Conrad T. Matt Date: 5/5/06

By: R 2 Red Dog Date: 5/5/06

By: Michael Lopez Date: 5/5/06

By: Wade T. Fagan Date: 5/5/06

Its Class Representatives

Approved as to Form: Thomas E. Fuller Date: 5/5/06
Attorney for Certified Class

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: AV Date: 5/5/06

By: Jessica Calyle Date: 5/5/06

By: Julian Ramon-Perez Date: 5/5/06

By: Conrad T. Matt Date: 5/5/06

By: R 2 Red Dog Date: 5/5/06

Its Class Representatives

Approved as to Form: Thomas E. Fuller Date: 5/5/06
Attorney for Certified Class

APPENDIX B: Exhibits to Settlement Agreement

CHRONOLOGY OF SOUTHERN ARIZONA
WATER RIGHTS LITIGATION AND SETTLEMENT EVENTS

A. On February 20, 1975, in its own right and on behalf of the Nation and individual Indian allottees of land on the San Xavier Indian Reservation of the Nation, the United States filed suit in the Federal District Court for the District of Arizona, under Case No. CV 75-39 TUC FRZ ("*United States v. Tucson*"). This action sought a declaration of the rights of the United States, the Nation and Indian allottees in and to the use of surface and groundwater of the Upper Santa Cruz River Basin, damages resulting from defendants' use of surface and groundwater from within the Basin in derogation of the rights of the plaintiffs, and injunctive relief to prohibit withdrawal of surface and groundwater by defendants in derogation of the rights of the plaintiffs.

B. On March 6, 1975, a second action was filed in Federal District Court for the District of Arizona by the Nation and John Lewis and Rosanna Carlyle, individually and on behalf of all other Indian allottees similarly situated, seeking the same relief as the first action, Case No. CV 75-51 TUC FRZ.

C. On October 16, 1975, the Court ordered the plaintiff in *United States v. Tucson* to amend its complaint to make all users of the surface and groundwater of the Upper Santa Cruz River Basin defendants.

D. The two actions were consolidated on December 11, 1975 (the "Tucson Case"). The plaintiffs in the consolidated action filed a first amended complaint on August 14, 1980 naming as defendants approximately 1300 individuals and entities who allegedly were surface and groundwater users in the Upper Santa Cruz River Basin. In the first amended complaint, the United States sued in its own right and on behalf of the

Nation and individual Indian allottees of land within the San Xavier Indian Reservation, the Nation sued in its own right and on behalf of its member allottees, and John Lewis and Rosanna Carlyle sued as Indian allottees on the San Xavier Indian Reservation. The first amended complaint omitted the class allegations that had been alleged in the second action.

E. Between 1975 and 1982, the principal parties to the Tucson Case engaged in negotiations to devise a federal legislative settlement of the case. The resulting legislation, the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) was approved on October 12, 1982, Public Law 97-293, 96 Stat. 1274, *et seq.*

F. Several of the provisions of SAWRSA did not become effective unless certain actions were taken within a one-year period. These requirements, specified in Section 307(a)(1) of SAWRSA, were timely met within one year of the date of SAWRSA's enactment as follows:

1. The City entered into an agreement with the United States dated October 11, 1983, to make available 28,200 acre feet of reclaimed water to the Secretary ~~of the Interior to be disposed of as the Secretary saw fit and including a provision that~~ permitted the Secretary to provide terms and conditions under which the Secretary would relinquish to the City such quantities of water as were not needed to satisfy the Secretary's obligations under SAWRSA;

2. The City, Asarco, FICO, the State of Arizona and others entered into an agreement with the United States dated October 11, 1983 to fund the Cooperative Fund; contributions that were required to be made to the Cooperative Fund pursuant to Section 313 of SAWRSA were subsequently made; and

3. The Nation entered into an agreement with the United States dated October 11, 1983 in which (a) the Nation agreed to file a stipulation for dismissal with prejudice of the Tucson Case, in compliance with Section 307(a)(1)(C) of SAWRSA, and (b) the Nation executed a waiver and release as required by Section 307(a)(1)(D) of SAWRSA.

G. In accordance with its October 11, 1983 agreement with the United States, on December 2, 1988, the Nation filed a motion to dismiss with prejudice the Tucson Case. On December 21, 1988, the City joined in the motion of the Nation with the objective that the claims of all plaintiffs against the defendants could be dismissed with prejudice. The Nation's motion was granted on February 3, 1989 and amended on July 6, 1989. The Court granted the Nation's motion to vacate its dismissal and restored the Nation as a party on September 17, 1992.

H. The United States filed a separate motion to dismiss on December 14, 1989. On March 19, 1990, allottees John Lewis and Rosanna Carlyle opposed dismissal of the Tucson Case, and filed a motion to certify a class of allottees and to add the remaining *United States v. Tucson* Named Plaintiff Allottees as class representatives. The remaining *United States v. Tucson* Named Plaintiff Allottees were added "as additional plaintiffs and class representatives" by Court Order dated June 7, 1990.

I. The *United States v. Tucson* Named Plaintiff Allottees filed a motion for leave to file a separate amended complaint on November 13, 1991, as later revised on June 8, and a second motion to file a further revised amended complaint on October 9, 1992. On December 7, 1992, the Court denied the October 9, 1992 motion and granted in part and denied in part the November 13, 1991 motion. The Court permitted the *United*

States v. Tucson Named Plaintiff Allottees to amend the pleadings to reassert class allegations and to assert separate *Winters*' reserved water rights.

J. The *United States v. Tucson* Named Plaintiff Allottees objected to dismissal with prejudice of the Tucson Case. Among other objections, the *United States v. Tucson* Named Plaintiff Allottees disagreed with the division of benefits between the Allottees and the Nation under SAWRSA.

K. SAWRSA was amended by the Southern Arizona Water Rights Technical Amendments Act of 1992, Public Law 102-497, 106 Stat. 3255 *et seq.* (October 24, 1992).

L. On January 22, 1993, Felicia Alvarez and additional Allottees (collectively, the *Alvarez v. Tucson* Named Plaintiff Allottees) filed an action in Federal District Court for the District of Arizona, Case No. CV 93-0039 TUC FRZ ("*Alvarez v. Tucson*"), against the City, Asarco and FICO each on his or her own behalf and on behalf of a putative class of Allottee plaintiffs. The *Alvarez v. Tucson* Named Plaintiff Allottees alleged: First Cause of Action - federal common law trespass by the defendants to Indian possessory rights based on (a) pumping activities by all defendants, resulting in (i) depletion of the surface flows of the Santa Cruz River, declining water tables and diminished water availability for irrigation, and (ii) land subsidence; and (b) groundwater contamination, erosion and sedimentation by defendant Asarco; Second Cause of Action - federal common law equitable restitution and accounting from the defendants; Third Cause of Action - federal statutory §1983 violation by defendant City of Tucson under color of Arizona State law by depriving the Allottees of federally-protected rights, privileges and immunities. The Allottee plaintiffs alleged a Fourth Cause of Action -

diversity nuisance violation by defendant Asarco by causing groundwater contamination, erosion and sedimentation of Allottees' lands. This Settlement Agreement includes the First through Third causes of action (the "Alvarez Case") which are consolidated with the Tucson case and the Fourth Cause of Action. Additionally, the Allottee plaintiffs alleged a Fifth Cause of Action for breaches by defendant Asarco of its mining and business site leases of allotted land. The Fifth Cause of Action is not involved in this settlement.

M. On April 20, 1993, Gerald D. Adams and a number of other allottees (the *Adams v. United States Plaintiff Allottees*) filed a lawsuit in Federal District Court for the District of Arizona, Case No. CIV 93-240-TUC (the "Adams Case") against the United States. The *Adams v. United States Plaintiff Allottees* claimed that: (1) the United States had (a) breached its trust responsibilities to the allottees and (b) violated the Administrative Procedures Act; (2) the *Adams v. U.S. Plaintiff Allottees* were entitled to a special adjudication and administration or statutory right to a just and equal distribution of the San Xavier Indian Reservation water resources; and (3) the United States had violated its statutory duty to protect the riparian allottees from wrongful appropriations or grants of appropriative water rights by other landowners.

N. On December 21, 1998, the parties filed a Joint Motion to Consolidate the Adams Case and Counts one through three of the Alvarez Case with the Tucson Case for administrative purposes. The Court granted the motion on September 30, 1999. The consolidated litigation of the Tucson Case, the Alvarez Case and the Adams Case is referred to herein as the "Consolidated Litigation."

O. On December 21, 1998, the parties filed a Joint Stipulation to Certification of the *United States v. Tucson Plaintiff Class* as a Rule 23(b)(3) Class and filed a Joint

Motion to Certify the *Alvarez v. Tucson* Plaintiff Class as a Rule 23(b)(3) Class. Putative members of the "Plaintiff Class" consist of (a) Allottees and (b) Fee Owners of Allotted Lands. Putative class members who do not opt out will constitute the *United States v. Tucson* Plaintiff Class and the *Alvarez v. Tucson* Plaintiff Class. The Court granted the motions on January 18, 2000.

P. On July 6, 2004, the attorney for the United States and the attorney for the Adams plaintiffs stipulated to the dismissal of the Adams case. The Adams Case was dismissed without prejudice on July 9, 2004.

Q. During the past decade, the parties have made a number of efforts to settle this matter through amendments to SAWRSA. The Tohono O'odham Settlement Agreement reflects a settlement that relies on both legislative and contractual components to resolve the disputes among the parties, including dismissal with prejudice of the Consolidated Litigation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDMENT TO CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

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Contract No. PAPAGO121180A
Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDED CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

1 PREAMBLE: This AMENDED CONTRACT TO CONTRACT NO. PAPAGO121180A ("Amended Contract") is made and entered into this 5th day of May, 2006, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat 1057), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. § 1501), as amended, the Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293, 96 Stat. 1274), as amended, the Arizona Water Settlements Act enacted December 10, 2004 ("Settlements Act") and the various authorities and responsibilities of the Secretary of the Interior ("Secretary") in relation to Indians and Indian Tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, and the Tohono O'odham Settlement Agreement, between the UNITED STATES OF AMERICA ("United States"), acting through the Bureau of Reclamation, for and on behalf of the Secretary, and the TOHONO O'ODHAM NATION ("Nation"), formerly known as the "Papago Tribe" organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476). In this Amended Contract, the United States

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and the Nation are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties".

WITNESSETH THAT:

2 EXPLANATORY RECITALS:

2.1 WHEREAS, on December 11, 1980, the Nation and the United States entered into Contract No. PAPAGO121180A, hereinafter referred to as the "1980 Contract" for the delivery of Central Arizona Project water to sustain the Nation's agricultural base and for other tribal homeland purposes; and

2.2 WHEREAS, the United States, the State of Arizona, the Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Company, and the San Xavier allottees entered into the Tohono O'odham Settlement Agreement to settle the disputes concerning the nature and extent of the rights to water of the Nation; and

2.3 WHEREAS, on December 10, 2004, Congress enacted the Arizona Water Settlements Act, hereinafter referred to as the "Settlements Act;" and

2.4 WHEREAS, the Settlements Act was created to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes; and

2.5 WHEREAS, Title III of the Settlements Act is the Southern Arizona Water Rights Settlement Amendments Act of 2004, which requires the Secretary, pursuant to section 309(g), to amend the 1980 Contract; and

2.6 WHEREAS, the Nation and the Secretary desire to amend the 1980 Contract to conform with the Settlements Act and the Tohono O'odham Settlement Agreement; and

2.7 WHEREAS, this Amended Contract will supersede and replace the 1980 Contract, in its

entirety;

NOW THEREFORE, the Parties agree as follows:

3 **AMENDED CONTRACT PURPOSE:** The purpose of this Amended Contract is to conform the 1980 Contract with the terms and conditions of the Settlements Act and the Tohono O'odham Settlement Agreement and to supersede and replace the 1980 Contract.

4 **STATUS OF THE 1980 CONTRACT:** The 1980 Contract is superseded and replaced by this Amended Contract when it becomes effective on the Enforceability Date, as defined in subsection 5.26 herein, and as set forth in section 302 of the Settlements Act.

5 **DEFINITIONS:** The first letters of defined terms are capitalized in this Amended Contract. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the following defined terms shall apply:

5.1 **Available CAP Supply** means for any given Year all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and Return Flows captured by the Secretary for CAP use.

5.2 **Basin Project Act** means the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended.

5.3 **CAP** means the Central Arizona Project, the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

5.4 **CAP Contract** means a long-term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for the delivery of water through the CAP System.

5.5 **CAP Contractor** means any person or entity having a CAP Contract.

5.6 **CAP Fixed OM&R Charge** means Fixed OM&R Charge as that term is defined in the

CAP Repayment Stipulation.

5.7 CAP Indian Priority Water means water having an Indian delivery priority as described in subsection 6.8 herein.

5.8 CAP Master Repayment Contract means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

5.9 CAP M&I Priority Water means water having a municipal and industrial delivery priority as described in subsection 6.8 herein.

5.10 CAP NIA Priority Water means water having a non-Indian agricultural delivery priority as described in subsection 6.8 herein.

5.11 CAP Operating Agency means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of September 13, 2004, CAWCD is the CAP Operating Agency.

5.12 CAP Pumping Energy Charge means the Pumping Energy Charge as that term is defined in the CAP Repayment Stipulation.

5.13 CAP Repayment Stipulation means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgement Upon the Satisfaction of Conditions, entered in Central Arizona Water Conservation District v. United States, et al., No. CIV 95-625-TUC-WDB EHC, No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the order dated April 29, 2003, entered therein and any amendment or revision thereof.

5.14 CAP Service Area means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central

Arizona Project water and any expansion of that area under applicable law.

5.15 CAP Subcontract means a long-term subcontract, as that term is used in the CAP Repayment Stipulation, among any person or entity, the United States, and CAWCD for the delivery of water through the CAP System.

5.16 CAP Subcontractor or Subcontractor means the person, agency or entity holding a subcontract between such party and CAWCD providing for the delivery of Project Water.

5.17 CAP System means the Mark Wilmer Pumping Plant, the Hayden Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants and appurtenant works of the Central Arizona Project aqueduct system and any extensions, addition thereto, or replacement features thereof.

5.18 CAWCD means the Central Arizona Water Conservation District.

5.19 Central Arizona Project or Project or CAP means that reclamation project authorized and constructed by the United States pursuant to Title III of the Colorado River Basin Project Act of September 30, 1968 (43 U.S.C. §§ 1501 et seq.), 82 Stat. 885, as amended.

5.20 Community means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

5.21 Contracting Officer means the Secretary or his or her authorized designee acting on his or her behalf.

5.22 Cooperative Fund means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the Settlements Act.

5.23 Delivery Point(s) means the point(s) on the Nation's Reservation that are reasonably required, by agreement of the Contracting Officer and the Nation, or selected by the Secretary, to permit the Nation to put the Project Water to its intended use.

5.24 Distribution Works mean those facilities constructed or financed by the United States for the primary purpose of distributing Project Water to the Delivery Point(s) within the Nation's Reservation after said Project Water has been transported or delivered through the Main System.

5.25 Eastern Schuk Toak District means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area as defined in section 303(48) of the Settlements Act.

5.26 Enforceability Date means the date on which Title III of the Settlements Act entitled "Southern Arizona Water Rights Settlement Amendments Act of 2004" takes effect.

5.27 Excess CAP Water means Excess Water as that term is defined in the CAP Repayment Stipulation.

5.28 Excess CAP Water Contract means a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

5.29 Excess CAP Water Contractor or Excess CAP Water Contractors means one or more persons or entities having an Excess CAP Water Contract.

5.30 Exhibit A is the Secretary's Shortage Sharing Approach Under 1980 Contract as referred to in subsection 6.8 herein.

5.31 Fourth Priority Water means Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water to the Central Arizona Project, including use of Colorado River water on Indian lands.

5.32 Hohokam Agreement means the Agreement Among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona Cities of Chandler, Mesa, Phoenix and Scottsdale, dated December 21, 1993.

5.33 Lower Colorado River Basin Fund means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

5.34 Main System means those principal works of the Project listed as follows: Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, Buttes Dam, and the Navajo Power Project, together with all appurtenances thereto and all lands, interests in lands, and rights-of-way for such works and appurtenances.

5.35 Nation's Reservation means all land within the exterior boundaries of (a) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (b) the San Xavier Reservation established by the Executive order of July 1, 1874; (c) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909; (d) the Florence Village established by Public Law 95-361 (92 Stat. 595); (e) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and (f) all other land to which the United States holds title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the Enforceability Date.

5.36 Non-Project Water means water acquired by the Nation other than from the Central Arizona Project.

5.37 OM&R means the care, operation, maintenance, and replacement of the Main System, or any part thereof.

5.38 Project Water means (i) Colorado River mainstream water, (ii) all other water conserved

and developed by Central Arizona Project dams and reservoirs and available for delivery by the United States, and (iii) Return Flow captured by the Secretary for Project use.

5.39 Return Flow means waste water, seepage, and ground water which originates or results from water contracted for from the CAP pursuant to this Amended Contract.

5.40 San Xavier Reservation means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

5.41 Secretary means the Secretary of the United States Department of the Interior or his or her duly authorized representative.

5.42 Settlements Act means the Arizona Water Settlements Act enacted on December 10, 2004.

5.43 Time of Shortage is described in subsection 6.8 herein entitled, "Priority" which conforms to subsection 5.3 of the Tohono O'odham Settlement Agreement.

5.44 Tohono O'odham Settlement Agreement means means the Agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478 (including all the exhibits of and attachments to the Agreement) among the United States of America, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two Allottee Classes in the Consolidated Litigation.

5.45 Water Right means any right in or to groundwater, surface water, or effluent under applicable law, as defined in section 303(53) of the Settlements Act.

5.46 Year means the twelve-month period between January 1 through the next succeeding December 31.

6 DELIVERY OF WATER:

6.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this Amended Contract, during such periods as it operates and maintains the Project, the

United States will deliver Project Water to the Nation. The United States will use reasonable diligence to make available to the Nation the quantities of water specified in the schedule submitted by the Nation and shall make deliveries of Project Water to the Nation to meet the Nation's water requirements within the constraints of and in accordance with subsection 6.6 herein. After transfer of OM&R to the CAP Operating Agency the United States will make deliveries of Project Water to the CAP Operating Agency for subsequent delivery to the Nation, as provided herein.

6.2 Term of Amended Contract. This Amended Contract is for permanent service, as that term is used in section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. 617d, is without limit as to term, and shall otherwise conform to the provisions of section 104(d) of the Settlements Act.

6.3 Conditions Relating to Delivery. The Nation hereby agrees that the obligation of the United States to deliver water under this Amended Contract is subject to:

6.3.1 The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of *Arizona v California et al.*, 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now issued or hereafter modified.

6.3.2 The United States obligation under the Mexican Water Treaty, Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Mexican Water Treaty;

and obligations associated with Minutes of the International Boundary and Water Commission adopted pursuant to the Mexican Water Treaty.

6.3.3 The express understanding and agreement by the Nation that this Amended Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Amended Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Nation shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to the Nation hereunder.

6.3.4 The right of the United States or the CAP Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the CAP Operating Agency will give thirty (30) days notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, employees, successors, or assigns, nor the CAP Operating Agency, its officers, agents, employees, successors, or assigns shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs.

6.3.5 Measures shall be in effect, adequate in the judgement of the Secretary, to provide for the internally integrated management and control of surface and ground water within the Nation's Reservation to the end that ground water withdrawals are managed on a responsible basis.

6.3.6 The canals and Distribution Works through which Project Water is conveyed after its delivery to the Nation shall be maintained with linings adequate in the Secretary's judgement to prevent excessive conveyance losses; provided, however, that the Nation shall be relieved from this obligation if the United States does not make funds for this purpose available to the Nation following a timely request for such funds.

6.3.7 The Nation shall not pump nor permit others to pump groundwater from within the exterior boundaries of the Nation's Reservation for use outside said Reservation unless the Secretary and the Nation agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is required; provided, however, that where such pumping is presently permitted pursuant to a contract, said pumping may continue through-out the life of said contract; provided, further, that such pumping may be permitted in other and additional cases subject to the approval of the Secretary.

6.4 Exchanges, Leases, and Other Agreements. The Nation may, with the approval of the Secretary assign, exchange, or otherwise temporarily dispose of CAP water to which the Nation is entitled under this Amended Contract. With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may, with the approval of the Secretary, lease and enter into options to lease its CAP water.

6.4.1 The Nation may, with the approval of the Secretary renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years.

6.4.2 Subject to the provisions of sections 309 and 310 of the Settlements Act, the Nation shall be entitled to all moneys or other consideration due to the Nation under any leases and

any options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

6.4.3 The United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange.

6.4.4 No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State of Arizona.

6.4.5 CAP water scheduled for delivery in any Year under this Amended Contract that the Nation does not use may be made available by the Contracting Officer to other users, or the Contracting Officer may request that the CAP Operating Agency make such water available to other users; provided, however, that the Nation shall first have an opportunity to enter into contracts to lease, options to lease, contracts to exchange or options to exchange or resell such water as provided in this Amended Contract.

6.4.6 None of the Nation's CAP water may be permanently alienated.

6.4.7 The provisions of this Amended Contract shall not be applicable to or affect Non-Project Water or Water Rights now owned or hereafter acquired by the Nation.

6.4.8 The Nation may exchange CAP water and may change times and places of delivery of CAP water, subject to the approval of the Secretary.

6.4.9 The Nation shall be entitled to enter into contracts for Excess CAP Water, as provided in the CAP Repayment Stipulation.

6.4.10 Nothing in this Contract shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

6.4.11 All of the Nation's CAP water shall be delivered through the CAP System;

provided, however, that in the event the delivery capacity of the CAP System is significantly reduced or is anticipated to be significantly reduced for an extended period of time or the CAP System is destroyed, the Nation shall have the same CAP delivery rights as other CAP Contractors and CAP Subcontractors, if the CAP Contractors or CAP Subcontractors are allowed to take delivery of water other than through the CAP System.

6.4.12 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District which is allocated solely for agricultural use within the Sif Oidak District, the Nation may use the Nation's CAP water on or off the Nation's Reservation for any purpose of the Nation consistent with the Settlements Act. Such purposes include any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use, whether the Nation's water supplies were delivered by the Secretary or pumped by the Nation.

6.4.13 The Secretary or the CAP Operating Agency shall deliver the Nation's CAP water in accordance with water delivery schedules provided by the Nation to the Secretary and the CAP Operating Agency pursuant to subsection 6.6 herein, or pursuant to lease or exchange agreements approved by the Secretary.

6.4.14 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District, if the Nation's CAP water is to be delivered for use off the Nation's Reservation, neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or of the Secretary, the delivery schedule for such off-Reservation use would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would delivery of the Nation's CAP water to the Nation's Reservation; provided, however, that Excess CAP Water Contracts first entered into after the off-Reservation delivery of the Nation's CAP water has been established shall not limit such

delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as “first entered into” if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

6.4.15 The Nation shall schedule delivery of the Nation’s CAP water in accordance with this Amended Contract. If the combined delivery requests for all CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Nation’s delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Nation requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Nation’s requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Nation or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor shall be considered “similarly located” for purposes of this section if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor will affect the quantity of the Nation’s CAP water available for delivery to the Nation.

6.4.16 With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may use the CAP water supplies provided under this Amended Contract within the CAP Service Area, in accordance with the Settlements Act.

6.4.17 Any CAP water received by the Nation in exchange for effluent shall not be deducted from the Nation's contractual entitlement under this Amended Contract.

6.5 Delivery Entitlements and Obligations.

6.5.1 The Secretary shall deliver annually from the CAP System, a total of 37,800 acre-feet of water suitable for agricultural use, of which:

6.5.1.1 27,000 acre-feet shall be deliverable for use to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.1.2 10,800 acre-feet shall be deliverable for use to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2 In addition to the delivery of water described in 6.5.1 herein, the Secretary shall deliver annually from the CAP System, a total of 28,200 acre-feet of NIA Priority Water suitable for agricultural use, of which:

6.5.2.1 23,000 acre-feet shall be delivered to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2.2 5,200 acre-feet shall be delivered to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act.

6.5.3 The Secretary shall deliver the 66,000 acre-feet per year of CAP water described in 6.5.1 and 6.5.2 herein, or an equivalent quantity of water from any appropriate source if the Secretary is unable during any Year to deliver annually from the main project works of the CAP any portion of the 66,000 acre-feet, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence affecting water delivery caused by an act or omission

of the Secretary, the United States or any officer, employee, contractor, or agent of the Secretary or United States; provided, however, that the Secretary shall not acquire any water that would cause depletion of groundwater supplies or aquifers in the San Xavier Reservation or the Eastern Schuk Toak District. In accordance with the provisions of the section 305(d) of the Settlements Act, the Secretary shall provide compensation if the Secretary is unable to acquire and deliver sufficient quantities of water under subsections 6.5.1 and 6.5.2 herein.

6.5.4 In addition to the delivery of water described in subsections 6.5.1 and 6.5.2 herein, the Secretary shall deliver 8,000 acre-feet annually to the Sif Oidak District; provided, however, that certain terms and conditions of this Amended Contract do not apply or apply differently to this CAP water, as set forth in subsections 6.4, 6.4.12, 6.4.14, 6.4.16, 9.6, and section 13, herein.

6.6 Procedure For Ordering Water.

6.6.1 The Nation will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery.

6.6.1.1 On or before October 1 of each Year, the Nation shall submit in writing to the Contracting Officer a water delivery schedule indicating the amount of CAP water desired by the Nation during each month of the following Year along with a preliminary schedule of water desired for the succeeding two (2) Years.

6.6.1.2 Upon receipt of the schedule, the Contracting Officer shall review it and, after consultation with the CAP Operating Agency and the Nation, shall make only such modifications in it as are necessary to ensure that the amounts, times and rates of delivery to the Nation will be consistent with the provisions of section 6.3 herein. On or before December 1 of each Year, the Contracting Officer shall determine and furnish to the Nation the water delivery schedule for the next succeeding Year which shall show the amounts of water to be delivered to the Nation during each month of that Year.

6.6.2 A water delivery schedule may be amended by the Contracting Officer upon the Nation's written request. Proposed amendments shall be submitted by the Nation to the Contracting Officer within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

6.6.3 The Nation shall hold the United States, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature arising out of or connected with the actions of the United States regarding water delivery schedules furnished to the Nation.

6.6.4 In lieu of the Nation submitting water delivery schedules to the Contracting Officer for approval, the Contracting Officer reserves the right to direct the Nation to submit such schedules to the CAP Operating Agency under such criteria as the Contracting Officer determines to be appropriate, after consultation with the Nation and the CAP Operating Agency and so long as the Nation's rights to require the delivery of CAP water are not thereby adversely impacted or diminished.

6.7 Points of Delivery - Measurement and Responsibility for Distribution of Water.

6.7.1 The Nation's CAP water to be furnished to the Nation pursuant to this Amended Contract will be delivered (i) at the turnout(s) from the CAP System to the Distribution Works as agreed upon in writing by the Contracting Officer and the Nation or, in the event they are unable to agree, as selected by the Secretary and (ii) at such other points as may otherwise be agreed upon or approved by the Secretary.

6.7.2 All water delivered to the Nation shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the CAP Operating Agency. Upon request of the Nation, the accuracy of such measurements will be investigated by the Contracting Officer or the CAP Operating Agency and the Nation, and any errors appearing therein adjusted; provided, however, that in the event the Parties cannot agree on the

required adjustment, the Contracting Officer's determination shall be conclusive.

6.7.3 Neither the United States nor the CAP Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the delivery point(s) as specified in section 305(a)(1) of the Settlements Act. The Nation shall hold the United States and the CAP Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Nation's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

6.8 Priority.

6.8.1 In time of shortage the Available CAP Supply shall be distributed as described in this section 6.8.

6.8.2 For purposes of administering this Amended Contract, a time of shortage shall be a Year when:

6.8.2.1 On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

6.8.2.2 Prior to January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and (iii) up to one-hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.2.3 On or after January 1, 2044, any Year in which the Available CAP

Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; (iii) up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and (iv) up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.3 In time of shortage the initial distribution of water shall be determined in the following manner:

6.8.3.1 If the available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

6.8.3.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsections 6.8.2.2 and 6.8.2.3, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.2 were nine hundred eighty-one thousand nine hundred two (981,902) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.3 were one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

6.8.4 In time of shortage unscheduled CAP water shall be redistributed in the following manner:

6.8.4.1 Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

6.8.4.2 CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

6.8.4.3 Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

6.8.4.4 Nothing in this subsection 6.8 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

6.8.5 The distribution of CAP Indian Priority Water among CAP Indian Priority Water users shall be accomplished as follows:

6.8.5.1 In consideration of the agreement by the Community and the Nation to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit A attached hereto, the Secretary shall first make available to the Community and the Nation any water made available for delivery as CAP Indian Priority Water under subsection 6.8.4.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community and the Nation. After the additional shortages borne by the Community and the Nation have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in including the Community and the Nation, in proportion to their contractual entitlements to CAP Indian Priority Water.

6.8.5.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in subsections 6.8.3.1 or 6.8.3.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with subsection 6.8.4.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit A attached hereto.

6.8.5.3 If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima Maricopa Indian Community, the Nation, and the San Carlos

Apache Tribe. During a Time of Shortage described in this subsection 6.8.5.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit A, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

6.8.5.4 If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to subsection 6.8.3.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at the Time of Shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only fifteen thousand (15,000) acre-feet of its entitlement because the Nation's CAP distribution system was only partially complete and would permit the delivery of only fifteen thousand (15,000) acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

6.8.5.5 If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or

exchange of CAP water, then the Secretary shall require such Indian Tribe to include in such new contract or amendment, a provision to share, on a proportional basis (the proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian irrigation water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian irrigation water) with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to subsections 6.8.5.2 and 6.8.5.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation and the Secretary shall modify this Amended Contract to reflect such sharing of shortages by the other Indian tribes.

6.8.5.6 Subsection 6.8.5.5 shall not apply to the renewal of any contract existing on December 31, 2002, with an Indian tribe or nation that the Secretary entered into pursuant to an Indian water settlement approved by act of Congress.

6.8.5.7 The shortage sharing criteria in subsection 6.8 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530, or water acquired from the Wellton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Public Law 100-512, both of which have a higher priority than Fourth Priority Water.

6.9 Secretarial Control of Return Flow. The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Nation's Reservation as a source of supply and for distribution to and use of the CAP to the fullest extent practicable. The Nation may recapture and reuse or sell Return Flow within the Nation's Reservation; provided, however, that such Return Flow captured within the Nation's Reservation may not be sold for use outside the Nation's Reservation unless the Secretary has given prior written approval.

6.10 Exchange Water. Where the Secretary determines that the Nation is able to receive Project Water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from the confluence of the Salt and Verde Rivers and Buttes Dam site, if such dam is then existent, the Secretary may require and the Nation agrees to accept said Project Water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

7 UNDERGROUND STORAGE AND RECOVERY PROJECTS: The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham Settlement Agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

8 OTHER WATER: Nothing in this Amended Contract shall prevent the Nation from agreeing with a water user to receive water from an off-Reservation source where the water user does not condition delivery upon substitution for Project Water.

9 PAYMENTS:

9.1 Pursuant to section 309(g)(7) of the Settlements Act, the costs associated with the construction of the delivery and distribution system allocable to the Nation:

9.1.1 shall be nonreimbursable; and

9.1.2 shall be excluded from any repayment obligation of the Nation.

9.2 Pursuant to section 309(g)(8) of the Settlements Act, no CAP water service capital charges shall be due or payable for the Nation's CAP water, regardless of whether the CAP water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

9.3 Pursuant to section 310(b)(1) and (2) of the Settlements Act and subject to the exceptions herein and in subsection 9.5, the Secretary shall be responsible for the payment of the

CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.3.1 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charge associated with the delivery of the Nation's CAP water as follows:

9.3.1.1 from the Lower Colorado River Basin Development Fund, established by section 403 of the Basin Project Act, as authorized by subparagraph (A) of section 403(f)(2) of that Act and to the extent that funds are available in the Fund.

9.3.1.2 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act and to the extent that funds are not available from the Lower Colorado River Basin Development Fund, from the Cooperative Fund; or

9.3.1.3 in the event that there are no monies available from the Lower Colorado River Basin Development Fund or from the Cooperative Fund, then from the Nation.

9.3.2 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water as follows:

9.3.2.1 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act, from the Cooperative Fund; or

9.3.2.2 in the event that there are no monies available from the Cooperative Fund the from the Nation.

9.4 In those instances in which the monies are not available to the Secretary from the Lower Colorado River Basin Development Fund as set forth in subsection 9.3.1, or the Cooperative Fund as

set forth in subsection 9.3.1 and 9.3.2, and the Nation is responsible for making payments as provided herein, the following shall apply:

9.4.1 The Nation's CAP water shall not be delivered to the Nation unless the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of such water are paid in advance.

9.4.2 The annual CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water shall be paid in twelve (12) equal monthly installments and shall be paid on or before the first day of each month in order for the Nation to receive water deliveries in the succeeding month.

9.4.3 The Contracting Officer may direct that payments be received in other than the equal monthly installments described in subsection 9.4.2.

9.4.4 Unless otherwise agreed, differences between estimated and actual CAP Fixed OM&R Charge and the estimated and actual CAP Pumping Energy Charge shall be determined by the Contracting Officer and shall be adjusted in the next succeeding annual CAP Fixed OM&R Charge; provided, however, that if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be insufficient to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge during the Year, the Contracting Officer may increase the annual estimate of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation CAP water by written notice thereof to the Nation, and the Nation shall forthwith increase its remaining monthly payments in such Year by the amount necessary to cover the insufficiency; provided, further, that unless otherwise agreed, if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be greater than what is required to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water during the Year, the Contracting Officer shall reduce the

remaining monthly payments on a pro rata basis to adjust the total payment for the Year to the revised estimate. The Nation agrees to make all advances or payments required under this section.

9.4.5 Pursuant to 25 U.S.C. 385 and regulations promulgated pursuant thereto (25 CFR Part 171), the Secretary may adjust the amount of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge for which the Nation is responsible.

9.4.6 In the event the Nation fails or refuses to accept delivery at the Delivery Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Amended Contract, or in the event the Nation fails in any Year to submit a schedule for delivery as provided in subsection 6.6, said failure or refusal shall not relieve the Nation of its obligation to make the payment required in this subsection 9.3.5. The Nation agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this Amended Contract except as provided in subsection 6.4.5; provided, however, that the Nation shall be relieved from such obligation to pay if Distribution Works are not in place to receive water because the United States has not made funds available to the Nation to construct Distribution Works or the United States has not constructed Distribution Works for the Nation.

9.4.7 If the Nation's CAP water is made available to others by the Contracting Officer or the CAP Operating Agency, the Nation shall be relieved of its payments hereunder and only to the extent of the amount paid to the Contracting Officer or the CAP Operating Agency by such other users, but not to exceed the amount the Nation is obligated to pay under this Amended Contract for said water.

9.4.8 In the event the Nation or the Contracting Officer and the CAP Operating Agency are unable to sell any portion of the Nation CAP water scheduled for delivery and not required by the Nation, the Nation shall be relieved of the CAP Pumping Energy Charges associated with the undelivered water.

9.4.9 In the event that a discontinuance or temporary reduction in deliveries of CAP water results in the delivery to the Nation of an amount less than what has been paid for in advance by the Nation, the Nation shall be given credit toward the next payment of the CAP Fixed OM&R Charge.

9.4.10 The Nation shall have no right to delivery of water from Project facilities during any period in which the Nation may be in arrears in the payment of any charges due to the Contracting Officer or the CAP Operating Agency. The Contracting Officer may sell to another entity any water determined to be available under the Nation's entitlement for which payment is in arrears or the Contracting Officer may request that the CAP Operating Agency sell such water; provided, however, that the Nation may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of water by the Contracting Officer or the CAP Operating Agency and payment of charges for the current period.

9.4.11 The Nation shall be subject to interest, administrative, and penalty charges on delinquent CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.12 When a payment is not received by the due date, the Nation shall pay an interest charge for each day the payment is delinquent beyond the due date. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

9.4.13 When a payment becomes 60 days delinquent, the Nation shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment.

9.4.14 When a payment is delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6 percent per Year for each day the payment is delinquent beyond the due date.

9.4.15 The Nation shall pay any fees incurred for debt collection services associated with a delinquent payment.

9.4.16 When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.17 The obligation of the Nation to pay the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water to the Contracting Officer, or the CAP Operating Agency as provided in this Amended Contract, is a general obligation of the Nation notwithstanding the manner in which the obligation may be distributed among the Nation's water users and notwithstanding the default of individual water users in their obligations to the Nation.

9.5 The Nation shall require its contractors to pay the CAP Operating Agency the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge in any contracts, leases, options to lease or other agreements providing for the temporary delivery to, or use by, such contractors of any portion of the Nation's CAP water.

9.6 Payment Provisions for Sif Oidak District Water (Chuichu).

9.6.1 Subsection 9.4 of this Amended Contract shall apply to the 8,000 acre feet per Year of the Nation's CAP water for the Sif Oidak District.

9.6.1.1 The Nation is obligated for the repayment of total reimbursable costs of construction of the CAP System allocated to delivery of irrigation water in accordance with section 402 of the Basin Project Act. Pursuant to section 402 of the Basin Project Act, (1) repayment of the

construction costs allocated to the delivery of irrigation water to lands of the Nation's Reservation and within the repayment capacity of such lands shall be deferred until such time as the lands are converted to non-Indian ownership, and (2) repayment of the construction costs allocated to delivery of irrigation water to the lands of the Nation's Reservation and beyond the repayment capability of such lands shall be nonreimbursable.

9.6.1.2 The Nation shall be responsible for payment to the United States or the CAP Operating Agency of CAP water service capital charges associated with the delivery of the 8,000 acre-feet per Year of CAP water for the Sif Oidak District in the event that (1) any of the Sif Oidak District lands are converted to non-Indian ownership, and (2) this water is converted to municipal and industrial (M&I) use.

9.6.1.3 The Nation shall be responsible for payment to the United States or the CAP Operating Agency for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the 8,000 acre-feet per Year of CAP water that is not covered by the Lower Colorado River Basin Development Fund.

9.6.1.4 Repayment will be made in accordance with applicable Federal Reclamation law. The Nation agrees to make all required payments associated with the delivery of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District on such terms and conditions as may be agreed to by the Contracting Officer and the Nation.

10 ENVIRONMENTAL COMPLIANCE: Notwithstanding any other provision of this Amended Contract, the United States will not deliver Project Water through Distribution Works to the Nation's Reservation until additional environmental analyses, as necessary, relating to the Distribution Works have been completed by the United States in accordance with the National Environmental Policy Act, and the design of Distribution Works suitable for delivery of Project Water to the Nation pursuant to the terms of this Amended Contract is thereafter approved by the Secretary, it being the intent of the Parties hereto that such approval is to be based on environmental considerations related

only to the Distribution Works.

11 GENERAL PROVISIONS:

11.1 Water and Air Pollution Control. The Nation, in carrying out this Amended Contract, shall comply with all applicable water and air pollution laws and regulations of the Nation and the United States, and shall obtain all required permits or licenses from the appropriate authorities of the Nation and the United States.

11.2 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. Neither the United States nor the CAP Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

11.3 Compliance With Federal Reclamation Laws. The delivery of water or the use of Federal facilities pursuant to this Amended Contract is subject to applicable Federal Reclamation laws.

11.4 Books, Records, and Reports. The Nation shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Amended Contract as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Amended Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Amended Contract.

11.5 Notices. Any notice, demand, or request authorized or required by this

Amended Contract shall be deemed to have been given, on behalf of the Nation, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Tohono O'odham Nation, P.O. Box 837, Sells, Arizona 85634-0837, with a copy mailed to P.O. Box 830, Sells, Arizona 85634. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

11.6 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Amended Contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allocated.

11.7 Assignment Limited – Successors and Assigns Obligated. The provisions of this Amended Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Amended Contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

11.8 Officials Not to Benefit. No member of or delegate to Congress or official of the Nation shall benefit from this Amended Contract other than as a water user or landowner in the same manner as other water users or landowners.

11.9 Equal Opportunity.

11.9.1 In accordance with the provisions of Title 42 U.S.C. 2000e-2(i), the Nation shall give preference in employment to Indians living on or near the Nation's Reservation.

11.9.2 Except as provided above, during the performance of this Amended Contract, the Nation agrees as follows:

11.9.2.1 The Nation will not discriminate against any employee or applicant

for employment because of race, color, religion, sex, or national origin. The Nation will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Nation agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

11.9.2.2 The Nation will, in all solicitations or advertisements for employees placed by or on behalf of the Nation, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

11.9.2.3 The Nation will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the Nation's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

11.9.2.4 The Nation will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

11.9.2.5 The Nation will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by

the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

11.9.2.6 In the event of the Nation's noncompliance with the nondiscrimination clauses of this Amended Contract or with any such rules, regulations, or orders, this Amended Contract may be canceled, terminated, or suspended, in whole or in part, and the Nation may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.9.2.7 The Nation will include the provisions of subsections 11.9.2.1 through 11.9.2.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Nation will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Nation becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interests of the United States.

11.10 Compliance with Civil Rights Laws and Regulations.

11.10.1 The Nation shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines

imposed by the Department of the Interior and/or Bureau of Reclamation.

11.10.2 These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Amended Contract, the Nation agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

11.10.3 The Nation makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Nation by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Nation recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this section, and that the United States reserves the right to seek judicial enforcement thereof.

11.10.4 Rules, Regulations, and Determinations.

11.10.4.1 The Contracting Officer shall have the right to make, after an opportunity has been offered to the Nation for consultation, rules and regulations consistent with the provisions of the Amended Contract and the laws of the United States and to add to or to modify such rules and regulations as the Contracting Officer may deem proper and necessary to carry out this Amended Contract, and to supply necessary details of its administration which are not covered by express provisions of this Amended Contract. The Nation shall observe such rules and regulations.

11.10.4.2 Where the terms of this Amended Contract provide action to be based upon the opinion or determination of either party to this Amended Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Nation questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Nation.

12 EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of subsections 11.9 and 11.10 apply except where they conflict with sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964 (73 Stat. 253-257), which pertain to Indian tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

13 CREDIT AGAINST WATER RIGHTS: At such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation under this Amended Contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and the Nation at that time. Thereafter, the Nation may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this Amended Contract. Until such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation is supplemental water and is not credited against, or in any way related to the Nation's Water Rights.

14 AMENDED CONTRACT AND SETTLEMENTS ACT: In the event that differences between the language of this Amended Contract and the Settlements Act result in ambiguity or confusion or

the provisions are inconsistent, the language of the Settlements Act shall govern.

15 EXHIBIT MADE PART OF CONTRACT: Exhibit A is attached hereto and made part of this Amended Contract, and shall be in full force and effect in accordance with its respective provisions until superseded by a subsequent exhibit or exhibits executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended Contract the day and year first written above.

THE UNITED STATES OF AMERICA

Legal Review and Approval:

By: 
Field Solicitor
Phoenix, Arizona

By: 
Regional Director
For Lower Colorado Region
Bureau of Reclamation

ATTEST:

TOHONO O'ODHAM NATION

By: 

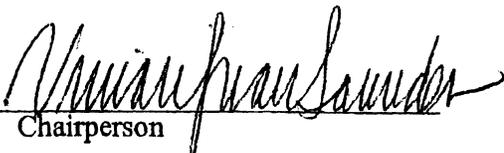
By: 
Chairperson

Exhibit A
Contract No. PAPAGO121180A
Amendment No. 1
Tohono O'odham Nation

**SECRETARY'S APPROACH FOR DETERMINING THE AMOUNT OF WATER
AVAILABLE TO THE NATION DURING A TIME OF SHORTAGE
UNDER 1980 CONTRACT**

1. This Exhibit A, made this 5th day of May, 2006, to be effective under and as a part of Contract No. PAPAGO121180A, as amended, hereinafter called "Amended Contract," shall become effective on the date of the Amended Contract's execution and shall remain in effect until superseded by another Exhibit A; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Amended Contract.

2. The following is the Secretary's approach for determining the amount of water available to the Nation during a time of shortage under the 1980 Contract, that is referred to in subarticle 6.8 entitled "Priority".

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.
5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.

5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.

EXHIBIT 8.7

Examples of Calculations for Additional Groundwater Pumping

The following examples illustrate calculations to determine additional groundwater pumping allowances for the San Xavier District and the eastern Schuk Toak District as provided in paragraph 8.7 of the Tohono O'odham Settlement Agreement.

I. SAN XAVIER RESERVATION:

Example A:

1. Determination of San Xavier District Maximum Demand (SXDM):

("San Xavier District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the Reservation for any use [other than direct groundwater recharge or use by Asarco], and (ii) pumped from groundwater for beneficial use on the Reservation, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].) The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example A calculation:

Year 1 water use	13,000 af
Year 2 water use	16,000 af
Year 3 water use	17,000 af
Year 4 water use	20,000 af
Year 5 water use	19,000 af

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDM (highest year's water use is year 4)	20,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDM	4,000 af]*
[Storage credits (excepting Marketable Credits):	
[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*

**Bracketed items are not summed.*

Minus non-marketable storage credits up to 20% of SXDMD	<u>-4,000 af</u>
TOTAL	-1,000 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	0 af

Example B:

1. Determination of San Xavier District Maximum Demand (SXDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	19,000 af
Year 2 water use	20,000 af
Year 3 water use	25,000 af
Year 4 water use	21,000 af
Year 5 water use	23,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

SXDMD (highest year's water use is year 3)	25,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus San Xavier Reservation groundwater pumping right	-10,000 af
[20% of SXDMD	5,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	5,000 af]*
[Deferred Pumping Storage Credits in account	50,000 af]*
Minus non-marketable storage credits up to 20% of SXDMD	<u>-5,000 af</u>
TOTAL	3,000 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	3,000 af

**Bracketed items are not summed.*

II. EASTERN SCHUK TOAK DISTRICT

Example A:

1. Determination of eastern Schuk Toak District Maximum Demand (ESTDMD):

("eastern Schuk Toak District Maximum Demand" is defined as "the largest total quantity of water (i) delivered by the Secretary to the eastern Schuk Toak District for any use [other than direct groundwater recharge], and (ii) pumped from groundwater for beneficial use in the eastern Schuk Toak District, during any one of the five most recent Years that are not Deficiency Years [exclusive of water pumped from Exempt Wells].) The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of the Example A calculation:

Year 1 water use	9,000 af
Year 2 water use	7,000 af
Year 3 water use	10,000 af
Year 4 water use	8,000 af
Year 5 water use	9,000 af

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

ESTDMD (highest year's water use is year 3)	10,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-7,000 af
Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
[20% of ESTDMD	2,000 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	4,000 af]*
[Deferred Pumping Storage Credits in account	16,000 af]*
Minus non-marketable storage credits up to 20% of ESTDMD	<u>-2,000 af</u>
TOTAL	-2,200 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	0 af

**Bracketed items are not summed.*

Example B:

1. Determination of eastern Schuk Toak Maximum Demand (ESTDMD):

The following hypothetical amounts of water use for each of the most recent five Years that are not Deficiency Years are provided for purposes of determining Maximum Demand for the Example B calculation:

Year 1 water use	14,000 af
Year 2 water use	13,000 af
Year 3 water use	14,000 af
Year 4 water use	15,000 af
Year 5 water use	16,000 af

Note: the only changes in Example B from Example A are the hypothetical amounts of water use for each of the most recent five years that are not Deficiency Years.

2. Determination of additional quantity of groundwater that may be pumped during the Deficiency Year:

ESTDMD (highest year's water use is year 5)	16,000 af
Minus Secretary's delivery of CAP water in Deficiency Year	-3,000 af
Minus eastern Schuk Toak District groundwater pumping right	-3,200 af
[20% of ESTDMD	3,200 af]*
[Storage credits (excepting Marketable Credits)]:	
[Direct storage credits in account (excepting marketable)	4,000 af]*
[Deferred Pumping Storage Credits in account	16,000 af]*
Minus non-marketable storage credits up to 20% of ESTDMD	<u>-3,200 af</u>
TOTAL	-6,600 af
ADDITIONAL GROUNDWATER THAT MAY BE PUMPED	6,600 af

**Bracketed items are not summed.*

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

The terms used herein shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the term "Non-exempt Well" means a well that is not an "Exempt Well" and the term "Replacement Well" means a well no further than 660 feet from an existing well being replaced that will not annually withdraw in excess of the historical withdrawals from the original well or as that term is defined in future ADWR well-spacing regulations if the distance of the replacement well from the original well is less than 660 feet.

The basic elements of the Groundwater Protection Program ("Program") referenced in paragraph 8.8 of the Tohono O'odham Settlement Agreement are as follows:

1. Written consent of the Nation shall be required for the permitting of any new Non-exempt Well, for which the projected 10-feet-within-5-year drawdown contour (as determined by a well-spacing analysis done under state regulations by ADWR) intercepts the border of the San Xavier Reservation.

- 2.a. In addition to the requirements of paragraph 1, an applicant for a permit to drill a proposed well of over 500 gpm capacity, or for a group of wells of over 500 gpm total capacity, to be located within two miles of the exterior boundaries of the San Xavier Reservation shall submit to ADWR one of the following:

- i. Evidence showing that the water levels at the proposed well site(s) are declining at less than an average rate of 2 feet per year (based on annual water level data collected during the five years prior to the permit application date); or

ii. Evidence showing that a projected 5-feet-within-5-year drawdown contour does not intercept the border of the San Xavier Reservation; or

iii. The Nation's written consent.

2.b. In determining the average annual water level change at a proposed well site and the projected drawdown effect of the proposed well(s) for purposes of obtaining a permit under this paragraph, the following shall be excluded:

i. the water-level effect of the pumping within the San Xavier Reservation; and

ii. the water-level effects of underground storage facilities within the 2 mile limit and permitted recovery wells within that limit except the water-level effects at the site of the proposed well of storage at said underground storage facilities by or on behalf of the applicant within the 2 mile limit.

2.c. For purposes of this paragraph, if the same applicant submits an application for a permit to drill a well within eighteen months of a previous application, the applications shall be aggregated in terms of capacity and considered as an application for a group of wells.

3. Upon receiving an application for a permit to drill any Non-exempt Well located within two miles of the San Xavier Reservation, the ADWR shall mail to the Nation written notice of the application along with a copy of thereof. The Nation shall have 60 days after mailing of the written notice to file an objection to the application. The grounds for an objection are that the application fails to meet the standards required herein or that the granting of the permit will violate these standards. If objection is made, a hearing shall be held on the application within 60 days of receipt of the objection. The

Nation shall be a party in such hearing. A recommendation based on the hearing shall be made by the hearing officer within 30 days after the close of the hearing. Within 30 days of the recommendation, the Director of ADWR ("Director") shall render his decision on the application. Any decision of the Director granting or denying a permit after objection by the Nation shall be subject to review by the Gila River Adjudication Court by an aggrieved party filing an application for review with the court within 30 days of mailing of the written notice of the decision of the Director on the application.

4. An applicant for a "Replacement Well" within two miles of the San Xavier Reservation shall be exempt from the requirements set forth in paragraphs 1 and 2 except that ADWR shall give notice thereof and provide the opportunity to object to the application and obtain review of the Director's decision thereon as provided in paragraph 3.

5. An applicant for a permit to drill an Exempt Well shall be exempt from the requirements set forth in paragraphs 1 and 2.

6. An applicant for a permit to drill a recovery well within two miles of the exterior boundaries of the San Xavier Reservation and within one mile of an underground storage facility shall be exempt from the requirements set forth in paragraphs 1 and 2 so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

7. This Program need not be described in detail in the SAWRSA Amendments, but the enactment of state legislation implementing the Program and authorizing ADWR's role in the Program will be a condition precedent to the Enforceability Date.

8. The judgment approving the Tohono O'odham Settlement Agreement should incorporate the salient provisions of this Program and the settlement will be made contingent on the passage of state legislation implementing the Program and authorizing the Director to enforce the Program as part of an approved Indian water rights settlement. Review of decisions of the Director will be part of the continuing jurisdiction of the Gila River Adjudication Court.

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
 AND THE
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

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3 UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

4 SUBCONTRACT AMONG THE UNITED STATES,
5 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
6 AND THE _____
PROVIDING FOR WATER SERVICE

7 CENTRAL ARIZONA PROJECT

8
9 1. PREAMBLE:

10 THIS SUBCONTRACT, made this ____ day of _____, 200____, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
12 thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
13 Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
14 August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
15 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
16 30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as the "Federal
17 Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as
18 the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA
19 WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water
20 conservation district organized under the laws of Arizona, with its principal place of business
21 in Phoenix, Arizona, and the _____, hereinafter referred to as the
22 "Subcontractor," with its principal place of business in _____, Arizona;

23 WITNESSETH, THAT:

24 * * *

25 * * *

2. EXPLANATORY RECITALS:

1 WHEREAS, the Colorado River Basin Project Act provides, among other
2 things, that for the purposes of furnishing irrigation and municipal and industrial water
3 supplies to water deficient areas of Arizona and western New Mexico through direct
4 diversion or exchange of water, control of floods, conservation and development of fish and
5 wildlife resources, enhancement of recreation opportunities, and for other purposes, the
6 Secretary of the Interior shall construct, operate, and maintain the Central Arizona Project;
7 and

8 WHEREAS, pursuant to the provisions of Arizona Revised Statutes §§ 48-
9 3701, et seq., the Contractor has been organized with the power to enter into a contract or
10 contracts with the Secretary of the Interior to accomplish the purposes of Arizona Revised
11 Statutes, §§ 48-3701, et seq.; and

12 WHEREAS, pursuant to Section 304(b)(1) of the Colorado River Basin
13 Project Act, the Secretary of the Interior has determined that it is necessary to effect
14 repayment of the cost of constructing the Central Arizona Project pursuant to a master
15 contract and that the United States, together with the Contractor, shall be a party to
16 contracts that are in conformity with and subsidiary to the master contract; and

17 WHEREAS, the United States and the Contractor entered into Contract
18 No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as
19 the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this
20 reference made a part hereof, whereby the Contractor agrees to repay to the United States
21 the reimbursable costs of the Central Arizona Project allocated to the Contractor; and

22 WHEREAS, the Subcontractor is in need of a water supply and desires to
23 subcontract with the United States and the Contractor for water service from water supplies
24 available under the Central Arizona Project; and

25 WHEREAS, upon completion of the Central Arizona Project, water shall be
26 available for delivery to the Subcontractor;

1 NOW THEREFORE, in consideration of the mutual and dependent
2 covenants herein contained, it is agreed as follows:

3 3. DEFINITIONS:

4 Definitions included in the Repayment Contract are applicable to this
5 subcontract; Provided, however, That the terms "Agricultural Water" or "Irrigation Water"
6 shall mean water used for the purposes defined in the Repayment Contract on tracts of
7 land operated in units of more than 5 acres. The first letters of terms so defined are
8 capitalized herein. As heretofore indicated, a copy of the Repayment Contract is attached
9 as Exhibit "A."

10 4. DELIVERY OF WATER:

11 4.1 Obligations of the United States. Subject to the terms, conditions,
12 and provisions set forth herein and in the Repayment Contract, during such periods as it
13 operates and maintains the Project Works, the United States shall deliver Project Water
14 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to
15 make available to the Subcontractor the quantity of Project Water specified in the schedule
16 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
17 the Operating Agency, the United States shall make deliveries of Project Water to the
18 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
19 herein.

20 4.2 Term of Subcontract.

21 This subcontract shall become effective upon its confirmation as provided
22 for in Article 6.12 and shall remain in effect for a period of 50 years beginning with the
23 January 1 of the Year following that in which the Secretary issues the Notice of Completion
24 of the Water Supply System; Provided, That this subcontract may be renewed upon written
25 request by the Subcontractor upon terms and conditions of renewal to be agreed upon not
26 later than 1 year prior to the expiration of this subcontract; and Provided, further, That such
terms and conditions shall be consistent with Article 9.9 of the Repayment Contract.

4.3 Conditions Relating to Delivery and Use.

1 Delivery and use of water under this subcontract is conditioned on the following, and the
2 Subcontractor hereby agrees that:

3 (a) All uses of Project Water and Return Flow shall be
4 consistent with Arizona water law unless such law is inconsistent with the Congressional
5 directives applicable to the Central Arizona Project.

6 (b) The system or systems through which water for Agricultural,
7 M&I, and Miscellaneous (including ground water recharge) purposes is conveyed after
8 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or other
9 conduits provided and maintained with linings adequate in the Contracting Officer's
10 judgment to prevent excessive conveyance losses.

11 (c) The Subcontractor shall not pump, or within its legal
12 authority, permit others to pump ground water from within the exterior boundaries of the
13 Subcontractor's service area, which has been delineated on a map filed with the Contractor
14 and approved by the Contractor and the Contracting Officer, for use outside of said service
15 area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes,
16 as it may be amended from time to time, and the Contracting Officer, the Contractor, and
17 the Subcontractor shall agree, or shall have previously agreed, that a surplus of ground
18 water exists and drainage is or was required; Provided; however, That such pumping may
19 be approved by the Contracting Officer and the Contractor, and approval shall not be
20 unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon
21 submittal by the Subcontractor of a written certification from the Arizona Department of
22 Water Resources or its successor agency that the pumping and transportation of ground
23 water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended
24 from time to time.

25 (d) The Subcontractor shall not sell or otherwise dispose of or
26 permit the sale or other disposition of any Project Water for use outside of Maricopa, Pinal,

and Pima Counties; Provided, however, That this does not prohibit exchanges of Project Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2.

(e) (i) Project Water scheduled for delivery in any Year under this subcontract may be used by the Subcontractor or resold, or exchanged by the Subcontractor pursuant to appropriate agreements approved by the Contracting Officer and the Contractor. If said water is resold or exchanged by the Subcontractor for an amount in excess of that which the Subcontractor is obligated to pay under this subcontract, the excess amount shall be paid forthwith by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States; Provided, however, That the Subcontractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs.

(ii) Project Water scheduled for delivery in any Year under this subcontract that cannot be used, resold, or exchanged by the Subcontractor may be made available by the Contracting Officer and Contractor to other users. If such Project Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its payments hereunder only to the extent of the amount paid to the Contractor by such other users, but not to exceed the amount the Subcontractor is obligated to pay under this subcontract for said water.

(iii) In the event the Subcontractor or the Contracting Officer and the Contractor are unable to sell any portion of the Subcontractor's Project Water scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water, as determined by the Contractor.

(f) Notwithstanding any other provision of this subcontract, Project Water shall not be delivered to the Subcontractor unless and until the Subcontractor has obtained final environmental clearance from the United States for the system or systems

1 through which Project Water is to be conveyed after delivery to the Subcontractor at the
2 Subcontractor's Project turnout(s). Such system(s) shall include all pipelines, canals,
3 distribution systems, treatment, storage, and other facilities through or in which Project
4 Water is conveyed, stored, or treated after delivery to the Subcontractor at the
5 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
6 based upon a review by the United States of the Subcontractor's plans for taking and using
7 Project Water and will be given or withheld by the United States in accordance with the
8 Final Environmental Impact Statement – Water Allocations and Water Service Contracting
9 (FES 82-7, filed March 19, 1982) and the National Environmental Policy Act of 1969 (83
10 Stat. 852). Any additional action(s) required on behalf of the Subcontractor in order to
11 obtain final environmental clearance from the United States will be identified to the
12 Subcontractor by the United States, and no Project Water shall be delivered to the
13 Subcontractor unless and until the Subcontractor has completed all such action(s) to the
14 satisfaction of the United States.

14 4.4 Procedure for Ordering Water.

15 (a) At least 15 months prior to the date the Secretary expects
16 to issue the Notice of Completion of the Water Supply System, or as soon thereafter as is
17 practicable, the Contracting Officer shall announce by written notice to the Contractor the
18 amount of Project Water available for delivery during the Year in which said Notice of
19 Completion is issued (initial Year of water delivery) and during the following Year. Within
20 30 days of receiving such notice, the Contractor shall issue a notice of availability of Project
21 Water to the Subcontractor. The Subcontractor shall, within a reasonable period of time
22 as determined by the Contractor, submit a written schedule to the Contractor and the
23 Contracting Officer showing the quantity of water desired by the Subcontractor during each
24 month of said initial Year and the following Year. The Contractor shall notify the
25 Subcontractor by written notice of the Contractor's action on the requested schedule within
26 2 months of the date of receipt of such request.

1 (b) The amounts, times, and rates of delivery of Project Water
2 to the Subcontractor during each Year subsequent to the Year following said initial Year
3 of water delivery shall be in accordance with a water delivery schedule for that Year. Such
4 schedule shall be determined in the following manner:

5 (i) On or before June 1 of each Year beginning with
6 the Year following the initial Year of water delivery pursuant to this subcontract, the
7 Contracting Officer shall announce the amount of Project Water available for delivery during
8 the following Year in a written notice to the Contractor. In arriving at this determination, the
9 Contracting Officer, subject to the provisions of the Repayment Contract, shall use his best
10 efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado
11 River water over the term of this subcontract. Within 30 days of receiving said notice, the
12 Contractor shall issue a notice of availability of Project Water to the Subcontractor.

13 (ii) On or before October 1 of each Year beginning
14 with the Year following said initial Year of water delivery, the Subcontractor shall submit in
15 writing to the Contractor and the Contracting Officer a water delivery schedule indicating the
16 amounts of Project Water desired by the Subcontractor during each month of the following
17 Year along with a preliminary estimate of Project Water desired for the succeeding 2 years.

18 (iii) Upon receipt of the schedule, the Contractor and
19 the Contracting Officer shall review it and, after consultation with the Subcontractor, shall
20 make only such modifications to the schedule as are necessary to ensure that the amounts,
21 times, and rates of delivery to the Subcontractor are consistent with the delivery capability
22 of the Project, considering, among other things, the availability of water and the delivery
23 schedules of all subcontractors; Provided, That this provision shall not be construed to
24 reduce annual deliveries to the Subcontractor.

25 (iv) On or before November 15 of each Year
26 beginning with the Year following said initial Year of water delivery, the Contractor shall
determine and furnish to the Subcontractor and the Contracting Officer the water delivery

1 schedule for the following Year which shall show the amount of water to be delivered to the
2 Subcontractor during each month of that Year, contingent upon the Subcontractor
3 remaining eligible to receive water under all terms contained herein.

4 (c) The monthly water delivery schedules may be amended
5 upon the Subcontractor's written request to the Contractor. Proposed amendments shall
6 be submitted by the Subcontractor to the Contractor no later than 15 days before the de-
7 sired change is to become effective, and shall be subject to review and modification in like
8 manner as the schedule. The Contractor shall notify the Subcontractor and the Contracting
9 Officer of its action on the Subcontractor's requested schedule modification within 10 days
10 of the Contractor's receipt of such request.

11 (d) The Contractor and the Subcontractor shall hold the United
12 States, its officers, agents, and employees, harmless on account of damage or claim of
13 damage of any nature whatsoever arising out of or connected with the actions of the
14 Contractor regarding water delivery schedules furnished to the Subcontractor.

15 (e) In no event shall the Contracting Officer or the Contractor
16 be required to deliver to the Subcontractor from the Water Supply System in any one month
17 a total amount of Project Water greater than 11 percent of the Subcontractor's maximum
18 entitlement; Provided, however, That the Contracting Officer may deliver a greater
19 percentage in any month if such increased delivery is compatible with the overall delivery
20 of Project Water to other subcontractors as determined by the Contracting Officer and the
21 Contractor and if the Subcontractor agrees to accept such increased deliveries.

22 4.5 Points of Delivery—Measurement and Responsibility for Distribution
23 of Water.

24 (a) The water to be furnished to the Subcontractor pursuant to
25 this subcontract shall be delivered at turnouts to be constructed by the United States at
26 such point(s) on the Water Supply System as may be agreed upon in writing by the
Contracting Officer and the Contractor, after consultation with the Subcontractor.

1 (b) Unless the United States and the Subcontractor agree by
2 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
3 expense, connection facilities required to take and convey the water from the turnouts to
4 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the
5 Contracting Officer, drawings showing the construction to be performed by the
6 Subcontractor within the Water Supply System right-of-way 6 months before starting said
7 construction. The facilities may be installed, operated, and maintained on the Water
8 Supply System right-of-way subject to such reasonable restrictions and regulations as to
9 type, location, method of installation, operation, and maintenance as may be prescribed by
10 the Contracting Officer.

11 (c) All water delivered from the Water Supply System shall be
12 measured with equipment furnished and installed by the United States and operated and
13 maintained by the United States or the Operating Agency. Upon the request of the
14 Subcontractor or the Contractor, the accuracy of such measurements shall be investigated
15 by the Contracting Officer or the Operating Agency, Contractor, and Subcontractor, and any
16 errors which may be mutually determined to have occurred therein shall be adjusted;
17 Provided, That in the event the parties cannot agree on the required adjustment, the
18 Contracting Officer's determination shall be conclusive.

19 (d) Neither the United States, the Contractor, nor the Operating
20 Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution
21 of Project Water beyond the delivery point(s) agreed to pursuant to Subarticle 4.5(a). The
22 Subcontractor shall hold the United States, the Contractor, and the Operating Agency
23 harmless on account of damage or claim of damage of any nature whatsoever for which
24 there is legal responsibility, including property damage, personal injury, or death arising out
25 of or connected with the Subcontractor's control, carriage, handling, use, disposal, or
26 distribution of such water beyond said delivery point(s).

4.6 Temporary Reductions. In addition to the right of the United

1 States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or
2 reduce the amount of water to be delivered, the United States or the Operating Agency
3 may, after consultation with the Contractor, temporarily discontinue or reduce the quantity
4 of water to be furnished to the Subcontractor as herein provided for the purposes of
5 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities
6 or any part thereof necessary for the furnishing of water to the Subcontractor, but so far as
7 feasible the United States or the Operating Agency shall coordinate any such
8 discontinuance or reduction with the Subcontractor and shall give the Subcontractor due
9 notice in advance of such temporary discontinuance or reduction, except in case of
10 emergency, in which case no notice need be given. Neither the United States, its officers,
11 agents, and employees, nor the Operating Agency, its officers, agents, and employees,
12 shall be liable for damages when, for any reason whatsoever, any such temporary
13 discontinuance or reduction in delivery of water occurs. If any such discontinuance or tem-
14 porary reduction results in deliveries to the Subcontractor of less water than what has been
15 paid for in advance, the Subcontractor shall be entitled to be reimbursed for the appropriate
16 proportion of such advance payments prior to the date of the Subcontractor's next payment
17 of water service charges or the Subcontractor may be given credit toward the next payment
18 of water charges if the Subcontractor should so desire.

18 4.7 Priority in Case of Shortage. Subject to the provisions of Section
19 304(e) of the Basin Project Act, any Project Water furnished for non-Indians through Project
20 facilities shall, in the event of shortage thereof, as determined by the Contracting Officer
21 after consultation with the Contractor, be reduced pro rata until exhausted, first for
22 Miscellaneous Water uses and next for Agricultural Water uses before water furnished for
23 non-Indian M&I use is reduced. Thereafter, water for M&I uses shall be reduced pro rata
24 among all non-Indian M&I users. All Project Water converted from agricultural to M&I use
25 shall be delivered with the same priority as other Project M&I Water. Pursuant to the
26 authority vested in the Secretary by the Reclamation Act of 1902 (32 Stat. 388), as

1 amended and supplemented, the Basin Project Act, the Regulations for Implementing the
2 Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1505), and
3 the Implementing Procedures of the U. S. Department of the Interior (516 DM 5.4), the
4 relative priorities between Indian and non-Indian uses will be determined by the Secretary
5 consistent with the allocations published in the Federal Register on March 24, 1983.

6 4.8 Secretarial Control of Return Flow.

7 (a) The Secretary reserves the right to capture all Return Flow
8 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
9 and for distribution to and use of the Central Arizona Project to the fullest extent practicable.
10 The Secretary also reserves the right to capture for Project use Return Flow which
11 originates or results from water contracted for from the Central Arizona Project within the
12 boundaries of the Contractor's Service Area if, in his judgment, such Return Flow is not
13 being put to a beneficial use. The Subcontractor may recapture and reuse or sell its Return
14 Flow; Provided, however, That such Return Flow may not be sold for use outside Maricopa,
15 Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent
16 exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor shall, at least 60
17 days in advance of any proposed sale of such water, furnish the following information in
18 writing to the Contracting Officer and the Contractor:

- 19 (i) The name and address of the prospective buyer.
20 (ii) The location and proposed use of the Return Flow.
21 (iii) The price to be charged for the Return Flow.

22 (b) The price charged for the Return Flow may cover the cost
23 incurred by the Subcontractor for Project Water plus the cost required to make the Return
24 Flow usable. If the price received for the Return Flow is greater than the costs incurred by
25 the Subcontractor, as described above, the excess amount shall be forthwith returned by
26 the Subcontractor to the Contractor for application against the Contractor's Repayment
Obligation to the United States. Costs required to make Return Flow usable shall include

1 but not be limited to capital costs and OM&R costs including transportation, treatment, and
2 distribution, and the portion thereof which may be retained by the Subcontractor shall be
subject to the advance approval of the Contractor and the Contracting Officer.

3 (c) Any Return Flow captured by the United States and
4 determined by the Contracting Officer and the Contractor to be suitable and available for
5 use by the Subcontractor may be delivered by the United States or Operating Agency to the
6 Subcontractor as a part of the water supply for which the Subcontractor subcontracts
7 hereunder and such water shall be accounted and paid for pursuant to the provisions
8 hereof.

9 (d) All capture, recapture, use, reuse, and sale of Return Flow
10 under this article shall be in accord with Arizona water law unless such law is inconsistent
11 with the Congressional directives applicable to the Central Arizona Project.

12 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
13 this subcontract, shall comply with all applicable water and air pollution laws and regulations
of the United States and the State of Arizona and shall obtain all required permits or
licenses from the appropriate Federal, State, or local authorities.

14 * * *

15 4.10 Quality of Water. The operation and maintenance of Project
16 facilities shall be performed in such manner as is practicable to maintain the quality of water
17 made available through such facilities at the highest level reasonably attainable as
18 determined by the Contracting Officer. Neither the United States, the Contractor, nor the
19 Operating Agency warrants the quality of water and is under no obligation to construct or
20 furnish water treatment facilities to maintain or better the quality of water. The
21 Subcontractor waives its right to make a claim against the United States, the Operating
22 Agency, the Contractor, or another subcontractor because of changes in water quality
23 caused by the commingling of Project Water with other water.

24 4.11 Exchange Water.

25 (a) Where the Contracting Officer determines the Subcontractor
26 is physically able to receive Colorado River mainstream water in exchange for or in

1 replacement of existing supplies of water from surface sources other than the Colorado
2 River, the Contracting Officer may require that the Subcontractor accept said mainstream
3 water in exchange for or in replacement of said existing supplies pursuant to the provisions
4 of Section 304(d) of the Basin Project Act; Provided, however, That a subcontractor on the
5 Project aqueduct shall not be required to enter into exchanges in which existing supplies
6 of water from surface sources are diverted for use by other subcontractors downstream on
7 the Project aqueduct.

8 (b) If, in the event of shortages, the Subcontractor has yielded
9 water from other surface water sources in exchange for Colorado River mainstream water
10 supplied by the Contractor or the Operating Agency, the Subcontractor shall have first
11 priority against other users supplied with Project Water that have not yielded water from
12 other surface water sources but only in quantities adequate to replace the water so yielded.

13 4.12 Entitlement to Project M&I Water.

14 (a) For the Year in which the Secretary issues the Notice of
15 Completion of the Water Supply System, the Subcontractor's entitlement to Project Water
16 for M&I uses shall be determined by the Contractor after consultation with the
17 Subcontractor and the Contracting Officer. Commencing with the Year following that in
18 which the Secretary issues the Notice of Completion of the Water Supply System, the
19 Subcontractor is entitled to take a maximum of _____ acre-feet of Project Water for M&I
20 uses including but not limited to ground water recharge.

21 (b) If at any time during the term of this subcontract there is
22 available for allocation additional M&I Project Water, or Agricultural Water converted to M&I
23 use, it shall be delivered to the Subcontractor at the same water service charge per
24 acre-foot and with the same priority as other M&I Water, upon execution or amendment of
25 an appropriate subcontract among the United States, the Contractor, and the Subcontractor
26 and payment of an amount equal to the acre-foot charges previously paid by other
subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water

1 conversions, the payment shall be reduced by all previous payments of agricultural capital
2 charges for each acre-foot of water converted. The interest due shall be calculated for the
3 period between issuance of the Notice of Completion of the Water Supply System and
4 execution or amendment of the subcontract using the weighted interest rate received by the
Contractor on all investments during that period.

5 **4.13 Delivery of Project Water Prior to Completion of Project Works.**

6 Prior to the date of issuance of the Notice of Completion of the Water Supply System by
7 the Secretary, water may be made available for delivery by the Secretary on a "when
8 available" basis at a water rate and other terms to be determined by the Secretary after
9 consultation with the Contractor.

10 **5. PAYMENTS:**

11
12 **5.1 Water Service Charges for Payment of Operation, Maintenance,**
13 **and Replacement Costs.** Subject to the provisions of Article 5.4 hereof, the Subcontractor
14 shall pay in advance for Project OM&R costs estimated to be incurred by the United States
15 or the Operating Agency. At least 15 months prior to first delivery of Project Water, or as
16 soon thereafter as is practicable, the Contractor shall furnish the Subcontractor with an
17 estimate of the Subcontractor's share of OM&R costs to the end of the initial Year of water
18 delivery and an estimate of such costs for the following Year. Within a reasonable time of
19 the receipt of said estimates, as determined by the Contractor, but prior to the delivery of
20 water, the Subcontractor shall advance to the Contractor its share of such estimated costs
21 to the end of the initial month of water delivery and without further notice or demand shall
22 on or before the first day of each succeeding month of the initial Year of water delivery and
23 the following Year advance to the Contractor in equal monthly installments the Sub-
24 contractor's share of such estimated costs. Advances of monthly payments for each
25 subsequent Year shall be made by the Subcontractor to the Contractor on the basis of
26 annual estimates to be furnished by the Contractor on or before June 1 preceding each said

subsequent Year and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent Year. Differences between actual OM&R costs and estimated OM&R costs shall be determined by the Contractor and shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contractor the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contractor may increase the annual estimate of the Subcontractor's OM&R costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith increase its remaining monthly payments in such Year to the Contractor by the amount necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contractor in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the Subcontractor and the Contractor.

5.2 M&I Water Service Charges.

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I Water service capital charge based on a maximum entitlement of _____ acre-feet per year multiplied by the rates set forth in the following schedule.

<u>Payment for the calendar year of</u>	<u>Payment due for each acre- foot of purchased capacity</u>
1988-1993	\$ 5
1994	6
1995	8
1996	10
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2025 - through the end of the term of this subcontract	40

(b) The M&I Water service capital charge may be adjusted periodically by the Contractor as a result of repayment determinations provided for in the Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot shall not be greater than the amount required to amortize Project capital costs allocated to the M&I function and determined by the Contracting Officer to be a part of the Contractor's Repayment Obligation. Such amortization shall include interest at 3.342 percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year; Provided, however, That the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in

accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by the Contractor in written notices to the Subcontractor.

(c) On or before the first anniversary of execution of this subcontract and on or before each succeeding anniversary, the Subcontractor shall pay, in addition to all other payments required herein, an M&I subcontract charge. The subcontract charge shall be \$2.00 per acre-foot for _____ acre-feet of M&I Water. Prior to the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year by the Subcontractor to the United States. The Contracting Officer shall advise the Contractor of the amounts and dates of the Subcontractor's payments. After the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year to the Contractor by the Subcontractor and the Contractor shall credit the revenues obtained from the subcontract charge against the Subcontractor's water service charges payable to the Contractor that Year.

(d) Funds advanced to the United States by the Subcontractor pursuant to Article 5.2(c) as a subcontracting charge shall be credited by the Contractor against the Subcontractor's initial capital charges for water deliveries under this subcontract. Credit provided to the Subcontractor shall include interest from the date the Subcontractor's funds are transferred to the United States through the effective date of credit for payment of capital costs as recorded in the Contractor's records. Interest credited to the Subcontractor shall be at an annual rate of 1 (one) percent less than the weighted rate received by the Contractor on all investments during the period for which the Subcontractor's payments earn an interest credit.

(e) Payment of all M&I Water service capital and corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated

in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

INSERT (f) for Cities and Towns

(f) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this subcontract, nor shall such sources be liable for the payments, contributions, and other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the Subcontractor for the applicable budget year; and Provided, further, That no portion of this agreement shall ever be construed to create an obligation superior in lien to or on a parity with the Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the Subcontractor may meet its obligations hereunder and make in full all payments required under this subcontract on or before the date such payments become due.

5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery of water from Project facilities during any period in which the Subcontractor may be in arrears in the payment of any charges due the Contractor. The Contractor may sell to another entity any water determined to be available under the Subcontractor's entitlement for which payment is in arrears; Provided, however, that the Subcontractor may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the

subcontractual obligation and the price received in the sale of the water by the Contractor and payment of charges for the current period.

5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this subcontract, or in the event the Subcontractor in any Year fails to submit a schedule for delivery as provided in Article 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to make the payments required in this subcontract.

5.5 Charge for Late Payments. The Subcontractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, That the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

6. GENERAL PROVISIONS:

6.1 Repayment Contract Controlling. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Project Water to the various subcontractors within the Project Service Area; and the Contractor has obligated itself for the payment of various costs, expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the Repayment Contract. The Subcontractor expressly approves and agrees to all the terms presently set out in the Repayment Contract including Subarticle 8.8(b)(viii) thereof, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent exchange agreements with Indian entities which have received an allocation of

1 Project Water and receive all benefits from the exchange. If the Subcontractor chooses to
2 exchange directly with the Indians, then the Subcontractor's entitlement to Project Water
3 shall be reduced by the amount of Project Water received in exchange by the
4 Subcontractor. The Subcontractor may also offer raw sewage or effluent to the Contractor
5 for the purpose of exchanging such sewage or effluent for the benefit of all subcontractors.

6 If such an exchange is consummated, the Subcontractor's entitlement to Project Water
7 shall remain at the level specified in Article 4.12. A copy of the above referenced
8 agreements shall be filed with the Contractor and the Contracting Officer.

9 6.3 Notices. Any notice, demand or request authorized or required by
10 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
11 delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O.
12 Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
13 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
14 Phoenix, Arizona 85080-3020, on behalf of the United States or Subcontractor; and to the
15 _____, Arizona 85_____, on behalf of the United
16 States or Contractor. The designation of the addressee or the address may be changed
17 by notice given in the same manner as provided in this Article for other notices.

18 6.4 Water Conservation Program.

19 (a) While the contents and standards of a given water
20 conservation program are primarily matters of State and local determination, there is a
21 strong Federal interest in developing an effective water conservation program because of
22 this subcontract. The Subcontractor shall develop and implement an effective water
23 conservation program for all uses of water which is provided from or conveyed through
24 Federally constructed or Federally financed facilities. That water conservation program
25 shall contain definite goals, appropriate water conservation measures, and time schedules
26 for meeting the water conservation objectives.

(b) A water conservation program, acceptable to the
Contractor and the Contracting Officer, shall be in existence prior to one or all of the
following: (1) service of Federally stored/conveyed water; (2) transfer of operation and
maintenance of the Project facilities to the Contractor or Operating Agency; or (3) transfer
of the Project to an operation and maintenance status. The distribution and use of
Federally stored/conveyed water and/or the operation of Project facilities transferred to the
Contractor shall be consistent with the adopted water conservation program. Following
execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor shall
resubmit the water conservation plan to the Contractor and the Contracting Officer for

1 review and approval. After review of the results of the previous 5 years and after
2 consultation with the Contractor, the Subcontractor, and the Arizona Department of Water
3 Resources or its successor, the Contracting Officer may require modifications in the water
4 conservation program to better achieve program goals.

5 **6.5 Rules, Regulations, and Determinations.**

6 (a) The Contracting Officer shall have the right to make, after
7 an opportunity has been offered to the Contractor and Subcontractor for consultation, rules
8 and regulations consistent with the provisions of this subcontract, the laws of the United
9 States and the State of Arizona, to add to or to modify them as may be deemed proper and
10 necessary to carry out this subcontract, and to supply necessary details of its administration
11 which are not covered by express provisions of this subcontract. The Contractor and
12 Subcontractor shall observe such rules and regulations.

13 (b) Where the terms of this subcontract provide for action to be
14 based upon the opinion or determination of any party to this subcontract, whether or not
15 stated to be conclusive, said terms shall not be construed as permitting such action to be
16 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
17 event that the Contractor or Subcontractor questions any factual determination made by the
18 Contracting Officer, the findings as to the facts shall be made by the Secretary only after
19 consultation with the Contractor or Subcontractor and shall be conclusive upon the parties.

20 **6.6 Officials Not to Benefit.**

21 (a) No Member of or Delegate to Congress or Resident
22 Commissioner shall be admitted to any share or part of this subcontract or to any benefit
23 that may arise herefrom. This restriction shall not be construed to extend to this
24 subcontract if made with a corporation or company for its general benefit.

25 (b) No official of the Subcontractor shall receive any benefit
26 that may arise by reason of this subcontract other than as a water user within the Project
and in the same manner as other water users within the Project.

27 **6.7 Assignment Limited--Successors and Assigns Obligated.** The
28 provisions of this subcontract shall apply to and bind the successors and assigns of the
29 parties hereto, but no assignment or transfer of this subcontract or any part or interest
30 therein shall be valid until approved by the Contracting Officer.

31 **6.8 Judicial Remedies Not Foreclosed.** Nothing herein shall be
32 construed (a) as depriving any party from pursuing and prosecuting any remedy in any
33 appropriate court of the United States or the State of Arizona which would otherwise be
34 available to such parties even though provisions herein may declare that determinations or
35 decisions of the Secretary or other persons are conclusive or (b) as depriving any party of
36 any defense thereto which would otherwise be available.

6.9 Books, Records, and Reports. The Subcontractor shall establish

1 and maintain accounts and other books and records pertaining to its financial transactions,
2 land use and crop census, water supply, water use, changes of Project works, and to other
3 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
4 Contracting Officer in such form and on such date or dates as he may require. Subject to
5 applicable Federal laws and regulations, each party shall have the right during office hours
6 to examine and make copies of each other's books and records relating to matters covered
7 by this subcontract.

8
9
10 6.10 Equal Opportunity. During the performance of this subcontract, the
11 Subcontractor agrees as follows:

12 (a) The Subcontractor shall not discriminate against any
13 employee or applicant for employment because of race, color, religion, sex, or national
14 origin. The Subcontractor shall take affirmative action to ensure that applicants are
15 employed, and that employees are treated during employment without regard to their race,
16 color, religion, sex, or national origin. Such action shall include, but not be limited to the
17 following: Employment, upgrading, demotion, or transfer; recruitment or recruitment
18 advertising; layoff or termination; rates of pay or other forms of compensation; and selection
19 for training, including apprenticeship. The Subcontractor agrees to post in conspicuous
20 places, available to employees and applicants for employment, notices to be provided
21 setting forth the provisions of this nondiscrimination clause.

22 (b) The Subcontractor shall, in all solicitations or
23 advertisements for employees placed by or on behalf of the Subcontractor, state that all
24 qualified applicants shall receive consideration for employment without discrimination
25 because of race, color, religion, sex, or national origin.

26 (c) The Subcontractor shall send to each labor union or
representative of workers with which it has a collective bargaining agreement or other
contract or understanding, a notice, to be provided by the Contracting Officer, advising said
labor union or workers' representative of the Subcontractor's commitments under Section
202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice
in conspicuous places available to employees and applicants for employment.

(d) The Subcontractor shall comply with all provisions of
Executive Order No. 11246 of September 24, 1965, as amended, and of the rules,
regulations, and relevant orders of the Secretary of Labor.

(e) The Subcontractor shall furnish all information and reports
required by said amended Executive Order and by the rules, regulations, and orders of the
Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and
accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation
to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Subcontractor's noncompliance with the
nondiscrimination clauses of this subcontract or with any of the such rules, regulations, or
orders, this subcontract may be canceled, terminated, or suspended, in whole or in part,
and the Subcontractor may be declared ineligible for further Government contracts in
accordance with procedures authorized in said amended Executive Order and such other
sanctions may be imposed and remedies invoked as provided in said amended Executive
Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
by law.

(g) The Subcontractor shall include the provisions of
paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the
rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of

1 said amended Executive Order, so that such provisions shall be binding upon each
2 subcontractor or vendor. The Subcontractor shall take such action with respect to any
3 subcontract or purchase order as may be directed by the Secretary of Labor as a means
4 of enforcing such provisions, including sanctions for noncompliance; Provided, however,
5 That in the event a Subcontractor becomes involved in, or is threatened with, litigation with
6 a subcontractor or vendor as a result of such direction, the Subcontractor may request the
7 United States to enter into such litigation to protect the interest of the United States.

8 6.11 Title VI. Civil Rights Act of 1964.

9 (a) The Subcontractor agrees that it shall comply with Title VI
10 of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or
11 pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that
12 title to the end that, in accordance with Title VI of that Act and the Regulation, no person
13 in the United States shall, on the grounds of race, color, or national origin be excluded from
14 participation in, be denied the benefits of, or be otherwise subjected to discrimination under
15 any program or activity for which the Subcontractor receives financial assistance from the
16 United States and hereby gives assurance that it shall immediately take any measures to
17 effectuate this agreement.

18 (b) If any real property or structure thereon is provided or
19 improved with the aid of Federal financial assistance extended to the Subcontractor by the
20 United States, this assurance obligates the Subcontractor, or in the case of any transfer of
21 such property, any transferee for the period during which the real property or structure is
22 used for a purpose involving the provision of similar services or benefits. If any personal
23 property is so provided, this assurance obligates the Subcontractor for the period during
24 which it retains ownership or possession of the property. In all other cases, this assurance
25 obligates the Subcontractor for the period during which the Federal financial assistance is
26 extended to it by the United States.

(c) This assurance is given in consideration of and for the
purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or
other Federal financial assistance extended after the date hereof to the Subcontractor by
the United States, including installment payments after such date on account of
arrangements for Federal financial assistance which were approved before such date. The
Subcontractor recognizes and agrees that such Federal financial assistance shall be
extended in reliance on the representations and agreements made in this assurance, and
that the United States shall reserve the right to seek judicial enforcement of this assurance.
This assurance is binding on the Subcontractor, its successors, transferees, and
assignees.

20 6.12 Confirmation of Subcontract. The Subcontractor shall promptly
21 seek a final decree of the proper court of the State of Arizona approving and confirming the
22 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
23 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of such
24 decree and of all pertinent supporting records. This subcontract shall not be binding on the
25 United States, the Contractor, or the Subcontractor until such final decree has been
26 entered.

6.13 Contingent on Appropriation or Allotment of Funds.

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The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Subcontractor from any obligation under this subcontract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract

No. _____ the day and year first above-written.

Legal Review and Approval

THE UNITED STATES OF AMERICA

By: _____
Field Solicitor
Phoenix, Arizona

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

[ENTITY] _____

Attest: _____

By: _____

Title: _____

Title: _____

Ac:\form m&i subk.wpd

TUCSON AGREEMENT

This Special Settlement Agreement is made and entered by and among the plaintiffs the Tohono O'odham Nation, a federally recognized Indian tribe ("Nation"), two classes of San Xavier Allottees and Fee Owners of Allotted Land (collectively "San Xavier Class Members") and the United States and defendant City of Tucson, a municipal corporation ("City"), relates to the San Xavier Reservation and the eastern Schuk Toak District, and is effective on the "Enforceability Date" of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("SAWRSA Amendments"). This Special Settlement Agreement is to be referred to as the "Tucson Agreement."

RECITALS:

A. The Nation, the San Xavier Class Members, and the United States are plaintiffs in United States et al. v. the City of Tucson et al., CV 75-39 TUC FRZ (consolidated with CV 75-051), consolidated for administrative purposes with Felicia Alvarez et al. v. City of Tucson, et al., CV 93-039 TUC FRZ (the "Consolidated Litigation").

B. The City is one of several defendants in the Consolidated Litigation.

C. In order to reach settlement of the Consolidated Litigation, the defendant City agrees with the plaintiff parties that there are certain issues that can best be resolved between the City and the plaintiffs without reference to the other defendants.

D. As a part of the settlement of the Consolidated Litigation, as against the City, the Nation and the San Xavier Class Members have requested that the City provide funds for the future reparation of Sinkholes. The City denies any responsibility or liability for the Sinkholes on the San Xavier Reservation. However, in order to avoid future claims and to reach full settlement of the Consolidated Litigation, the City is agreeing to provide funds as more fully set forth below.

E. In settlement of the Consolidated Litigation as against the City and in consideration for timely performance of the City's obligations pursuant to this Agreement, the United States, the Nation and the San Xavier Class Members agree to waive and limit certain claims for injuries to land as more fully set forth below.

F. Execution of the Tucson Agreement is a requirement of the Settlement Agreement, is referred to in Paragraph 12 of the Settlement Agreement and a copy of the Tucson Agreement is attached as Exhibit 12.1 of the Settlement Agreement.

G. In the event that the Secretarial statement of findings described in the SAWRSA Amendments is not published as provided in the SAWRSA Amendments and the SAWRSA Amendments do not take effect, the parties agree that this Tucson Agreement shall be void and of no further effect.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants agreed to herein the parties agree as follows:

**ARTICLE 1.
DEFINITIONS**

As used in this Agreement, the terms used shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the following terms have the following respective meanings:

1.1 The term "Land Subsidence" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling is caused by the pumping of water; land subsidence shall not include "Sinkholes" as defined herein.

1.2 The term "Sinkhole" or "Sinkholes" means sinks, sinkholes or depressions occurring within the San Xavier Reservation and thought to be caused by several types of compaction and erosion of near surface materials. Sinkholes typically range in size and depth from shallow depressions of a few inches to 20 feet with steep sides.

**ARTICLE 2.
SINKHOLE REPARATION**

2.1 Sinkhole Fund. Without admitting responsibility or liability for Sinkholes and as a part of the settlement of the Consolidated Litigation, the City agrees, upon timely adoption by the San Xavier District of the resolution described in Paragraph 2.2, to pay to the San Xavier District, in installments as provided below, the sum of Three Hundred Thousand Dollars (\$300,000), to be held by the San Xavier District in a separate interest bearing account, for the reparation of sinkholes (the "San Xavier Sinkhole Repair Fund"). The money shall be payable by the City to the San Xavier District in five annual installments of \$60,000 each, the first installment of which shall be paid on or before the 180th day after the Enforceability Date, and the remaining four installments shall each be paid on or before the anniversary date of the previous payment. The City shall bear no responsibility or liability whatsoever for the maintenance or management of such funds once paid in accordance with this Paragraph.

2.2 Use of Proceeds from the Sinkhole Fund. The resolution to be adopted by the San Xavier District will specify a procedure for the Nation and beneficial owners of land located on the San Xavier Reservation to obtain repairs of Sinkholes located on their land on the San Xavier Reservation, and will be adopted within ninety (90) days after the Enforceability Date. The District Council resolution shall provide that:

2.2.1 the cost of such repairs shall be paid from the San Xavier Sinkhole Repair Fund;

2.2.2 expenditures shall be made from the San Xavier Sinkhole Repair Fund for no other purpose;

2.2.3 if, at any time after ten (10) Years have elapsed after the Year in which the Enforceability Date occurs, no claims for sinkhole repairs have been received by the San Xavier District for a period of five (5) Years, and no expenditures have been made from the Fund for a period of five (5) Years, the San Xavier District may use any monies remaining in the San Xavier Sinkhole Repair Fund for projects to benefit and protect lands on the San Xavier Reservation, including, but not limited to, recharge, soil conservation, bank protection, erosion control and flood control.

ARTICLE 3. RELEASE AND LIMITATIONS OF CLAIMS

3.1 Releases of Claims by the Nation.

3.1.1 Release of Claims by the Nation Against the City. The Nation waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.1.2 Release of Claims by the Nation Against the United States. The Nation waives and releases any and all claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes caused by the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2 Release of Claims by the San Xavier Class Members.

3.2.1 Release of Claims by the San Xavier Class Members Against the City. The San Xavier Class Members waive and release any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2.2 Release of Claims by the San Xavier Class Members Against the United States. The San Xavier Class Members waive and release any and all past, present and future claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion caused by or resulting from the actions or inactions of the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy. Nothing in this release of claims by the San

Xavier Class Members against the United States shall act to restrict or prohibit San Xavier Class Members, either individually or through the San Xavier Cooperative Association or other other organizations comprised of San Xavier Class Members, from seeking government assistance through available programmatic funds in the study and remediation of Sinkholes, Land Subsidence or erosion.

3.3 Release of Claims by the United States on behalf of the Nation and the Allottees.

3.3.1 Release of Claims by the United States on Behalf of the Nation. The United States on behalf of the Nation waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.4 Release of Claims by the United States on Behalf of the Allottees. The United States on behalf of members of those Allottees who are San Xavier Class Members waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.5 Effective Date of Releases. The releases of claims as provided herein shall be effective on the Enforceability Date.

3.6 Preservation of Claims for Land-related Injuries. With the exception of claims for injuries to land resulting from Sinkholes which are waived and released pursuant to Paragraph 3.1, there are preserved to the Nation claims ("Claim") for Land Subsidence, erosion or other injuries to land within the San Xavier Reservation or eastern Schuk Toak District, if any, provided that any such Claim is brought in accordance with the procedures established below.

3.6.1 Administrative Procedure.

3.6.1.1 The Nation will not initiate a suit unless the Nation has filed a Claim with the City Manager and followed the procedures outlined in this Paragraph 3.4.1. The Claim shall contain sufficient facts to enable the City to review the basis for liability, including a written opinion of an expert engaged by the Nation which concludes that there is reasonable basis for the Claim, including causation, in whole or in part, by the City. The opinion shall be filed with the Claim or within one hundred and eighty (180) days after the filing date of the Claim. The opinion shall not be deemed by the City to be a public record or disclosed to the public and may only be used for the purpose of resolving the Claim with the Nation either through the administrative procedure established herein or in a subsequent lawsuit filed by the Nation under this Agreement.

3.6.1.2 The City shall issue a decision on the Claim within Ninety (90) days after the later of the date the Claim is filed or the expert opinion is submitted. If no decision is issued within such period, the Nation may, at its option, deem the Claim denied. Any decision which offers a remedy to the Nation shall be deemed rejected if the Nation fails to respond or rejects the decision in writing within ninety (90) days after receipt.

3.6.1.3 The Nation shall not file suit against the City until the Nation receives a decision denying the Claim or the Claim is deemed denied.

3.6.1.4 During the period from the date a Claim is filed through the date of decision or deemed denial, any applicable statute of limitations shall be tolled.

3.6.2 Remedies. The Nation shall be entitled to seek whatever relief may be available under applicable law as relief for a Claim.

3.6.3 No Intention to Create a Cause of Action. The parties do not intend, by this Agreement, to create any cause of action for any claims by the Nation for Land Subsidence, erosion or other injuries to land. References in this Agreement to the preservation of claims for Land Subsidence, erosion or other injuries to land is not an agreement or recognition by the City that any such claims or causes of action exist under the law.

ARTICLE 4. JURISDICTION; LAW; DEFAULT AND REMEDIES

4.1 Applicable Law and Jurisdiction. The parties recognize and agree that all actions arising under this Agreement, including any Claim by the Nation against the City (a) arises under and is governed by the laws of the United States and (b) personal and subject matter jurisdiction with respect thereto is vested the Gila River Adjudication Court. The United States District Court for the District of Arizona (the "Federal Court") shall have concurrent jurisdiction to the extent otherwise provided by Federal law. Neither the other courts of the State of Arizona nor the courts of the Nation shall have jurisdiction over actions brought pursuant to this Agreement including any action brought for a Claim preserved to the Nation pursuant to Paragraph 3.4 of this Agreement.

4.2 Event of Default; Enforcement. Failure to remedy a breach of this Agreement, after written notice and a ninety (90) calendar day opportunity to cure the breach, shall constitute an event of default. Any action to enforce this Agreement against the City shall be brought and maintained by the Nation or the United States.

4.3 Remedies. Remedies for default shall be limited to termination of this Agreement, injunctive relief or, as against the City, for damages pursuant to Paragraph 3.4.

4.4 Waiver of Immunity. The immunity from suit of the United States, the Nation and the City is hereby waived solely for declaratory judgment or injunctive relief in any action arising under this Agreement. A waiver of immunity under this Agreement shall not extend to any claims for costs, attorneys' fees or other monetary relief, except that the City waives any

immunity it might have for damages in the event that a Claim is made after the requirements of Paragraph 3.4 of this Agreement have been met.

**ARTICLE 5.
MISCELLANEOUS**

5.1 Term. This Agreement is perpetual and commences on the Enforceability Date.

5.2 Notices. Notice required pursuant to the terms of this Agreement shall be in writing, and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

**Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, AZ 85634**

With copies to:

**Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, AZ 85634**

**Chairperson
San Xavier District
2018 W. San Xavier Road
Tucson, AZ 85746**

**Barassi & Curl
485 South Main Avenue
Tucson, AZ 85701**

**Chairperson
Schuk Toak District
P.O. Box 368
Sells, AZ 85634**

City:

**City Manager
City of Tucson
P.O. Box 27210
Tucson, AZ 85726-7210**

With copies to:

**Director
Tucson Water
P.O. Box 27210
Tucson, AZ 85726-7210**

**City Attorney
P.O. Box 27210
Tucson, AZ 85726-7210**

San Xavier Class Members:

**President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, AZ 85746**

With a copy to:

**Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, NM 87102**

United States:

**Secretary of the Interior
Department of the Interior
Washington, D.C. 20240**

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.3 Full Understanding. The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel prior to executing it.

5.4 Neutral Construction. Counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.5 Binding on Successors. This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

5.6 Multiple Counterparts. This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties hereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized; each of which shall be deemed an original document.

5.7 Further Actions. The parties agree to execute all contracts, agreements and documents, and to take all further actions reasonably necessary, as may be required to comply with the provisions of this Agreement and the intent hereof.

APPROVED AS TO FORM

By 
City Attorney

CITY OF TUCSON

By 
Mayor

ATTEST:

By Kathleen S. Detwiler
City Clerk

APPROVED AS TO FORM

By Dan Frank
Attorney General

TOHONO O'ODHAM NATION

By Maria Paula Saunders
Chairperson

APPROVED AS TO FORM

UNITED STATES v. TUCSON SAN XAVIER
ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By Thomas E. Fuller
Attorney for Certified Class

By [Signature]

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Its Class Representatives

APPROVED AS TO FORM

ALVAREZ V. TUCSON ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By *Thomas E. Juelken*
Attorney for Certified Class

By *AV*

Barbara Colville
Julian Ramon Placer
Carmelle Smith
David Pridgen
Michael L. Davis

Its Class Representatives

THE UNITED STATES OF AMERICA

By *Gale Norton*
Secretary of the Interior

ALVAREZ v. TUCSON ALLOTTEE CLASS

By *Quintin Encinas*

By *Therese Lopez*

By *John E. O'Connell*

By *Celestine Pablos*

By *David J. Taylor*

By *Jocelyn Grace Powell*

By *Fernando Nunez*

By *Russell Hays*

By *[Signature]*

By _____

Its Class Representatives

ASARCO SETTLEMENT AGREEMENT

This settlement agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), three classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, and Asarco Incorporated, a New Jersey corporation ("Asarco") who are each a Party hereto and are collectively referred to as "Parties", and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("Amendments"). This settlement agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in *United States v. Tucson, et al.*, a class action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. Asarco is one of several defendants in the Litigation.

C. In order to reach a final settlement of the unconsolidated portions of the Litigation, there are certain issues that may be resolved herein among the parties to this Agreement without reference to the other defendants in the Litigation.

D. The San Xavier Allottees are plaintiffs in *Alvarez v. City of Tucson, et al.*, a class action pending in the United States District Court for the District of Arizona (No. CV 93-0039 TUC FRZ) ("Alvarez").

Now, therefore, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Accrual Date" means the date on which CAP water is first delivered to Asarco in lieu of groundwater pursuant to the terms of this Agreement.

1.2 "Accrual Period" is the fourteen-year period commencing with the Accrual Date.

1.3 "ADEQ" means the Arizona Department of Environmental Quality.

1.4 "ADWR" means the Arizona Department of Water Resources.

1.5 "Aquifer Protection Permit", or "APP," means any permits issued to Asarco by ADEQ pursuant to A.R.S. § 49-241 et seq. for the Mission Complex, and any amendments thereto.

1.6 "Boundaries of the Nation" means the geographic boundaries of the Tohono O'odham Nation, existing as of the Enforceability Date, including the San Xavier Reservation.

1.7 "Business Leases" means those 21 leases to Asarco of lands within the San Xavier Reservation for general mining purposes approved by the Bureau of Indian Affairs on May 12, 1959.

1.8 "CAP" or "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

1.9 "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.10 "Environmental Purposes" means specific environmental requirements or activities that involve well maintenance, reclamation, Mine Plan compliance, Aquifer Protection Permit compliance, closure requirements, or applicable governmentally imposed dictates, orders, laws or regulations relating to the environment.

1.11 "Mine Plan of Operations," or "MPO," means that plan for operating the Mission Complex approved by the United States Bureau of Land Management pursuant to 25 CFR Part 216 and 43 CFR Subpart 3592, and any amendments to such plan.

1.12 "Mining Leases" means Contract No. 14-20-450-2750, Lease No. 454-2-60, and Contract No. 14-20-450-2741, Lease No. 454-3-60, effective September 18, 1959.

1.13 "Mission Complex" means all of the mine, mill, processing, tailings, waste, well, road, building, and related facilities and properties owned, leased or used by Asarco and located south and east of the San Xavier Reservation and related facilities located on the San Xavier Reservation.

1.14 "San Xavier District," or "District," means one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.15 "San Xavier Reservation" means the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874 which is a part of the Tohono O'odham Nation.

1.16 "Storage Credit" means a storage credit granted by ADWR pursuant to Arizona law.

1.17 "Termination Date" means (a) for CAP water used for mining and processing ore at the Mission Complex, the earlier of 25 years after the Enforceability Date or the completion of such use, and (b) for CAP water used for Environmental Purposes, the earlier of 25 years after the Enforceability Date or the completion of such use.

1.18 "Tucson Management Area," or "TMA," means the area of land corresponding to

the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980 (session laws of the State of Arizona, 1980, thirty-fourth legislature, fourth special session, chapter 1), subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area pursuant to Arizona Laws of 1994, Ch. 296), and that part of the Upper Santa Cruz Basin not within the area initially designated as the Tucson Active Management Area.

1.19 "Well Site Lease" means that certain business lease No. H54-16-72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972. "New Well Site Lease" means a lease to be entered into pursuant to the provisions of paragraph 3.4.

ARTICLE 2

CENTRAL ARIZONA PROJECT WATER

2.1 The Nation shall deliver up to 10,000 acre-feet per annum of its CAP allocation to Asarco for use, in lieu of groundwater, in its mining, milling, processing, Environmental Purposes and related operations at the Mission Complex under terms and conditions set forth in a water agreement. The water shall be delivered at the CAP turnout south of Pima Mine Road pursuant to orders placed by Asarco in a manner consistent with the Nation's contracts with the United States dated December 11, 1980 and October 11, 1983, including any amendments thereto that hereafter may be made.

2.2 In years one through five starting on the Accrual Date, the delivery fee shall be \$15 per acre foot delivered in lieu of water pumpable under the Well Site Lease, and \$20 per acre foot for water delivered in lieu of other groundwater pumping. On the 6th and each succeeding five-year anniversary of the Accrual Date the delivery charges shall increase by 13% over the previous charges and the new charges shall remain in effect for the succeeding five years. Asarco shall make payments of the delivery charges on a monthly basis within 30 days after delivery. In any year during the term of this Agreement that Asarco uses more than 10,000 acre-feet of CAP water in lieu of pumping groundwater for the Mission Complex, it shall use a minimum of 10,000 acre-feet of CAP water pursuant to this Agreement if such water is available thereunder.

2.3 Nothing herein shall be construed as prohibiting Asarco from utilizing its off-Reservation wells or water rights for any purpose.

2.4 On or before March 31 of each year commencing with the Accrual Date, Asarco will report to the Nation its Mission Complex CAP and groundwater use for the previous year.

2.5 The Parties may not seek to shut off, terminate or otherwise interfere with the CAP water delivered to Asarco pursuant to this Agreement, which is subject only to the remedies provided under Article 10 hereof.

2.6 The Nation's obligation to deliver CAP water to Asarco under the terms of this Article shall cease on the Termination Date, except that if the Termination Date is 25 years after the Enforceability Date and if Asarco continues mining and processing ore at the Mission

Complex after that date, the Nation shall have the option, at its sole discretion, to continue the obligation to deliver in lieu CAP water to Asarco for an additional period of not less than 10 years or more than 25 years.

2.7 If at any time during the 35-year period after the Enforceability Date, Asarco intends to use its grandfathered water rights listed in Article 8 hereof for any purpose other than mining that is compatible with the use of CAP water by Asarco and also is compatible with the delivery of CAP water by the Nation ("new use"), not less than 180 days prior to the commencement of the new use Asarco shall give the Nation and the San Xavier District notice of the intended new use and the quantity of water required for the new use. Within the 180-day period, the Nation, with the concurrence of the San Xavier District, may exercise the right to supply the new use with CAP water for the lesser of the life of the use or 25 years.

2.8 The delivery charges for CAP water delivered to Asarco under paragraphs 2.6 and 2.7 shall be the charges set forth in paragraph 2.2 for the acre-feet for which Storage Credits are earned and for the remaining water the delivery charge shall be the lesser of the then current market rate for CAP municipal and industrial water or Asarco's cost for pumping an equivalent amount of groundwater.

ARTICLE 3

SAN XAVIER WELL SITE LEASE

3.1 The Asarco option to renew the Well Site Lease for an additional 25-year term is hereby recognized as having been validly exercised as of November 14, 1997.

3.2 The rental adjustment provisions of 25 C.F.R. § 162.8 are hereby waived for the renewed Well Site Lease.

3.3 It is agreed among the parties that Asarco's rights to use water for the purposes described in paragraph 7 of the Well Site Lease shall include uses for San Xavier Reservation Environmental Purposes; provided that (a) the Nation and Asarco shall consult to determine whether a mutual agreement can be reached on the feasibility of first withdrawing water from Asarco's off-Reservation wells to use for San Xavier Reservation Environmental Purposes and (b) if it is necessary to withdraw water under the Well Site Lease for San Xavier Reservation Environmental Purposes which cannot reasonably be used on the San Xavier Reservation or to process San Xavier Reservation ore at the Mission Complex, the Nation and Asarco shall consult and use the water for a mutually agreed purpose.

3.4 Asarco agrees to reduce its pumping under the Well Site Lease by reducing such quantity by each acre-foot of CAP water delivered to Asarco under the Water Lease.

3.5 Except as otherwise provided herein, all other terms of the Well Site Lease shall remain in full force and effect.

3.6 If Asarco has not completed use of the wells for the purposes authorized under the Well Site Lease prior to its expiration date, the Nation and Asarco shall enter into a New Well Site Lease on the same material terms and conditions as the existing Well Site Lease except as

set forth below:

3.6.1 The effective date of the New Well Site Lease shall be the day following the termination date of the Well Site Lease, subject to approval of the Secretary of the Interior.

3.6.2 The term shall end on the earlier of (1) the date 25 years after the termination date of the Well Site Lease or (2) the date on which Asarco completes (A) mining and processing San Xavier Reservation ore and (B) use of water for San Xavier Reservation Environmental Purposes.

3.6.3 The following provisions shall be incorporated as affirmative rights and obligations:

3.6.3.1 Paragraphs 3.2 and 3.4 hereof;

3.6.3.2 Asarco agrees not to exercise the distance and use limitations on well development and operation prescribed in paragraph 5 of the Well Site Lease on the following conditions:

3.6.3.2.1 The Nation shall have the right to drill and operate a well, or grant such right to any person, at a site which is more than four tenths (.4) of a mile from any existing Asarco well operated under the Well Site Lease.

3.6.3.2.2 Water withdrawn from any such well may be used for any purpose, which does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.2.3 Costs associated with the construction, operation, maintenance, repair or other activity related to any such well shall be solely the responsibility of the Nation, or any person granted rights to use the well.

3.6.3.2.4 Water withdrawn pursuant to this subparagraph 3.6.3.2 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.3.3 Asarco agrees not to exercise the use and quantity limitations in paragraph 6 of the Well Site Lease related to direct withdrawals from Asarco wells on the following conditions:

3.6.3.3.1 The Nation shall have the right to withdraw water from any Asarco well, or grant such right to any person, and to use the water for any purpose that does not interfere with Asarco's use rights under the New Well Site Lease.

3.6.3.3.2 Asarco shall have the right to impose a charge on each acre-foot of water withdrawn by the Nation or the Nation's grantee which shall be no greater than Asarco's average operation, maintenance and repair costs for withdrawal of an acre-foot of water in the preceding calendar year. The Nation or other user shall pay the withdrawal charge within 15 days after the end of each month in which water is withdrawn.

3.6.3.3.3 Groundwater withdrawn pursuant to this paragraph 3.6.3.3 shall not exceed a total of 100 acre-feet during any calendar year.

3.6.4 Upon completion of processing San Xavier Reservation ore, the Nation shall have the right to withdraw the number of acre-feet of water directly or from constructed wells, as authorized by the Amendments, that does not interfere with Asarco's use or non-use of the wells for San Xavier Reservation Environmental Purposes.

3.6.5 Asarco shall make lease payments as follows: (1) until processing of San Xavier Reservation ore is complete (A) \$5 per acre-foot withdrawn and (B) paragraph 3.2 shall apply; and (2) effective as of the date San Xavier Reservation ore processing is completed, 25 CFR § 162.8 shall apply for the water withdrawable for San Xavier Reservation Environmental Purposes.

3.6.6 The provisions of this paragraph 3.6 shall not limit the Nation and Asarco from agreeing to negotiate a New Well Site Lease on other terms and conditions or for other purposes.

ARTICLE 4

CAP WATER DELIVERY INFRASTRUCTURE COSTS

4.1 Asarco shall construct and own the infrastructure necessary to take delivery of up to 10,000 acre-feet annually of CAP water under a water agreement at its own expense, except for the financing provided for in paragraph 4.2 below. Asarco may, in its discretion and at its expense, construct the infrastructure necessary to take delivery of additional water.

4.2 Upon Asarco's providing to the Nation reasonable security for any requested loan, the Nation will loan Asarco up to \$800,000 at Asarco's option for up to 14 years, plus interest at the rate of 6% per annum, compounded annually on the outstanding balance, to finance infrastructure costs necessary to make use of the CAP water pursuant to this Agreement. The loan shall be funded by the Nation in the manner that construction loans are normally funded upon being presented with evidence of the expenditures necessary for the construction of the infrastructure. The loan is to be repaid first by crediting Storage Credits earned as set forth in paragraph 5.3 of this Agreement and if any balance remains at the end of the term of the loan by Asarco in cash within 30 days.

4.3 The obligations under this Article 4 of this Agreement are independent of and separable from the remaining Articles of this Agreement. Even if this Article is not assumable or assignable under 11 U.S.C. §365 (c)(2), the remaining portion of this Agreement may be assumed or assigned even though executory.

ARTICLE 5

STORAGE CREDITS

5.1 Except as otherwise provided in this Agreement, Storage Credits earned under this Agreement shall be owned by the Nation.

5.2 Solely for purposes of this Agreement, each Storage Credit for one acre-foot of water shall be valued at \$40.

5.3 Any Storage Credits earned by the Nation shall first be treated as repayment of the principal and interest of the loan referred to in paragraph 4.2, and then shall be allocated as further provided by internal agreement between the Nation and the District.

ARTICLE 6

WAIVER AND RELEASE

6.1 The Nation, the District and the Allottees waive and release all claims against Asarco arising out of Asarco's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

6.2 The Nation, the District and the Allottees waive and release all claims against Asarco that may arise after the Enforceability Date to the extent that such claims arise out of Asarco's withdrawal of water within the Tucson Management Area pursuant to its existing Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

6.3 The United States waives and releases all claims referred to in 6.1 and 6.2 above against Asarco in so far as said Claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

6.4 Asarco waives and releases all claims against the United States, the Nation, the District and the Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

6.5 Asarco waives and releases all claims after the Enforceability Date against the United States, the Nation, the District and the Allottees to the extent that such claims arise out of their withdrawal of water as authorized under the Amendments, and hereby confirms such parties' rights to withdraw water as authorized by said Amendments.

ARTICLE 7

ALVAREZ LAWSUIT CLAIMS

7.1 Payments made by Asarco under this Agreement shall be made and disbursed as follows:

7.1.1 During the Accrual Period and commencing on the Accrual Date, payments for delivery of CAP in lieu water made under this Agreement shall be paid by Asarco into a fund to be called the "Alvarez Groundwater Settlement Fund" (the "Fund"), which shall be maintained as a segregated account by the San Xavier Allottees Association as provided in paragraph 7.2.

7.1.2 Asarco shall make additional payments to the Fund ("Advance Minimum Payments") within 30 days of the following specified anniversaries of the Accrual Date if required to ensure that the Fund has received the corresponding specified minimum cumulative totals of payments, exclusive of all interest or dividends earned by the Fund on balances in the Fund:

- (a) Second Anniversary - \$100,000.
- (b) Fifth Anniversary - \$350,000.
- (c) Eighth Anniversary - \$600,000.
- (d) Eleventh Anniversary - \$1,050,000.
- (e) Fourteenth Anniversary - \$1,500,000.

7.1.3 Any Advance Minimum Payments made by Asarco shall be credited against future charges for CAP in lieu water that would otherwise be due for water delivered under this Agreement.

7.1.4 When Asarco has paid a total of \$1.5 million of payments to the Fund, all subsequent payments due under this Agreement shall be paid by Asarco 55% to the Nation and 45% to the District.

7.2 The Board of Directors of the San Xavier Allottees Association ("Board") shall establish, maintain, control, invest, administer and expend the Fund. The Board shall establish a procedure for the orderly administration and protection of the corpus of the Fund. Payments from the Fund shall only be made upon written application showing a need for such compensation pursuant to the purposes of the Fund as stated herein. The Fund shall be expended by the Board at its discretion for an ongoing groundwater quality testing program; water supply development and individual or community water treatment systems to provide good quality water for any development that may take place in the future on lands affected by groundwater contamination, including but not limited to, Total Dissolved Solids ("TDS") and sulfate contamination within the San Xavier Reservation and within the Upper Santa Cruz subbasin as defined by ADWR; administration of the Fund by the Allottees Association; compensation payments to allottee landowners based upon a reasonable showing that TDS or sulfate levels in groundwater under their allotments are unsuitable for an existing or imminent use and for other purposes to be determined by the SXAA, including reimbursement to the District for Asarco-related Alvarez litigation expenses. The Nation shall be eligible to receive groundwater contamination benefits from the Fund on the same basis as any other owner of Indian trust lands on the San Xavier Reservation.

7.3 The San Xavier Allottees Association shall prepare and distribute to the San Xavier Allottee landowners an annual report of the financial status of the Fund on a calendar year basis. The Allottees Association shall provide a copy of such annual report to Asarco within 30 days of its completion and in no case later than 90 days after year-end. Asarco shall maintain the confidentiality of the annual report.

7.4 In the event Asarco fails to make any payment to the Fund when due under paragraph 7.1.2, any member of the allottee class in Alvarez may invoke any remedy available under Article 10 for the benefit of the Fund.

7.5 Subject to the conditions stated in the following subparagraphs, the Nation, the District, the San Xavier Allottees and the United States, to the extent of its trust responsibility, hereby waive and release Asarco from claims for damages arising out of the degradation of groundwater quality caused by (a) the withdrawal of groundwater by Asarco as permitted by the Well Site Lease, (b) the use of CAP water by Asarco pursuant to this Agreement or (c) Asarco's mining operations at the Mission Complex pursuant to the Mining Leases, the Business Leases, the Mine Plan of Operations and any Aquifer Protection Permit:

7.5.1 This waiver and release shall be effective only upon the Accrual Date.

7.5.2 This Article 7 and this waiver and release shall be of no force and effect if the Accrual Date has not occurred prior to the third anniversary of the Enforceability Date.

7.5.3 The named class representative plaintiffs (San Xavier Allottees) in Alvarez agree to file a stipulated motion to certify a non-opt-out subclass consisting of all original allottees, heirs and devisees of original allottees, and purchasers and grantees of allotments in the San Xavier Reservation, together with a stipulated motion to dismiss the plaintiffs' Fourth Cause of Action with prejudice, within 30 days of the commencement of the Accrual Period.

7.5.4 This waiver and release shall not be effective to the extent that Asarco's activities violate any federal or state law regulating discharges of toxic or hazardous substances to groundwater; as to which all common law, statutory and regulatory remedies shall be preserved.

ARTICLE 8

STATE LAW WATER RIGHTS

8.1 The Nation and the Allottees confirm the full validity of Asarco's existing certificated and permitted state law water rights listed as follows, copies of which are attached hereto as Exhibit 1, subject to the provisions of this Agreement:

Type 2 Right Certificate # 58-160032
Type 2 Right Certificate # 58-115187.0002
Type 2 Right Certificate # 58-100315.0004
Type 1 Right Certificate # 58-100306

8.2 Except in connection with a sale or transfer of the Mission Complex, or a substantial portion thereof, Asarco will provide the Nation and the District with 90-days notice of its intent to sell its Type 1 or Type 2 water rights to any buyer, together with the price and any substantive terms of the sale, who intends to use such rights for other than mining purposes, so that the Nation may have an opportunity to seek to acquire the property offered for sale. Information concerning any intent to sell, including information regarding the price and terms of

sale, shall be kept confidential by the Nation and the District. Nothing herein shall be deemed to constitute a right of first refusal or an option to buy Asarco's water rights.

ARTICLE 9

MISCELLANEOUS

9.1 Payment of the minimum royalties provided for in paragraphs V.A(2) and V.A(3) of the Settlement Agreement of November 3, 1971 in Cause No. CIV. 70-83 TUC shall be deemed to satisfy Asarco's covenants under the mining leases to diligently prospect, develop and operate the leased premises, and shall be deemed to constitute mining in paying quantities as required by paragraph 2 of such leases and any applicable laws.

9.2 Asarco will not unreasonably protest any groundwater recharge facility permit applications by the Nation or the District, or unreasonably oppose any unpermitted recharge facility on the San Xavier Reservation.

ARTICLE 10

REMEDIES

10.1 The party claiming a breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking enforcement of this Agreement.

10.2 The remedies of a party for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief and shall not include the payment of damages, except for payments due from Asarco under this Agreement.

ARTICLE 11

GENERAL

11.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

With copies to:

**Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, Arizona 85634**

Asarco:

**General Manager
Mission Complex
Asarco Incorporated
P.O. Box 111
Sahuarita, Arizona 85629**

With a copy to:

**Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001**

San Xavier District:

**Chairman
San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746**

With a copy to:

**Louis W. Barassi
Barassi & Curl
485 So. Main Ave.
Tucson, AZ 85701**

San Xavier Allottees:

**President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746**

With a copy to:

**Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87012**

United States of America;

**Secretary of the Interior
Department of the Interior
Washington, D.C. 20240**

With copies to:

**Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001**

**Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005**

**Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634**

11.2 The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advise of independent counsel.

11.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

11.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

11.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties thereto, such counterparts taken together shall constitute

a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed and original document.

11.6 The parties agree to execute all contracts, agreements and documents, to take all further action reasonably necessary as may be required to comply with the provisions of this Agreement and the intent hereof and to cooperate with each other in effectuating this Agreement and carrying out its terms.

11.7 Should any party hereto be placed into bankruptcy under the laws of the United States, this Agreement, including all waivers and releases, will be of no force or effect unless all Articles hereof, except Article 4, are accepted in toto by the bankruptcy court or trustee as permitted by said laws.

DATED this 12th day of June, 2006

TOHONO O'ODHAM NATION

By *Murray Saunders*
Chairperson

UNITED STATES OF AMERICA

By *Gale A. Norton*
Secretary of the Interior

SAN XAVIER DISTRICT

By *[Signature]*
Chairperson

ASARCO INCORPORATED

By *A. E. McCreiter*
President

Th. J. Adair
U.P. Env. Affairs

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: Suzie Nunez

By: Quintanilla

By: Thyllia

By: Veronica O. Higuera

By: Celestine Pablo

By: Danlynn

By: Jada Dross Benell

By: Felicia Nunez

By: Randy

By: Jose

By: _____

Its Class Representatives

UNITED STATES V. TUCSON ALLOTTEE CLASS

By: AV

By: Jasanna Caspale

By: Julian Ramon-Person

By: Conrad Mott

By: R-2 Red Dog

By: Michael L. Davis

By: Dee L. Bagay

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: AV

By: Jasanna Caspale

By: Julian Ramon-Person

By: Conrad Mott

By: R-2 Red Dog

Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Cause of Action 4)

By: _____

By: _____

By: _____

By: _____

By: _____

Its Class Representatives

FICO SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and among the Tohono O'odham Nation, a federally recognized Indian Tribe ("Nation"), the San Xavier District ("District"), two classes of San Xavier allottees (collectively "San Xavier Allottees"), the United States, Farmers Investment Co., an Arizona corporation and Farmers Water Co., an Arizona corporation (collectively "FICO"), who are each a party hereto and are collectively referred to as "Parties," and is effective on the Enforceability Date of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("Amendments"). This Settlement Agreement is referred to as this "Agreement."

RECITALS:

A. The Nation, the San Xavier Allottees and the United States are plaintiffs in an action pending in the United States District Court for the District of Arizona (Civ. No. 75-39 TUC consolidated with Civ. No. 75-51 TUC-FRZ) and related litigation ("Litigation").

B. FICO is one of several defendants in the Litigation.

C. The Parties desire to reach a final settlement of the Litigation as between them. .

D. The Nation, the San Xavier Allottees, and FICO are users of the water resources of the Upper Santa Cruz Basin and have a mutual interest in conserving those resources.

E. The Parties desire to further provide for water conservation.

F. The Parties further desire to release each other from certain claims and liabilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Enforceability Date. The term "Enforceability Date" means the "Enforceability Date" as defined in the Amendments.

1.2 FICO Lands. The term "FICO Lands" shall mean all lands owned by FICO described on Exhibit "A" hereto.

1.3 San Xavier District or District. The terms "San Xavier District" or "District" shall mean one of eleven political subdivisions of the Tohono O'odham Nation established under the constitution of the Nation, having boundaries coterminous with the San Xavier Reservation.

1.4 San Xavier Reservation. The term "San Xavier Reservation" shall mean the San Xavier Indian Reservation existing as of the Enforceability Date as established by the Executive Order of July 1, 1874, which is a part of the Tohono O'odham Nation.

ARTICLE 2

WITHDRAWALS

2.1 FICO agrees to limit total withdrawals of water from FICO Lands within two miles of the San Xavier Reservation as described in Exhibit B to no more than 850 acre-feet per annum on a three-year rolling average. This limit includes withdrawals of stored water as defined in A.R.S. § 45-802.01 on the Enforceability Date, except for withdrawals from a recovery well within one mile of an underground storage facility so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

2.2 FICO agrees to limit withdrawals of water from all FICO Lands to 36,000 acre-feet per annum on a three-year rolling average not including withdrawals of stored water (as defined in A.R.S. § 45-802.01 on the Enforceability Date) that has been stored within these lands.

2.3 FICO agrees not to sell any groundwater credits accumulated pursuant to A.R.S. § 45-467 for use by third parties for withdrawal of water from within three miles of the exterior boundaries of the Tohono O'odham Nation as such boundaries exist on the Enforceability Date.

2.4 The Nation, the District and the San Xavier Allottees agree to limit their withdrawals from the San Xavier Reservation to those amounts authorized by the Amendments.

2.5 In order to monitor compliance with the limitations provided in this Article above, the Nation and FICO mutually agree to provide the other with water use reports on or before April 30 of each year for the year preceding. FICO may comply with this obligation by providing the Nation with a copy of relevant reports required to be filed under State law.

ARTICLE 3

WAIVER AND RELEASE

3.1 The Nation and the San Xavier Allottees waive and release all claims against FICO arising out of FICO's withdrawal of water from beneath the ground within the Tucson Management Area from time immemorial through the Enforceability Date.

3.2 The Nation and the San Xavier Allottees waive and release all claims against FICO that may arise after the Enforceability Date to the extent that such claims arise out of FICO's withdrawal of water within the Tucson Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law water rights and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

3.3 The United States waives and releases all claims referred to in 3.1 and 3.2 above against FICO insofar as said claims relate to claims of the Allottees and the Nation within the Tucson Management Area.

3.4 FICO waives and releases all claims against the United States, the Nation and the San Xavier Allottees arising out of their withdrawal of water from beneath the San Xavier Reservation and other land of the Nation within the Tucson Management Area on or before the Enforceability Date.

3.5 FICO waives and releases all claims after the Enforceability Date against the United States, the Nation and the San Xavier Allottees to the extent that such claims arise out of their withdrawal of water as authorized under Amendments, and hereby confirms such parties' rights to withdraw water as authorized by said amendments.

ARTICLE 4

REMEDIES

4.1 The Party claiming any breach of this Agreement shall notify the offending party in writing of the alleged breach and provide the offending party a 60-day opportunity to cure prior to seeking any remedy hereunder.

4.2 The remedies of the Parties for breach of this Agreement shall be limited to equitable, declaratory and injunctive relief including avoidance of this Agreement and the waivers provided in Article 3 and shall not include the payment of damages.

ARTICLE 5

GENERAL

5.1 Notice required pursuant to the terms of this Agreement shall be in writing and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such Party set forth herein, or to such other address as shall have previously been specified in writing by such Party to all Parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P. O. Box 837
Sells, Arizona 85634

With copies to:

**Attorney General
Tohono O'odham Nation
P. O. Box 830
Sells, Arizona 85634**

FICO:

**Mr. Richard S. Walden
President
FARMERS INVESTMENT CO.
1525 Sahuarita Road
P.O. Box 7
Sahuarita, Arizona 85629**

With a copy to:

**Robert B. Hoffman
Somach Simmons & Dunn
6035 North 45th Street
Paradise Valley, Arizona 85253-4001**

San Xavier District:

**Chairman San Xavier District Council
2018 W. San Xavier Road
Tucson, Arizona 85746**

With a copy to:

**Louis W. Barassi
Barassi & Curl PLC
485 S. Main Ave.
Tucson, Arizona 85701**

San Xavier Allottees:

**President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, Arizona 85746**

With a copy to:

**Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, New Mexico 87012**

United States of America;

**Secretary of the Interior
Department of the Interior
Washington, D.C. 20240**

With copies to:

**Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001**

**Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005**

**Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634**

5.2 The Parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no Party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel.

5.3 The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Notwithstanding such canons, counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.4 This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the Parties. The lands described in Exhibit A hereto and the owners thereof shall benefit from Article 3 hereof unless and until the withdrawal

limitations of Article 2 are exceeded after the expiration of the cure period provided by paragraph 4.1 hereof. In order to carry out the intent of this paragraph, FICO shall record this Agreement in the official records of Pima County upon the occurrence of the Enforceability Date.

5.5 This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the Parties thereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed an original document.

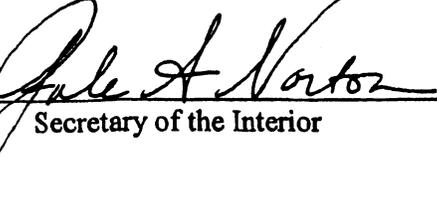
5.6 The Parties agree to cooperate with each other in effectuation this Agreement and carrying out its terms.

DATED this 12th day of June, 2008.

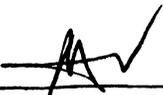
TOHONO O'ODHAM NATION

By 
Chairperson

UNITED STATES OF AMERICA

By 
Secretary of the Interior

SAN XAVIER DISTRICT

By 
Chairman

FARMERS INVESTMENT CO.

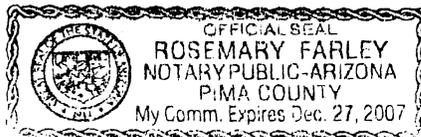
By Richard Walden
President

STATE OF ARIZONA)
)SS
COUNTY OF Pima)

The foregoing was acknowledged before me this 12th day of June, 200⁶, by
Richard Walden, President of Farmers Investment Co.

Rosemary Farley
Notary Public

My Commission expires:
12/27/07



FARMERS WATER CO.

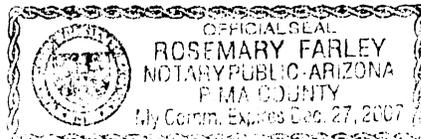
By Richard Walden
President

STATE OF ARIZONA)
)SS
COUNTY OF Pima)

The foregoing was acknowledged before me this 12th day of June, 200⁶, by
Richard Walden, President of Farmers Water Co.

Rosemary Farley
Notary Public

My Commission expires:
12/27/07



UNITED STATES V. TUCSON ALLOTTEE CLASS

By: AA ✓

By: Suzanna Carlyle

By: Julian Ramon-Person

By: Carmela Mitt

By: R 2 RedD of

By: Michael S. Loria

By: Michael S. Loria
Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: AA ✓

By: Suzanna Carlyle

By: Julian Ramon-Person

By: Carmela Mitt

By: R 2 RedD of
Its Class Representatives

ALVAREZ V. TUCSON ALLOTTEE CLASS (Causes of Action 1 through 3)

By: Lucinda Nunez

By: David Encinas

By: Abili Encinas

By: Verma & Thiguel

By: Celestine Robles

By: David Encinas

By: Jocella David Encinas

By: Jessica Nunez

By: Randy Jones

By: Sam Jones

By: _____

Its Class Representatives

HOLDINGS OF
FARMERS INVESTMENT CO. & FARMERS WATER CO.
(a subsidiary of Farmers Investment Co.)
in
PIMA COUNTY, ARIZONA

January 19, 2004

SAHUARITA
LEGAL DESCRIPTION

Parcel 1:

All that portion of Section 31, Township 16 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that part within Pima Mine Road; and

EXCEPT that portion described in Docket 1788 at Page 546.

Parcel 2:

All that portion of Section 6, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established.

Parcel 3:

All that portion of Section 7, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that portion of said Section within the right-of-way of Sahuarita Road as now established;

EXCEPT that portion described in Docket 1788 at Page 536; and

EXCEPT that portion described in Docket 5007 at Page 286.

Parcel 4:

The South half of the Southeast quarter of Section 12, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the right-of-way of Sahuarita Road as now established;

ALSO EXCEPT the West 45 feet thereof as conveyed to Pima County in Docket 4535 at Page 467.

Parcel 5:

The Northeast quarter of the Southeast quarter of Section 12, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the West 528.00 feet of the South half of the South half of the Northeast quarter of the Southeast quarter of Section 12.

Parcel 6:

The East half of Section 13, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the Sahuarita Road right-of-way as now established;

EXCEPT the Southern Pacific Railroad Spur described in Docket 6101 at Page 1026; and

EXCEPT that portion conveyed to Pima County, Arizona in Docket 10276 at Page 849.

Parcel 7:

All that portion of Section 18, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established;

EXCEPT that portion within the right-of-way of Southern Pacific Railroad as now established;

EXCEPT that portion described in Docket 6101 at Page 1026 and in Docket 7829 at Page 1377; and

EXCEPT any portion lying within Sahuarita Road.

Parcel 8:

That portion of the West half of Section 19, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of Highway 89 as now established.

Parcel 9:

The East half of Section 24, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT any portion lying within La Villita Road as now established.

Parcel 10:

All of Section 25, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the West half of the Southwest quarter of said Section 25;

EXCEPT the East half of the Southeast quarter of said Section lying Southerly of Duval Mine Road/Tucson-Nogales Highway as now established;

EXCEPT that parcel of land described in Docket 5600 at Page 34; and

EXCEPT any portion lying within Duval Mine Road/Tucson-Nogales Highway.

Parcel 11:

All that portion of the Northwest quarter of Section 30, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying West of the Westerly right-of-way of the Southern Pacific Railroad;

EXCEPT any portion lying within Duval Mine Road/Tucson-Nogales Highway and the Old Nogales Highway.

Parcel 12:

That portion of the East half of Section 31, Township 16 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad as now established;

EXCEPT that portion described in Docket 1788 at Page 523; and

EXCEPT a strip of land 33.00 feet wide adjacent to the East right-of-way line of the Southern Pacific Railroad in the Northeast quarter of said Section 31.

Parcel 13:

The West half of Section 5, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Parcel 14:

All that portion of Section 6, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of the Southern Pacific Railroad as now established.

Parcel 15:

All that portion of Section 7, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad as now established;

EXCEPT the following described parcel:

BEGINNING at the Northeast corner of Section 7;

EXCEPT any portion described in Docket 4469 at Pages 493 and 513, Docket 5171 at Page 547, Docket 5993 at Page 640, Docket 10312 at Page 862; and Docket 7094 at Page 1031, Docket 7829 at Page 1377 (church properties) and

FURTHER EXCEPTING Sahuarita Road and right-of-way as now established.

Parcel 16:

All of Section 8, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT the East half of the East half of said Section 8;

EXCEPT the South half of the Southeast quarter of the Southwest quarter of said Section 8;

EXCEPT that portion of the West half of the Northeast quarter of said Section 8, being described as follows:

BEGINNING at a point on the East line of the West half of the Northeast quarter of said Section 8, which is 500.00 feet South of the North 1/16th corner;

THENCE South 0°04'55" West, along said East line, a distance of 1020.00 feet;

THENCE North 44°55'05" West, a distance of 721.25 feet;

THENCE North 45°04'55" East, a distance of 721.25 feet to the POINT OF BEGINNING; and

FURTHER EXCEPT any portion of said Section 8 within the right-of-way of Sahuarita road as now established.

Parcel 17:

The North half of the North half of the Northwest quarter of Section 17, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona;

EXCEPT that portion within the right-of-way of Sahuarita Road as now established.

Parcel 18:

All that portion of Section 18, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad;

EXCEPT that portion described in Docket 3681 at Page 310.

Parcel 19:

All that portion of Section 19, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of Southern Pacific Railroad;

EXCEPT the Southeast quarter of the Northeast quarter of Section 19;

EXCEPT the East half of the Southeast quarter of said Section 19;

EXCEPT that parcel described in Docket 1138 at Page 104.

Parcel 20:

All that portion of Section 30, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, lying East of the Easterly right-of-way of the Southern Pacific Railroad;

EXCEPT the East half of the Northeast quarter of said Section 30; and

EXCEPT the Southeast quarter of said Section 30.

**CONTINENTAL
LEGAL DESCRIPTION**

Parcel 21:

That portion of the North half of the San Ignacio de la Canoa Private Land Grant, Pima County, Arizona, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, which said survey is now on file in the United States Surveyor General's office at Phoenix in the State of Arizona, said portion lying West of the West right-of-way line of Nogales Branch of the Southern Pacific Railroad as now established;

COMMENCING at the Southeast corner of said North half of the San Ignacio de la Canoa Private Land Grant as shown in Roadhaven Resort, Inc., Lots 1 through 425 and Common Areas A & B, a subdivision as recorded in Book 37 of Maps and Plats at Page 4, records of Pima County, Arizona;

THENCE North 59°12'41" West, along the South line of said North half, a distance of 3790.40 feet to a point on the Westerly right-of-way line of the Southern Pacific Railroad, said point being the POINT OF BEGINNING;

THENCE continue North 59°12'41" West, along the South line of said North half, a distance of 705.00 feet;

THENCE departing said South line, North 04°31'51" East, a distance of 550.00 feet;

THENCE North 17°44'48" West, a distance of 1522.12 feet;

THENCE North 18°26'38" East, a distance of 5812.36 feet;

THENCE North 21°39'23" East, a distance of 112.00 feet;

THENCE North 28°41'19" East, a distance of 2033.45 feet;

THENCE North 05°48'33" East, a distance of 2869.19 feet;

THENCE North 12°48'58" East, a distance of 1366.80 feet;

THENCE North 30°59'55" East, a distance of 1796.96 feet;

THENCE North 09°45'08" East, a distance of 1443.96 feet;

THENCE North 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'15" East, a distance of 250.00 feet;

THENCE South 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'16" East, along the projected East line of the Green Valley Desert Meadows, a subdivision as recorded in Book 22 of Maps and Plats at Page 65, a distance of 1944.11 feet to the Northeast corner of said subdivision, said corner also being the Southeast corner of the Green Valley Fairways #3 as recorded in Book 18 of Maps and Plats at Page 51, records of Pima County;

THENCE North 13°14'25" East, along the East boundary line of said Green Valley Fairway #3, a distance of 867.97 feet;

THENCE North 28°23'31" East, along said boundary line, a distance of 592.14 feet;

THENCE North 11°58'29" East, a distance of 729.46 feet to the Southeast corner of the Tucson Green Valley Unit No. 1, a subdivision as recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 10°30'00" East, along the East boundary line of said subdivision, a distance of 467.35 feet;

THENCE North 15°10'27" East, along said boundary line, a distance of 852.31 feet;

THENCE North 13°22'39" East, along said line, a distance of 1002.51 feet;

THENCE North 10°22'19" East, along said line, a distance of 377.99 feet;

THENCE North 19°43'59" East, a distance of 365.40 feet;

THENCE North 36°51'49" East, a distance of 508.85 feet;

THENCE North 36°33'39" East, a distance of 80.77 feet to the Southeast corner of the Tucson Green Valley Unit No. 1 recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 36°33'39" East, along the East line, a distance of 499.00 feet;

THENCE North 00°34'46" East, along said East line, a distance of 656.10 feet;

THENCE North 05°33'44" East, along said East line, a distance of 596.54 feet;

THENCE North 10°12'43" East, along said East line, a distance of 675.61 feet;

THENCE North 10°36'01" East, along said East line, a distance of 502.77 feet;

THENCE North 37°24'33" East, along said East line, a distance of 697.42 feet;

THENCE North 04°09'06" West, along said East line, a distance of 450.06 feet;

THENCE North $17^{\circ}14'13''$ East, along said East line, a distance of 706.82 feet;

THENCE North $22^{\circ}59'37''$ East, along said East line, a distance of 633.96 feet;

THENCE North $07^{\circ}52'58''$ West, along said East line, a distance of 620.62 feet to a point on the North boundary line of said San Ignacio de la Canoa Private Land Grant;

THENCE South $59^{\circ}19'09''$ East, along said boundary line, a distance of 2401.52 feet to a point on the West right-of-way line of the Tucson-Nogales U.S. Highway 89 as dedicated in Book 7 of Road Dedications at Page 268, Pima County;

THENCE South $16^{\circ}21'30''$ West, along said right-of-way line, a distance of 726.44 feet to a point of tangent curve to the left having a radius of 3894.72 feet;

THENCE Southerly along the arc of said curved right-of-way line through a central angle of $11^{\circ}52'48''$, a distance of 807.55 feet;

THENCE South $85^{\circ}31'18''$ East, a distance of 30.00 feet;

THENCE South $04^{\circ}28'42''$ West, along said right-of-way line, a distance of 6427.29 feet to a point of tangent curve to the left having a radius of 2743.82 feet;

THENCE Southerly along the curve to the right, a distance of 638.37 feet and an interior angle of $13^{\circ}19'49''$ to the point of tangent;

THENCE South $17^{\circ}48'31''$ West, a distance of 2786.32 feet;

THENCE South $72^{\circ}11'29''$ East, a distance of 71.00 feet to a point on the West right-of-way line of the Southern Pacific Railroad;

THENCE South $17^{\circ}48'31''$ West, along said Westerly right-of-way line, a distance of 7309.23 feet to a point of tangent curve with a radius of 5679.65 feet;

THENCE Southerly along the arc of said curve to the right through a central angle of $14^{\circ}33'33''$, a distance of 1443.23 feet to the point of tangent;

THENCE South $32^{\circ}22'04''$ West, a distance of 45.01 feet;

THENCE North $57^{\circ}37'56''$ West, a distance of 100.00 feet;

THENCE South $32^{\circ}22'04''$ West, a distance of 2535.54 feet to the point of tangent curve with a radius of 11,609.19 feet;

THENCE Southerly along the arc of said curve to the left through a central angle of $03^{\circ}04'08''$, a distance of 743.39 feet to a point of non-tangent;

THENCE South 61°18'04" East, a distance of 100.00 feet to a point of a non-tangent curve with a radius of 11509.19 feet and a radial line that bears South 61°18'04" East;

THENCE Southerly along the arc of said curve to the left through a central angle of 08°20'51", a distance of 1676.79 feet to a point of tangent;

THENCE South 20°21'05" West, a distance of 4430.47 feet;

THENCE North 69°38'55" West, a distance of 100.00 feet;

THENCE South 20°21'05" West, a distance of 1000.00 feet;

THENCE South 69°38'55" East, a distance of 100.00 feet;

THENCE South 20°21'05" West, a distance of 194.08 feet to the POINT OF BEGINNING;

EXCEPT any portion lying within the property described Docket 3903 at Page 468, Docket 4038 at Page 721, and Docket 7858 at Page 1363;

EXCEPT any portion lying within the Park Centre Subdivision, Lots 1 through 180 and Common Area A, a subdivision recorded in Book 41 of Maps and Plats at Page 19 thereof, records of Pima County, Arizona;

EXCEPT any portion lying within the property conveyed to Pima County as described in Docket 8195 at page 1483;

EXCEPT the parcel conveyed to Farmers Water Co., an Arizona corporation in Docket 11409 at Page 1418; and

EXCEPT the parcel conveyed to the Town of Sahuarita in Docket 11481 at Page 3594;

BUT TOGETHER WITH those portions of abandoned Continental Road/Tucson Nogales Highway described in the Deed from Pima County recorded in Docket 8270, Page 1106, which was rerecorded in Docket 10095, Page 645.

Parcel 22:

R. K. Walden residence (two parcels). See Attachment A.

Parcel 23:

R. S. Walden residence. See Attachment B.

Parcel 24:

Roadhaven (DeAnza) Booster. See Attachment C

Parcel 25:

W-11 (DeAnza) Well Site. See Attachment D.

Parcel 26:

W-12 (DeAnza) Well Site. See Attachment E.

Parcel 27:

NP-1 Well Site. Described in Docket 7928 on Pages 2537 & 2538. See Attachment F.

Parcel 28:

NP-2 Well Site. Described in Docket 7928 on Pages 2539 & 2540. See Attachment F.

Parcel 29:

E-2 Well Site. Described in Docket 7928 on Pages 2533 & 2534. See Attachment F.

Parcel 30:

E-7 Well Site. Described in Docket 7928 on Page 2535. See Attachment F.

Parcel 31:

E-14 Well Site. Described in Docket 7928 on Page 2536. See Attachment F.

Parcel 32:

FICO (Continental) Housing. Described in Docket 7928 on Pages 2507 & 2508, except School District #39 Property, described in Docket 154 on Page 166 and Docket 7349 on Page 509. See Attachment G.

LEGAL DESCRIPTION

EAST PARCEL
DJA JOB NO. FICO005
AUGUST 20, 1997

That certain parcel of land situated in the San Ignacio de la Canoa private land grant, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, and which said survey is now on file in the United States General's Office at Phoenix, in the State of Arizona, and which reference is being made, within Pima County, Arizona, more particularly described as follows:

Commencing at the northeast corner of Lot 61 as shown in the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, said corner being a 2" aluminum capped pipe tagged P.E. 7076;

Thence North $87^{\circ}17'37''$ East along the south property line of the Green Valley Foothills No. 2 Subdivision, as recorded in Book 19 of Maps & Plats at Page 65, Pima County, Arizona, a distance of 941.69 feet, to a point, said point being a $5/8''$ rebar with no tag;

Thence continue along said south property line South $47^{\circ}10'49''$ East a distance of 724.88 feet to a point, said point being a $1/2''$ rebar tagged R.L.S.1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 Subdivision, South $69^{\circ}25'01''$ East a distance of 340.00 feet to the POINT OF BEGINNING;

Thence continue South $69^{\circ}25'01''$ East a distance of 1009.22 feet to a point, said point being a $1/2''$ rebar tagged R.L.S. 1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 subdivision South $59^{\circ}48'43''$ East a distance of 680.44 feet to a point on the west right-of-way line of the Tucson-Nogales Highway (I-19), said point being a point of a non-tangent curve with a radius of 11589.16, with a radial line that bears South $68^{\circ}20'08''$ East;

Thence southwesterly along the arc of said curve concave to the southeast a distance of 1372.62 feet and an interior angle of $6^{\circ}47'10''$ to a point, said point being A.D.O.T. aluminum cap and on said west right-of-way line;

Thence South $15^{\circ}17'22''$ West along said west right-of-way line of Tucson-Nogales Highway, a distance of 152.28 feet to a point, said point being a $1/2''$ rebar tagged P.E. 2067;

Thence departing said west right-of-way line North 74°21'57" West a distance of 277.74 feet to a point, said point being a 2" aluminum capped pipe tagged P.E. 7076, said point shown on the north property line of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona;

Thence continue along said north property line North 74°43'26" West a distance of 1370.62 feet to a point, said point being a 2" aluminum capped pipe;

Thence North 63°34'01" West along said north property line of said subdivision a distance of 510.00 feet to a point;

Thence departing said north property line North 61°29'02" East a distance of 190.00 feet to a point;

Thence North 84°54'38" East a distance of 125.00 feet to a point;

Thence North 20°19'26" East a distance of 163.58 feet to a point;

Thence North 21°05'18" West a distance of 49.07 feet to a point;

Thence North 68°54'42" East a distance of 50.00 feet to a point;

Thence North 21°05'18" West a distance of 495.00 feet to a point;

Thence North 69°25'15" East a distance of 202.45 feet to a point;

Thence South 63°07'44" East a distance of 165.00 feet to a point;

Thence North 24°01'59" East a distance of 260.00 feet to a point;

Thence South 57°21'21" East a distance of 20.00 feet to a point;

Thence North 32°38'39" East a distance of 50.00 feet to a point;

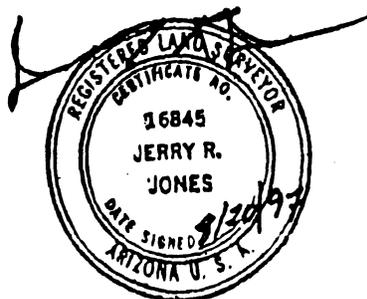
Thence North 36°50'46" East a distance of 470.00 feet to the POINT OF BEGINNING.

Said parcel contains 71.82 acres more or less.

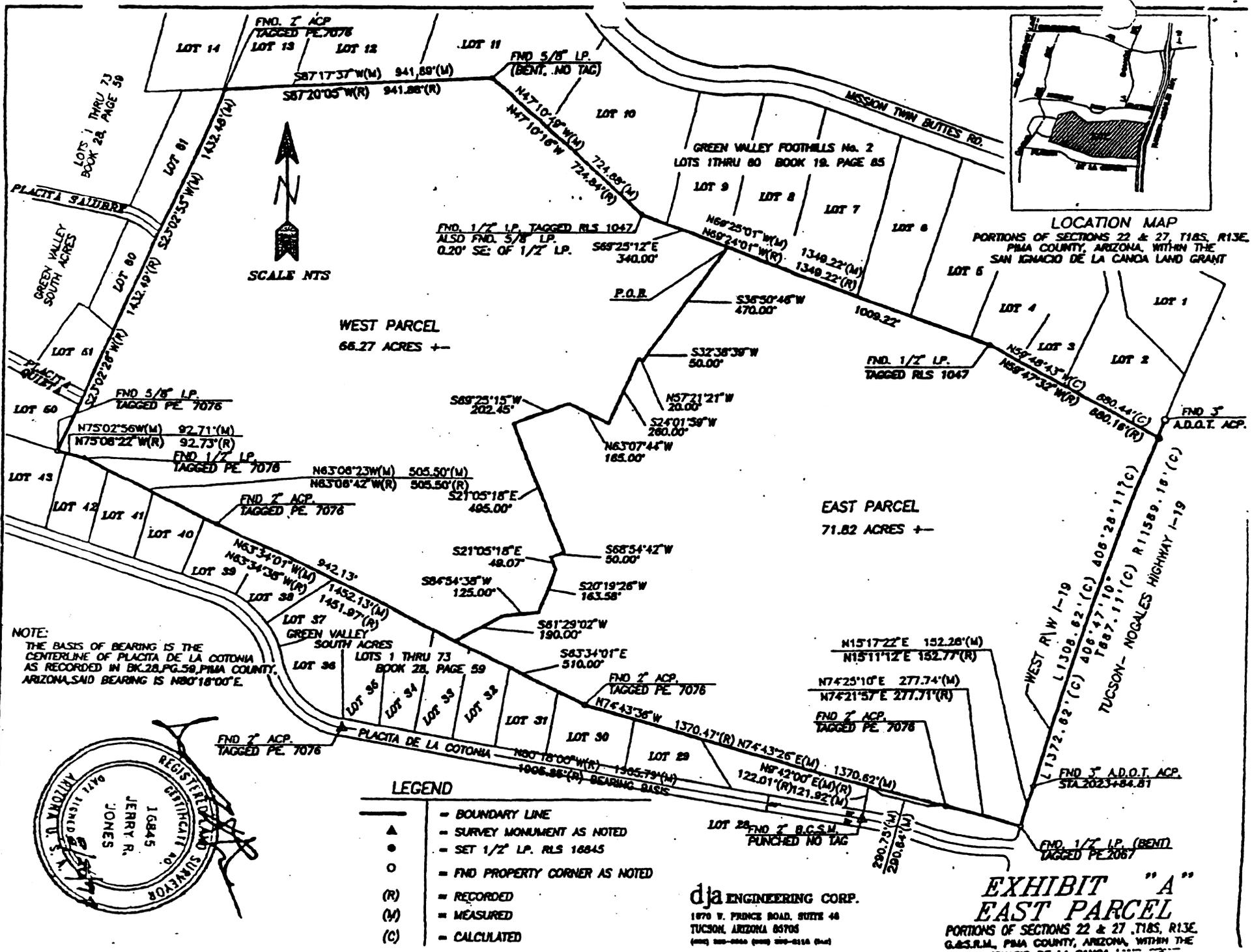
Subject to all easements, encumbrances, restrictions, and reservation of record or otherwise.

See attached Exhibit "A".

Page 2 of 2
(d:\legals\lico5est.pcl)



Attachment A



dja ENGINEERING CORP.
1870 V. PRINCE ROAD, SUITE 48
TUCSON, ARIZONA 85705
(520) 320-2240 (FAX) 520-3114 (Cell)

LEGAL DESCRIPTION

**WEST PARCEL
DJA JOB NO. FICO005
AUGUST 20, 1997**

That certain parcel of land situated in the San Ignacio de la Canoa private land grant, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, and which said survey is now on file in the United States General's Office at Phoenix, in the State of Arizona, and which reference is being made, within Pima County, Arizona, more particularly described as follows:

Beginning at the northeast corner of Lot 61 as shown in the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, said corner being a 2" aluminum capped pipe tagged P.E. 7076;

Thence North $87^{\circ}17'37''$ East along the south property line of the Green Valley Foothills No. 2 Subdivision, as recorded in Book 19 of Maps & Plats at Page 65, Pima County, Arizona, a distance of 941.69 feet to a point, said point being a 5/8" rebar with no tag;

Thence continue along said south property line South $47^{\circ}10'49''$ East a distance of 724.88 feet to a point, said point being a 1/2" rebar tagged R.L.S. 1047;

Thence continue along said south property line of the Green Valley Foothills No. 2 Subdivision, South $69^{\circ}25'01''$ East a distance of 340.00 feet to a point;

Thence departing said south property line South $36^{\circ}50'46''$ West a distance of 470.00 feet to a point;

Thence South $32^{\circ}38'39''$ West a distance of 50.00 feet to a point;

Thence North $57^{\circ}21'21''$ West a distance of 20.00 feet to a point;

Thence South $24^{\circ}01'59''$ West a distance of 260.00 feet to a point;

Thence North $63^{\circ}07'44''$ West a distance of 165.00 feet to a point;

Thence South $69^{\circ}25'15''$ West a distance of 202.45 feet to a point;

Thence South $21^{\circ}05'18''$ East a distance of 495.00 feet to a point;

Page 1 of 2
(d:\legals\fico5wst.pcl)

Thence South 68°54'42" West a distance of 50.00 feet to a point;

Thence South 21°05'18" East a distance of 49.07 feet to a point;

Thence South 20°19'26" West a distance of 163.58 feet to a point;

Thence South 84°54'38" West a distance of 125.00 feet to a point;

Thence South 61°29'02" West a distance of 190.00 feet to a point on the north property line of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats, at Page 59, Pima County, Arizona;

Thence along said north property line North 63°34'01" West a distance of 942.13 feet to a point, said point being a 2" aluminum capped pipe, tagged P.E. 7076;

Thence continue along said north property line North 63°06'42" West a distance of 505.50 feet to a point, said point being a 1/2" rebar tagged P.E. 7076;

Thence North 75°02'56" West a distance of 92.71 feet to a point, said point being a 5/8" rebar tagged P.E. 7076;

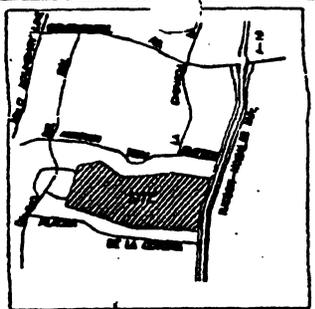
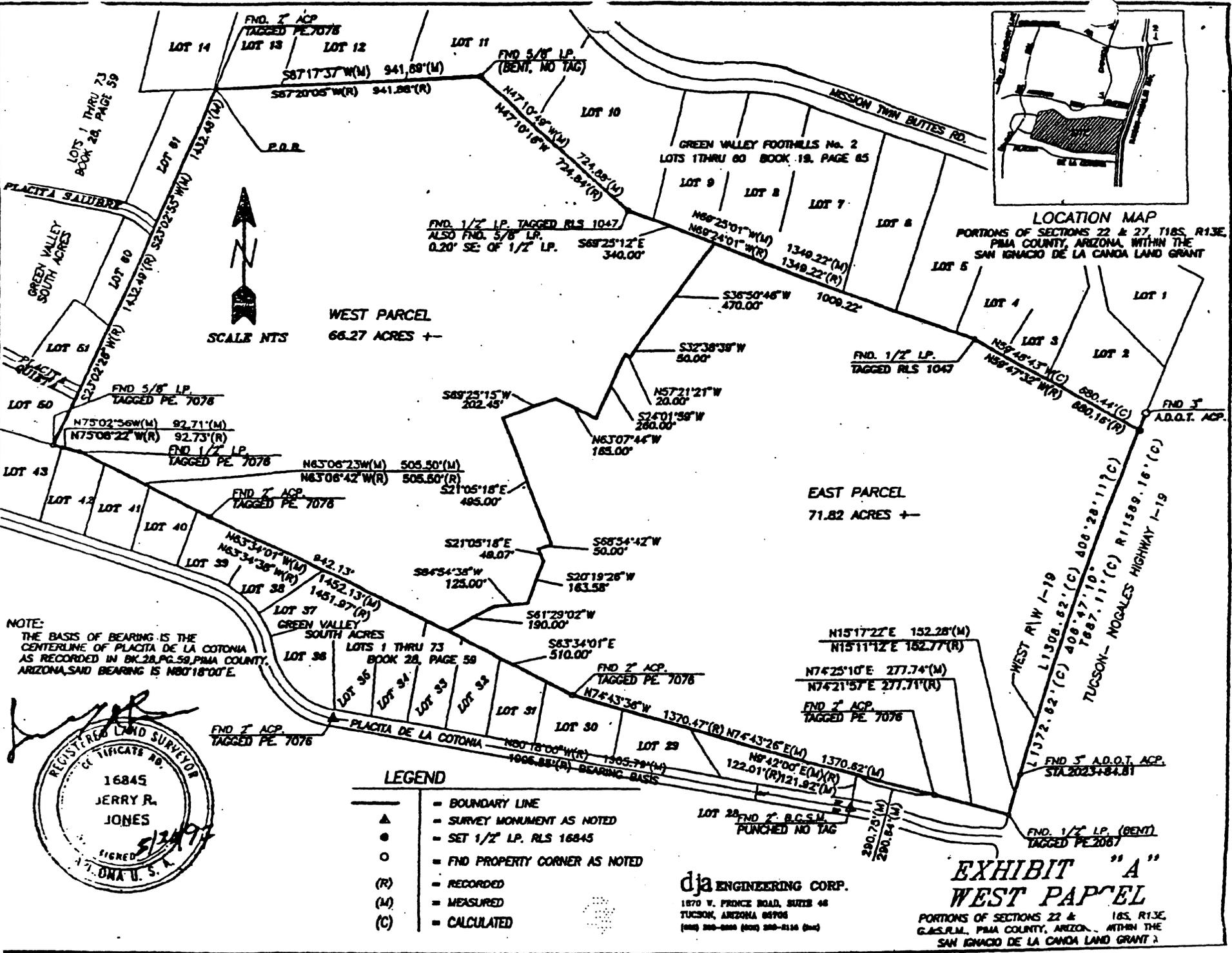
Thence North 23°02'55" East along the east property line of Lots 50, 51, 60 and 61 of the Green Valley South Acres Subdivision, as recorded in Book 28 of Maps & Plats at Page 59, Pima County, Arizona, a distance of 1432.48 feet to the POINT OF BEGINNING.

Said parcel of land contains 66.27 acres more or less.

Subject to all easements, encumbrances, restrictions, and reservation of record or otherwise.

See attached Exhibit "A".



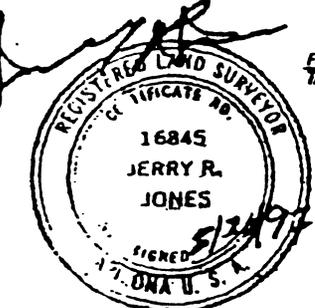


LOCATION MAP
 PORTIONS OF SECTIONS 22 & 27, T18S, R13E,
 P14S, ARIZONA, WITHIN THE
 SAN IGNACIO DE LA CANGA LAND GRANT

WEST PARCEL
 66.27 ACRES +

EAST PARCEL
 71.82 ACRES +

NOTE:
 THE BASIS OF BEARING IS THE
 CENTERLINE OF PLACITA DE LA COTONIA
 AS RECORDED IN BK. 28, PG. 59, PIMA COUNTY,
 ARIZONA, SAID BEARING IS N80°18'00"E.



LEGEND

- = BOUNDARY LINE
- ▲ = SURVEY MONUMENT AS NOTED
- = SET 1/2" LP. RLS 16845
- = FND PROPERTY CORNER AS NOTED
- (R) = RECORDED
- (M) = MEASURED
- (C) = CALCULATED

dja ENGINEERING CORP.
 1870 V. PRINCE ROAD, SUITE 48
 TUCSON, ARIZONA 85706
 (520) 298-8888 (FAX) 298-8136 (FAX)

EXHIBIT "A"
 WEST PARCEL

PORTIONS OF SECTIONS 22 & 27, T18S, R13E,
 P14S, ARIZONA, WITHIN THE
 SAN IGNACIO DE LA CANGA LAND GRANT

12/23/02 13:57 FAX 480 348 8976
12/23/02 12:57 FAX

HARVARD - A HILL CO.

004
004

BENEFICIARY APPROVAL:

Madera Highlands, L.L.C., an
Arizona limited liability company.

By: Paul A. Bowen
Name: Paul A. Bowen
Title: Project Manager

Stantec Consulting Inc.
201 North Bonita Avenue
Tucson AZ 85745-2999
Tel: (520) 750-7474 Fax: (520) 750-7470
stantec.com



Stantec

Legal Description of Parcel of Land

DESCRIPTION of a parcel of land located within a portion of the San Ignacio De La Canoa Land Grant, which lies within Township 18 South, Ranges 13 & 14 East, Gila & Salt River Meridian, Pima County, Arizona. Said parcel being more fully described as follows:

COMMENCING at a point said point being the northeast corner of said land grant, Thence South 23°01'34" West a distance of 1272.25 feet;

Thence South 23°01'11" West a distance of 2701.26 feet;

Thence South 23°05'55" West a distance of 267.49 feet;

Thence: North 66°54'05" West a distance of 2214.24 feet to the **TRUE POINT OF BEGINNING**;

Thence South 70°24'07" West a distance of 121.31 feet;

Thence South 49°50'32" West a distance of 56.77 feet;

Thence South 25°57'03" West a distance of 70.00 feet;

Buildings

Thence South 01°26'48" East a distance of 206.01 feet;

Environment

Thence North 77°29'37" West a distance of 400.05 feet;

Industrial

Thence North 04°25'13" East a distance of 155.02 feet;

Transportation

Thence North 48°51'51" West a distance of 114.75 feet;

Urban Land

Thence North 41°08'09" East a distance of 171.21 feet;

Thence along a tangent curve to the left, with a radius of 120.00 feet, through a central angle of 34°37'56" (the chord of which bears North 23°49'11" East, a distance of 71.43 feet) for an arc length of 72.53 feet;

3 December 2002

Reference: 85610664-15 Madera Highlands Infrastructure

Page 2 of 3

Thence along a reverse curve to the right, with a radius of 25.00 feet, through a central angle of $69^{\circ}24'57''$ (the chord of which bears North $41^{\circ}12'42''$ East, a distance of 28.47 feet) for an arc length of 30.29 feet;

Thence along a reverse curve to the left, with a radius of 350.00 feet, through a central angle of $1^{\circ}09'58''$ (the chord of which bears North $75^{\circ}20'12''$ East, a distance of 7.12 feet) for an arc length of 7.12 feet;

Thence along a reverse curve to the right; with a radius of 300.00 feet, through a central angle of $33^{\circ}27'03''$ (the chord of which bears South $88^{\circ}31'16''$ East, a distance of 172.67 feet) for an arc length of 175.15 feet;

Thence South $71^{\circ}47'45''$ East a distance of 211.50 feet;

Thence along a tangent curve to the right, with a radius of 162.50 feet, through a central angle of $58^{\circ}40'24''$ (the chord of which bears South $42^{\circ}27'33''$ East, a distance of 159.23 feet) for an arc length of 166.41 feet to the **TRUE POINT OF BEGINNING**.

Said parcel containing an approximate area of 213,363 square feet or 4.90 acres of land, more or less.

EXHIBIT B

Reservations, Covenants and Easements Requiring Metering, Inspection and Entry

The Property described herein which is the subject of this conveyance (the "Property") is subject to an agreement made and entered into as of December 31, 1978 (the "Agreement") by and among Farmers Investment Co., an Arizona corporation, Anamax Mining Company, a partnership consisting of the Anaconda Company, a Delaware corporation, and AMAX Arizona, Inc., a Nevada corporation, and Duval Corporation, a Delaware corporation (the "Parties") and to a Declaration of Reservations, Covenants, and Easements running with the land recorded on November 20, 1979, in Book 6179, page 719, and re-recorded February 26, 1980 in Book 6223 at page 671 in the records of Pima County, Arizona (the "Declaration"). As provided in and in accordance with paragraph 2 of the Declaration, the prohibitions in paragraph 1 of the Declaration on taking, withdrawing, transferring, assigning, or using water underlying the surface of the Property are hereby modified and released on the following terms and conditions. Grantee hereunder by acceptance of any contract of sale or deed to the Property covenants to be personally bound hereby, to include this paragraph in all future agreements of sale, and deeds of conveyance of the Property or any part thereof, and to require all lessees or any other persons who enjoy any beneficial interest in the Property through Grantee to comply with the terms hereof. The following reservations, covenants and easements are hereby declared to attach to and run with the land, in favor of the Parties, to be binding upon the land and all owners, mortgagees (excepting mortgagees pursuant to mortgages of record on the date of recordation of the Declaration), lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof. The taking, withdrawal, transfer, assignment or use in any manner whatsoever of water underlying the surface of the Property is prohibited except in compliance with the following provisions. Each well on the Property shall be equipped by Grantee with a recording device which will within acceptable engineering standards measure accurately the gallonage of water produced by such well. The production of each well shall be recorded and the records maintained. Each Party shall be entitled at reasonable times to inspect each measuring and recording device on the Property and its installation, and to copy the recording and recorded data as made. Each Party shall also, upon reasonable notice, be entitled to have any such device checked for accuracy, provided that such activity shall be so conducted as not to unreasonably interfere with the usage of the well being checked. Grantee hereunder shall maintain for periods of not less than five years accurate records, which shall disclose the total production in gallons of all water produced for each well on the Property, which records shall be open to inspection and copying by the Parties. Any Party requesting an accuracy check of any water measuring device shall bear the actual expense thereof. Grantee shall submit to each of the Parties (or to such other persons as the Parties may be written notice to Grantee designate in writing) on or before February 15 of each year an annual report stating the total amount of water pumped from each well on the Property during the preceding calendar year. Grantee shall promptly respond to requests for additional information from the Parties related to the amount of water used and such other information as may reasonably be related to the fact, amount and purpose of water use during the year. At the time of delivery of the annual pumping reports, Grantee shall also notify the Parties of any additional wells which have been drilled, any wells which have been deepened, and any wells which have been abandoned during the preceding calendar year. Such information shall include the location of the well by legal

description, and, as to new and deepened wells, their size, depth, source of power supply, current production or actual productive capacity and productive capacity when last in use. Each Party shall be entitled at reasonable times upon reasonable notice to enter and inspect the Property to determine that the terms hereof are being complied with and shall have the right to enforce the provisions hereof and to enjoin any violations hereof. The restrictions of this paragraph shall terminate as provided in paragraph 7 of the Declaration. The terms "Party," "Parties," "Farmers Investment Co.," "Anamax Mining Company," and "Duval Corporation" mean the Parties and their successors as defined in paragraph 10 of the Declaration. Except as specifically modified herein, all other reservations, covenants and easements of the Declaration shall remain in full force and effect as to the Property and all owners, mortgagees, lessees, and other person having or acquiring any right, title or interest in and to the Property or any part thereof.

COMMENCE AT THE NE CORNER
OF THE SAN IGNACIO DE LA CANOA
LAND GRANT

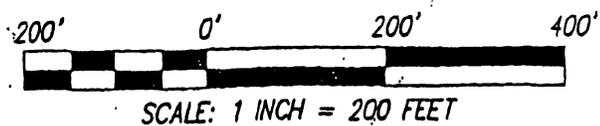
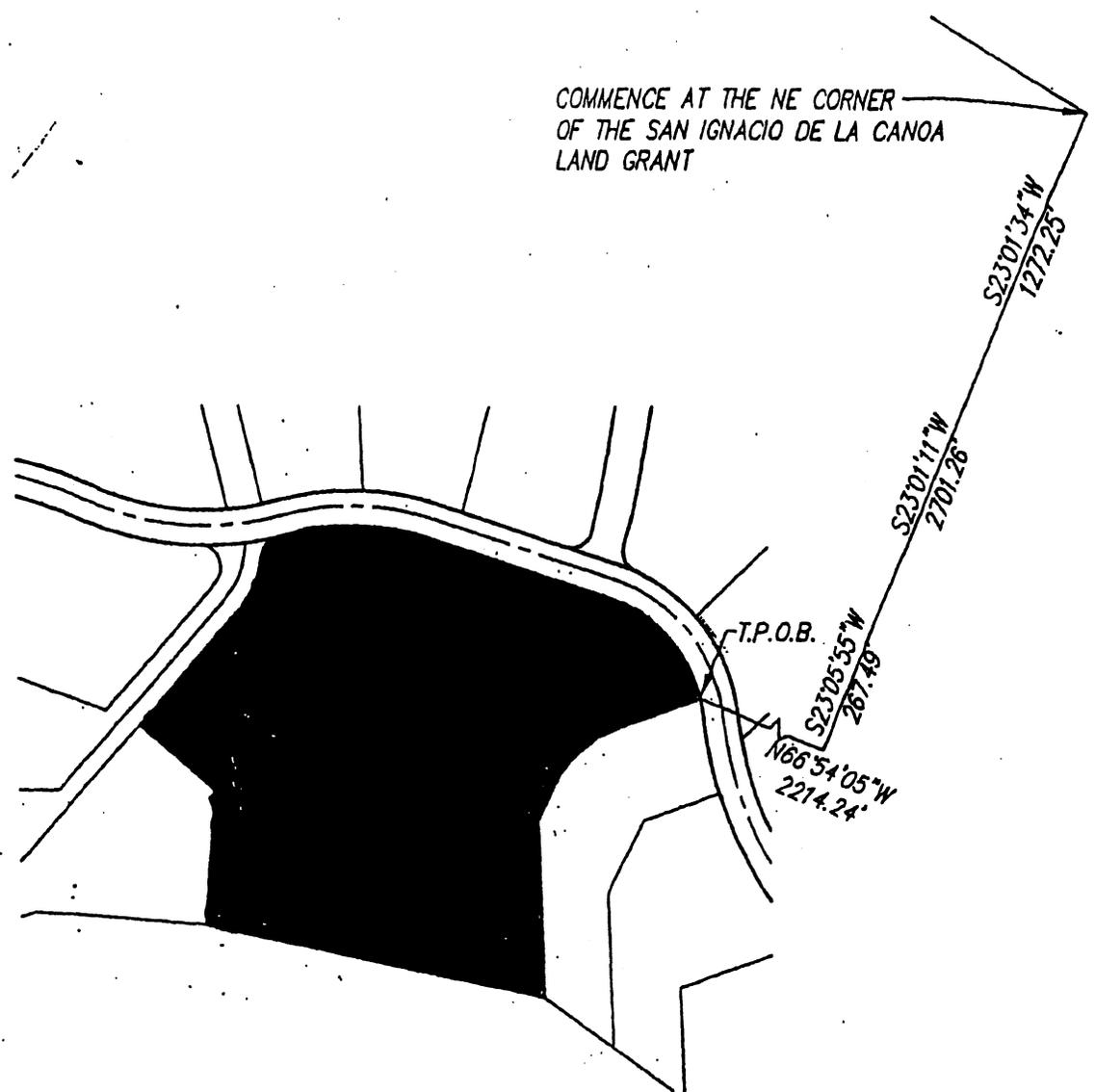


EXHIBIT OF A PARCEL OF LAND
SAID PARCEL IS LOCATED IN PART OF
SAN IGNACIO DE LA CANOA LAND GRANT WITHIN
TOWNSHIP 18 SOUTH, RANGE 13 EAST
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

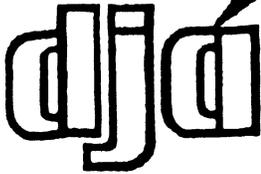
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DRAWN	WLA
DATE	12-03-2002
JOB No.	85810664-15
SHT.	1 OF 1



201 NORTH BONITA AVENUE
TUCSON, AZ 85745-2999
PH: [520] 750-7474
FAX: [520] 750-7470

- ENGINEERING · PLANNING ·
- LANDSCAPE ARCHITECTURE ·
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- SURVEYING · TRANSPORTATION ·



Dooley-Jones & Associates, Inc.

CONSULTING ENGINEERS / PLANNERS / ARCHITECTS / SURVEYORS

Tucson
35 E. Toole Avenue
Mail: P.O. Box 1830
Tucson, AZ 85702-1830
(602) 624-2391

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Jerry R. Jones, P.E.
Hubert A. Duncan, P.E.
David C. Logue, P.E.
James R. Wise, P.E.
Richard H. Bourque, P.E.
Frank G. Castro, P.E.
Roger E. Baale, P.E.
Shi-En Shiau, P.E.
John Panchalk, R.L.S.
James D. Lynch, A.P.A.

Phoenix
4747 N 22nd St
Suite 302
Phoenix, AZ 85016
(602) 956-9850

William D. Mathews, P.E.
James A. Catterfeld, P.E.
Richard M. Presto, A.I.A., A.S.L.A.
Carroll M. Lenderking, R.L.S.

PREPARED FOR
FARMERS INVESTMENT COMPANY
DICK WALDEN
DJA JOB NO. 83-089
SEPTEMBER 25, 1983
REVISED OCTOBER 25, 1983

DeAnza Booster Station Site

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the south line of the north 1/2 of San Ignacio de Canoa Private Land Grant, said corner being on the east right-of-way line of I-19, Tucson-Nogales Highway, thence North $22^{\circ}27'31''$ East along said right-of-way line a distance of 2700.00 feet;

Thence departing said right-of-way line South $67^{\circ}32'29''$ East a distance of 60.00 feet to the TRUE POINT OF BEGINNING;

Thence North $22^{\circ}27'31''$ East a distance of 60.00 feet;

Thence North $45^{\circ}04'43''$ East a distance of 97.50 feet;

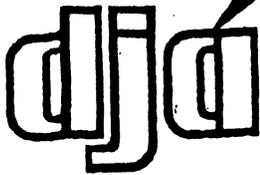
Thence South $67^{\circ}32'29''$ East a distance of 162.50 feet;

Thence South $22^{\circ}27'31''$ West a distance of 150.00 feet;

Thence North $67^{\circ}32'29''$ West a distance of 200.00 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 0.65 acre, more or less.

MO:HAD:RAB:dmh



Dooley-Jones & Associates, Inc.

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PREPARED FOR
FARMERS INVESTMENT COMPANY
DICK WALDEN
DJA JOB NO. 83-089
SEPTEMBER 25, 1983
REVISED OCTOBER 25, 1983

DeAnza Well Site W-11

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the south line of the north 1/2 of San Ignacio de La Canoa Private Land Grant, said corner being on the east right-of-way line of I-19, Tucson-Nogales Highway;

Thence North 22° 27'31" East along said right-of-way line a distance of 2692.64 feet;

Thence departing said right-of-way line South 67° 32'29" East distance of 1749.36 feet to the northwest corner of proposed well site W-11, said point also being the TRUE POINT OF BEGINNING;

Thence South 71° 33'22" East a distance of 100.00 feet;

Thence South 18° 26'38" West a distance of 100.00 feet;

Thence North 71° 33'22" West a distance of 100.00 feet;

Thence North 18° 26'38" East a distance of 100.00 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 0.23 acre, more or less.

MO:HA D:RAB:dmh



Dooley-Jones & Associates, Inc.

CONSULTING ENGINEERS / PLANNERS / ARCHITECTS / SURVEYORS

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Carroll M. Lenderking, R.L.S.

PREPARED FOR
FARMERS INVESTMENT COMPANY

DICK WALDEN

DJA JOB NO. 83-089

SEPTEMBER 25, 1983

REVISED OCTOBER 25, 1983

DeAnza Well Site W-12

That certain portion of land situated in the San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, more particularly described as follows:

Beginning at a point on the east right-of-way of Interstate 19, said point be the southwest corner of Green Valley Desert Meadows #3 as recorded in Book 25, Page 73, thence South $32^{\circ}24'19''$ East a distance of 1756.07 feet to the northwest corner of proposed well site W-12, said point also being the TRUE POINT OF BEGINNING;

Thence South $74^{\circ}46'34''$ East a distance of 100.00 feet;

Thence South $15^{\circ}13'26''$ West a distance of 100.00 feet;

Thence North $74^{\circ}46'34''$ West a distance of 100.00 feet;

Thence North $15^{\circ}13'26''$ East a distance of 100.00 feet to the TRUE POINT OF BEGINNING.

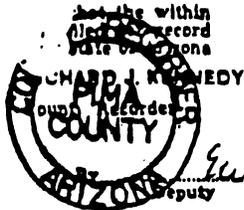
Said parcel contains 0.23 acre, more or less.

MO:HAD:RAB:dmh

STATE OF ARIZONA }
COUNTY OF PIMA } ss. I h
Witness my hand and Official Seal. instr. in Pin.

Indexed	Paged	Blotted

Form 4-78



No. 75244
 Book 7 Page 2524
 Date: DEL 10 '86 -4 PM 2540
 Request of:

STEWART TITLE & TRUST OF TUCSON

Fee: 17.00

WHEN RECORDED, RETURN TO:)
)
)
)
)
)
)
)
)
)

QUITCLAIM DEED

For consideration of Ten Dollars, and other valuable consideration, the undersigned Grantor,

E.C. GARCIA AND COMPANY, INC.,
an Arizona corporation,

does hereby quitclaim to the undersigned Grantee,

FARMERS WATER CO.,
an Arizona corporation,

all right, title and interest it may have in and to the following described real property located in the County of Pima, State of Arizona, together with all rights, water rights, improvements, irrigation ditches, privileges, and appurtenances thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND
HEREBY INCORPORATED BY REFERENCE
(hereinafter referred to as the
"Property")

SUBJECT TO the following reservations, covenants and easements:

The Property described herein which is the subject of this conveyance (the "Property") is subject to an Agreement made and entered into as of December 31, 1978 (the "Agreement") by and among Farmers Investment Co., an Arizona corporation, Anamax Mining Company, a partnership consisting of the Anaconda Company, a Delaware corporation, and AMAX Arizona, Inc., a Nevada corporation, and Duval Corporation, a Delaware corporation (the "Parties") and to a Declaration of Reservations, Covenants, and Easements running with the land recorded on December 24, 1979, in Docket 6179, page 719, et seq., and rerecorded on February 26, 1980 in Docket 6223, page 671, et seq., in the records of Pima County, Arizona (the "Declaration"). As provided in and in accordance with paragraph 2 of the Declaration, the prohibitions in paragraph 1 of the Declaration on taking, withdrawing, transferring, assigning, or using water underlying the surface of the

7928 2529

71850 85 86-09187

Property are hereby modified and released on the following terms and conditions. The Grantee hereunder by acceptance of any contract of sale or deed to the Property covenants to be personally bound hereby, to include this paragraph in all future agreements of sale, and deeds of conveyance of the Property or any part thereof, and to require all lessees or any other persons who enjoy any beneficial interest in the Property through the Grantee to comply with the terms hereof. The following reservations, covenants and assessments are hereby declared to attach to and run with the land, in favor of the Parties, to be binding upon the land and all owners, mortgagees (excepting mortgagees pursuant to mortgages of record on the date of recordation of the Declaration), lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof. The taking, withdrawal, transfer, assignment or use in any manner whatsoever of water underlying the surface of the Property is prohibited except in compliance with the following provisions. Each well on the Property shall be equipped by the Grantee with a recording device which will within acceptable engineering standards measure accurately the gallons of water produced by such well. The production of each well shall be recorded and the records maintained. Each Party shall be entitled at reasonable times to inspect each measuring and recording device on the Property and its installation, and to copy the recording and recorded data as made. Each Party shall also, upon reasonable notice, be entitled to have any such device checked for accuracy, provided that such activity shall be so conducted as not to unreasonably interfere with the usage of the well being checked. The Grantee hereunder shall maintain for periods of not less than five years accurate records, which shall disclose the total production in gallons of all water produced for each well on the Property, which records shall be open to inspection and copying by the Parties. Any Party requesting an accuracy check of any water measuring device shall bear the actual expense thereof. The Grantee shall submit to each of the Parties (or to such other persons as the Parties may by written notice to the Grantee designate in writing) on or before February 15 of each year an annual report stating the total amount of water pumped from each well on the Property during the preceding calendar year. The Grantee shall promptly respond to requests for additional information from the Parties related to the amount of water used and such other information as may reasonably be related to the fact, amount and purpose of water use during the year. At the time of delivery of the annual pumping reports, the Grantee shall also notify the Parties of any additional wells which have been drilled, any wells which have been deepened, and any wells which have been abandoned during the preceding calendar year.

Such information shall include the location of the well by legal description, and, as to new and deepened wells, their size, depth, source of power supply, current production or actual productive capacity and productive capacity when last in use. Each Party shall be entitled at reasonable times upon reasonable notice to enter and inspect the Property to determine that the terms hereof are being complied with and shall have the right to enforce the provisions hereof and to enjoin any violations hereof. The restrictions of this paragraph shall terminate as provided in paragraph 7 of the Declaration. The terms "Party", "Parties", "Farmers Investment Co.", "Anamax Mining Company", and "Duval Corporation" mean the Parties and their successors as defined in paragraph 10 of the Declaration. Except as specifically modified herein, all other reservations, covenants and assessments of the Declaration shall remain in full force and effect as to the Property and all owners, mortgagees, lessees, and other persons having or acquiring any right, title or interest in and to the Property or any part thereof.

Grantee, by signature hereto and acknowledgement hereof, accepts the conveyance of the Property and agrees to be bound by the reservations, covenants, and assessments above set forth.

DATED: December 10th, 1986.

E.C. GARCIA AND COMPANY, INC.,
an Arizona corporation

By *William D. Garcia*
Its *E.C. Garcia*

"GRANTOR"

ACCEPTED BY THE UNDERSIGNED
GRANTEE:

FARMERS WATER CO.,
an Arizona corporation

By *Richard W. ...*
Its *President*

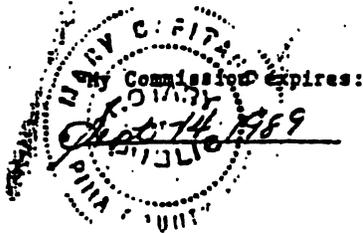
"GRANTEE"

STATE OF ARIZONA)
)ss
COUNTY OF PIMA)

On this, the 10TH day of December, 1986, before me, the undersigned Notary Public, personally appeared WILLIAM D. MARTIN, who acknowledged himself to be the EXECUTIVE VICE PRESIDENT of E. C. GARCIA AND COMPANY, INC., an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Mary Capatena
Notary Public

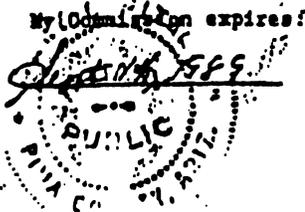


STATE OF ARIZONA)
)ss
COUNTY OF PIMA)

On this, the 10TH day of December, 1986, before me, the undersigned Notary Public, personally appeared R. KEITH WALDEN, who acknowledged himself to be the PRESIDENT of FARMERS WATER CO., an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Mary Capatena
Notary Public



7928 2532

Legal Description For Well Site E-2

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 59°19'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH 04°28'42" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF 08°58'56" TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF 04°20'53" TO A POINT OF TANGENCY;

THENCE SOUTH 17°48'31" WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH 17°48'31" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";

EXHIBIT A

7928 2533

Well Site E-2
Page 2 of 2

THENCE SOUTH 72°11'29" EAST A DISTANCE OF 100.00 FEET TO
A POINT ON THE EASTERLY RIGHT-OF-WAY LINE. SAID POINT
BEING THE TRUE POINT OF BEGINNING OF SAID WELL SITE E-2:

THENCE CONTINUE SOUTH 72°11'29" EAST A DISTANCE OF 100.00
FEET:

THENCE SOUTH 17°48'31" WEST A DISTANCE OF 100.00 FEET:

THENCE NORTH 72°11'29" WEST A DISTANCE OF 100.00 FEET TO
A POINT ON SAID RIGHT-OF-WAY LINE:

THENCE NORTH 17°48'31" EAST A DISTANCE OF 100.00 FEET TO
THE TRUE POINT OF BEGINNING:

7928 2534

Legal Description For Well Site E-7

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANADA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 58°19'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

THENCE NORTH 85°31'18" EAST A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID RAILROAD;

THENCE SOUTH 85°02'04" EAST A DISTANCE OF 1142.97 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "C";

BEGINNING AT THE AFOREMENTIONED POINT "C";

THENCE NORTH 04°57'56" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 85°02'04" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 04°57'56" WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH 85°02'04" WEST A DISTANCE OF 100.00 FEET;



7928 2535

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Legal Description For Well Site E-14

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 59°18'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH 04°28'42" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF 08°58'56" TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

THENCE DEPARTING SAID CENTERLINE SOUTH 76°32'22" EAST A DISTANCE OF 818.34 FEET TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 76°00'00" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 14°00'00" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 76°00'00" WEST A DISTANCE OF 100.00 FEET

THENCE NORTH 14°00'00" WEST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING.



7928 2536

F

Legal Description For Well Site NP-1

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, BEARS SOUTH $59^{\circ}19'09''$ EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH $20^{\circ}51'30''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF $16^{\circ}22'48''$ TO A POINT OF TANGENCY;

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH $04^{\circ}28'42''$ WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH $04^{\circ}28'42''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF $08^{\circ}58'56''$ TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF $04^{\circ}20'53''$ TO A POINT OF TANGENCY;

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";



7928 2537

BEGINNING AT THE AFOREMENTIONED POINT "F"

THENCE SOUTH $17^{\circ}48'31''$ WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1168.00 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 5729.65 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 1455.93 FEET THROUGH A CENTRAL ANGLE OF $14^{\circ}33'33''$ TO A POINT OF TANGENCY;

THENCE SOUTH $32^{\circ}22'04''$ WEST ALONG SAID CENTERLINE A DISTANCE OF 2580.54 FEET TO A POINT OF TANGENT CURVE TO THE LEFT WITH A RADIUS OF 11,459.19 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 698.06 FEET THROUGH A CENTRAL ANGLE OF $03^{\circ}29'25''$ TO A POINT HERINAFTER REFERRED TO AS POINT "G";

THENCE DEPARTING SAID CENTERLINE SOUTH $61^{\circ}07'21''$ EAST A DISTANCE OF 724.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $69^{\circ}38'55''$ EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH $20^{\circ}21'05''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $69^{\circ}38'55''$ WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH $20^{\circ}21'05''$ EAST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING;

7928 2538

G

Legal Description For Well Site N-P2

THAT PORTION OF LAND SITUATED IN THE NORTH ONE-HALF OF SAID LAND GRANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF CENTERLINE OF SOUTHERN PACIFIC RAILROAD WITH NORTH BOUNDARY LINE OF SAID CANOA LAND GRANT, FROM WHICH THE G.L.O. CLOSING CORNER MONUMENT OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 13 EAST, AND SECTION 7, TOWNSHIP 18 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN PIMA COUNTY, ARIZONA, BEARS SOUTH 59°19'09" EAST A DISTANCE OF 2678.88 FEET;

THENCE SOUTH 20°51'30" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 477.20 FEET TO A POINT OF TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 819.01 FEET THROUGH A CENTRAL ANGLE OF 16°22'48" TO A POINT OF TANGENCY;

THENCE SOUTH 04°28'42" WEST ALONG SAID RAILROAD CENTERLINE A DISTANCE OF 2954.64 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUE SOUTH 04°28'42" WEST A DISTANCE OF 2497.92 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B";

BEGINNING AT THE AFOREMENTIONED POINT "B";

THENCE SOUTH 04°28'42" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1138.53 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2864.82 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 449.11 FEET THROUGH A CENTRAL ANGLE OF 08°58'56" TO A POINT HEREINAFTER REFERRED TO AS POINT "D";

BEGINNING AT THE AFOREMENTIONED POINT "D";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVED CENTERLINE A DISTANCE OF 217.41 FEET THROUGH A CENTRAL ANGLE OF 04°20'53" TO A POINT OF TANGENCY;

THENCE SOUTH 17°48'31" WEST ALONG SAID CENTERLINE A DISTANCE OF 3959.06 FEET TO A POINT HEREINAFTER REFERRED AS POINT "E";

BEGINNING AT THE AFOREMENTIONED POINT "E";

THENCE SOUTH 17°48'31" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 4968.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "F";

7928 2539



BEGINNING AT THE AFOREMENTIONED POINT "F":

THENCE SOUTH 17°48'31" WEST ALONG THE CENTERLINE OF SAID RAILROAD A DISTANCE OF 1168.00 FEET TO A POINT OF TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 5729.65 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 1455.93 FEET THROUGH A CENTRAL ANGLE OF 14°33'33" TO A POINT OF TANGENCY;

THENCE SOUTH 32°22'04" WEST ALONG SAID CENTERLINE A DISTANCE OF 2580.54 FEET TO A POINT OF TANGENT CURVE TO THE LEFT WITH A RADIUS OF 11,459.19 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 698.06 FEET THROUGH A CENTRAL ANGLE OF 03°28'25" TO A POINT HEREINAFTER REFERRED TO AS POINT "G":

BEGINNING AT THE AFOREMENTIONED POINT "G":

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 11,459.19 FEET THROUGH A CENTRAL ANGLE OF 08°31'34" A DISTANCE OF 1705.23 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 20°21'05" WEST ALONG SAID CENTERLINE A DISTANCE OF 1298.54 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "H":

THENCE DEPARTING SAID CENTERLINE SOUTH 69°38'55" EAST A DISTANCE OF 660.63 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 69°38'55" EAST A DISTANCE OF 100.00 FEET;

THENCE SOUTH 20°21'05" WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH 69°38'55" WEST A DISTANCE OF 100.00 FEET;

THENCE NORTH 20°21'05" EAST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING.

7928 2540

FICO (Continental) Housing
Legal Description

That portion of land situated in the north one-half of said Land Grant, more particularly described as follows:

Beginning at the intersection of centerline of Southern Pacific Railroad with north boundary line of said Canos Land Grant, from which the GLO closing corner monument of Section 12, Township 18 South, Range 13 East, and Section 7, Township 18 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, bears south 59 degrees 19 minutes 09 seconds east a distance of 2678.88 feet;

Thence south 20 degrees 51 minutes 30 seconds west along the centerline of said railroad a distance of 477.20 feet to a point of tangent curve to the left having a radius of 2864.82 feet;

Thence southerly along the arc of said curve a distance of 819.01 feet through a central angle of 16 degrees 22 minutes 48 seconds to a point of tangency;

Thence south 04 degrees 28 minutes 42 seconds west along said railroad centerline a distance of 2954.64 feet to a point hereinafter referred to as point "A";

Thence continue south 04 degrees 28 minutes 42 seconds west a distance of 2497.92 feet to a point hereinafter referred to as point "B";

Beginning at the aforementioned point B;

Thence south 04 degrees 28 minutes 42 seconds west along the centerline of said railroad a distance of 1138.53 feet to a point of tangent curve to the right with a radius of 2864.82 feet;

Thence southerly along the arc of said curve a distance of 449.11 feet through a central angle of 08 degrees 58 minutes 56 seconds to a point hereinafter referred to as point "D";

BEGINNING at the aforementioned point "D";

Thence southerly along the arc of said curved centerline a distance of 217.41 feet through a central angle of 04 degrees 20 minutes 53 seconds to a point of tangency;

Thence south 17 degrees 48 minutes 31 seconds west along said centerline a distance of 3959.06 feet to a point hereinafter referred as point "E";

Thence departing said centerline south 72 degrees 11 minutes 29 seconds east a distance of 100.00 feet to a point of intersection with the easterly right-of-way line of said railroad and southerly right-of-way line of Whitehouse Canyon

7928 2507

Road as recorded in Book 9 at page 82 of Road Maps, said point being the TRUE POINT OF BEGINNING;

Thence south 34 degrees 23 minutes 31 seconds east along said south right-of-way line of Whitehouse Canyon Road a distance of 73.29 feet to a point of tangent curve to the left with a radius of 584.28 feet;

Thence easterly along the arc of said curve a distance of 241.20 feet through a central angle of 23 degrees 39 minutes 09 seconds to a point of tangency;

Thence south 58 degrees 03 minutes 00 seconds east along said right-of-way line a distance of 251.11 feet to a point of tangent curve to the left with a radius of 776.89 feet;

Thence easterly along said right-of-way line a distance of 80.10 feet through a central angle of 05 degrees 54 minutes 28 seconds to a point of tangency;

Thence south 63 degrees 57 minutes 28 seconds east a distance of 423.61 feet;

Thence departing said right-of-way line south 17 degrees 48 minutes 31 seconds west a distance of 576.85 feet;

Thence north 72 degrees 11 minutes 29 seconds west a distance of 1014.52 feet to a point on the east right-of-way line of said railroad;

Thence north 17 degrees 48 minutes 31 seconds east along said right-of-way line a distance of 864.18 feet to the TRUE POINT OF BEGINNING.

7928 2508

Schoolhouse District No. 39, Pima County
Legal Description

AND FURTHER EXCEPTING that certain parcel conveyed to the Board of Trustees, School District No. 39, Pima County, by instrument recorded in Book 164 of Deeds at page 89, described as follows: Beginning at a point 130 feet easterly, measured at right angles from center line of Tucson-Nogales Railroad main track of Southern Pacific Lines and 125 feet, measured on a line 130 feet distant from and parallel to said center line of the Railroad, northerly from pipe valve structure number 2, said valve structure being on pipe line from Well E-3; thence north 17 degrees 45.5 minutes east, 266.1 feet to a point; thence south 13 degrees 35.5 minutes east 392.3 feet to a point; thence south 17 degrees 45.5 minutes west 62 feet to a point; thence north 72 degrees 14.5 minutes west, 335 feet to a point or place of beginning.

BOOK 154 PAGE 168

Basketball Court School District No. 39, Pima County
Legal Description

9. EXCEPTING THEREFROM the following described parcel:

All that part of the said San Ignacio de La Canoa Private Land Grant, Pima County, Arizona, described as follows:

BEGINNING at a point 130 feet Easterly, measured at right angles from center line of Tucson Nogales Railroad main track of Southern Pacific Lines and 125 feet, measured on a line 130 feet distant from and parallel to said center line of the Railroad, Northerly from pipe valve structure No. 2, said valve structure being on pipe line from Well E 3, which point of beginning is the Southwest corner of that certain parcel conveyed to the Board of Trustees School District No. 39, Pima County, by instrument recorded in Book 164 of Deeds at Page 89, in the Office of the County Recorder, Pima County, Arizona:
thence South 72 degrees 14 minutes 30 seconds East along the Southerly boundary of the parcel so conveyed, 109.00 feet;
thence South 17 degrees 45 minutes 30 seconds West, 124.50 feet;
thence North 72 degrees 14 minutes 30 seconds West, 109.00 feet;
thence North 17 degrees 45 minutes 30 seconds East, 124.50 feet to the Point of Beginning.

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Admitted to practice in this Court by certificates dated 2/13/90 and 7/17/91
14 Attorneys for Allottee Plaintiffs

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19
20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF ARIZONA**

22 UNITED STATES, et al., 23 Plaintiffs, 24 v. 25 CITY OF TUCSON, et. al., 26 Defendants.	No. CV 75-039 TUC FRZ (Consolidated with CV No. 75-051)
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1 FELICIA ALVAREZ, et al.,

No. CV 93-039 TUC FRZ

2 Plaintiffs,

3 v.

4 CITY OF TUCSON, et al.,

5 Defendants.
6

7
8 **NOTICE OF FILING AMENDED EXHIBIT 16.2 TO THE**
9 **TOHONO O'ODHAM SETTLEMENT AGREEMENT**

10 The parties hereto, by and through their undersigned attorneys herewith, give notice
11 of filing of the Amended Exhibit 16.2 to the Tohono O'odham Settlement Agreement. A
12 copy of the Amended Exhibit 16.2 is attached hereto and made a part hereof.

13 Dated this 3rd day of February, 2006.

14
15 SACKS TIERNEY P.A.

16
17 By s/ Judith M. Dworkin
18 Attorneys for City of Tucson

19
20 OFFICE OF THE ATTORNEY GENERAL

21
22 By s/ David P. Frank
23 Attorney for Tohono O'odham Nation

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LUEBBEN, JOHNSON & BARNHOUSE

By s/ Thomas E. Luebben
Attorneys for *United States v. City of Tucson Allottee Class*
Attorneys for *Felicia Alvarez v. City of Tucson Allottee Classes*

SOMACH, SIMMONS & DUNN

By: s/ Robert B. Hoffman
Attorney for Farmers Investment Co.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America, et al.,
Plaintiffs,
vs.
City of Tucson, et al.,
Defendants.

Felicia Alvarez, et al.,
Plaintiffs,
vs.
City of Tucson, et al.,
Defendants.

No. CV 75-039-TUC-FRZ
(consolidated with CV 75-051)

FINAL JUDGMENT

No. CV 93-039-TUC-FRZ
PARTIAL JUDGMENT

This matter having come before the court for hearing, pursuant to the Order of the Court, dated October 12, 2005, on the Joint Motion of plaintiffs and defendants for approval of the settlement set forth in the Tohono O’odham Settlement Agreement (“Settlement Agreement”) dated April 30, 2003, amended to conform with Public Law 108-451, 118 Stat. 3478, due and adequate notice having been given to the Plaintiff Allottee Classes as required in the Order, the Court having considered all papers filed, and argument and evidence provided at the proceeding and otherwise being fully informed in the matter, and good cause appearing therefore.

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. This Final Judgment in Case No. CV 75-039 TUC FRZ (Consolidated with CV
3 No. 75-051) and Partial Judgment in Case No. CV 93-039 TUC FRZ (collectively, the
4 “Judgment”) incorporates by reference the definitions set forth in the Settlement Agreement,
5 and all terms used herein shall have the same meanings as set forth in the Settlement
6 Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and over
8 all parties to this litigation, including all members of the Plaintiff Allottee Classes.

9 3. This Court hereby approves the settlement set forth in the Settlement
10 Agreement (the “Settlement”) and finds that the Settlement is, in all respects, fair, reasonable,
11 adequate and in the best interests of the Plaintiff Allottee Classes. Consummation of the
12 Settlement in accordance with the terms and provisions of the Settlement Agreement is
13 approved.

14 4. The Settlement is binding upon: all parties to this consolidated litigation
15 including (a) the Tohono O’odham Nation, (b) all persons (i) that hold a beneficial real
16 property interest in an Indian allotment that is located within the San Xavier Reservation and
17 is held in trust by the United States or (ii) that hold fee simple title in real property on the San
18 Xavier reservation that, at any time before the date on which the person acquired fee simple
19 title, was held in trust by the United States as an Indian allotment and (iii) who have not
20 timely elected to be excluded from the Classes as provided by the Court in its Order dated
21 October 12, 2005, (c) the United States, (d) the city of Tucson, (e) Farmers Investment
22 Company and the Farmers Water Company (together referred to as “FICO”), (f) Asarco
23 Mining Company (“Asarco”) and all other defendant parties.

24 5. By reason of the Settlement, members of the Allottee Classes (along with the
25 San Xavier District) are entitled to:

26 a. a first right of beneficial use to 35,000 acre feet per year of Central Arizona
27 Project (“CAP”) water of the 50,000 acre feet per year of CAP water deliverable to
28 the San Xavier District,

- 1 b. 10,000 acre feet per year of groundwater pumping right,
- 2 c. a right to “bank” in a deferred pumping storage account groundwater not
- 3 pumped in any year and pump up to an additional 10,000 acre feet per year or a
- 4 maximum of 50,000 acre feet in any 10-year period of deferred groundwater pumping
- 5 credits,
- 6 d. a right to pump groundwater from Exempt Wells,
- 7 e. a right to the use of direct recharge credits to pump water from the ground
- 8 that are not marketable under state law,
- 9 f. protections for due process and other rights pursuant to an allottee water
- 10 rights code,
- 11 g. the right to have the San Xavier District elect to accept a cash-out of
- 12 \$18,300,000 (plus interest from January 1, 2008 until the cash-out) in lieu of
- 13 construction of a new farm within the San Xavier Reservation, funds to be controlled,
- 14 managed and invested by the San Xavier District and used for governmental and
- 15 social services for the San Xavier community and the allottees,
- 16 h. state limitations on approval of new pumping from the area in close
- 17 proximity to the San Xavier Reservation,
- 18 i. the sum of up to \$891,200 for a water management plan for the San Xavier
- 19 Reservation,
- 20 j. the sum of \$300,000 from the city of Tucson in 5 annual installments of
- 21 \$60,000 for the repair of Sinkholes that have occurred on the San Xavier Reservation,
- 22 k. an agreement with FICO to limit pumping by FICO to no more than 850
- 23 acre feet per year from within 2 miles of the San Xavier Reservation and to further
- 24 limit pumping to 36,000 acre feet per year not including water stored in the ground
- 25 from all FICO’s lands,
- 26 l. an agreement with Asarco to use CAP water thereby limiting Asarco’s
- 27 groundwater pumping on and near the San Xavier Reservation, and
- 28 m. a right to benefit from the sale of marketable groundwater credits obtained

1 through the use by Asarco of CAP rather than groundwater.

2 6. In exchange for the benefits provided in the Settlement and effective on the
3 Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives and
4 releases:

5 a. any and all past, present, and future claims for Water Rights (including
6 claims based on aboriginal occupancy) arising from time immemorial and, thereafter,
7 forever, claims for Injury to Water Rights from time immemorial through the
8 Enforceability Date, and claims for future Injury to Water Rights for land within the
9 San Xavier Reservation, against the State (or any agency or political subdivision of
10 the State), any municipal corporation; and any other person or entity (other than the
11 Nation);

12 b. any and all claims for Water Rights arising from time immemorial and,
13 thereafter, forever, claims for Injury to Water Rights arising from time immemorial
14 through the Enforceability Date, claims for failure to protect, acquire, or develop
15 Water Rights for land within the San Xavier Reservation from time immemorial
16 through the Enforceability Date, against the United States, in any capacity, (including
17 any agency, officer, and employee of the United States);

18 c. any and all claims for Injury to Water Rights arising after the
19 Enforceability Date for land within the San Xavier Reservation resulting from the off-
20 Reservation diversion or use of water in a manner not in violation of the Settlement
21 or State law against the United States, in any capacity, the State (or any agency or
22 political subdivision of the State), any municipal corporation, and any other person
23 or entity;

24 d. any and all past, present, and future claims arising out of or relating to the
25 negotiation or execution of this Agreement or the negotiation or enactment of the
26 SAWRSA Amendments, against the United States, the State (or any agency or
27 political subdivision of the State), any municipal corporation; and any other person
28 or entity; and

1 e. any and all past, present, and future claims for Water Rights arising from
2 time immemorial and, thereafter, forever, and claims for Injury to Water Rights
3 arising from time immemorial through the Enforceability Date, against the Nation
4 (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308
5 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall
6 retain rights to share in the water resources granted or confirmed under the SAWRSA
7 Amendments and this Agreement with respect to uses within the San Xavier
8 Reservation).

9 7. In exchange for the benefits provided in the Tucson Agreement and effective
10 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
11 waives and releases:

12 a. any and all claims against the city of Tucson (including any agency, officer
13 and employee of the City) for injuries to land within the Tucson Management Area
14 resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other
15 laws which may otherwise have been enforceable by money damages, declaratory
16 relief, injunction, or other remedy arising from time immemorial to the Enforceability
17 Date and thereafter forever; and

18 b. any and all past, present and future claims against the United States
19 (including any agency, officer and employee of the United States) for injuries to land
20 within the Tucson Management Area resulting from Sinkholes, Land Subsidence or
21 erosion caused by or resulting from the actions or inactions of the City of Tucson
22 under Federal, State and other laws which may otherwise have been enforceable by
23 money damages, declaratory relief, injunction, or other remedy.

24 8. In exchange for the benefits provided in the Asarco Agreement and effective
25 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
26 waives and releases:

27 a. all claims against Asarco arising out of Asarco's withdrawal of water from
28 beneath the ground within the Tucson Management Area from time immemorial

1 through the Enforceability Date; and

2 b. all claims against Asarco that may arise after the Enforceability Date to the
3 extent that such claims arise out of Asarco's withdrawal of water within the Tucson
4 Management Area pursuant to its existing Type 1 and Type 2 state law water rights
5 and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-
6 802.01, except as such rights are agreed to be limited in the Settlement.

7 9. In exchange for the benefits provided in the FICO Agreement and effective on
8 the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives
9 and releases:

10 a. all claims against FICO arising out of FICO's withdrawal of water from
11 beneath the ground within the Tucson Management Area from time immemorial
12 through the Enforceability Date; and

13 b. all claims against FICO that may arise after the Enforceability Date to the
14 extent that such claims arise out of FICO's withdrawal of water within the Tucson
15 Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law
16 water rights and withdrawals of stored water as defined on the Enforceability Date in
17 A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

18 10. With respect to the releases contained in the Settlement, the Court finds that
19 the Plaintiff Allottee Classes expressly understand and agree that the Settlement fully and
20 finally releases and forever resolves the matters released and discharged in paragraphs 6
21 through 9 above and in the Settlement Agreement, including those which may be unknown,
22 unanticipated or unsuspected. Each Plaintiff Allottee Class acknowledges that it is aware
23 that the class members may hereafter discover facts relevant to the subject matter of this
24 Settlement, but that it is the intention of each member of the Plaintiff Allottee Class hereby
25 to fully, finally and forever settle and release all of the claims, disputes and differences
26 known or unknown, suspected or unsuspected, except as otherwise expressly provided
27 herein.

28 11. The Defendant parties to the Settlement agree that the Settlement represents

1 a compromise of disputed claims without admission of any fact or allegation.

2 12. Following entry of this Judgment, the representatives of the Plaintiff Allottee
3 Classes shall execute the Settlement Agreement on behalf of the members of the respective
4 classes.

5 13. This Judgment shall be an exhibit to the Stipulation and Request for Entry of
6 Judgment and Decree in the Arizona state court adjudication proceeding entitled In re the
7 General Adjudication of All Rights to Use Water in the Gila River System and Source, No.
8 W-1, W-2, W-3 and W-4 (the "Gila River Adjudication Court").

9 14. With the exception of the use of this Judgment in the Gila River Adjudication
10 Court, neither this Judgment nor any other order entered in this consolidated litigation shall
11 constitute an admission of liability or of any other fact by any party, and no such document
12 or order shall have any res judicata, collateral estoppel or issue preclusive effect in any other
13 or subsequent proceeding.

14 15. The Settlement Agreement and all exhibits and attachments thereto including
15 the separate agreements referred to as the Tucson Agreement, the FICO Agreement and the
16 Asarco Agreement are incorporated herein by this reference and are made a part of this
17 Judgment. This Judgment does not diminish the rights and obligations of the parties under
18 the Settlement Agreement.

19 16. The above-captioned case of *United States v. Tucson*, CV 75-039 TUC FRZ
20 (consolidated with CV 75-051) and Causes of Action 1 through 3 of *Alvarez v. Tucson*, CV
21 93-039 TUC FRZ, are dismissed with prejudice effective upon the publication by the
22 Secretary of the Interior of a notice in the Federal Register of completion of all actions
23 necessary to make the settlement effective as required by Section 302(b) of the Arizona
24 Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478. Without limiting the
25 generality and legal effect of the foregoing, the dismissal with prejudice extends to all claims
26 ever asserted in this Consolidated Litigation individually or on behalf of the Plaintiff Allottee
27 Classes except those claims raised in Causes of Action 4 and 5 of *Alvarez v. Tucson*, CV 93-
28 039 TUC FRZ.

1 17. All members of the Plaintiff Allottee Classes as of January 14, 2006 shall
2 conclusively be deemed to be and remain members of the Plaintiff Allottee Classes, to have
3 given the releases described in Paragraphs 6 through 9 above, and to be bound by the
4 Settlement and this Judgment.

5 18. All members of the Plaintiff Allottee Classes are barred and permanently
6 enjoined from instituting, asserting or prosecuting, directly, representatively, derivatively or
7 in any other capacity, any claims against any of the Released Parties.

8 19. The Notice given to the Plaintiff Allottee Classes of the Settlement as described
9 in the Joint Motion and the Order constituted the best notice practicable under the
10 circumstances. The Notice provided due and adequate notice of these proceedings and of the
11 matters set forth in the Notice, including the Settlement set forth in the Joint Motion, to all
12 persons entitled to such Notice, and the Notice fully satisfied the requirements of due process
13 and applicable law.

14 20. The Court having considered any objections filed by members of the Plaintiff
15 Allottee Classes to entry of this Judgment, and having found those objections, if any, to be
16 without merit in the circumstances, all such objections are overruled and denied.

17 21. Upon publication of the notice in the Federal Register identified in paragraph
18 16, the parties are directed to file a copy of the Federal Register notice with the Court.

19 22. Causes of Action 4 and 5 of *Alvarez v. Tucson* are not dismissed.

20 23. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court
21 further expressly finds and determines that there is no just reason for delay and therefore
22 expressly directs that this Judgment be entered as a final judgment.

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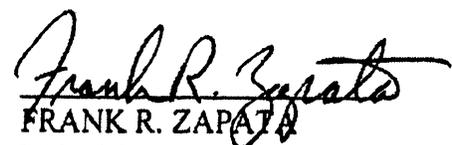
24 DATED this 14th day of June, 2006.

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FRANK R. ZAPATA
United States District Judge

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION) No. W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN THE) No. W-2 (Verde)
GILA RIVER SYSTEM AND SOURCE.) No. W-3 (Upper Gila)
) No. W-4 (San Pedro)
)
) CONTESTED CASE NO. W1-208
)
) JUDGMENT AND DECREE
)
)
)
)

The Court has considered the Tohono O’odham Settlement Agreement restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478, and executed by all parties thereto on or before June 12, 2006, which permanently resolves the water rights claims of the Tohono O’odham Nation ("Nation"), individual Indian trust allotment landowners located within San Xavier Indian Reservation ("Allottees") and the United States on behalf of the Nation and the Allottees to that portion of the Gila River System and Source within the Tucson Management Area and the Stipulation filed with this Court on _____, 2006. A copy of the Tohono O’odham Settlement Agreement is attached as Exhibit A to the Stipulation of Parties to the Tohono O’odham Settlement Agreement and Request for Entry of Judgment and Decree ("Stipulation").

This Judgment and Decree will only become effective and enforceable if and when the United States Secretary of the Interior publishes in the Federal Register a notice of completion of all actions necessary to make the settlement effective, as required by Section

1 302(b) of the Arizona Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478.

2 The parties are directed to file a notice with the Court upon such publication.

3 NOW, THEREFORE, it is hereby adjudged and decreed effective as of the
4 publication of the Federal Register notice referred to above as follows:

5 1. The capitalized terms used in this Judgment and Decree shall be defined as
6 stated in the Tohono O'odham Settlement Agreement.

7 2. The Stipulation is hereby approved in its entirety.

8 3. The Tohono O'odham Settlement Agreement is hereby approved and
9 incorporated herein in its entirety.

10 4. Subject to the terms of paragraph 4 of the Tohono O'odham Settlement
11 Agreement, the Nation and the Allottees shall have rights to a total of 79,200 acre-feet per
12 year of water within the Tucson Management Area, which shall be held in trust by the
13 United States on behalf of the Nation and the Allottees.

14 5. Included within the 79,200 acre-feet is 66,000 acre-feet per year of CAP
15 water of which 37,800 acre-feet per year has a priority of CAP Indian Priority Water and
16 28,200 acre-feet per year has a priority of CAP NIA Priority Water.

17 6. Subject to the terms of paragraph 8 of the Tohono O'odham Settlement
18 Agreement and included within the 79,200 acre-feet per year, the Nation has a right to
19 withdraw 13,200 acre-feet per year from non-exempt wells on the Nation's Reservation
20 within the Tucson Management Area.

21 7. The Nation may use the water provided in the Tohono O'odham Settlement
22 Agreement for any use and at any location within the Nation's Reservation.

23 8. Except as provided in subparagraph 4.4 of the Tohono O'odham Settlement
24 Agreement, none of the water that is the subject of the Tohono O'odham Settlement
25 Agreement may be leased, exchanged, transferred or in any way used off the Reservation.

26 9. In exchange for the benefits realized under the Tohono O'odham Settlement
27 Agreement and as authorized by the Act, the Nation has waived and released claims
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1 enumerated in paragraph 15.1 of the Tohono O’odham Settlement Agreement, certain
2 Allottees have waived and released claims as defined and enumerated in paragraph 15.2 of
3 the Tohono O’odham Settlement Agreement and the United States on behalf of the Nation
4 and the Allottees has waived and released claims enumerated in paragraph 15.3 of the
5 Tohono O’odham Settlement Agreement. The waivers and releases are effective on the
6 Enforceability Date.

7 10. The Water Rights and other benefits granted, confirmed or recognized to or
8 for the Nation, the Allottees and the United States on behalf of the Nation and the Allottees
9 by the Tohono O’odham Settlement Agreement and the Act shall be in replacement of, in
10 substitution for, and in full satisfaction of all claims for Water Rights and Injuries to Water
11 Rights by the Nation, the Allottees and the United States on behalf of the Nation and the
12 Allottees in the Tucson Management Area. Except as provided in Paragraph 12 of this
13 Stipulation, the claims of the Nation, the Allottees and the United States on behalf of the
14 Nation and the Allottees to water of the Gila River System and Source within the Tucson
15 Management Area are fully, finally and permanently adjudicated by this Judgment and
16 Decree.

17 11. Nothing in this Judgment and Decree or the Settlement Agreement shall be
18 construed to quantify or otherwise affect the water rights or entitlements to water of any
19 Arizona Indian tribe, band or community, or the United States on their behalf, other than
20 the Nation and the United States acting on behalf of the Nation.

21 12. Nothing in the Tohono O’odham Settlement Agreement shall affect the right
22 of any party, other than the Nation and the United States, to assert any priority date or
23 quantity of water for water rights claimed by such party in the Gila River Adjudication or
24 other court of competent jurisdiction.

25 13. This Court retains jurisdiction over this matter for enforcement of this
26 Judgment and Decree and the Tohono O’odham Settlement Agreement, including the entry
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1 of injunctions, restraining orders or other remedies under law or equity and to carry out the
2 provisions of sections 312(d) and 312(h) of the Act.

3 DATED this ___ day of _____, 200_.

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Judge of the Superior Court

APPENDIX C: Settlement Acts

TITLE III

Sec. 301. [Congressional findings concerning settlement of water rights claims of Papago Tribe.]—The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe. (96 Stat. 1274)

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SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT 3349

Sec. 302. [Definitions: "subjugate", "Tucson Active Management Area", "December 11, 1980, agreement", "replacement costs", "value".]—For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater. (96 Stat. 1275)

EXPLANATORY NOTE

References in the Text. The Colorado River Basin Project Act (Act of September 30, 1968, Public Law 90-537), referred to in paragraph (2) of the text, appears in Volume IV

in chronological order. The Act of June 18, 1934, referred to in paragraph (3) of the text, does not appear herein.

Sec. 303. [Water deliveries to the Tribe from the Central Arizona Project—Construction and improvement of on-Reservation irrigation systems—Authorization of appropriations for irrigation systems—Water management plan—Water and energy availability studies—Tribe shall retain right to withdraw groundwater—Obligations of Secretary under 1980 agreement not diminished or abrogated—No intent to establish whether Federal reserved rights doctrine applies to groundwater.]—(a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

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(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

(4) There are authorized to be appropriated up to \$3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

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(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water. (96 Stat. 1275)

Sec. 304. [Central Arizona Project water shall be delivered pursuant to 1980 agreement—Alternative sources of water—Damages for inability to acquire and deliver water—Conditions and limitations on acquisition of land, interests therein, water, water rights, contract rights, or reclaimed water—Construction and operation of delivery systems for Central Arizona Project water—Authorization of appropriations for delivery systems—Authorization to enter into contracts or agreements to facilitate delivery of water.]—(a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

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(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds. (96 Stat. 1276)

EXPLANATORY NOTE

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in subsection (e)(2) of the text, is known as the Leavitt Act. It authorizes and directs the Secretary to ad-

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just or eliminate reimbursable charges existing as debts against individual Indians or tribes of Indians in an equitable and just manner in consideration of the circumstances under which the charges were made and provides that the collection of all construction

costs against Indian-owned lands within any Government irrigation project shall be deferred and no assessments made for such charges until the Indian title to such lands has been extinguished. The 1932 Act appears in volume I at page 504.

Sec. 305. [Acquisition and delivery to the Tribe of reclaimed water—Obligation may be fulfilled by voluntary exchange—Construction and operation of delivery facilities—Tribe responsible for costs of construction and operation of on-reservation distribution systems—Secretary shall not construct separate delivery system—Use of unused capacity of Central Arizona Project main works—Alternative sources of water—Damages for inability to acquire and deliver reclaimed water—Conditions and limitations on acquisition of land, interests therein, water, water rights, contract rights, or reclaimed water.]—(a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available

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for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community. (96 Stat. 1278)

Sec. 306. [Obligations of the Secretary under sections 304(b), (c), and (e) and 305 contingent upon Tribe's agreement to limit groundwater pumping and comply with management plan—Exception for wells with a capacity of less than 35 gpm—Obligations of the Secretary concerning distribution systems under sections 303(a)(1)(B) and (2)(B) contingent upon Tribe's agreement to subjugate land and assume responsibility for operation and maintenance after delivery of water—Use of water by the Tribe—Right of Tribe to sell, exchange, or dispose of water—Contract approved and executed by the Secretary required—Use of proceeds—No intent to establish whether reserved water may be used or sold off-reservation.]—(a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the

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Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3)

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach. (96 Stat. 1279)

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EXPLANATORY NOTE

Reference in the Text. The section of the Act of August 1, 1914 referred to in subsection (b)(2) of the text deals with apportionment and reimbursability from Indian funds of the costs of Indian irrigation projects and

the authority of the Secretary to fix maintenance charges for irrigable lands within such projects. This section of the 1914 Act does not appear herein.

Sec. 307. [Obligations of the Secretary under sections 304(b), (c) and (e) and 305 contingent upon agreement within 1 year with Tucson to make available reclaimed water, agreement within 1 year on funding of Cooperative Fund, execution by Tribe within 1 year of waiver and release of all claims of or injuries to water rights, filing by Tribe within 1 year of voluntary dismissal of lawsuit, and final dismissal of lawsuit—Agreements to acquire and deliver water from alternative sources—No intent to waive or release claims arising under this Act—Effective date of waiver and release—Settlement deemed to satisfy all claims of water rights or injuries thereto.]—(a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title:

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water)

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within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title. (96 Stat. 1281)

Sec. 308. [Studies of lands within Gila Bend Reservation—Exchange of Gila Bend lands for public domain lands—Tribal consent required—Lands exchanged shall be held in trust for Tribe—Former Gila Bend lands shall be managed by Bureau of Land Management—Reimbursement for moneys paid for flood easements.]—(a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation

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have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b). (96 Stat. 1282)

Sec. 309. [Establishment of Trust fund—Expenditures from fund.]—

(a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of \$15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress. (96 Stat. 1282)

Sec. 310. [Applicability of Indian Self-Determination and Education Assistance Act.]—The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs. (96 Stat. 1283)

EXPLANATORY NOTE

Reference in the Text. The Indian Self-Determination and Education Assistance Act (Act of January 4, 1975, Public Law 93-638), referred to in the text, does not appear herein.

Sec. 311. [Statute of limitations.]—Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States

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Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985. (96 Stat. 1283)

EXPLANATORY NOTE

Reference in the Text. Section 2415 of title 28 of the U.S. Code, referred to in the text, establishes statutes of limitations governing the commencement of various types of legal actions brought by the United States, including actions brought for or on behalf of individual Indians or Indian tribes. This provision does not appear herein.

Sec. 312. [Arid land renewable resources projects—Assistance to the Tribe.]—If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

- (1) price guarantees, loan guarantees, or purchase agreements,
- (2) loans, and
- (3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe. (96 Stat. 1283)

Sec. 313. [Cooperative Fund—Establishment—Purposes—Composition of Fund—Authorization of appropriations to Fund—Only interest may be expended—Secretary of the Treasury shall be trustee—Termination—Payments for damages shall not exceed amounts available for expenditure.]—(a) There is established in the Treasury of the United States a fund to be known as the “Cooperative Fund” for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) \$5,250,000 to be contributed as follows:

(i) \$2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) \$1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

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(iii) \$1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine [sic] Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) \$5,250,000; and

(B) Such sums up to \$16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title—

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed. the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United

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States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section. (96 Stat. 1284)

Sec. 314. [Limitation on authority to enter into contracts or make payments—Effective date for new budget authority provided under this Act.]—No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982. (96 Stat. 1285)

Sec. 315. [Short title.]—This title may be cited as the “Southern Arizona Water Rights Settlement Act of 1982”. (96 Stat. 1285)

EXPLANATORY NOTES

Not Codified. Title III of this Act is not codified in the U.S. Code.

Legislative History. S. 1867 (Reclamation Reform) in the 97th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97-373. H.R. 5539 (Reclamation Reform) in the 97th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97-458. Passed House May 6, 1982. Amended and Passed Senate, in lieu of S. 1867, July 16, 1982. H.R. 5118 (Southern Arizona Water Rights) in the 97th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97-422. Reported in Senate from Indian Affairs; S. Rept. No. 97-375. Passed House March 4, 1982. Passed Senate, amended, May 11, 1982. House concurs in Senate amendment, with

amendments, May 12, 1982. Senate concurs in House amendments May 13, 1982. Vetoed by President June 1, 1982. S. 1409 (Buffalo Bill) in the 97th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97-420. Conference reports: H.R. Rept. No. 97-855; S. Rept. No. 97-568. Passed Senate June 22, 1982. Passed House August 17, 1982, with amendment in the nature of a substitute comprised of three titles: Title I being S. 1409 as it passed the Senate; Title II being H.R. 5539 as it passed the House; and Title III being a modified version of H.R. 5118. Senate concurs in House amendment, with amendments, August 20, 1982. Senate agrees to conference report September 24, 1982. House agrees to conference report September 29, 1982.

PUBLIC LAW 108-451—DEC. 10, 2004

ARIZONA WATER SETTLEMENTS ACT

Public Law 108–451
108th Congress

An Act

Dec. 10, 2004
[S. 437]

To provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes.

Arizona Water
Settlements Act.

43 USC 1501
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Arizona Water Settlements Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Arbitration.
- Sec. 4. Antideficiency.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. General permissible uses of the Central Arizona Project.
- Sec. 104. Allocation of Central Arizona Project water.
- Sec. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN WATER.
- Sec. 106. Acquisition of agricultural priority water.
- Sec. 107. Lower Colorado River Basin Development Fund.
- Sec. 108. Effect.
- Sec. 109. Repeal.
- Sec. 110. Authorization of appropriations.
- Sec. 111. Repeal on failure of enforceability date under title II.

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

- Sec. 201. Short title.
- Sec. 202. Purposes.
- Sec. 203. Approval of the Gila River Indian Community Water Rights Settlement Agreement.
- Sec. 204. Water rights.
- Sec. 205. Community water delivery contract amendments.
- Sec. 206. Satisfaction of claims.
- Sec. 207. Waiver and release of claims.
- Sec. 208. Gila River Indian Community Water OM&R Trust Fund.
- Sec. 209. Subsidence remediation program.
- Sec. 210. After-acquired trust land.
- Sec. 211. Reduction of water rights.
- Sec. 212. New Mexico Unit of the Central Arizona Project.
- Sec. 213. Miscellaneous provisions.
- Sec. 214. Authorization of appropriations.
- Sec. 215. Repeal on failure of enforceability date.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

- Sec. 301. Southern Arizona water rights settlement.
- Sec. 302. Southern Arizona water rights settlement effective date.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

Sec. 401. Effect of titles I, II, and III.

Sec. 402. Annual report.

Sec. 403. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In titles I and II:

(1) **ACRE-FEET.**—The term “acre-feet” means acre-feet per year.

(2) **AFTER-ACQUIRED TRUST LAND.**—The term “after-acquired trust land” means land that—

(A) is located—

(i) within the State; but

(ii) outside the exterior boundaries of the Reservation; and

(B) is taken into trust by the United States for the benefit of the Community after the enforceability date.

(3) **AGRICULTURAL PRIORITY WATER.**—The term “agricultural priority water” means Central Arizona Project non-Indian agricultural priority water, as defined in the Gila River agreement.

(4) **ALLOTTEE.**—The term “allottee” means a person who holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Reservation; and

(B) held in trust by the United States.

(5) **ARIZONA INDIAN TRIBE.**—The term “Arizona Indian tribe” means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

(6) **ASARCO.**—The term “Asarco” means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

(7) **CAP CONTRACTOR.**—The term “CAP contractor” means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(8) **CAP OPERATING AGENCY.**—The term “CAP operating agency” means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(9) **CAP REPAYMENT CONTRACT.**—

(A) **IN GENERAL.**—The term “CAP repayment contract” means the contract dated December 1, 1988 (Contract No. 14-0906-09W-09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

(B) **INCLUSIONS.**—The term “CAP repayment contract” includes all amendments to and revisions of that contract.

(10) **CAP SUBCONTRACTOR.**—The term “CAP subcontractor” means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

(11) **CAP SYSTEM.**—The term “CAP system” means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;
(C) the Fannin-McFarland Aqueduct;
(D) the Tucson Aqueduct;

(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

(12) CENTRAL ARIZONA PROJECT.—The term “Central Arizona Project” means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term “Central Arizona Water Conservation District” means the political subdivision of the State that is the contractor under the CAP repayment contract.

(14) CITIES.—The term “Cities” means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

(15) COMMUNITY.—The term “Community” means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

(16) COMMUNITY CAP WATER.—The term “Community CAP water” means water to which the Community is entitled under the Community water delivery contract.

(17) COMMUNITY REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term “Community repayment contract” means Contract No. 6-0907-0903-09W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation.

(B) INCLUSIONS.—The term “Community repayment contract” includes any amendments to the contract described in subparagraph (A).

(18) COMMUNITY WATER DELIVERY CONTRACT.—

(A) IN GENERAL.—The term “Community water delivery contract” means Contract No. 3-0907-0930-09W0284 between the Community and the United States dated October 22, 1992.

(B) INCLUSIONS.—The term “Community water delivery contract” includes any amendments to the contract described in subparagraph (A).

(19) CRR PROJECT WORKS.—

(A) IN GENERAL.—The term “CRR project works” means the portions of the San Carlos Irrigation Project located on the Reservation.

(B) INCLUSION.—The term “CRR Project works” includes the portion of the San Carlos Irrigation Project known as the “Southside Canal”, from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

(20) DIRECTOR.—The term “Director” means—

(A) the Director of the Arizona Department of Water Resources; or

(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

(21) ENFORCEABILITY DATE.—The term “enforceability date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c).

(22) FEE LAND.—The term “fee land” means land, other than off-Reservation trust land, owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

(23) FIXED OM&R CHARGE.—The term “fixed OM&R charge” has the meaning given the term in the repayment stipulation.

(24) FRANKLIN IRRIGATION DISTRICT.—The term “Franklin Irrigation District” means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(25) GILA RIVER ADJUDICATION PROCEEDINGS.—The term “Gila River adjudication proceedings” means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled “In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source” W-091 (Salt), W-092 (Verde), W-093 (Upper Gila), W-094 (San Pedro) (Consolidated).

(26) GILA RIVER AGREEMENT.—

(A) IN GENERAL.—The term “Gila River agreement” means the agreement entitled the “Gila River Indian Community Water Rights Settlement Agreement”, dated February 4, 2003.

(B) INCLUSIONS.—The term “Gila River agreement” includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation Agreement, which is also an exhibit to the UVD Agreement); and

(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement consistent with section 203(a) or as approved by the Secretary.

(27) GILA VALLEY IRRIGATION DISTRICT.—The term “Gila Valley Irrigation District” means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(28) GLOBE EQUITY DECREE.—

(A) IN GENERAL.—The term “Globe Equity Decree” means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

(B) INCLUSIONS.—The term “Globe Equity Decree” includes all court orders and decisions supplemental to that decree.

(29) HAGGARD DECREE.—

(A) IN GENERAL.—The term “Haggard Decree” means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa

Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

(B) INCLUSIONS.—The term “Haggard Decree” includes all court orders and decisions supplemental to that decree.

(30) INCLUDING.—The term “including” has the same meaning as the term “including, but not limited to”.

(31) INJURY TO WATER QUALITY.—The term “injury to water quality” means any contamination, diminution, or deprivation of water quality under Federal, State, or other law.

(32) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term “injury to water rights” means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

(B) INCLUSION.—The term “injury to water rights” includes a change in the underground water table and any effect of such a change.

(C) EXCLUSION.—The term “injury to water rights” does not include subsidence damage or injury to water quality.

(33) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term “Lower Colorado River Basin Development Fund” means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(34) MASTER AGREEMENT.—The term “master agreement” means the agreement entitled “Arizona Water Settlement Agreement” among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004.

(35) NM CAP ENTITY.—The term “NM CAP entity” means the entity or entities that the State of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.

(36) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(A) IN GENERAL.—The term “New Mexico Consumptive Use and Forbearance Agreement” means that agreement entitled the “New Mexico Consumptive Use and Forbearance Agreement,” entered into by and among the United States, the Community, the San Carlos Irrigation and Drainage District, and all of the signatories to the UVD Agreement, and approved by the State of New Mexico, and authorized, ratified, and approved by section 212(b).

(B) INCLUSIONS.—The “New Mexico Consumptive Use and Forbearance Agreement” includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation agreement, which is also an exhibit to the UVD agreement); and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(37) NEW MEXICO UNIT.—The term “New Mexico Unit” means that unit or units of the Central Arizona Project authorized by sections 301(a)(4) and 304 of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4), 1524) (as amended by section 212).

(38) NEW MEXICO UNIT AGREEMENT.—

(A) **IN GENERAL.**—The term “New Mexico Unit Agreement” means that agreement entitled the “New Mexico Unit Agreement,” to be entered into by and between the United States and the NM CAP entity upon notice to the Secretary from the State of New Mexico that the State of New Mexico intends to have the New Mexico Unit constructed or developed.

(B) **INCLUSIONS.**—The “New Mexico Unit Agreement” includes—

- (i) all exhibits to that agreement; and
- (ii) any amendment to that agreement made or added pursuant to that agreement.

(39) **OFF-RESERVATION TRUST LAND.**—The term “off-Reservation trust land” means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the enforceability date.

(40) **PHELPS DODGE.**—The term “Phelps Dodge” means the Phelps Dodge Corporation, a New York corporation of that name, and Phelps Dodge’s subsidiaries (including Phelps Dodge Morenci, Inc., a Delaware corporation of that name), and Phelps Dodge’s successors or assigns.

(41) **REPAYMENT STIPULATION.**—The term “repayment stipulation” means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-09625-09TUC-09WDB(EHC), No. CIV 95-091720-09PHX-09EHC (Consolidated Action), and that court’s order dated April 28, 2003, and any amendments or revisions thereto.

(42) **RESERVATION.**—

(A) **IN GENERAL.**—Except as provided in sections 207(d) and 210(d), the term “Reservation” means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

(B) **EXCLUSION.**—The term “Reservation” does not include the land located in sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

(43) **ROOSEVELT HABITAT CONSERVATION PLAN.**—The term “Roosevelt Habitat Conservation Plan” means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

(44) **ROOSEVELT WATER CONSERVATION DISTRICT.**—The term “Roosevelt Water Conservation District” means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

(45) SAFFORD.—The term “Safford” means the city of Safford, Arizona.

(46) SALT RIVER PROJECT.—The term “Salt River Project” means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users’ Association, an Arizona Territorial corporation.

(47) SAN CARLOS APACHE TRIBE.—The term “San Carlos Apache Tribe” means the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

(48) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term “San Carlos Irrigation and Drainage District” means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

(49) SAN CARLOS IRRIGATION PROJECT.—

(A) IN GENERAL.—The term “San Carlos Irrigation Project” means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

(B) INCLUSIONS.—The term “San Carlos Irrigation Project” includes any amendments and supplements to the Act described in subparagraph (A).

(50) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(51) SPECIAL HOT LANDS.—The term “special hot lands” has the meaning given the term in subparagraph 2.34 of the UVD agreement.

(52) STATE.—The term “State” means the State of Arizona.

(53) SUBCONTRACT.—

(A) IN GENERAL.—The term “subcontract” means a Central Arizona Project water delivery subcontract.

(B) INCLUSION.—The term “subcontract” includes an amendment to a subcontract.

(54) SUBSIDENCE DAMAGE.—The term “subsidence damage” means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

(55) TBI ELIGIBLE ACRES.—The term “TBI eligible acres” has the meaning given the term in subparagraph 2.37 of the UVD agreement.

(56) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term “uncontracted municipal and industrial water” means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

(57) UV DECREED ACRES.—

(A) IN GENERAL.—The term “UV decreed acres” means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

(B) EXCLUSION.—The term “UV decreed acres” does not include the reservation of the San Carlos Apache Tribe.

(58) **UV DECREED WATER RIGHTS.**—The term “UV decreed water rights” means the right to divert water for use on UV decreed acres in accordance with the Globe Equity Decree.

(59) **UV IMPACT ZONE.**—The term “UV impact zone” has the meaning given the term in subparagraph 2.47 of the UVD agreement.

(60) **UV SUBJUGATED LAND.**—The term “UV subjugated land” has the meaning given the term in subparagraph 2.50 of the UVD agreement.

(61) **UVD AGREEMENT.**—The term “UVD agreement” means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge, and other parties located in the upper valley of the Gila River, dated September 2, 2004.

(62) **UV SIGNATORIES PARTIES.**—The term “UV signatories” means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

(63) **WATER OM&R FUND.**—The term “Water OM&R Fund” means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

(64) **WATER RIGHT.**—The term “water right” means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(65) **WATER RIGHTS APPURTENANT TO NEW MEXICO 381 ACRES.**—The term “water rights appurtenant to New Mexico 381 acres” means the water rights—

(A) appurtenant to the 380.81 acres described in the decree in *Arizona v. California*, 376 U.S. 340, 349 (1964); and

(B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

(66) **WATER RIGHTS FOR NEW MEXICO DOMESTIC PURPOSES.**—The term “water rights for New Mexico domestic purposes” means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in *Arizona v. California*, 376 U.S. 340, 350 (1964).

(67) **1994 BIOLOGICAL OPINION.**—The term “1994 biological opinion” means the biological opinion, numbered 2-21-90-F-119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

(68) **1996 BIOLOGICAL OPINION.**—The term “1996 biological opinion” means the biological opinion, numbered 2-21-95-F-462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

(69) **1999 BIOLOGICAL OPINION.**—The term “1999 biological opinion” means the draft biological opinion numbered 2-21-91-F-706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of non-native aquatic species.

SEC. 3. ARBITRATION.**(a) NO PARTICIPATION BY THE UNITED STATES.—**

(1) **IN GENERAL.**—No arbitration decision rendered pursuant to subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River agreement (including the joint control board agreement attached to exhibit 20.1) shall be considered invalid solely because the United States failed or refused to participate in such arbitration proceedings that resulted in such arbitration decision, so long as the matters in arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement concern aspects of the water rights of the Community, the San Carlos Irrigation Project, or the Miscellaneous Flow Lands (as defined in subparagraph 2.18A of the UVD agreement) and not the water rights of the United States in its own right, any other rights of the United States, or the water rights or any other rights of the United States acting on behalf of or for the benefit of another tribe.

(2) **ARBITRATION INEFFECTIVE.**—If an issue otherwise subject to arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement cannot be arbitrated or if an arbitration decision will not be effective because the United States cannot or will not participate in the arbitration, then the issue shall be submitted for decision to a court of competent jurisdiction, but not a court of the Community.

(b) PARTICIPATION BY THE SECRETARY.—Notwithstanding any provision of any agreement, exhibit, attachment, or other document ratified by this Act, if the Secretary is required to enter arbitration pursuant to this Act or any such document, the Secretary shall follow the procedures for arbitration established by chapter 5 of title 5, United States Code.

SEC. 4. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity required by this Act, including all titles and all agreements or exhibits ratified or confirmed by this Act, funded by—

(1) the Lower Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), if there are not enough monies in that fund to fulfill those obligations or carry out those activities; or

(2) appropriations, if appropriations are not provided by Congress.

Central Arizona
Project
Settlement Act of
2004.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

43 USC 1501
note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Central Arizona Project Settlement Act of 2004”.

SEC. 102. FINDINGS.

Congress finds that—

(1) the water provided by the Central Arizona Project to Maricopa, Pinal, and Pima Counties in the State of Arizona, is vital to citizens of the State; and

(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State.

SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

(1) domestic, municipal, fish and wildlife, and industrial purposes; and

(2) any purpose authorized under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.).

SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

(1) REALLOCATION TO ARIZONA INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

(ii) 28,200 acre-feet shall be reallocated to the Tohono O'odham Nation; and

(iii) subject to the conditions specified in subparagraph (B), 67,300 acre-feet shall be reallocated to Arizona Indian tribes.

(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

(i) such water shall be used to resolve Indian water claims in Arizona, and may be allocated by the Secretary to Arizona Indian Tribes in fulfillment of future Arizona Indian water rights settlement agreements approved by an Act of Congress. In the absence of an Arizona Indian water rights settlement that is approved by an Act of Congress after the date of enactment of this Act, the Secretary shall not allocate any such water until December 31, 2030. Any allocations made by the Secretary after such date shall be accompanied by a certification that the Secretary is making the allocation in order to assist in the resolution of an Arizona Indian water right claim. Any such water allocated to an Arizona Indian Tribe pursuant to a water delivery contract with the Secretary under this clause shall be counted on an acre-foot per acre-foot basis against any claim to water for that Tribe's reservation;

(ii) notwithstanding clause (i), the Secretary shall retain 6,411 acre-feet of water for use for a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation's claims to water in Arizona. If Congress does not approve

Effective date.

this settlement before December 31, 2030, the 6,411 acre-feet of CAP water shall be available to the Secretary under clause (i); and

(iii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

(C) REPORT.—The Secretary, in consultation with Arizona Indian tribes and the State, shall prepare a report for Congress by December 31, 2016, that assesses whether the potential benefits of subparagraph (A) are being conveyed to Arizona Indian tribes pursuant to water rights settlements enacted subsequent to this Act. For those Arizona Indian tribes that have not yet settled water rights claims, the Secretary shall describe whether any active negotiations are taking place, and identify any critical water needs that exist on the reservation of each such Arizona Indian tribe. The Secretary shall also identify and report on the use of unused quantities of agricultural priority water made available to Arizona Indian tribes under subparagraph (A).

(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

(A) IN GENERAL.—Subject to subparagraph (B) and subparagraph 9.3 of the master agreement, the Secretary shall reallocate up to 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

(i) an allocation decision; and

(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

(C) FURTHER ALLOCATION.—With respect to the allocation of agricultural priority water under subparagraph (A)—

(i) before that water may be further allocated—

(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

(II) as soon as practicable after receiving the recommendation, the Secretary shall carry out all necessary reviews of the proposed reallocation, in accordance with applicable Federal law; and

(III) if the recommendation is rejected by the Secretary, the Secretary shall—

(aa) request a revised recommendation from the Director; and

(bb) proceed with any reviews required under subclause (II); and

(ii) as soon as practicable after the date on which agricultural priority water is further allocated, the Secretary shall offer to enter into a subcontract for that water in accordance with paragraphs (1) and (2) of subsection (d).

(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

(3) PRIORITY.—The agricultural priority water reallocated under paragraphs (1) and (2) shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

(b) UNCONTRACTED CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

(A) 285 acre-feet shall be reallocated to the town of Superior, Arizona;

(B) 806 acre-feet shall be reallocated to the Cave Creek Water Company;

(C) 1,931 acre-feet shall be reallocated to the Chaparral Water Company;

(D) 508 acre-feet shall be reallocated to the town of El Mirage, Arizona;

(E) 7,211 acre-feet shall be reallocated to the city of Goodyear, Arizona;

(F) 147 acre-feet shall be reallocated to the H2O Water Company;

(G) 7,115 acre-feet shall be reallocated to the city of Mesa, Arizona;

(H) 5,527 acre-feet shall be reallocated to the city of Peoria, Arizona;

(I) 2,981 acre-feet shall be reallocated to the city of Scottsdale, Arizona;

(J) 808 acre-feet shall be reallocated to the AVRA Cooperative;

(K) 4,986 acre-feet shall be reallocated to the city of Chandler, Arizona;

(L) 1,071 acre-feet shall be reallocated to the Del Lago (Vail) Water Company;

(M) 3,053 acre-feet shall be reallocated to the city of Glendale, Arizona;

(N) 1,521 acre-feet shall be reallocated to the Community Water Company of Green Valley, Arizona;

(O) 4,602 acre-feet shall be reallocated to the Metropolitan Domestic Water Improvement District;

(P) 3,557 acre-feet shall be reallocated to the town of Oro Valley, Arizona;

(Q) 8,206 acre-feet shall be reallocated to the city of Phoenix, Arizona;

(R) 2,876 acre-feet shall be reallocated to the city of Surprise, Arizona;

(S) 8,206 acre-feet shall be reallocated to the city of Tucson, Arizona; and

(T) 250 acre-feet shall be reallocated to the Valley Utilities Water Company.

(2) SUBCONTRACTS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, and in accordance with paragraphs (1) and (2) of subsection (d) and any other applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).

(B) REVISED RECOMMENDATION.—If the Secretary is precluded under applicable Federal law from entering into a subcontract with an entity identified in paragraph (1), the Secretary shall—

(i) request a revised recommendation from the Director; and

(ii) on receipt of a recommendation under clause (i), reallocate and enter into a subcontract for the delivery of the water in accordance with subparagraph (A).

(c) LIMITATIONS.—

(1) AMOUNT.—

(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—

(i) 650,724 acre-feet shall be—

(I) under contract to Arizona Indian tribes;

or

(II) available to the Secretary for allocation to Arizona Indian tribes; and

(ii) 764,276 acre-feet shall be under contract or available for allocation to—

(I) non-Indian municipal and industrial entities;

(II) the Arizona Department of Water Resources; and

(III) non-Indian agricultural entities.

(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(2) TRANSFER.—

(A) IN GENERAL.—Except pursuant to the master agreement, Central Arizona Project water may not be transferred from—

(i) a use authorized under paragraph (1)(A)(i) to a use authorized under paragraph (1)(A)(ii); or

(ii) a use authorized under paragraph (1)(A)(ii) to a use authorized under paragraph (1)(A)(i).

(B) EXCEPTIONS.—

(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not

be considered to be a transfer for purposes of subparagraph (A).

(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).

(iii) Notwithstanding subparagraph (A), up to 17,000 acre-feet of CAP municipal and industrial water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, subcontract No. 3-07-30-W0307, dated November 7, 1993, may be reallocated to the Community on execution of an exchange and lease agreement among the Community, the United States, and Asarco.

(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—

(1) IN GENERAL.—Notwithstanding section 6 of the Reclamation Project Act of 1939 (43 U.S.C. 485e), and paragraphs (2) and (3) of section 304(b) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)), as soon as practicable after the date of enactment of this Act, the Secretary shall offer to enter into subcontracts or to amend all Central Arizona Project contracts and subcontracts in effect as of that date in accordance with paragraph (2).

(2) REQUIREMENTS.—All subcontracts and amendments to Central Arizona Project contracts and subcontracts under paragraph (1)—

(A) shall be for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d));

(B) shall have an initial delivery term that is the greater of—

(i) 100 years; or

(ii) a term—

(I) authorized by Congress; or

(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;

(C) shall conform to the shortage sharing criteria described in paragraph 5.3 of the Tohono O'odham settlement agreement;

(D) shall include the prohibition and exception described in subsection (e); and

(E) shall not require—

(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or

(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.

(3) APPLICABILITY.—This subsection does not apply to—

(A) a subcontract for non-Indian agricultural use; or

(B) a contract executed under paragraph 5(d) of the repayment stipulation.

(e) PROHIBITION ON TRANSFER.—

(1) **IN GENERAL.**—Except as provided in paragraph (2), no Central Arizona Project water shall be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State.

(2) **EXCEPTIONS.**—Central Arizona Project water may be—

(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations; and

(B) delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(3) **EFFECT OF SUBSECTION.**—Nothing in this subsection prohibits any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State law.

SEC. 105. FIRING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) **FIRMING PROGRAM.**—The Secretary and the State shall develop a firming program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) **DUTIES.**—

(1) **SECRETARY.**—The Secretary shall—

(A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) **STATE.**—The State shall—

(A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i);

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii); and

(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

(a) **APPROVAL OF AGREEMENT.**—

(1) **IN GENERAL.**—Except to the extent that any provision of the master agreement conflicts with any provision of this title, the master agreement is authorized, ratified, and confirmed. To the extent that amendments are executed to make the master agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXHIBITS.—The Secretary is directed to and shall execute the master agreement and any of the exhibits to the master agreement that have not been executed as of the date of enactment of this Act.

(3) DEBT COLLECTION.—For any agricultural priority water that is not relinquished under the master agreement, the subcontractor shall continue to pay, consistent with the master agreement, the portion of the debt associated with any retained water under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and the Secretary shall apply such revenues toward the reimbursable section 9(d) debt of that subcontractor.

(4) EFFECTIVE DATE.—The provisions of subsections (b) and (c) shall take effect on the date of enactment of this Act.

(b) NONREIMBURSABLE DEBT.—

(1) IN GENERAL.—In accordance with the master agreement, the portion of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and identified in the master agreement as nonreimbursable to the United States, shall be nonreimbursable and nonreturnable to the United States in an amount not to exceed \$73,561,337.

(2) EXTENSION.—In accordance with the master agreement, the Secretary may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

(c) EXEMPTION.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full cost pricing provisions of Federal law shall not apply to—

(1) land within the exterior boundaries of the Central Arizona Water Conservation District or served by Central Arizona Project water;

(2) land within the exterior boundaries of the Salt River Reservoir District;

(3) land held in trust by the United States for an Arizona Indian tribe that is—

(A) within the exterior boundaries of the Central Arizona Water Conservation District; or

(B) served by Central Arizona Project water; or

(4) any person, entity, or land, solely on the basis of—

(A) receipt of any benefits under this Act;

(B) execution or performance of the Gila River agreement; or

(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

(a) IN GENERAL.—Section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) is amended by striking subsection (f) and inserting the following:

“(f) ADDITIONAL USES OF REVENUE FUNDS.—

“(1) CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection

(d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

“(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

“(A) to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act) in accordance with clause 8(d)(i)(1)(i) of the Repayment Stipulation (as defined in section 2 of the Arizona Water Settlements Act);

“(B) to make deposits, totaling \$53,000,000 in the aggregate, in the Gila River Indian Community Water OM&R Trust Fund established by section 208 of the Arizona Water Settlements Act;

“(C) to pay \$147,000,000 for the rehabilitation of the San Carlos Irrigation Project, of which not more than \$25,000,000 shall be available annually consistent with attachment 6.5.1 of exhibit 20.1 of the Gila River agreement, except that the total amount of \$147,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

“(D) in addition to amounts made available for the purpose through annual appropriations, as reasonably allocated by the Secretary without regard to any trust obligation on the part of the Secretary to allocate the funding under any particular priority and without regard to priority (except that payments required by clause (i) shall be made first)—

“(i) to make deposits totaling \$66,000,000, adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, into the New Mexico Unit Fund as provided by section 212(i) of the Arizona Water Settlements Act in 10 equal annual payments beginning in 2012;

“(ii) upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212, to pay certain of the costs associated with construction of the New Mexico Unit, in addition to any amounts that may be expended from the New Mexico Unit Fund, in a minimum amount of \$34,000,000 and a maximum amount of \$62,000,000, as provided in section 212 of the Arizona Water Settlements Act, as adjusted to

reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit;

“(iii) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

“(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6-07-03-W0345, and dated July 20, 1998;

“(II) section 3707(a)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4747); and

“(III) section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2004;

“(iv) to pay \$52,396,000 for the rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4) of the Arizona Water Settlements Act, of which not more than \$9,000,000 shall be available annually, except that the total amount of \$52,396,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

“(v) to pay other costs specifically identified under—

“(I) sections 213(g)(1) and 214 of the Arizona Water Settlements Act; and

“(II) the Southern Arizona Water Rights Settlement Amendments Act of 2004;

“(vi) to pay a total of not more than \$250,000,000 to the credit of the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development Fund, for use for Indian water rights settlements in Arizona approved by Congress after the date of enactment of this Act, subject to the requirement that, notwithstanding any other provision of this Act, any funds credited to the Future Indian Water Settlement Subaccount that are not used in furtherance of a congressionally approved Indian water rights settlement in Arizona by December 31, 2030, shall be returned to the main Lower Colorado Basin Development Fund for expenditure on authorized uses pursuant to this Act, provided that any interest earned on funds held in the Future Indian Water Settlement Subaccount shall remain in such subaccount until disbursed or returned in accordance with this section;

“(vii) to pay costs associated with the installation of gages on the Gila River and its tributaries to measure the water level of the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement in an amount not to exceed \$500,000; and

“(viii) to pay the Secretary’s costs of implementing the Central Arizona Project Settlement Act of 2004;

“(E) in addition to amounts made available for the purpose through annual appropriations—

“(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O’odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

“(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, payments to those tribes shall be made from funds in the Future Indian Water Settlement Subaccount; and

“(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

“(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

“(A) to pay annually the fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

“(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

“(C) to reimburse the general fund of the Treasury for fixed operation, maintenance, and replacement charges previously paid under paragraph (2)(A);

“(D) to reimburse the general fund of the Treasury for costs previously paid under subparagraphs (B) through (E) of paragraph (2);

“(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), made nonreimbursable under section 106(b) of the Arizona Water Settlements Act;

“(F) to pay to the general fund of the Treasury the difference between—

“(i) the costs of each unit of the projects authorized under title III that are repayable by the Central Arizona Water Conservation District; and

“(ii) any costs allocated to reimbursable functions under any Central Arizona Project cost allocation undertaken by the United States; and

“(G) for deposit in the general fund of the Treasury.

“(4) INVESTMENT OF AMOUNTS.—

“(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not,

in the judgment of the Secretary of the Interior, required to meet current needs of the development fund.

“(B) PERMITTED INVESTMENTS.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, including any provision requiring the consent or concurrence of any party, the investments referred to in subparagraph (A) shall include 1 or more of the following:

“(I) Any investments referred to in the Act of June 24, 1938 (25 U.S.C. 162a).

“(II) Investments in obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds.

“(III) The obligations referred to in section 201 of the Social Security Act (42 U.S.C. 401).

“(ii) LAWFUL INVESTMENTS.—For purposes of clause (i), obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds includes any of the following securities or securities with comparable language concerning the investment of federally managed funds:

“(I) Obligations of the United States Postal Service as authorized by section 2005 of title 39, United States Code.

“(II) Bonds and other obligations of the Tennessee Valley Authority as authorized by section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4).

“(III) Mortgages, obligations, or other securities of the Federal Home Loan Mortgage Corporation as authorized by section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452).

“(IV) Bonds, notes, or debentures of the Commodity Credit Corporation as authorized by section 4 of the Act of March 4, 1939 (15 U.S.C. 713a-4).

“(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

“(i) on original issue at the issue price; or

“(ii) by purchase of outstanding obligations at the market price.

“(D) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

“(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.

“(5) AMOUNTS NOT AVAILABLE FOR CERTAIN FEDERAL OBLIGATIONS.—None of the provisions of this section, including paragraphs (2)(A) and (3)(A), shall be construed to make any

of the funds referred to in this section available for the fulfillment of any Federal obligation relating to the payment of OM&R charges if such obligation is undertaken pursuant to Public Law 95-328, Public Law 98-530, or any settlement agreement with the United States (or amendments thereto) approved by or pursuant to either of those acts.”

43 USC 1543
note.

(b) **LIMITATION.**—Amounts made available under the amendment made by subsection (a)—

(1) shall be identified and retained in the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543); and

(2) shall not be expended or withdrawn from that fund until the later of—

Federal Register,
publication.

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

Deadline.

(B) January 1, 2010.

43 USC 1543.

(c) **TECHNICAL AMENDMENTS.**—The Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

(1) in section 403(g), by striking “clause (c)(2)” and inserting “subsection (c)(2)”; and

(2) in section 403(e), by deleting the first word and inserting “Except as provided in subsection (f), revenues”.

SEC. 108. EFFECT.

Except for provisions relating to the allocation of Central Arizona Project water and the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), nothing in this title affects—

(1) any treaty, law, or agreement governing the use of water from the Colorado River; or

(2) any rights to use Colorado River water existing on the date of enactment of this Act.

SEC. 109. REPEAL.

Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2559) is repealed.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated such sums as are necessary to comply with—

(1) the 1994 biological opinion, including any funding transfers required by the opinion;

(2) the 1996 biological opinion, including any funding transfers required by the opinion; and

(3) any final biological opinion resulting from the 1999 biological opinion, including any funding transfers required by the opinion.

(b) **CONSTRUCTION COSTS.**—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

(c) **AGREEMENTS.**—

(1) **IN GENERAL.**—Any amounts made available under subsection (a) may be used to carry out agreements to permanently fund long-term reasonable and prudent alternatives in accepted biological opinions relating to the Central Arizona Project.

(2) **REQUIREMENTS.**—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision

requiring that the contractor manage the funds through interest-bearing investments.

SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE UNDER TITLE II. 43 USC 1501 note.

(a) **IN GENERAL.**—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void; and

(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

(b) **EXCEPTION.**—No subcontract amendment executed by the Secretary under the notice of June 18, 2003 (67 Fed. Reg. 36578), shall be considered to be a contract entered into by the Secretary for purposes of subsection (a)(1).

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

Gila River Indian Community Water Rights Settlement Act of 2004.
43 USC 1501 note.

SEC. 201. SHORT TITLE.

This title may be cited as the “Gila River Indian Community Water Rights Settlement Act of 2004”.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to resolve permanently certain damage claims and all water rights claims among the United States on behalf of the Community, its members, and allottees, and the Community and its neighbors;

(2) to authorize, ratify, and confirm the Gila River agreement;

(3) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement;

(4) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title; and

(5) to authorize and direct the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement to allow the Secretary to exercise the rights authorized by subsections (d) and (f) of section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

(a) **IN GENERAL.**—Except to the extent that any provision of the Gila River agreement conflicts with any provision of this title, the Gila River agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the Gila River agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) **EXECUTION OF AGREEMENT.**—To the extent that the Gila River agreement does not conflict with this title, the Secretary

is directed to and shall execute the Gila River agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Gila River agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE GILA RIVER AGREEMENT.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the Gila River agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

(d) REHABILITATION AND OPERATION, MAINTENANCE, AND REPLACEMENT OF CERTAIN WATER WORKS.—

(1) IN GENERAL.—In addition to any obligations of the Secretary with respect to the San Carlos Irrigation Project, including any operation or maintenance responsibility existing on the date of enactment of this Act, the Secretary shall—

(A) in accordance with exhibit 20.1 to the Gila River agreement, provide for the rehabilitation of the San Carlos Irrigation Project water diversion and delivery works with the funds provided for under section 403(f)(2) of the Colorado River Basin Project Act; and

(B) provide electric power for San Carlos Irrigation Project wells and irrigation pumps at the Secretary's direct cost of transmission, distribution, and administration, using the least expensive source of power available.

(2) JOINT CONTROL BOARD AGREEMENT.—

(A) IN GENERAL.—Except to the extent that it is in conflict with this title, the Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement, including all exhibits to the joint control board agreement requiring the signature of the Secretary and any amendments necessary to the joint control board agreement consistent with this title.

(B) CONTROLS.—The joint control board agreement shall contain the following provisions, among others:

(i) The Secretary, acting through the Bureau of Indian Affairs, shall continue to be responsible for the operation and maintenance of Picacho Dam and Coolidge Dam and Reservoir, and for scheduling and delivering water to the Community and the District through the San Carlos Irrigation Project joint works.

(ii) The actions and decisions of the joint control board that pertain to construction and maintenance of those San Carlos Irrigation Project joint works that are the subject of the joint control board agreement

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shall be subject to the approval of the Secretary, acting through the Bureau of Indian Affairs within 30 days thereof, or sooner in emergency situations, which approval shall not be unreasonably withheld. Should a required decision of the Bureau of Indian Affairs not be received by the joint control board within 60 days following an action or decision of the joint control board, the joint control board action or decision shall be deemed to have been approved by the Secretary.

(3) REHABILITATION COSTS ALLOCABLE TO THE COMMUNITY.—The rehabilitation costs allocable to the Community under exhibit 20.1 to the Gila River agreement shall be paid from the funds available under paragraph (2)(C) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(4) REHABILITATION COSTS NOT ALLOCABLE TO THE COMMUNITY.—

(A) IN GENERAL.—The rehabilitation costs not allocable to the Community under exhibit 20.1 to the Gila River agreement shall be provided from funds available under paragraph (2)(D)(iv) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(B) SUPPLEMENTARY REPAYMENT CONTRACT.—Prior to the advance of any funds made available to the San Carlos Irrigation and Drainage District pursuant to the provisions of this Act, the Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

(i) in accomplishing the work under the supplemental repayment contract—

(I) the San Carlos Irrigation and Drainage District—

(aa) may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law; and

(bb) shall be subject to the value engineering program of the Bureau of Reclamation established pursuant to OMB Circular A-131; and

(II) in accordance with FAR Part 48.101(b), the incentive returned to the contractor through this “Incentive Clause” shall be 55 percent after the Contractor is reimbursed for the allowable costs of developing and implementing the proposal and the Government shall retain 45 percent of such savings in the form of reduced expenditures;

(ii) up to 18,000 acre-feet annually of conserved water will be made available by the San Carlos Irrigation and Drainage District to the United States pursuant to the terms of exhibit 20.1 to the Gila River agreement; and

(iii) a portion of the San Carlos Irrigation and Drainage District’s share of the rehabilitation costs

specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

(5) **LEAD AGENCY.**—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

(6) **FINANCIAL RESPONSIBILITY.**—Except as expressly provided by this section, nothing in this Act shall affect—

(A) any responsibility of the Secretary under the provisions of the Act of June 7, 1924 (commonly known as the “San Carlos Irrigation Project Act of 1924”) (43 Stat. 475); or

(B) any other financial responsibility of the Secretary relating to operation and maintenance of the San Carlos Irrigation Project existing on the date of enactment of this Act.

SEC. 204. WATER RIGHTS.

(a) **RIGHTS HELD IN TRUST; ALLOTTEES.**—

(1) **INTENT OF CONGRESS.**—It is the intent of Congress to provide allottees with benefits that are equal to or that exceed the benefits that the allottees currently possess, taking into account—

(A) the potential risks, cost, and time delay associated with the litigation that will be resolved by the Gila River agreement;

(B) the availability of funding under title I for the rehabilitation of the San Carlos Irrigation Project and for other benefits;

(C) the availability of water from the CAP system and other sources after the enforceability date, which will supplement less secure existing water supplies; and

(D) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this title to protect the interests of allottees.

(2) **HOLDING IN TRUST.**—The water rights and resources described in the Gila River agreement shall be held in trust by the United States on behalf of the Community and the allottees as described in this section.

(3) **ALLOTTED LAND.**—As specified in and provided for under this Act—

(A) agricultural allottees, other than allottees with rights under the Globe Equity Decree, shall be entitled to a just and equitable allocation of water from the Community for irrigation purposes from the water resources described in the Gila River agreement;

(B) allotted land with rights under the Globe Equity Decree shall be entitled to receive—

(i) a similar quantity of water from the Community to the quantity historically delivered under the Globe Equity Decree; and

(ii) the benefit of the rehabilitation of the San Carlos Irrigation Project as provided in this Act, a more secure source of water, and other benefits under this Act;

(C) the water rights and resources and other benefits provided by this Act are a complete substitution of any

rights that may have been held by, or any claims that may have been asserted by, the allottees before the date of enactment of this Act for land within the exterior boundaries of the Reservation;

(D) any entitlement to water of allottees for land located within the exterior boundaries of the Reservation shall be satisfied by the Community using the water resources described in subparagraph 4.1 in the Gila River agreement;

(E) before asserting any claim against the United States under section 1491(a) of title 28, United States Code, or under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), an allottee shall first exhaust remedies available to the allottee under the Community's water code and Community law; and

(F) following exhaustion of remedies on claims relating to section 7 of the Act of February 8, 1887 (25 U.S.C. 381), a claimant may petition the Secretary for relief.

(4) ACTIONS, CLAIMS, AND LAWSUITS.—

(A) IN GENERAL.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, under Federal, State, or other law.

(B) THE COMMUNITY AND THE UNITED STATES.—Except as provided in subparagraphs (E) and (F) of paragraph (3) and subsection (e)(2)(C), nothing in this Act either authorizes any action, claim, or lawsuit by an allottee against the Community under Federal, State, or other law, or alters available actions pursuant to section 1491(a) of title 28, of the United States Code, or section 381 of title 25, of the United States Code.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Gila River agreement, the Secretary shall reallocate and contract with the Community for the delivery in accordance with this section of—

(A) an annual entitlement to 18,600 acre-feet of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and Roosevelt Water Conservation District dated August 7, 1992;

(B) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3-0907-0930-09W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

(C) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement of up to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3-07-30-W0307, dated November 7, 1993; and

(D) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

(2) SOLE AUTHORITY.—In accordance with this section, the Community shall have the sole authority, subject to the Secretary's approval pursuant to section 205(a)(2), to lease, distribute, exchange, or allocate the CAP water described in this subsection, except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land. Nothing in this paragraph shall affect the validity of any lease or exchange ratified in section 205(c) or 205(d).

(c) WATER SERVICE CAPITAL CHARGES.—The Community shall not be responsible for water service capital charges for CAP water.

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the date of enactment of this Act, the costs associated with the delivery of water described in subsection (b), whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

(1) shall be nonreimbursable; and

(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

(e) APPLICATION OF PROVISIONS.—

(1) IN GENERAL.—The water rights recognized and confirmed to the Community and allottees by the Gila River agreement and this title shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) WATER CODE.—

(A) IN GENERAL.—Not later than 18 months after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law (including subsection (a)(3)), that—

(i) manages, regulates, and controls the water resources on the Reservation;

(ii) governs all of the water rights that are held in trust by the United States; and

(iii) provides that, subject to approval of the Secretary—

(I) the Community shall manage, regulate, and control the water resources described in the Gila River agreement and allocate water to all water users on the Reservation pursuant to the water code;

(II) the Community shall establish conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in the Gila River agreement;

(III) any allocation of water shall be from the pooled water resources described in the Gila River agreement;

(IV) charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without

Deadline.

regard to the status of the Reservation land on which the water is used;

(V) there is a process by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with this title;

(VI) there is a due process system for the consideration and determination by the Community of any request by any water user on the Reservation (including water users on allotted land), for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions; and

(VII) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (a)(3)(F).

(B) APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to the approval of the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(C) INCLUSION OF REQUIREMENT IN WATER CODE.—The Community is authorized to and shall include in the water code the requirement in subparagraph (A)(VII) that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States.

(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community and allottees by the Gila River agreement and this Act until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described in the Gila River agreement, subject to paragraph (2), except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land.

SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

(a) IN GENERAL.—The Secretary shall amend the Community water delivery contract to provide, among other things, in accordance with the Gila River agreement, that—

(1) the contract shall be—

(A) for permanent service (as that term is used in section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(B) without limit as to term;

(2) the Community may, with the approval of the Secretary, including approval as to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381)—

(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

(3)(A) the Community, and not the United States, shall be entitled to all consideration due to the Community under any leases or options to lease and exchanges or options to exchange Community CAP water entered into by the Community; and

(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Community as consideration under any such leases or options to lease and exchanges or options to exchange; or

(ii) the expenditure of such funds;

(4)(A) all Community CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

(7) the costs associated with the construction of the CAP system allocable to the Community—

(A) shall be nonreimbursable; and

(B) shall be excluded from any repayment obligation of the Community; and

(8) no CAP water service capital charges shall be due or payable for Community CAP water, whether CAP water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP water entered into by the Community.

(b) **AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.**—To the extent it is not in conflict with the provisions of this Act, the Amended and Restated Community CAP Water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the contract. To the extent amendments are executed to make the Amended and Restated Community CAP Water Delivery Contract consistent with this title, such amendments are also authorized, ratified, and confirmed.

(c) **LEASES.**—To the extent they are not in conflict with the provisions of this Act, the leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the leases. To the extent amendments are executed to make such leases consistent with this title, such amendments are also authorized, ratified, and confirmed.

(d) **RECLAIMED WATER EXCHANGE AGREEMENT.**—To the extent it is not in conflict with the provisions of this Act, the Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement. To the extent amendments are executed to make the Reclaimed Water Exchange Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(e) **PAYMENT OF CHARGES.**—Neither the Community nor any recipient of Community CAP water through lease or exchange shall be obligated to pay water service capital charges or any other charges, payments, or fees for the CAP water, except as provided in the lease or exchange agreement.

(f) **PROHIBITIONS.**—

(1) **USE OUTSIDE THE STATE.**—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

(2) **USE OFF RESERVATION.**—Except as authorized by this section and subparagraph 4.7 of the Gila River agreement, no water made available to the Community under the Gila River agreement, the Globe Equity Decree, the Haggard Decree, or this title may be sold, leased, transferred, or used off the Reservation other than by exchange.

(3) **AGREEMENTS WITH THE ARIZONA WATER BANKING AUTHORITY.**—Nothing in this Act or the Gila River agreement limits the right of the Community to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

SEC. 206. SATISFACTION OF CLAIMS.

(a) **IN GENERAL.**—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to land

within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(b) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in section 204(a), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

SEC. 207. WAIVER AND RELEASE OF CLAIMS.

(a) IN GENERAL.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE COMMUNITY AND THE UNITED STATES ON BEHALF OF THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of their obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee

land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

(B) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES AS TRUSTEE FOR THE ALLOTTEES.—Except as provided in subparagraph 25.12 of the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date.

(C) CLAIMS FOR INJURY TO WATER QUALITY BY THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims, and to agree to waive its right to request the United States to bring any claims, against the State (or any agency

or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i) past and present claims for injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq. as amended) arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land;

(ii) past, present, and future claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq.), arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(iii) claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-9281 et seq.), that result from—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation,

except that the waiver provided in this clause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this clause.

(D) PAST AND PRESENT CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for injury to water quality where all of the following conditions are met:

(i) The claims are brought solely on behalf of the Community, members, or allottees.

(ii) The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation.

(iii) The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq.).

(iv) The claimed injury is to land, water, or natural resources located on trust land within the exterior boundaries of the Reservation or on off-Reservation trust land.

(E) FUTURE CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, in its own right and as trustee for the Community, its members and allottees, as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of the following claims for injury or threat of injury to water quality arising after December 31, 2002, against the State (or any agency or political subdivision of the State) or any

other person, entity, corporation, or municipal corporation under Federal, State, or other law:

(i) All common law claims for injury or threat of injury to water quality where the injury or threat of injury asserted is to the Community's, Community members' or allottees' interests in trust land, water, or natural resources located within the exterior boundaries of the Reservation or within off-Reservation trust lands caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(ii) All natural resource damage claims for injury or threat of injury to water quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, its members or allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or off-Reservation trust lands, caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(F) CLAIMS BY THE COMMUNITY AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the Community, on behalf of the Community and Community members (but not

members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community or its members.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subparagraph is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

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(G) CLAIMS BY THE UNITED STATES AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community, members, or allottees.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water

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quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subsection is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(H) UNITED STATES ENFORCEMENT AUTHORITY.—Except as provided in subparagraphs (D), (E), and (G), nothing in this Act or the Gila River agreement affects any right of the United States, or the State, to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(2) CLAIMS FOR SUBSIDENCE BY THE COMMUNITY, ALLOTTEES, AND THE UNITED STATES ON BEHALF OF THE COMMUNITY AND ALLOTTEES.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

(3) CLAIMS AGAINST THE COMMUNITY.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this Act, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

(i) past and present claims for subsidence damage to trust land within the exterior boundaries of the Reservation, off-Reservation trust lands, and fee land arising from time immemorial through the enforceability date; and

(ii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II.

(4) CLAIMS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of

any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law;

(v) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002; and

(vi) past, present, and future claims relating to failure to assert any claims expressly waived pursuant to section 207(a)(1)(C) through (E).

(B) EXHAUSTION OF REMEDIES.—To the extent that members in their capacity as allottees assert that this title impairs or alters their present or future claims to water or constitutes an injury to present or future water rights, the members shall be required to exhaust their

remedies pursuant to the tribal water code prior to asserting claims against the United States.

(5) CLAIMS AGAINST CERTAIN PERSONS AND ENTITIES IN THE UPPER GILA VALLEY.—

(A) BY THE COMMUNITY AND THE UNITED STATES.—

Except as provided in the UVD agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States on behalf of the Community and Community members (but not members in their capacities as allottees), are authorized, as part of the performance of obligations under the UVD agreement, to execute a waiver and release of the following claims against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of the Community or Community members;

(ii)(I) past, present, and future claims for injuries to water rights for land within the exterior boundaries of the Reservation or the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project, resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement; and

(IV) claims for injury to water rights arising after the enforceability date for water rights transferred to the Project pursuant to section 211 resulting from the diversion, pumping or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres,

on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of and relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.— Except as provided in the UVD agreement, to the extent consistent with this section, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release of the following claims under Federal, State, or other law against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial, and thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors;

(ii)(I) past and present claims for injury to water rights for lands within the exterior boundaries of the Reservation arising from time immemorial, through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement; and

(III) claims for injury to water rights for land within the exterior boundaries of the Reservation arising after the enforceability date resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary

Records.

to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(C) ADDITIONAL WAIVER OF CERTAIN CLAIMS BY THE UNITED STATES.—Except as provided in the UVD Agreement, the United States (to the extent the waiver and release authorized by this subparagraph is not duplicative of the waiver and release provided in subparagraph (B) and to the extent the United States holds legal title to (but not the beneficial interest in) the water rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands) shall execute a waiver and release of the following claims under Federal, State or other law against the UV signatories and the UV Non-signatories (and the predecessors of each) for—

(i) past, present, and future claims for water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial, and thereafter, forever;

(ii)(I) past and present claims for injury to water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) claims for injury to water rights arising after the enforceability date for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands resulting from the diversion, pumping, or use of water in a manner that is consistent with

and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(6) **TRIBAL WATER QUALITY STANDARDS.**—The Community, on behalf of the Community and Community members, as part of the performance of its obligations under the Gila River agreement, is authorized to agree never to adopt any water quality standards, or ask the United States to promulgate such standards, that are more stringent than water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State or the United States of more stringent water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on—

(A) any water delivery system used to deliver water to the Community; or

(B) the discharge of water into any such system.

(b) **EFFECTIVENESS OF WAIVER AND RELEASES.**—

(1) **IN GENERAL.**—The waivers under paragraphs (1) and (3) through (5) of subsection (a) shall become effective on the enforceability date.

(2) **CLAIMS FOR SUBSIDENCE DAMAGE.**—The waiver under subsection (a)(2) shall become effective on execution of the waiver by—

(A) the Community, a Community member, or an allottee; and

(B) the United States, on behalf of the Community, a Community member, or an allottee.

(c) **ENFORCEABILITY DATE.**—

(1) **IN GENERAL.**—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the

Records.

Effective date.

Effective date.
Federal Register,
publication.

Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

(B) the Secretary has fulfilled the requirements of—
(i) paragraphs (1)(A)(i) and (2) of subsection (a) and subsections (b) and (d) of section 104; and
(ii) sections 204, 205, and 209(a);

(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

(D) \$53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

(E) the State has appropriated and paid to the Community any amount to be paid under paragraph 27.4 of the Gila River agreement;

(F) the Salt River Project has paid to the Community \$500,000 under subparagraph 16.9 of the Gila River agreement;

(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.18A (Gila River adjudication proceedings) and 25.18B (Globe Equity Decree proceedings) have been approved by the respective courts;

(H) the dismissals attached to the Gila River agreement as exhibits 25.17.1A and B, 25.17.2, and 25.17.3A and B have been filed with the respective courts and any necessary dismissal orders entered;

(I) legislation has been enacted by the State to—

(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

(ii) authorize the firming program required by section 105; and

(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

(K) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95-625-TUC-WDB(EHC), No. CIV 95-1720PHX-EHC) (Consolidated Action) in accordance with the repayment stipulation.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(d) **ALL LAND WITHIN EXTERIOR BOUNDARIES OF THE RESERVATION.**—Notwithstanding section 2(42), for purposes of this section, section 206, and section 210(d)—

(1) the term “land within the exterior boundaries of the Reservation” includes—

(A) land within the Reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915; and

(B) land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian; and

(2) the term “off-Reservation” refers to land located outside the exterior boundaries of the Reservation (as defined in paragraph (1)).

(e) **NO RIGHTS TO WATER.**—Upon the occurrence of the enforceability date—

(1) all land held by the United States in trust for the Community, Community members, and allottees and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to water other than those specifically granted to the Community and the United States for the Reservation pursuant to paragraph 4.0 of the Gila River agreement; and

(2) all water usage on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in determining compliance by the Community and the United States with the limitations on total diversions specified in subparagraph 4.2 of the Gila River agreement.

SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R TRUST FUND.

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Gila River Indian Community Water OM&R Fund”, to be managed and invested by the Secretary, consisting of \$53,000,000, the amount made available for this purpose under paragraph (2)(B) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(b) **MANAGEMENT.**—The Secretary shall manage the Water OM&R Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Community consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), hereafter referred to in this section as the “Trust Fund Reform Act”.

(c) **INVESTMENT OF THE FUND.**—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a); and

(3) subsection (b).

(d) **EXPENDITURES AND WITHDRAWALS.**—

(1) **TRIBAL MANAGEMENT PLAN.**—

(A) **IN GENERAL.**—The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) **REQUIREMENTS.**—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Community only spend any funds, as provided in the Gila River agreement, to assist in paying operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

(2) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that the monies withdrawn from the Water OM&R Fund are used in accordance with this Act.

(3) **LIABILITY.**—If the Community exercises the right to withdraw monies from the Water OM&R Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Community shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this section that the Community does not withdraw under this subsection.

(B) **DESCRIPTION.**—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Community remaining in the Water OM&R Fund will be used.

(C) **APPROVAL.**—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) **ANNUAL REPORT.**—The Community shall submit to the Secretary an annual report that describes all expenditures from the Water OM&R Fund during the year covered by the report.

(e) **NO DISTRIBUTION TO MEMBERS.**—No part of the principal of the Water OM&R Fund, or of the interest or income accruing on the principal, shall be distributed to any Community member on a per capita basis.

(f) **FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY DATE.**—Amounts in the Water OM&R Fund shall not be available for expenditure or withdrawal by the Community until the enforceability date, or until January 1, 2010, whichever is later.

SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

(a) **IN GENERAL.**—Subject to the availability of funds and consistent with the provisions of section 107(a), the Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

(b) **DAMAGE.**—Under the program, the Community, a Community member, or an allottee may submit to the Secretary a request for the repair or remediation of—

(1) subsidence damage; and

(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any

length or depth, which settling or cracking is caused by pumping of underground water.

(c) REPAIR OR REMEDIATION.—The Secretary shall perform the requested repair or remediation if—

(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

(d) SPECIFIC SUBSIDENCE DAMAGE.—Subject to the availability of funds, the Secretary, acting through the Commissioner of Reclamation, shall repair, remediate, and rehabilitate the subsidence damage that has occurred to land before the enforceability date within the Reservation, as specified in exhibit 30.21 to the Gila River agreement.

SEC. 210. AFTER-ACQUIRED TRUST LAND.

(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

(b) WATER RIGHTS.—After-acquired trust land shall not include federally reserved rights to surface water or groundwater.

(c) SENSE OF CONGRESS.—It is the sense of Congress that future Acts of Congress authorizing land to be taken into trust under subsection (a) should provide that such land will have only such water rights and water use privileges as would be consistent with State water law and State water management policy.

(d) ACCEPTANCE OF LAND IN TRUST STATUS.—

(1) IN GENERAL.—If the Community acquires legal fee title to land that is located within the exterior boundaries of the Reservation (as defined in section 207(d)), the Secretary shall accept the land in trust status for the benefit of the Community upon receipt by the Secretary of a submission from the Community that provides evidence that—

(A) the land meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of the Community's submission; and

(B) the title to the land meets applicable Federal title standards in effect on the date of the Community's submission.

(2) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (1) shall be deemed part of the Community's reservation.

SEC. 211. REDUCTION OF WATER RIGHTS.

(a) REDUCTION OF TBI ELIGIBLE ACRES.—

(1) IN GENERAL.—Consistent with this title and as provided in the UVD agreement to assist in reducing the total water demand for irrigation use in the upper valley of the Gila River, the Secretary shall provide funds to the Gila Valley Irrigation District and the Franklin Irrigation District (hereafter in this section referred to as “the Districts”) for the acquisition of UV decreed water rights and the extinguishment of those rights to decrease demands on the Gila River, or severance and transfer of those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law.

Deadlines.

(2) ACQUISITIONS.—

(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the third calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands).

(B) REQUIRED PHASE II ACQUISITION.—Not later than December 31 of the sixth calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands). The reduction of TBI eligible acres under this subparagraph shall be in addition to that accomplished under subparagraph (A).

(C) ADDITIONAL ACQUISITION IN CASE OF SETTLEMENT.—If the San Carlos Apache Tribe reaches a comprehensive settlement that is approved by Congress and finally approved by all courts the approval of which is required, the Secretary shall offer to acquire for fair market value the UV decreed water rights associated with not less than 500 nor more than 3,000 TBI eligible acres of land (other than special hot lands).

(D) METHODS OF ACQUISITION FOR RIGHTS ACQUIRED PURSUANT TO SUBPARAGRAPHS (A) AND (B).—

(i) DETERMINATION OF VALUE.—

(I) APPRAISALS.—Not later than December 31 of the first calendar year that begins after the enforceability date in the case of the phase I acquisition, and not later than December 31 of the fourth calendar year that begins after the enforceability date in the case of the phase II acquisition, the Districts shall submit to the Secretary an appraisal of the average value of water rights appurtenant to 1,000 TBI eligible acres.

Notification.

(II) REVIEW.—The Secretary shall review the appraisal submitted to ensure its consistency with the Uniform Appraisal Standards for Federal Land Acquisition and notify the Districts of the results of the review within 30 days of submission of the appraisal. In the event that the Secretary finds that the appraisal is not consistent with such standards, the Secretary shall so notify the Districts with a full explanation of the reasons for

that finding. Within 60 days of being notified by the Secretary that the appraisal is not consistent with such Standards, the Districts shall resubmit an appraisal to the Secretary that is consistent with such standards. The Secretary shall review the resubmitted appraisal to ensure its consistency with nationally approved standards and notify the Districts of the results of the review within 30 days of resubmission.

Notification.

(III) PETITION.—In the event that the Secretary finds that such resubmitted appraisal is not consistent with those Standards, either the Districts or the Secretary may petition a Federal court in the District of Arizona for a determination of whether the appraisal is consistent with nationally approved Standards. If such court finds the appraisal is so consistent, the value stated in the appraisal shall be final for all purposes. If such court finds the appraisal is not so consistent, the court shall determine the average value of water rights appurtenant to 1,000 TBI eligible acres.

(IV) NO OBJECTION.—If the Secretary does not object to an appraisal within the time periods provided in this clause (i), the value determined in the appraisal shall be final for all purposes.

(ii) APPRAISAL.—In determining the value of water rights pursuant to this paragraph, any court, the Districts, the Secretary, and any appraiser shall take into account the obligations the owner of the land (to which the rights are appurtenant) will have after acquisition for phreatophyte control as provided in the UVD agreement and to comply with environmental laws because of the acquisition and severance and transfer or extinguishment of the water rights.

(iii) PAYMENT.—No more than 30 days after the average value of water rights appurtenant to 1,000 acres of land has been determined in accordance with clauses (i) and (ii), the Secretary shall pay 125 percent of such values to the Districts.

(iv) REDUCTION OF ACREAGE.—No later than December 31 of the first calendar year that begins after each such payment, the Districts shall acquire the UV decreed water rights appurtenant to one thousand (1,000) acres of lands that would have been included in the calculation of TBI eligible acres (other than special hot lands), if the calculation of TBI eligible acres had been undertaken at the time of acquisition. To the extent possible, the Districts shall select the rights to be acquired in compliance with subsection 5.3.7 of the UVD agreement.

(3) REDUCTION OF TBI ELIGIBLE ACRES.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

(4) ALTERNATIVES TO ACQUISITION.—

(A) SPECIAL HOT LANDS.—After the payments provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

(ii) sever and transfer those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District.

(B) FOLLOWING AGREEMENT.—After the payment provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

(i) the number of TBI eligible acres is reduced;

but

(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a following agreement authorized under the UVD agreement.

(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

(A) IN GENERAL.—Of the UV decreed water rights acquired by the Districts pursuant to subparagraphs (A) and (B) of paragraph (2), the Districts shall, in accordance with all applicable law and the UVD agreement—

(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a following agreement authorized under paragraph (4)(B)).

(B) SAN CARLOS APACHE SETTLEMENT.—With respect to water rights acquired by the Secretary pursuant to paragraph (2)(C), the Secretary shall, in accordance with applicable law—

(i) cause to be severed and transferred to the San Carlos Irrigation Project, for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with 200 UV decreed acres;

(ii) cause to be extinguished the UV decreed water rights associated with 300 UV decreed acres; and

(iii) cause to be transferred the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

(6) MITIGATION.—To the extent the Districts, after the payments provided by paragraph (2)(D)(iii), do not comply with

the acquisition requirements of paragraph (2) or otherwise comply with the alternatives to acquisition provided by paragraph (4), the Districts shall provide mitigation to the San Carlos Irrigation Project as provided by the UVD agreement.

(b) ADDITIONAL REDUCTIONS.—

(1) COOPERATIVE PROGRAM.—In addition to the reduction of TBI eligible acres to be accomplished under subsection (a), not later than 1 year after the enforceability date, the Secretary and the UVD settling parties shall cooperatively establish a program to purchase and extinguish UV decreed water rights associated with UV decreed acres that have not been recently irrigated.

(2) FOCUS.—The primary focus of the program under paragraph (1) shall be to prevent any land that contains riparian habitat from being reclaimed for irrigation.

(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD signatories other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT.

(a) REQUIRED APPROVALS.—The Secretary shall not execute the Gila River agreement pursuant to section 203(b), and the agreement shall not become effective, unless and until the New Mexico Consumptive Use and Forbearance Agreement has been executed by all signatory parties and approved by the State of New Mexico.

(b) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(1) IN GENERAL.—Except to the extent a provision of the New Mexico Consumptive Use and Forbearance Agreement conflicts with a provision of this title, the New Mexico Consumptive Use and Forbearance Agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the New Mexico Consumptive Use and Forbearance Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXECUTION.—To the extent the New Mexico Consumptive Use and Forbearance Agreement does not conflict with this title, the Secretary shall execute the New Mexico Consumptive Use and Forbearance Agreement, including all exhibits to which the Secretary is a party to the New Mexico Consumptive Use and Forbearance Agreement and any amendments to the New Mexico Consumptive Use and Forbearance necessary to make it consistent with this title.

(c) NEW MEXICO UNIT AGREEMENT.—The Secretary is authorized to execute the New Mexico Unit Agreement, which agreement shall be executed within 1 year of receipt by the Secretary of written notice from the State of New Mexico that the State of New Mexico intends to build the New Mexico Unit, which notice must be received not later than December 31, 2014. The New Mexico Unit Agreement shall, among other things, provide that—

(1) all funds from the Lower Colorado River Basin Development Fund disbursed in accordance with section 403(f)(2)(D) (i) and (ii) of the Colorado River Basin Project Act (as amended by section 107(a)) shall be nonreimbursable (and such costs

Deadlines.
Notice.

shall be excluded from the repayment obligation, if any, of the NM CAP entity under the New Mexico Unit Agreement);

(2) in determining payment for CAP water under the New Mexico Unit Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and replacement costs (and no capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the NM CAP entity);

(3) upon request by the NM CAP entity, the Secretary shall transfer to the NM CAP entity the responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those responsibilities, provided that the Secretary shall not transfer the authority to divert water pursuant to the New Mexico Consumptive Use and Forbearance Agreement, provided further that the Secretary, shall remain responsible to the parties to the New Mexico Consumptive Use and Forbearance Agreement for the NM CAP entity's compliance with the terms and conditions of that agreement;

(4) the Secretary shall divert water and otherwise exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement solely for the benefit of the NM CAP entity and for no other purpose;

(5) the NM CAP entity shall own and hold title to all portions of the New Mexico Unit constructed pursuant to the New Mexico Unit Agreement; and

(6) the Secretary shall provide a waiver of sovereign immunity for the sole and exclusive purpose of resolving a dispute in Federal court of any claim, dispute, or disagreement arising under the New Mexico Unit Agreement.

(d) AMENDMENT TO SECTION 304.—Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)) is amended—

Contracts.

(1) by striking paragraph (1) and inserting the following: “(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in *Arizona v. California* (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.”;

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) COST LIMITATION.—In determining payment for CAP water under the New Mexico Consumptive Use and Forbearance Agreement, the NM CAP entity shall be responsible only for its share

of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the NM CAP entity.

(f) **EXCLUSION OF COSTS.**—For the purpose of determining the allocation and repayment of costs of the Central Arizona Project under the CAP Repayment Contract, the costs associated with the New Mexico Unit and the delivery of Central Arizona Project water pursuant to the New Mexico Consumptive Use and Forbearance Agreement shall be nonreimbursable, and such costs shall be excluded from the Central Arizona Water Conservation District's repayment obligation.

(g) **NEW MEXICO UNIT CONSTRUCTION AND OPERATIONS.**—The Secretary is authorized to design, build, and operate and maintain the New Mexico Unit. Upon request by the State of New Mexico, the Secretary shall transfer to the NM CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

(h) **NATIONAL ENVIRONMENTAL POLICY ACT.**—

(1) **ENVIRONMENTAL COMPLIANCE.**—Upon execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) **EXECUTION OF THE NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT AND THE NEW MEXICO UNIT AGREEMENT.**—Execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement.

(3) **LEAD AGENCY.**—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance. Upon request by the State of New Mexico to the Secretary, the State of New Mexico shall be designated as joint lead agency with respect to environmental compliance.

(i) **NEW MEXICO UNIT FUND.**—The Secretary shall deposit the amounts made available under paragraph (2)(D)(i) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.

(j) **ADDITIONAL FUNDING FOR NEW MEXICO UNIT.**—The Secretary shall pay for an additional portion of the costs of constructing the New Mexico Unit from funds made available under paragraph

Deadlines.

(2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) on a construction schedule basis, up to a maximum amount under this subparagraph (j) of \$34,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, upon satisfaction of the conditions that—

Notices.

(1) the State of New Mexico must provide notice to the Secretary in writing not later than December 31, 2014, that the State of New Mexico intends to have constructed or developed the New Mexico Unit; and

Federal Register,
publication.

(2) the Secretary must have issued in the Federal Register not later than December 31, 2019, a Record of Decision approving the project based on an environmental analysis required pursuant to applicable Federal law and on a demonstration that construction of a project for the New Mexico Unit that would deliver an average annual safe yield, based on a 50-year planning period, greater than 10,000 acre feet per year, would not cost more per acre foot of water diverted than a project sized to produce an average annual safe yield of 10,000 acre feet per year. If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.

(k) **RATE OF RETURN EXCEEDING 4 PERCENT.**—If the rate of return on carryover funds held in the Lower Colorado Basin Development Fund on the date that construction of the New Mexico Unit is initiated exceeds an average effective annual rate of 4 percent for the period beginning on the date of enactment of this Act through the date of initiation of construction of the New Mexico Unit, the Secretary shall pay an additional portion of the costs of the construction costs associated with the New Mexico Unit, on a construction schedule basis, using funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)). The amount of such additional payments shall be equal to 25 percent of the total return on the carryover funds earned during the period in question that is in excess of a return on such funds at an annual average effective return of 4 percent, up to a maximum total of not more than \$28,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit.

(l) **DISCLAIMER.**—Nothing in this Act shall affect, alter, or diminish rights to use of water of the Gila River within New Mexico, or the authority of the State of New Mexico to administer such rights for use within the State, as such rights are quantified by article IV of the decree of the United States Supreme Court in *Arizona v. California* (376 U.S. 340).

(m) **PRIORITY OF OTHER EXCHANGES.**—The Secretary shall not approve any exchange of Gila River water for water supplied by the CAP that would amend, alter, or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 213. MISCELLANEOUS PROVISIONS.

(a) **WAIVER OF SOVEREIGN IMMUNITY.**—If any party to the Gila River agreement or signatory to an exhibit executed pursuant to section 203(b) or to the New Mexico Consumptive Use and Forbearance Agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement) or the New Mexico Consumptive Use and Forbearance Agreement, and names the United States or the Community as a party, or if any other landowner or water user in the Gila River basin in Arizona (except any party referred to in subparagraph 28.1.4 of the Gila River agreement) files a lawsuit relating only and directly to the interpretation or enforcement of subparagraph 6.2, subparagraph 6.3, paragraph 25, subparagraph 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the Gila River agreement, naming the United States or the Community as a party—

(1) the United States, the Community, or both, may be joined in any such action; and

(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement).

(b) **EFFECT OF ACT.**—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

(c) **LIMITATION ON CLAIMS FOR REIMBURSEMENT.**—The United States shall not make a claim for reimbursement of costs arising out of the implementation of this title or the Gila River agreement against any Indian-owned land within the Reservation, and no assessment shall be made in regard to those costs against that land.

(d) **NO EFFECT ON FUTURE ALLOCATIONS.**—Water received under a lease or exchange of Community CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(e) **COMMUNITY REPAYMENT CONTRACT.**—To the extent it is not in conflict with this Act, the Secretary is directed to and shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community. To the extent amendments are executed to make Amendment No. 1 consistent with this title, such amendments are also authorized, ratified, and confirmed.

(f) **SALT RIVER PROJECT RIGHTS AND CONTRACTS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, as amended, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to

the Community under the Gila River agreement, are authorized, ratified, and confirmed.

(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights described in paragraph (1) shall be determined in an appropriate proceeding in State court.

(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain authority and responsibility existing on the date of enactment of this Act for decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the 1917 agreement, as amended, described in paragraph (1).

(g) UV IRRIGATION DISTRICTS.—

(1) IN GENERAL.—As partial consideration for obligations the UV irrigation districts shall be undertaking, the obligation to comply with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) to the New Mexico Consumptive Use and Forbearance Agreement, the Gila Valley Irrigation District, in 2010, shall receive funds from the Secretary in an amount of \$15,000,000 (adjusted to reflect changes since the date of enactment of this Act in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(2) RESTRICTION.—The funds to be received by the Gila Valley Irrigation District shall be used solely for the purpose of developing programs or constructing facilities to assist with mitigating the risks and costs associated with compliance with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) of the New Mexico Consumptive and Forbearance Agreement, and for no other purpose.

(h) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Community by any party to the Gila River agreement; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(i) BLUE RIDGE PROJECT TRANSFER AUTHORIZATION.—

(1) DEFINITIONS.—In this subsection:

(A) BLUE RIDGE PROJECT.—The term “Blue Ridge Project” means the water storage reservoir known as “Blue Ridge Reservoir” situated in Coconino and Gila Counties, Arizona, consisting generally of—

(i) Blue Ridge Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and

fiber optic lines, pumps, machinery, tools, and appliances; and

(ii) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with Blue Ridge Reservoir.

(B) SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.—The term “Salt River Project Agricultural Improvement and Power District” means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(2) TRANSFER OF TITLE.—The United States, acting through the Secretary of the Interior, shall accept from the Salt River Project Agricultural Improvement and Power District the transfer of title to the Blue Ridge Project. The transfer of title to the Blue Ridge Project from the Salt River Project Agricultural Improvement and Power District to the United States shall be without cost to the United States. The transfer, change of use or change of place of use of any water rights associated with the Blue Ridge Project shall be made in accordance with Arizona law.

(3) USE AND BENEFIT OF SALT RIVER FEDERAL RECLAMATION PROJECT.—

(A) IN GENERAL.—Subject to subparagraph (B), the United States shall hold title to the Blue Ridge Project for the exclusive use and benefit of the Salt River Federal Reclamation Project.

(B) AVAILABILITY OF WATER.—Up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in Northern Gila County, Arizona, without cost to the Salt River Federal Reclamation Project.

(4) TERMINATION OF JURISDICTION.—

(A) LICENSING AND REGULATORY AUTHORITY.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Federal Energy Regulatory Commission shall have no further licensing and regulatory authority over Project Number 2304, the Blue Ridge Project, located within the State.

(B) ENVIRONMENTAL LAWS.—All other applicable Federal environmental laws shall continue to apply to the Blue Ridge Project, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) CARE, OPERATION, AND MAINTENANCE.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the United States and the Salt River Valley Water Users' Association, dated September 6, 1917, as amended.

(6) C.C. CRAGIN DAM & RESERVOIR.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), Blue Ridge Dam and Reservoir shall thereafter be known as the “C.C. Cragin Dam and Reservoir”.

(j) EFFECT ON CURRENT LAW; JURISDICTION OF COURTS.—
Nothing in this section—

(1) alters law in effect on the day before the date of enactment of this Act with respect to pre-enforcement review of Federal environmental enforcement actions; or

(2) confers jurisdiction on any State court to interpret subparagraphs (D), (E), and (G) of section 207(a)(1) where such jurisdiction does not otherwise exist.

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) REHABILITATION OF IRRIGATION WORKS.—

(A) IN GENERAL.—There is authorized to be appropriated \$52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

(B) ADJUSTMENT.—The amount under subparagraph

(A) shall be adjusted by such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction required by the rehabilitation.

(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—

There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed \$4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

(5) SAFFORD FACILITY.—There are authorized to be appropriated such sums as are necessary to—

(A) retire \$13,900,000, minus any amounts appropriated for this purpose, of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

(B) pay the interest accrued on that amount.

(6) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated—

(A) such sums as are necessary to carry out—

(i) all necessary environmental compliance activities undertaken by the Secretary associated with the Gila River agreement and this title;

(ii) any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the construction of the diversion and delivery facilities of the water referred to in section 204 for use on the reservation; and

(iii) no more than 50 percent of the cost of any mitigation measures adopted by the Secretary that are the responsibility of the Community associated

with the diversion or delivery of the water referred to in section 204 for use on the Reservation, other than any responsibility related to water delivered to any other person by lease or exchange; and

(B) to carry out the mitigation measures in the Roosevelt Habitat Conservation Plan, not more than \$10,000,000.

(7) UV IRRIGATION DISTRICTS.—There are authorized to be appropriated such sums as are necessary to pay the Gila Valley Irrigation District an amount of \$15,000,000 (adjusted to reflect changes since the date of enactment of the Arizona Water Settlements Act of 2004 in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(b) IDENTIFIED COSTS.—

(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be identified costs for purposes of paragraph (2)(D)(v)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(2) EXCEPTION.—Amounts made available under subsection (a)(4) to carry out section 211(b) shall not be considered to be identified costs for purposes of section 403(f)(2)(D)(v)(I) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(v)(I)) (as amended by section 107(a)).

SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

43 USC 1501
note.

If the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) except for section 213(i), this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

(2) any amounts appropriated under paragraphs (1) through (7) of section 214(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(3) any amounts made available under section 214(b) that remain unexpended shall immediately revert to the general fund of the Treasury; and

(4) any amounts paid by the Salt River Project in accordance with the Gila River agreement shall immediately be returned to the Salt River Project.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended to read as follows:

Southern Arizona
Water Rights
Settlement
Amendments Act
of 2004.

“TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

“SEC. 301. SHORT TITLE.

“This title may be cited as the ‘Southern Arizona Water Rights Settlement Amendments Act of 2004’.

“SEC. 302. PURPOSES.

“The purposes of this title are—

“(1) to authorize, ratify, and confirm the agreements referred to in section 309(h);

“(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

“(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under those agreements and this title.

“SEC. 303. DEFINITIONS.

“In this title:

“(1) **ACRE-FOOT.**—The term ‘acre-foot’ means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

“(2) **AFTER-ACQUIRED TRUST LAND.**—The term ‘after-acquired trust land’ means land that—

“(A) is located—

“(i) within the State; but

“(ii) outside the exterior boundaries of the Nation’s Reservation; and

“(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

“(3) **AGREEMENT OF DECEMBER 11, 1980.**—The term ‘agreement of December 11, 1980’ means the contract entered into by the United States and the Nation on December 11, 1980.

“(4) **AGREEMENT OF OCTOBER 11, 1983.**—The term ‘agreement of October 11, 1983’ means the contract entered into by the United States and the Nation on October 11, 1983.

“(5) **ALLOTTEE.**—The term ‘allottee’ means a person that holds a beneficial real property interest in an Indian allotment that is—

“(A) located within the Reservation; and

“(B) held in trust by the United States.

“(6) **ALLOTTEE CLASS.**—The term ‘allottee class’ means an applicable plaintiff class certified by the court of jurisdiction in—

“(A) the Alvarez case; or

“(B) the Tucson case.

“(7) **ALVAREZ CASE.**—The term ‘Alvarez case’ means the first through third causes of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93-09039 TUC FRZ (D. Ariz., filed April 21, 1993)).

“(8) **APPLICABLE LAW.**—The term ‘applicable law’ means any applicable Federal, State, tribal, or local law.

“(9) **ASARCO.**—The term ‘Asarco’ means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

“(10) ASARCO AGREEMENT.—The term ‘Asarco agreement’ means the agreement by that name attached to the Tohono O’odham settlement agreement as exhibit 13.1.

“(11) CAP REPAYMENT CONTRACT.—

“(A) IN GENERAL.—The term ‘CAP repayment contract’ means the contract dated December 1, 1988 (Contract No. 14-0906-09W-09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

“(B) INCLUSIONS.—The term ‘CAP repayment contract’ includes all amendments to and revisions of that contract.

“(12) CENTRAL ARIZONA PROJECT.—The term ‘Central Arizona Project’ means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

“(13) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term ‘Central Arizona Project link pipeline’ means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to Station 293+36.

“(14) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term ‘Central Arizona Project service area’ means—

“(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central Arizona Project water; and

“(B) any expansion of that area under applicable law.

“(15) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term ‘Central Arizona Water Conservation District’ means the political subdivision of the State that is the contractor under the CAP repayment contract.

“(16) COOPERATIVE FARM.—The term ‘cooperative farm’ means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

“(17) COOPERATIVE FUND.—The term ‘cooperative fund’ means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

“(18) DELIVERY AND DISTRIBUTION SYSTEM.—

“(A) IN GENERAL.—The term ‘delivery and distribution system’ means—

“(i) the Central Arizona Project aqueduct;

“(ii) the Central Arizona Project link pipeline; and

“(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

“(B) INCLUSIONS.—The term ‘delivery and distribution system’ includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

“(19) EASTERN SCHUK TOAK DISTRICT.—The term ‘eastern Schuk Toak District’ means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

“(20) ENFORCEABILITY DATE.—The term ‘enforceability date’ means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

“(21) EXEMPT WELL.—The term ‘exempt well’ means a water well—

“(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

“(B) the water from which is used for—

“(i) the supply, service, or activities of households or private residences;

“(ii) landscaping;

“(iii) livestock watering; or

“(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

“(I) sale;

“(II) human consumption; or

“(III) use as feed for livestock or poultry.

“(22) FEE OWNER OF ALLOTTED LAND.—The term ‘fee owner of allotted land’ means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

“(23) FICO.—The term ‘FICO’ means collectively the Farmers Investment Co., an Arizona corporation of that name, and the Farmers Water Co., an Arizona corporation of that name.

“(24) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(25) INJURY TO WATER QUALITY.—The term ‘injury to water quality’ means any contamination, diminution, or deprivation of water quality under applicable law.

“(26) INJURY TO WATER RIGHTS.—

“(A) IN GENERAL.—The term ‘injury to water rights’ means an interference with, diminution of, or deprivation of water rights under applicable law.

“(B) INCLUSION.—The term ‘injury to water rights’ includes a change in the underground water table and any effect of such a change.

“(C) EXCLUSION.—The term ‘injury to water rights’ does not include subsidence damage or injury to water quality.

“(27) IRRIGATION SYSTEM.—

“(A) IN GENERAL.—The term ‘irrigation system’ means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

“(B) INCLUSIONS.—The term ‘irrigation system’, with respect to the cooperative farm, includes activities, procedures, works, and devices for—

“(i) rehabilitation of fields;

“(ii) remediation of sinkholes, sinks, depressions, and fissures; and

“(iii) stabilization of the banks of the Santa Cruz River.

“(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term ‘Lower Colorado River Basin Development Fund’ means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

“(29) M&I PRIORITY WATER.—The term ‘M&I priority water’ means Central Arizona Project water that has municipal and industrial priority.

“(30) NATION.—The term ‘Nation’ means the Tohono O’odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

“(31) NATION’S RESERVATION.—The term ‘Nation’s Reservation’ means all land within the exterior boundaries of—

“(A) the Sells Tohono O’odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

“(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

“(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909;

“(D) the Florence Village established by Public Law 95-361 (92 Stat. 595);

“(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

“(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation’s Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

“(32) NET IRRIGABLE ACRES.—The term ‘net irrigable acres’ means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

“(33) NIA PRIORITY WATER.—The term ‘NIA priority water’ means Central Arizona Project water that has non-Indian agricultural priority.

“(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term ‘San Xavier Allottees Association’ means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

“(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term ‘San Xavier Cooperative Association’ means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

“(36) SAN XAVIER DISTRICT.—The term ‘San Xavier District’ means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

“(37) SAN XAVIER DISTRICT COUNCIL.—The term ‘San Xavier District Council’ means the governing body of the San Xavier District, as established under the constitution of the Nation.

“(38) SAN XAVIER RESERVATION.—The term ‘San Xavier Reservation’ means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

“(39) SCHUK TOAK FARM.—The term ‘Schuk Toak Farm’ means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

“(40) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(41) STATE.—The term ‘State’ means the State of Arizona.

“(42) SUBJUGATE.—The term ‘subjugate’ means to prepare land for agricultural use through irrigation.

“(43) SUBSIDENCE DAMAGE.—The term ‘subsidence damage’ means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

“(44) SURFACE WATER.—The term ‘surface water’ means all water that is appropriable under State law.

“(45) TOHONO O’ODHAM SETTLEMENT AGREEMENT.—The term ‘Tohono O’odham settlement agreement’ means the agreement dated April 30, 2003 (including all exhibits of and attachments to the agreement).

“(46) TUCSON CASE.—The term ‘Tucson case’ means United States et al. v. City of Tucson, et al. (Civ. No. 75-0939 TUC consol. with Civ. No. 75-0951 TUC FRZ (D. Ariz., filed February 20, 1975)).

“(47) TUCSON INTERIM WATER LEASE.—The term ‘Tucson interim water lease’ means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

“(48) TUCSON MANAGEMENT AREA.—The term ‘Tucson management area’ means the area in the State comprised of—

“(A) the area—

“(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

“(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

“(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

“(49) TURNOUT.—The term ‘turnout’ means a point of water delivery on the Central Arizona Project aqueduct.

“(50) UNDERGROUND STORAGE.—The term ‘underground storage’ means storage of water accomplished under a project authorized under section 308(e).

“(51) UNITED STATES AS TRUSTEE.—The term ‘United States as Trustee’ means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

“(52) VALUE.—The term ‘value’ means the value attributed to water based on the greater of—

“(A) the anticipated or actual use of the water; or

“(B) the fair market value of the water.

“(53) WATER RIGHT.—The term ‘water right’ means any right in or to groundwater, surface water, or effluent under applicable law.

“(54) 1982 ACT.—The term ‘1982 Act’ means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

“(a) WATER DELIVERY.—The Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 37,800 acre-feet of water suitable for agricultural use, of which—

“(1) 27,000 acre-feet shall—

“(A) be deliverable for use to the San Xavier Reservation; or

“(B) otherwise be used in accordance with section 309; and

“(2) 10,800 acre-feet shall—

“(A) be deliverable for use to the eastern Schuk Toak District; or

“(B) otherwise be used in accordance with section 309.

“(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

“(c) DUTIES OF THE SECRETARY.—

Deadlines.

“(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

“(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

“(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

“(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

“(3) CONSTRUCTION OF NEW FARM.—

“(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

“(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for

the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

“(ii) in lieu of the actions described in clause (i), pay to the San Xavier District \$18,300,000 (adjusted as provided in section 317(a)(2)) in full satisfaction of the obligations of the United States described in clause (i).

“(B) ELECTION.—

Notification.

“(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under clause (i) or (ii) of subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council.

“(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay \$18,300,000 (adjusted as provided in section 317(a)(2)) to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

“(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

“(i) IN GENERAL.—Payment of \$18,300,000 (adjusted as provided in section 317(a)(2)) under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

“(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made), but in no event earlier than the enforceability date or January 1, 2010, whichever is later; or

“(II) not later than 240 days after the enforceability date or January 1, 2010, whichever is later, if no timely election is made.

“(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

“(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

“(d) EXTENSION OF DEADLINES.—

“(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

“(A) a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);

“(B) the inability of such a contractor, under such a contract, to carry out the contract by reason of force majeure, as defined by the Secretary in the contract;

“(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

“(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

“(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

“(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

“(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

“(A) publish a notice of the extension in the Federal Register; and

“(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

“(ii) specify a deadline that provides for a period for completion of the project before the end of the period described in clause (i).

“(e) AUTHORITY OF SECRETARY.—

“(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the eastern Schuk Toak District.

“(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

“(f) USE OF FUNDS.—

“(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

“(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

“(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

“(i) authorized by the San Xavier District Council; and

“(ii) approved by resolution of the Legislative Council of the Nation; and

“(C) shall expend the funds—

“(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

“(ii) to provide governmental services, including—

“(I) programs for senior citizens;

Federal Register,
publication.

- “(II) health care services;
 - “(III) education;
 - “(IV) economic development loans and assistance; and
 - “(V) legal assistance programs;
 - “(iii) to provide benefits to allottees;
 - “(iv) to pay the costs of activities of the San Xavier Allottees Association; or
 - “(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).
- “(2) NO LIABILITY OF SECRETARY; LIMITATION.—
- “(A) IN GENERAL.—The Secretary shall not—
- “(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or
 - “(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.
- “(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

“(a) DELIVERY OF WATER.—

“(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, the agreement of October 11, 1983, and the Tohono O’odham settlement agreement (to the extent that the settlement agreement does not conflict with this Act), to 1 or more of—

- “(A) the cooperative farm;
 - “(B) the eastern Schuk Toak District;
 - “(C) turnouts existing on the enforceability date; and
 - “(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—
- “(i) the Secretary;
 - “(ii) the operator of the Central Arizona Project; and
 - “(iii) the Nation.

“(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—

- “(A) any declaration by the Secretary of a water shortage on the Colorado River; or
 - “(B) any other occurrence affecting water delivery caused by an act or omission of—
- “(i) the Secretary;
 - “(ii) the United States; or
 - “(iii) any officer, employee, contractor, or agent of the Secretary or United States.

“(b) ACQUISITION OF LAND AND WATER.—

“(1) DELIVERY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if the Secretary, under the terms and conditions of the agreements referred to in subsection (a)(1), is unable, during any year, to deliver annually from the main project works of the Central Arizona Project any portion of the quantity of water covered by sections 304(a) and 306(a), the Secretary shall identify, acquire and deliver an equivalent quantity of water from, any appropriate source.

“(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

“(2) PRIVATE LAND AND INTERESTS.—

“(A) ACQUISITION.—

“(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire, for not more than market value, such private land, or interests in private land, that include rights in surface or groundwater recognized under State law, as are necessary for the acquisition and delivery of water under this subsection.

“(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

“(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

“(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

“(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

“(4) DELIVERY OF EFFLUENT.—

“(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

“(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

“(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

“(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

“(1) for—

“(A) the exchange of water; or

“(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

“(2) to use facilities constructed, in whole or in part, with Federal funds.

“(d) COMPENSATION AND DISBURSEMENTS.—

“(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

“(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

“(ii) the value of such quantities of water as—

“(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the irrigation system; but

“(II) are not delivered in any calendar year;

“(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

“(ii) the value of such quantities of water as—

“(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the extension to the irrigation system; but

“(II) are not delivered in any calendar year; and

“(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

“(ii) except as provided in clause (i), the value of such quantities of water as—

“(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the San Xavier Cooperative Association); but

“(II) are not delivered in any calendar year.

“(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

“(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the San Xavier Cooperative Association; and

“(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

“(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

“SEC. 306. ADDITIONAL WATER DELIVERY.

“(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the

main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

“(1) 23,000 acre-feet shall—

“(A) be delivered to, and used by, the San Xavier Reservation; or

“(B) otherwise be used by the Nation in accordance with section 309; and

“(2) 5,200 acre-feet shall—

“(A) be delivered to, and used by, the eastern Schuk Toak District; or

“(B) otherwise be used by the Nation in accordance with section 309.

“(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute \$3,000,000—

“(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

“(2) in the form of cash or in-kind goods and services.

“SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

“(a) CONDITIONS ON ACTIONS OF SECRETARY.—The Secretary shall carry out section 304(c), subsections (a), (b), and (d) of section 305, and section 306, only if—

“(1) the Nation agrees—

“(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

“(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

“(C) to comply with water management plans established by the Secretary under section 308(d);

“(D) to consent to the San Xavier District being deemed a tribal organization (as defined in section 900.6 of title 25, Code of Federal Regulations (or any successor regulations)) for purposes identified in subparagraph (E)(iii)(I), as permitted with respect to tribal organizations under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

“(E) subject to compliance by the Nation with other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations), to consent to contracting by the San Xavier District under section 311(b), on the conditions that—

“(i)(I) the plaintiffs in the Alvarez case and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

“(II) those cases have been dismissed with prejudice;

“(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery

of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

“(iii) with respect to the consent of the Nation to contracting—

“(I) the consent is limited solely to contracts for—

“(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

“(bb) the extension of the irrigation system for the cooperative farm;

“(cc) the subjugation of land to be served by the extension of the irrigation system;

“(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

“(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

“(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

“(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

“(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

“(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

“(i) the obligation of the Nation to subjugate the land in the cooperative farm that is to be served by the extension of the irrigation system under section 304(c)(2) shall be determined by the Secretary, in consultation with the Nation and the San Xavier Cooperative Association; and

“(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date

Deadlines.
Notice.
Certification.

on which the San Xavier District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

“(G) subject to business lease No. H54-16-72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972, that the Nation—

“(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

“(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

“(aa) to fulfill the obligations prescribed in the Asarco agreement; and

“(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

“(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

“(III) the groundwater withdrawn from exempt wells;

“(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

“(V) the storage credits resulting from a project authorized in section 308(e) that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation’s Reservation;

“(ii) subject to section 309(b)(2), has the right—

“(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

“(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation’s Reservation; and

“(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation’s Reservation;

“(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

“(iv) shall, on timely receipt of an order for water by a permittee under a permit for Central Arizona Project water referred to in clause (i), submit the order to—

“(I) the Secretary; or

“(II) the operating agency for the Central Arizona Project;

“(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

“(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

“(vii) shall, on timely receipt of an order for water by a permittee under a permit for water referred to in clause (v), submit the order to—

“(I) the Secretary; or

“(II) the operating agency for the Central Arizona Project; and

“(2) the Alvarez case and Tucson case have been dismissed with prejudice.

“(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

“(c) PAYMENT OF CHARGES.—The Nation shall not be responsible for payment of any water service capital charge for Central Arizona Project water delivered under section 304, subsection (a) or (b) of section 305, or section 306.

“SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

“(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

“(1) shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381); and

“(2) shall be apportioned pursuant to clauses (i) and (ii) of section 307(a)(1)(G).

“(b) WATER CODE.—Subject to this title and any other applicable law, the Nation shall—

“(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

“(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation’s Reservation;

“(3) enact and maintain—

“(A) an interim allottee water rights code that—

“(i) is consistent with subsection (a);

“(ii) prescribes the rights of allottees identified in paragraph (4); and

“(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

- “(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title; Deadline.
- “(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—
- “(A) an acknowledgement of the rights described in subsection (a);
- “(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;
- “(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation’s first right of use under section 307(a)(1)(G)(ii)(II);
- “(D) provisions for the protection of due process, including—
- “(i) a fair procedure for consideration and determination of any request by—
- “(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and
- “(II) an allottee, for a permit for use of—
- “(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or
- “(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);
- “(ii) provisions for—
- “(I) appeals and adjudications of denied or disputed permits; and
- “(II) resolution of contested administrative decisions; and
- “(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and
- “(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and
- “(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).
- “(c) WATER CODE APPROVAL.—
- “(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—
- “(A) issue a written approval of the water code; or
- “(B) provide a written notification to the Nation that— Notification.
- “(i) identifies such provisions of the water code that do not conform to subsection (b) or other applicable Federal law; and

“(ii) recommends specific corrective language for each nonconforming provision.

“(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

“(3) INTERIM AUTHORITY.—Until such time as the Nation revises the water code of the Nation in accordance with paragraph (2) and the Secretary subsequently approves the water code, the Secretary may exercise any lawful authority of the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

“(4) LIMITATION.—Except as provided in this subsection, nothing in this title requires the approval of the Secretary of the water code of the Nation (or any amendment to that water code).

“(d) WATER MANAGEMENT PLANS.—

“(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

“(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

Contracts.

“(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San Xavier Reservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

“(i) with respect to a contract between the Secretary and the San Xavier District, \$891,200; and

“(ii) with respect to a contract between the Secretary and the Nation, \$237,200;

“(B) shall, at a minimum—

“(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

“(ii) provide for—

Records.

“(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

“(II) a system for the reporting of withdrawals from each well that is not an exempt well;

“(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

“(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

“(I) between the Nation and the Arizona Department of Water Resources; and

“(II) between the Nation and the city of Tucson, Arizona;

“(v) provide for—

“(I) the efficient use of water; and

“(II) the prevention of waste;

“(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

“(vii) provide for amendments to the water plan in accordance with this title;

“(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

“(i) the San Xavier Reservation; or

“(ii) the eastern Schuk Toak District; and

“(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

“(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O’odham settlement agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

“(f) GROUNDWATER.—

“(1) SAN XAVIER RESERVATION.—

“(A) IN GENERAL.—In accordance with section 307(a)(1)(A), 10,000 acre-feet of groundwater may be pumped annually within the San Xavier Reservation.

“(B) DEFERRED PUMPING.—

“(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

“(I) may be withdrawn in a subsequent year; and

“(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O’odham settlement agreement as a debit to the deferred pumping storage account.

“(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

“(I) 50,000 acre-feet for any 10-year period;

or

“(II) 10,000 acre-feet in any year.

“(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

“(2) EASTERN SCHUK TOAK DISTRICT.—

“(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

“(B) DEFERRED PUMPING.—

“(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

“(I) may be withdrawn in a subsequent year; and

“(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O’odham settlement agreement as a debit to the deferred pumping storage account.

“(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

“(I) 16,000 acre-feet for any 10-year period;

or

“(II) 3,200 acre-feet in any year.

“(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

“(3) INABILITY TO RECOVER GROUNDWATER.—

“(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

“(i) physically exists; or

“(ii) is recoverable.

“(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

“(i) subject to paragraph 8.8 of the Tohono O’odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

“(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

“(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

“(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O’odham settlement agreement.

“(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

“SEC. 309. USES OF WATER.

“(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial,

mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

“(b) USE AREA.—

“(1) USE WITHIN NATION’S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation’s Reservation—

“(A) the water supplies acquired under sections 304(a) and 306(a);

“(B) groundwater supplies; and

“(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

“(2) USE OUTSIDE THE NATION’S RESERVATION.—

“(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation’s Reservation only in accordance with this title.

“(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

“(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation’s Reservation, but within the State, only in accordance with State law.

“(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation’s Reservation.

“(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

“(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES.—

“(1) IN GENERAL.—With respect to users outside the Nation’s Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

“(A) this subsection; and

“(B) subsection (b)(2).

“(2) LIMITATION ON ALIENATION.—The Nation shall not permanently alienate any water right under paragraph (1).

“(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

“(4) CONTRACT.—An assignment, exchange, lease, option, or temporary disposal described in paragraph (1) shall be executed only in accordance with a contract that—

“(A) is accepted by the Nation;

“(B) is ratified under a resolution of the Legislative Council of the Nation;

“(C) is approved by the United States as Trustee; and

“(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

Applicability.

“(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O’odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

“(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

“(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

“(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

“(1) any water right of the Nation, as established under this title or any other applicable law; or

“(2) any water use right recognized under this title, including—

“(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

“(B) the allottee use rights referred to in section 308(a).

“(g) AMENDMENT TO AGREEMENT OF DECEMBER 11, 1980.—The Secretary shall amend the agreement of December 11, 1980, to provide that—

“(1) the contract shall be—

“(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d)); and

“(B) without limit as to term;

“(2) the Nation may, with the approval of the Secretary—

“(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

“(B) renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years;

“(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease

or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

“(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

“(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

“(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

“(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

“(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

“(7) the allocated costs associated with the construction of the delivery and distribution system—

“(A) shall be nonreimbursable; and

“(B) shall be excluded from any repayment obligation of the Nation;

“(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

“(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

“(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980, for the Sif Oidak District.

“(h) RATIFICATION OF AGREEMENTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, each agreement described in paragraph (2), to the extent that the agreement is not in conflict with this Act—

“(A) is authorized, ratified, and confirmed; and

“(B) shall be executed by the Secretary.

“(2) AGREEMENTS.—The agreements described in this paragraph are—

“(A) the Tohono O’odham settlement agreement, to the extent that—

“(i) the Tohono O’odham settlement agreement is consistent with this title; and

“(ii) parties to the Tohono O’odham settlement agreement other than the Secretary have executed that agreement;

“(B) the Tucson agreement (attached to the Tohono O’odham settlement agreement as exhibit 12.1); and

“(C)(i) the Asarco agreement (attached to the Tohono O’odham settlement agreement as exhibit 13.1 to the Tohono O’odham settlement agreement);

“(ii) lease No. H54-0916-0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and

“(iii) any new well site lease as provided for in the Asarco agreement; and

“(D) the FICO agreement (attached to the Tohono O’odham settlement agreement as Exhibit 14.1).

“(3) RELATION TO OTHER LAW.—

“(A) ENVIRONMENTAL COMPLIANCE.—In implementing an agreement described in paragraph (2), the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

“(B) EXECUTION OF AGREEMENT.—Execution of an agreement described in paragraph (2) by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing an agreement described in paragraph (2).

“(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

“(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

“(j) USE OF GROSS PROCEEDS.—

“(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term ‘gross proceeds’ means all proceeds, without reduction, received by the Nation from—

“(A) the Tucson interim water lease;

“(B) the Asarco agreement; and

“(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation; provided, however, that gross proceeds shall not include proceeds from the transfer of Central Arizona Project water in excess of 20,000 acre feet annually pursuant to any agreement under this

subparagraph or under the Asarco agreement referenced in subparagraph (B).

“(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

“(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

“SEC. 310. COOPERATIVE FUND.

“(a) REAUTHORIZATION.—

“(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

“(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

“(A)(i) \$5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

“(ii) such amount, not to exceed \$32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

“(B) any additional Federal funds deposited to the cooperative fund under Federal law;

“(C) \$5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

“(i) \$2,750,000 was contributed by the State;

“(ii) \$1,500,000 was contributed by the city of Tucson; and

“(iii) \$1,000,000 was contributed by—

“(I) the Anamax Mining Company;

“(II) the Cyprus-Pima Mining Company;

“(III) the American Smelting and Refining Company;

“(IV) the Duval Corporation; and

“(V) the Farmers Investment Company;

“(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

“(E) all revenues received from—

“(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

“(ii) the sale or lease of storage credits derived from the storage of that effluent.

“(b) EXPENDITURES FROM FUND.—

“(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

“(A) the variable costs relating to the delivery of water under sections 304 through 306;

“(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the

Lower Colorado River Basin Development Fund to pay those costs;

“(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

“(D) any compensation provided by the Secretary under section 305(d).

“(2) EXPENDITURE OF INTEREST.—Except as provided in paragraph (3), the Secretary may expend only interest income accruing to the cooperative fund, and that interest income may be expended by the Secretary, without further appropriation.

“(3) EXPENDITURE OF REVENUES.—Revenues described in subsection (a)(2)(E) shall be available for expenditure under paragraph (1).

“(c) INVESTMENT OF AMOUNTS.—

“(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

“(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

“(d) TRANSFERS OF AMOUNTS.—

“(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

“(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

“(e) DAMAGES.—Damages arising under this title or any contract for the delivery of water recognized by this title shall not exceed, in any given year, the amounts available for expenditure in that year from the cooperative fund.

“SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

“(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

“(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

“(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

“(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying

out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

“(c) GROUNDWATER MONITORING PROGRAMS.—

Deadlines.

“(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

“(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

“(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than \$215,000.

“(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

“(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

“(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than \$175,000.

“(3) DUTIES OF SECRETARY.—

“(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

“(i) the Nation;

“(ii) the San Xavier District and Schuk Toak District, respectively; and

“(iii) appropriate State and local entities.

“(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

“(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

“(1) within the Nation’s Reservation; but

“(2) outside the Tucson management area.

“(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

“(1) give first priority to the needs of the Nation in providing that assistance; and

“(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements,

and joint venture projects at a level that the entity determines will—

“(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

“(B) contribute significantly to the economy of the Nation.

“(f) ASARCO LAND EXCHANGE STUDY.—

Deadline.

“(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees’ Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

“(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

“(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

“(2) COMPONENTS.—The study under paragraph (1) shall include—

“(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

“(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

“(3) LIMITATION ON EXPENDITURES.—In carrying out this subsection, the Secretary shall expend not more than \$250,000.

“SEC. 312. WAIVER AND RELEASE OF CLAIMS.

“(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O’odham settlement agreement shall provide that the Nation waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

“(A) the State (or any agency or political subdivision of the State);

“(B) any municipal corporation; and

“(C) any other person or entity;

“(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

“(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner

not in violation of the Tohono O'odham settlement agreement or State law against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity; and

“(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity.

“(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

“(A) the State (or any agency or political subdivision of the State);

“(B) any municipal corporation; and

“(C) any other person or entity (other than the Nation);

“(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

“(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity; and

“(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement with respect to uses within the San Xavier Reservation).

“(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O’odham settlement agreement shall provide that the United States as Trustee waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area against—

“(A) the Nation;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(2) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O’odham settlement agreement or State law against—

“(A) the Nation;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement with respect to uses within the San Xavier Reservation); and

“(4) claims against Asarco on behalf of the allottee class for the fourth cause of action in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (D. Ariz., filed April 21, 1993)), in accordance with the terms and conditions of the Asarco agreement.

“(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

“(1) shall have the right to assert any claims granted by a State law implementing the groundwater protection program described in paragraph 8.8 of the Tohono O’odham settlement agreement; and

“(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction

over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

“(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O’odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

“(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

“(1) IN GENERAL.—As of the enforceability date—

“(A) the water rights and other benefits granted or confirmed by this title and the Tohono O’odham settlement agreement shall be in full satisfaction of—

“(i) all claims for water rights and claims for injuries to water rights of the Nation; and

“(ii) all claims for water rights and injuries to water rights of the allottees;

“(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement; and

“(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O’odham settlement agreement.

“(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

“(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

“(i) the United States;

“(ii) the State (or any agency or political subdivision of the State);

“(iii) any municipal corporation; or

“(iv) any other person or entity; or

“(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

“(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

“(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

“(i) the claim has been waived and released in the Tohono O’odham settlement agreement; and

“(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

“(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall

be offset by benefits received by that fee owner of allotted land under this title.

“(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

“(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement.

“(g) CONSENT.—

“(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

“(2) REMEDY.—

“(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

“(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

“(i) made available by any Act of Congress; and

“(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

“(3) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

“(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

“(1) JURISDICTION.—

“(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

“(i) civil actions relating to the interpretation and enforcement of—

“(I) this title;

“(II) the Tohono O’odham settlement agreement; and

“(III) agreements referred to in section 309(h)(2); and

“(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O’odham settlement agreement.

“(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

“(2) WAIVER.—

“(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

“(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

“(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

“(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

“(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

“(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

“(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys’ fees, or other monetary relief.

“(3) NATION AS A PARTY.—

“(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation.

“(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

“(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

“(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement—

“(A) with respect to the use of those resources by—

“(i) the Nation;

“(ii) individual members of the Nation;

“(iii) districts of the Nation; and

“(iv) allottees; and

“(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

“(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

Deadline.
Notice.

“(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

“(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

“SEC. 313. AFTER-ACQUIRED TRUST LAND.

“(a) IN GENERAL.—Except as provided in subsection (b)—

“(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation’s Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

“(2) lands taken into trust under paragraph (1) shall include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

“(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

“(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

“SEC. 314. NONREIMBURSABLE COSTS.

“(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

“(1) shall be nonreimbursable; and

“(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

“(b) CLAIMS BY UNITED STATES.—The United States shall—

“(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

“(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

“(B) the delivery of Central Arizona Project water for any use authorized under this title; or

“(C) the implementation of this title;

“(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

“(A) is known as the ‘San Lucy Farm’; and

“(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

“(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

“(A) trust or allotted land within the Nation’s Reservation; or

“(B) the land described in paragraph (2).

“SEC. 315. TRUST FUND.

“(a) **REAUTHORIZATION.**—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of \$15,000,000 made under that section, for use in carrying out this title.

“(b) **EXPENDITURE AND INVESTMENT.**—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

“(1) expended by the Nation for any governmental purpose; and

“(2) invested by the Nation in accordance with such policies as the Nation may adopt.

“(c) **RESPONSIBILITY OF SECRETARY.**—The Secretary shall not—

“(1) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

“(2) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

“(d) **CONDITIONS OF TRUST.**—

“(1) **RESERVE FOR THE COST OF SUBJUGATION.**—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

“(A) the principal amount of at least \$3,000,000; and

“(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

“(i) the date on which full payment of such costs has been made; or

“(ii) the date that is 10 years after the enforceability date.

“(2) **PAYMENT.**—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

“(3) **LIMITATION ON RESTRICTIONS.**—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

“(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

“(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

“SEC. 316. MISCELLANEOUS PROVISIONS.

“(a) **IN GENERAL.**—Nothing in this title—

“(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

“(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

“(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O’odham settlement agreement;

“(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

“(5) affects the obligations of the parties under the Agreement of December 11, 1980, with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

“(6)(A) applies to any exempt well;

“(B) prohibits or limits the drilling of any exempt well within—

“(i) the San Xavier Reservation; or

“(ii) the eastern Schuk Toak District; or

“(C) subjects water from any exempt well to any pumping limitation under this title; or

“(7) diminishes or abrogates rights to use water under—

“(A) contracts of the Nation in existence before the enforceability date; or

“(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

“(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

“(c) LIMITATION ON LIABILITY OF UNITED STATES.—

“(1) IN GENERAL.—The United States shall have no trust or other obligation—

“(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act; or

“(B) to review or approve the expenditure of those funds.

“(2) INDEMNIFICATION.—The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

“SEC. 317. AUTHORIZED COSTS.

“(a) IN GENERAL.—There are authorized to be appropriated—

“(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

“(A) \$3,500,000; and

“(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

“(2) \$18,300,000 in lieu of construction to implement section 304(c)(3)(B), including an adjustment representing interest that would have been earned if this amount had been deposited in the cooperative fund during the period beginning on January 1, 2008, and ending on the date the amount is actually paid to the San Xavier District;

“(3) \$891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d);

“(4) \$237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d);

“(5) \$4,000,000 to complete the water resources study under section 311(d);

“(6) \$215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

“(7) \$175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

“(8) \$250,000 to complete the Asarco land exchange study under section 311(f); and

“(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

“(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).”

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) shall apply to this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that—

Federal Register,
publication.

(1)(A) to the extent that the Tohono O’odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O’odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

(B) the Tohono O’odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) have executed those agreements;

(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(4) final dismissal with prejudice has been entered in each of the Alvarez case and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

(5) the judgment and decree attached to the Tohono O’odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila

River adjudication proceedings, and that judgment and decree have become final and nonappealable;

(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

(A) \$18,300,000 to implement section 304(c)(3);

(B) \$891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(C) \$237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(D) \$4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(E) \$215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(F) \$175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301); and

(G) \$250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(7) the State has enacted legislation that—

(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

(C) enables the State to carry out section 306(b); and

(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

(9) a final judgment has been entered in *Central Arizona Water Conservation District v. United States* (No. CIV 95-625-TUC-WDB(EHC), No. CIV 95-1720-PHX-EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

Deadline.

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

- (1) the 1982 Act shall remain in full force and effect;
- (2) this title shall not take effect; and
- (3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 401. EFFECT OF TITLES I, II, AND III.

None of the provisions of title I, II, or III or the agreements, attachments, exhibits, or stipulations referenced in those titles shall be construed to—

- (1) amend, alter, or limit the authority of—

- (A) the United States to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its capacity as trustee for the San Carlos Apache Tribe, its members and allottees, or in any other capacity on behalf of the San Carlos Apache Tribe, its members, and allottees, in any judicial, administrative, or legislative proceeding; or

- (B) the San Carlos Apache Tribe to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its own behalf or on behalf of its members and allottees in any judicial, administrative, or legislative proceeding consistent with title XXXVII of Public Law 102-575 (106 Stat. 4600, 4740); or

- (2) amend or alter the CAP Contract for the San Carlos Apache Tribe dated December 11, 1980, as amended April 29, 1999.

SEC. 402. ANNUAL REPORT.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of efforts to reach a negotiated agreement covering the Gila River water rights claims of the San Carlos Apache Tribe.

(b) **TERMINATION.**—This section shall be of no effect after the later of—

- (1) the date that is 3 years after the date of enactment of this Act; or
- (2) the date on which the Secretary submits a third annual report under this section.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

(a) **SAN CARLOS APACHE TRIBE.**—There is authorized to be appropriated to assist the San Carlos Apache Tribe in completing comprehensive water resources negotiations leading to a comprehensive Gila River water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, \$150,000 for fiscal year 2006.

(b) **WHITE MOUNTAIN APACHE TRIBE.**—There is authorized to be appropriated to assist the White Mountain Apache Tribe in

completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, \$150,000 for fiscal year 2006.

(c) OTHER ARIZONA INDIAN TRIBES.—There is authorized to be appropriated to the Secretary to assist Arizona Indian tribes (other than those specified in subsections (a) and (b)) in completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Arizona Indian tribes, including soil and water technical analyses, legal, paralegal, and other related efforts, \$300,000 for fiscal year 2006.

(d) NO LIMITATION ON OTHER FUNDING.—Amounts made available under subsections (a), (b), and (c) shall not limit, and shall be in addition to, other amounts available for Arizona tribal water rights negotiations leading to comprehensive water settlements.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 437 (H.R. 885):

HOUSE REPORTS: No. 108-793 (Comm. on Resources).

SENATE REPORTS: No. 108-360 (Comm. on Energy and Natural Resources).

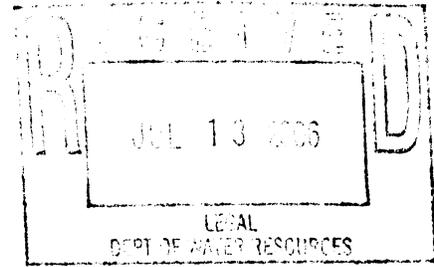
CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 10, considered and passed Senate.

Nov. 17, considered and passed House.



APPENDIX D: Gila Adjudication Filings



1 Marvin B. Cohen (Bar No. 000923)
Judith M. Dworkin (Bar No. 010849)
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Paradise Valley, Arizona 85253
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Attorney for Farmers Investment Co.
8 and Farmers Water Co.

9 Patrick Barry (Bar No. 006056)
UNITED STATES OF AMERICA
10 DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
11 Indian Resources Section
P.O. Box 44378
12 Washington, D.C. 20026-4378
Telephone: (202) 305-0254
13 Attorney for United States of America

14
15 **SUPERIOR COURT OF ARIZONA**
16 **MARICOPA COUNTY**

17
18 **IN RE THE GENERAL**
19 **ADJUDICATION OF ALL RIGHTS TO**
20 **USE WATER IN THE GILA RIVER**
21 **SYSTEM AND SOURCE.**

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

APPLICATION FOR AN ORDER FOR
SPECIAL PROCEEDINGS TO APPROVE
AN INDIAN WATER RIGHTS
SETTLEMENT STIPULATION

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26 **DESCRIPTIVE SUMMARY:** In accordance with the Special Procedural Order

27 issued by the Supreme Court of Arizona on May 16, 1991 ("Special Procedural Order"), this is an
28 application for an order for special proceedings to approve (i) a Stipulation dated July 11, 2006 to

1 which the undersigned are parties and (ii) the Judgment and Decree attached as Exhibit B to the
2 Stipulation ("Proposed Judgment"). The Stipulation and Judgment and Decree settle the federally
3 reserved and other water rights within the Tucson Management Area of (i) the Tohono O'odham
4 Nation ("Nation"), (ii) individual Indian trust allotment landowners located within the San Xavier
5 Indian Reservation ("Allottees") and (iii) the United States acting on behalf of the Nation and the
6 Allottees. The Tucson Management Area is defined as the Tucson Active Management Area, the
7 Santa Cruz Active Management Area and that portion of the Upper Santa Cruz Basin not within
8 either of the Active Management Areas.

9 **STATEMENT OF CLAIMANT NUMBERS:** City of Tucson ("Tucson"): 39-09-72680
10 and 39-09-72681. Farmers Investment Co.: 39-09-77742 and 39-09-77743. United States on
11 behalf of the Tohono O'odham (Papago at Sells) Indian Community, (Papago) San Xavier Indian
12 Community, and the (Papago) Schuk Toak District of the Sells Papago Reservation: 39-74333,
13 39-74335 and 39-74336. Asarco Incorporated ("Asarco"): 39-09-71594, 39-09-71595, 39-09-
14 71687, 39-09-7168, 39-09-71690, 39-09-73094, 39-09-73206, 39-09-73725 through 73791, 39-09-
15 79038 through 39-09-79041, 39-09-79589, 39-09-79638 and 39-09-79639.

16 **DATE OF FILING OF DOCUMENT:** July 11, 2006

17 **NUMBER OF PAGES OF DOCUMENT:** 7 (excluding attachments)

18 1. The applicants are the United States of America on behalf of the Nation and the
19 Allottees, Tucson, and Farmers Investment Co. and Farmers Water Co. (collectively, "FICO").

20 2. In accordance with the Special Procedural Order, the applicants seek proceedings to
21 obtain a final judgment ("Proposed Judgment") approving a Stipulation dated July 11, 2006
22 ("Stipulation"), which Stipulation and Proposed Judgment set forth the principal terms of the
23 Tohono O'odham Settlement Agreement ("Settlement Agreement"), which is that settlement
24 agreement between the parties executed as of April 30, 2003 and (i) restated from the April 30,
25 2003 Agreement, (ii) revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478
26 and (iii) executed by each party on the date shown next to the party's signature. The applicants are
27 parties to the Stipulation and to the Settlement Agreement. The Stipulation and Settlement
28 Agreement were entered into in good faith. The Stipulation is filed on even date herewith. All

1 defined terms herein, which have not been separately defined, have the meaning specified in the
2 Settlement Agreement. The Settlement Agreement and Proposed Judgment are attached as Exhibits
3 A and B to the Stipulation.

4 3. Copies of the Stipulation with attached Settlement Agreement and Proposed
5 Judgment will be mailed to and available for inspection in the offices of the Clerks of Superior
6 Court in every Arizona county and of the Arizona Department of Water Resources promptly upon
7 issuance of the Order for Special Proceedings.

8 4. The claimed water rights that are described in the Settlement Agreement, the
9 Stipulation and Proposed Judgment, including the water rights which are the subject of statement
10 of claimant numbers 39-74333, 39-74335 and 39-74336 by the United States, are within the
11 jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of Arizona*,
12 463 U.S. 545 (1983), and *United States v. Superior Court et al.*, 144 Ariz. 265, 697 P.2d 658
13 (1985).

14 5. The claims of settling parties Tucson, FICO and Asarco in this adjudication
15 proceeding (the "Gila River Adjudication") are adverse to claimant numbers 39-74333, 39-74335
16 and 39-74336 filed by the United States.

17 6. The Agreement has been confirmed by the Southern Arizona Water Rights
18 Settlement Amendments Act of 2004, Title III of Public Law 108-451 ("Settlement Act").

19 7. The Agreement has been found, in all respects, to be fair, reasonable, adequate and
20 in the best interests of the Allottees by the U.S. District Court for the District of Arizona in *United*
21 *States v. City of Tucson*, Case No. CV 75-39-TUC FRZ. The Judgment/Partial Judgment dated
22 June 14, 2006 is attached hereto as Exhibit 1.

23 8. Special circumstances prevent the consideration of the Stipulation and the Proposed
24 Judgment in the normal course of the Gila River Adjudication. Section 302 of the Settlement Act
25 provides that the Settlement Act is void unless the Secretary of the Interior publishes a statement of
26 findings in the Federal Register on or before December 31, 2007 that, among other requirements,
27 the Proposed Judgment has been approved in this proceeding. Time does not permit this Court to
28 consider these claims in the normal course of the Gila River Adjudication.

SOMACH, SIMMONS & DUNN

By  for _____
Robert B. Hoffman
Attorneys for Farmers Investment Co.
and Farmers Water Co.

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UNITED STATES OF AMERICA

By 

Patrick Barry
Attorney, Department of Justice
Environmental and Natural Resources Division
Indian Resource Section
P.O. Box 44378
Washington, D.C. 20026-4378
(202) 305-0254

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1 COPY OF THE FOREGOING MAILED
2 this ____ day of _____, 2006, to:

3 Gila River Adjudication W-1, W-2, W-3, W-4
4 Court Approved Mailing List dated July 7, 2006.
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EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America, et al.,
Plaintiffs,
vs.
City of Tucson, et al.,
Defendants.

Felicia Alvarez, et al.,
Plaintiffs,
vs.
City of Tucson, et al.,
Defendants.

No. CV 75-039-TUC-FRZ
(consolidated with CV 75-051)
FINAL JUDGMENT

No. CV 93-039-TUC-FRZ
PARTIAL JUDGMENT

This matter having come before the court for hearing, pursuant to the Order of the Court, dated October 12, 2005, on the Joint Motion of plaintiffs and defendants for approval of the settlement set forth in the Tohono O’odham Settlement Agreement (“Settlement Agreement”) dated April 30, 2003, amended to conform with Public Law 108-451, 118 Stat. 3478, due and adequate notice having been given to the Plaintiff Allottee Classes as required in the Order, the Court having considered all papers filed, and argument and evidence provided at the proceeding and otherwise being fully informed in the matter, and good cause appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. This Final Judgment in Case No. CV 75-039 TUC FRZ (Consolidated with CV
3 No. 75-051) and Partial Judgment in Case No. CV 93-039 TUC FRZ (collectively, the
4 “Judgment”) incorporates by reference the definitions set forth in the Settlement Agreement,
5 and all terms used herein shall have the same meanings as set forth in the Settlement
6 Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and over
8 all parties to this litigation, including all members of the Plaintiff Allottee Classes.

9 3. This Court hereby approves the settlement set forth in the Settlement
10 Agreement (the “Settlement”) and finds that the Settlement is, in all respects, fair, reasonable,
11 adequate and in the best interests of the Plaintiff Allottee Classes. Consummation of the
12 Settlement in accordance with the terms and provisions of the Settlement Agreement is
13 approved.

14 4. The Settlement is binding upon: all parties to this consolidated litigation
15 including (a) the Tohono O’odham Nation, (b) all persons (i) that hold a beneficial real
16 property interest in an Indian allotment that is located within the San Xavier Reservation and
17 is held in trust by the United States or (ii) that hold fee simple title in real property on the San
18 Xavier reservation that, at any time before the date on which the person acquired fee simple
19 title, was held in trust by the United States as an Indian allotment and (iii) who have not
20 timely elected to be excluded from the Classes as provided by the Court in its Order dated
21 October 12, 2005, (c) the United States, (d) the city of Tucson, (e) Farmers Investment
22 Company and the Farmers Water Company (together referred to as “FICO”), (f) Asarco
23 Mining Company (“Asarco”) and all other defendant parties.

24 5. By reason of the Settlement, members of the Allottee Classes (along with the
25 San Xavier District) are entitled to:

26 a. a first right of beneficial use to 35,000 acre feet per year of Central Arizona
27 Project (“CAP”) water of the 50,000 acre feet per year of CAP water deliverable to
28 the San Xavier District,

- 1 b. 10,000 acre feet per year of groundwater pumping right,
- 2 c. a right to “bank” in a deferred pumping storage account groundwater not
3 pumped in any year and pump up to an additional 10,000 acre feet per year or a
4 maximum of 50,000 acre feet in any 10-year period of deferred groundwater pumping
5 credits,
- 6 d. a right to pump groundwater from Exempt Wells,
- 7 e. a right to the use of direct recharge credits to pump water from the ground
8 that are not marketable under state law,
- 9 f. protections for due process and other rights pursuant to an allottee water
10 rights code,
- 11 g. the right to have the San Xavier District elect to accept a cash-out of
12 \$18,300,000 (plus interest from January 1, 2008 until the cash-out) in lieu of
13 construction of a new farm within the San Xavier Reservation, funds to be controlled,
14 managed and invested by the San Xavier District and used for governmental and
15 social services for the San Xavier community and the allottees,
- 16 h. state limitations on approval of new pumping from the area in close
17 proximity to the San Xavier Reservation,
- 18 i. the sum of up to \$891,200 for a water management plan for the San Xavier
19 Reservation,
- 20 j. the sum of \$300,000 from the city of Tucson in 5 annual installments of
21 \$60,000 for the repair of Sinkholes that have occurred on the San Xavier Reservation,
- 22 k. an agreement with FICO to limit pumping by FICO to no more than 850
23 acre feet per year from within 2 miles of the San Xavier Reservation and to further
24 limit pumping to 36,000 acre feet per year not including water stored in the ground
25 from all FICO’s lands,
- 26 l. an agreement with Asarco to use CAP water thereby limiting Asarco’s
27 groundwater pumping on and near the San Xavier Reservation, and
- 28 m. a right to benefit from the sale of marketable groundwater credits obtained

1 through the use by Asarco of CAP rather than groundwater.

2 6. In exchange for the benefits provided in the Settlement and effective on the
3 Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives and
4 releases:

5 a. any and all past, present, and future claims for Water Rights (including
6 claims based on aboriginal occupancy) arising from time immemorial and, thereafter,
7 forever, claims for Injury to Water Rights from time immemorial through the
8 Enforceability Date, and claims for future Injury to Water Rights for land within the
9 San Xavier Reservation, against the State (or any agency or political subdivision of
10 the State), any municipal corporation; and any other person or entity (other than the
11 Nation);

12 b. any and all claims for Water Rights arising from time immemorial and,
13 thereafter, forever, claims for Injury to Water Rights arising from time immemorial
14 through the Enforceability Date, claims for failure to protect, acquire, or develop
15 Water Rights for land within the San Xavier Reservation from time immemorial
16 through the Enforceability Date, against the United States, in any capacity, (including
17 any agency, officer, and employee of the United States);

18 c. any and all claims for Injury to Water Rights arising after the
19 Enforceability Date for land within the San Xavier Reservation resulting from the off-
20 Reservation diversion or use of water in a manner not in violation of the Settlement
21 or State law against the United States, in any capacity, the State (or any agency or
22 political subdivision of the State), any municipal corporation, and any other person
23 or entity;

24 d. any and all past, present, and future claims arising out of or relating to the
25 negotiation or execution of this Agreement or the negotiation or enactment of the
26 SAWRSA Amendments, against the United States, the State (or any agency or
27 political subdivision of the State), any municipal corporation; and any other person
28 or entity; and

1 e. any and all past, present, and future claims for Water Rights arising from
2 time immemorial and, thereafter, forever, and claims for Injury to Water Rights
3 arising from time immemorial through the Enforceability Date, against the Nation
4 (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308
5 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall
6 retain rights to share in the water resources granted or confirmed under the SAWRSA
7 Amendments and this Agreement with respect to uses within the San Xavier
8 Reservation).

9 7. In exchange for the benefits provided in the Tucson Agreement and effective
10 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
11 waives and releases:

12 a. any and all claims against the city of Tucson (including any agency, officer
13 and employee of the City) for injuries to land within the Tucson Management Area
14 resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other
15 laws which may otherwise have been enforceable by money damages, declaratory
16 relief, injunction, or other remedy arising from time immemorial to the Enforceability
17 Date and thereafter forever; and

18 b. any and all past, present and future claims against the United States
19 (including any agency, officer and employee of the United States) for injuries to land
20 within the Tucson Management Area resulting from Sinkholes, Land Subsidence or
21 erosion caused by or resulting from the actions or inactions of the City of Tucson
22 under Federal, State and other laws which may otherwise have been enforceable by
23 money damages, declaratory relief, injunction, or other remedy.

24 8. In exchange for the benefits provided in the Asarco Agreement and effective
25 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
26 waives and releases:

27 a. all claims against Asarco arising out of Asarco's withdrawal of water from
28 beneath the ground within the Tucson Management Area from time immemorial

1 through the Enforceability Date; and

2 b. all claims against Asarco that may arise after the Enforceability Date to the
3 extent that such claims arise out of Asarco's withdrawal of water within the Tucson
4 Management Area pursuant to its existing Type 1 and Type 2 state law water rights
5 and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-
6 802.01, except as such rights are agreed to be limited in the Settlement.

7 9. In exchange for the benefits provided in the FICO Agreement and effective on
8 the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives
9 and releases:

10 a. all claims against FICO arising out of FICO's withdrawal of water from
11 beneath the ground within the Tucson Management Area from time immemorial
12 through the Enforceability Date; and

13 b. all claims against FICO that may arise after the Enforceability Date to the
14 extent that such claims arise out of FICO's withdrawal of water within the Tucson
15 Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law
16 water rights and withdrawals of stored water as defined on the Enforceability Date in
17 A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

18 10. With respect to the releases contained in the Settlement, the Court finds that
19 the Plaintiff Allottee Classes expressly understand and agree that the Settlement fully and
20 finally releases and forever resolves the matters released and discharged in paragraphs 6
21 through 9 above and in the Settlement Agreement, including those which may be unknown,
22 unanticipated or unsuspected. Each Plaintiff Allottee Class acknowledges that it is aware
23 that the class members may hereafter discover facts relevant to the subject matter of this
24 Settlement, but that it is the intention of each member of the Plaintiff Allottee Class hereby
25 to fully, finally and forever settle and release all of the claims, disputes and differences
26 known or unknown, suspected or unsuspected, except as otherwise expressly provided
27 herein.

28 11. The Defendant parties to the Settlement agree that the Settlement represents

1 a compromise of disputed claims without admission of any fact or allegation.

2 12. Following entry of this Judgment, the representatives of the Plaintiff Allottee
3 Classes shall execute the Settlement Agreement on behalf of the members of the respective
4 classes.

5 13. This Judgment shall be an exhibit to the Stipulation and Request for Entry of
6 Judgment and Decree in the Arizona state court adjudication proceeding entitled In re the
7 General Adjudication of All Rights to Use Water in the Gila River System and Source, No.
8 W-1, W-2, W-3 and W-4 (the "Gila River Adjudication Court").

9 14. With the exception of the use of this Judgment in the Gila River Adjudication
10 Court, neither this Judgment nor any other order entered in this consolidated litigation shall
11 constitute an admission of liability or of any other fact by any party, and no such document
12 or order shall have any res judicata, collateral estoppel or issue preclusive effect in any other
13 or subsequent proceeding.

14 15. The Settlement Agreement and all exhibits and attachments thereto including
15 the separate agreements referred to as the Tucson Agreement, the FICO Agreement and the
16 Asarco Agreement are incorporated herein by this reference and are made a part of this
17 Judgment. This Judgment does not diminish the rights and obligations of the parties under
18 the Settlement Agreement.

19 16. The above-captioned case of *United States v. Tucson*, CV 75-039 TUC FRZ
20 (consolidated with CV 75-051) and Causes of Action 1 through 3 of *Alvarez v. Tucson*, CV
21 93-039 TUC FRZ, are dismissed with prejudice effective upon the publication by the
22 Secretary of the Interior of a notice in the Federal Register of completion of all actions
23 necessary to make the settlement effective as required by Section 302(b) of the Arizona
24 Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478. Without limiting the
25 generality and legal effect of the foregoing, the dismissal with prejudice extends to all claims
26 ever asserted in this Consolidated Litigation individually or on behalf of the Plaintiff Allottee
27 Classes except those claims raised in Causes of Action 4 and 5 of *Alvarez v. Tucson*, CV 93-
28 039 TUC FRZ.

1 17. All members of the Plaintiff Allottee Classes as of January 14, 2006 shall
2 conclusively be deemed to be and remain members of the Plaintiff Allottee Classes, to have
3 given the releases described in Paragraphs 6 through 9 above, and to be bound by the
4 Settlement and this Judgment.

5 18. All members of the Plaintiff Allottee Classes are barred and permanently
6 enjoined from instituting, asserting or prosecuting, directly, representatively, derivatively or
7 in any other capacity, any claims against any of the Released Parties.

8 19. The Notice given to the Plaintiff Allottee Classes of the Settlement as described
9 in the Joint Motion and the Order constituted the best notice practicable under the
10 circumstances. The Notice provided due and adequate notice of these proceedings and of the
11 matters set forth in the Notice, including the Settlement set forth in the Joint Motion, to all
12 persons entitled to such Notice, and the Notice fully satisfied the requirements of due process
13 and applicable law.

14 20. The Court having considered any objections filed by members of the Plaintiff
15 Allottee Classes to entry of this Judgment, and having found those objections, if any, to be
16 without merit in the circumstances, all such objections are overruled and denied.

17 21. Upon publication of the notice in the Federal Register identified in paragraph
18 16, the parties are directed to file a copy of the Federal Register notice with the Court.

19 22. Causes of Action 4 and 5 of *Alvarez v. Tucson* are not dismissed.

20 23. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court
21 further expressly finds and determines that there is no just reason for delay and therefore
22 expressly directs that this Judgment be entered as a final judgment.

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24 DATED this 14th day of June, 2006.

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FRANK R. ZAPATA
United States District Judge

EXHIBIT 2

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

**IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS TO
USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE.**

**No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)**

CONTESTED CASE NO. W1-208

**ORDER FOR SPECIAL PROCEEDINGS
FOR CONSIDERATION OF THE TOHONO
O'ODHAM NATION WATER RIGHTS
SETTLEMENT**

Contested Case Name: *In re Proposed Tohono O'odham Nation Water Rights
Settlement.*

HSR Involved: None.

Descriptive Summary: Order of Judge Eddward P. Ballinger, Jr., approving application by Applicants filed July 11, 2006, to commence special proceedings to consider the Settlement of the claim for water rights within the Tucson Management Area of the Tohono O'odham Nation and individual Indian trust allotment landowners ("Allottees") and of the United States acting on behalf of the Nation and the Allottees. The Tucson Management Area is (A) that area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 and subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area and (B) the portion of the Upper Santa Cruz Basin that is not located within the area described in (A) above.

1 **Date of Filing:** July 11, 2006.

2 **Number of Pages:** 8 without attachments.

3 This matter came before the Court on July 11, 2006, upon the application of the
4 United States of America, the City of Tucson and Farmers Investment Co. (“Applicants”)
5 (Applicants and the State of Arizona, ASARCO, the Nation and the Allottees are
6 hereinafter referred to as the “Settling Parties”) for an order for special proceedings,
7 pursuant to the Special Procedural Order Providing for the Approval of Federal Water
8 Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court
9 on May 16, 1991. The application shall be referred to hereinafter as the “Application for
10 Special Proceedings.” The Supreme Court’s May 16, 1991 Order shall be referred to
11 hereinafter as the “Special Procedural Order.”

12 Entry of an order for special proceedings is requested for the Court to consider a
13 stipulation filed on July 11, 2006 (the "Stipulation"), which sets forth the terms of the
14 Settlement Agreement, and incorporates and attaches as exhibits thereto copies of: (1) an
15 agreement settling all claims for water rights of the Nation, the Allottees and United States
16 on behalf of the Nation and the Allottees within the area defined as the Tucson
17 Management Area (the "Settlement Agreement") and (2) a proposed judgment and decree
18 (“Proposed Judgment”) adjudicating the water rights of the Nation, the Allottees and the
19 United States on behalf of the Nation and the Allottees within the Tucson Management
20 Area, as established in the Settlement Agreement. The Court, having considered the
21 Application for Special Proceedings ex parte, as is authorized by paragraph B(1) of the
22 Special Procedural Order, finds the following:

23 1. The Settling Parties have reached a proposed settlement (“Settlement”) of all
24 claims of the Nation, the Allottees and the United States on behalf of the Nation and the
25 Allottees for water rights within the Tucson Management Area, whose claimed water rights
26 are subject to determination in this proceeding (the “Gila River Adjudication”). Congress
27 ratified the Settlement in passing the Southern Arizona Water Rights Settlement
28 Amendments Act of 2004, Title III of Public Law.108-451 (“Settlement Act”). The U.S.

1 District Court for the District of Arizona found the Settlement, in all respects, to be fair,
2 reasonable adequate and in the best interests of the Allottees. *United States v. City of*
3 *Tucson*, Case No. CV-75-39 TUC FRZ, Final Judgment/Partial Judgment, June 14, 2006 is
4 attached as Exhibit 1 to the Application.

5 2. The Application for Special Proceedings satisfies the requirements of
6 paragraph B(1) of the Special Procedural Order issued by the Arizona Supreme Court as it
7 contains: (1) the Stipulation of the Applicants, which sets forth the terms of the Settlement
8 Agreement and incorporates and attaches as exhibits thereto copies of the Settlement
9 Agreement and the Proposed Judgment; (2) a request that the Court enter an order
10 approving the Stipulation and the Proposed Judgment; (3) a description of the special
11 circumstances that prevent the consideration of the Settlement in the normal course of the
12 Gila River Adjudication; (4) a proposed order to commence the special proceedings, (5) a
13 proposed notice of Settlement; and (6) information indicating the location of copies of the
14 Settlement Agreement and supporting documents available for review.

15 3. The Settling Parties have satisfied paragraph A of the Supreme Court's
16 Special Procedural Order which specifies the conditions warranting special procedures to
17 consider the proposed settlement:

18 a. The Settlement involves the claimed water rights within the Tucson
19 Management Area of the United States acting on behalf of the Nation and the Allottees,
20 which are the subject of statement of claimant numbers 39-74333, 39-74335 and 39-74336.
21 The claims of the United States acting on behalf of the Nation and the Allottees are within
22 the jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of*
23 *Arizona*, 463 U.S. 545 (1983) and *United States v. Superior Court et al.*, 144 Ariz. 265, 697
24 P.2d 658 (1985).

25 b. The claimed water rights of Settling Parties Tucson, FICO and Asarco are
26 adverse to those of the Nation.

27 c. The Settlement Agreement establishes the water rights of the Nation, the
28 Allottees and the United States acting on behalf of the Nation and the Allottees. A

1 description of the water rights of the Nation, the Allottees and the United States acting on
2 behalf of the Nation and the Allottees as established in Paragraph 4 of the Settlement
3 Agreement, is set forth in Attachment A to this Order, which description is incorporated
4 herein.

5 d. The Settlement has been confirmed by Congress in the Settlement Act,
6 but the confirmation by Congress is conditioned upon approval of the Settlement by this
7 Court.

8 e. There are special circumstances preventing the consideration of the
9 Settlement Agreement in the normal course of the Gila River Adjudication. Those special
10 circumstances are that the enforceability of the Settlement Act is conditioned upon the
11 entry of an order by this Court approving the Proposed Judgment, sufficiently prior to
12 December 31, 2007 to permit the Secretary of the Interior to publish findings in the Federal
13 Register that this requirement, among others, has been met. In the normal course of the
14 Gila River Adjudication, the claims for water rights of the Nation and the Allottees would
15 not be considered by the Court prior to December 31, 2007.

16 4. The claimed water rights of Tucson, FICO and Asarco will not be adjudicated
17 in this special proceeding, but will instead be adjudicated in the normal course of the Gila
18 River Adjudication.

19 5. The proposed settlement of all of the claims for water rights of the Tohono
20 O'odham Nation, the Allottees, and of the United States on behalf of the Tohono O'odham
21 Nation and Allottees is a lengthy agreement involving several parties. The Hydrographic
22 Survey Report (HSR) concerning present and potential water uses of the Tohono O'odham
23 Nation and Allottees, which would be prepared by the Arizona Department of Water
24 Resources ("ADWR") in the normal course of the Gila River Adjudication to assist the
25 Court and parties, has not been completed and is not even scheduled to be completed. As a
26 consequence, it is appropriate for the Court to order ADWR to prepare a factual analysis
27 and technical assessment of the proposed settlement as is authorized by paragraph B(3)(f)
28 of the Supreme Court's Special Procedural Order.

1 NOW, THEREFORE, IT IS ORDERED:

2 1. The Application for Special Proceedings to consider the Settlement of the claims
3 for water rights within the Tucson Management Area of the Nation, the Allottees and the
4 United States acting on behalf of the Nation and the Allottees is granted. The conditions
5 warranting special procedures have been satisfied. The Settling Parties shall serve by mail
6 copies of their Application for Special Proceedings and this Order upon all persons listed in
7 the Court-approved mailing list for the Gila River Adjudication.

8 2. The special proceedings shall be conducted in accordance with the Special
9 Procedural Order Providing for the Approval of Federal Water Rights Settlements,
10 Including Those of Indian Tribes, issued by the Arizona Supreme Court on May 16, 1991.

11 3. The Court will consider the Settlement under the criteria enumerated by the
12 Arizona Supreme Court in paragraph D (6) of its Special Procedural Order. Except as
13 otherwise provided in the Stipulation and Settlement Agreement, if this Court approves the
14 Stipulation regarding the Settlement and enters the Proposed Judgment adjudicating the
15 water rights of the Nation, the Allottees and the United States acting on behalf of the
16 Nation and the Allottees, the Proposed Judgment will be binding upon all parties to the Gila
17 River Adjudication.

18 4. ADWR, shall file with the Court no later than October 24, 2006, a factual
19 analysis and technical assessment of the proposed settlement. ADWR's report shall
20 including the following: (1) a review of the terms of the settlement; (2) a summary of the
21 statements of claimant filed by or on behalf of the Tohono O'odham Nation and the
22 Allottees within the Tucson Management Area; (3) a brief description of the history,
23 physical characteristics, and natural resources (including an estimate of the arable acreage)
24 of that portion of the Tohono O'odham Nation within the Tucson Management Area,
25 emphasizing those facts, events, and plans which may be important in ascertaining the
26 water rights of the reservation within the Tucson Management Area; (4) a determination of
27 whether there is a reasonable basis for this Court to conclude that the water rights of the
28 Tohono O'odham Nation, the Allottees and the United States on behalf of the Tohono

1 O'odham Nation and the Allottees as established in the Settlement Agreement and the
2 Proposed Final Judgment and Decree, are no more extensive than the Tohono O'odham
3 Nation, the Allottees, and the United States on behalf of the Tohono O'odham Nation and
4 the Allottees, would be able to prove to a degree of reasonable probability at the trial of
5 these claimed rights in the due course of the Gila River Adjudication; (5) the probable
6 depletion of water resources in the Gila River system and source as a result of the proposed
7 settlement; (6) the probable impact of the proposed settlement upon categories of other
8 claimants in the adjudication; (7) the probable impact of the proposed settlement upon the
9 groundwater uses on or in the vicinity of the reservation and upon the groundwater
10 regulatory program administered by ADWR; and (8) other important impacts or
11 consequences that might result from the proposed settlement. The Settling Parties are
12 ordered to meet with ADWR and to provide ADWR with information and documents
13 necessary for ADWR to complete its factual analysis and technical assessment (including
14 information comparing the proposed settlement to the amount of water the Tohono
15 O'odham Nation the Allottees, and the United States on behalf of the Tohono O'odham
16 Nation and the Allottees could reasonably prove at a trial of its claimed water rights).
17 Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon
18 each of the Settling Parties and each person appearing on the Court-approved mailing list
19 for the Gila River Adjudication.

20 5. The Settling Parties shall provide interested parties in the Gila River
21 Adjudication and the public with information about the Settlement at a public meeting. The
22 meeting will include a statement that the meeting has been ordered by the Court, a
23 disclaimer indicating that the interests of the parties to the Settlement ("Settling Parties")
24 may be adverse to the interests of other parties in the Gila River Adjudication, a description
25 of the terms and conditions of the Settlement, and an announcement of the date objections
26 to the Settlement must be filed. At the meeting, the Settling Parties shall make copies of
27 this Order (including attachments) available to those persons who are present. The meeting
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1 will be held at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street,
2 Tucson, Arizona 85701, at 7:00 p.m. on November 13, 2006.

3 6. The Settling Parties shall serve by first-class mail a notice upon all claimants
4 (and all assignees and transferees of claimants, to the extent they appear in ADWR's
5 records) in the Gila River Adjudication, notifying them of the application to approve the
6 Settlement involving the water rights within the Tucson Management Area of the Nation,
7 the Allottees and the United States acting on behalf of the Nation and the Allottees; the
8 pendency of this special proceeding; the time, date, and location of the informational
9 meeting described in the preceding paragraph; and advising them where complete copies of
10 the application for special proceedings and this Order may be found. The Court approves
11 the use of the Notice of Settlement attached hereto as Attachment B. The Settling Parties
12 shall publish a copy of the Notice of Settlement in two newspapers of general circulation
13 within the geographical area encompassed by the Gila River Adjudication.

14 7. Objections to the application to approve the Settlement shall be filed with the
15 Clerk of the Court in and for Maricopa County no later than December 13, 2006.

16 8. Any Settling Party may file a response to an objection no later than twenty (20)
17 days after the time for filing objections has expired.

18 9. The Settling Parties shall promptly provide ADWR with a complete copy of the
19 Settlement Agreement including copies of all attachments and documents referred to or
20 incorporated therein, a copy of the Settlement Act, and a copy of any printed congressional
21 reports concerning the Settlement Act. ADWR shall make its set of these documents
22 available for public inspection and copying at its headquarters and at the Tucson AMA
23 office during its normal business hours. The Settling Parties shall also provide a complete
24 copy of the Settlement Agreement, including copies of all attachments, and a copy of the
25 Settlement Act, to the offices of the Clerks of the Superior Court in every Arizona county.

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EXHIBIT 3

1 SUPERIOR COURT OF ARIZONA

2 MARICOPA COUNTY

3
4 **IN RE THE GENERAL**
5 **ADJUDICATION OF ALL RIGHTS TO**
6 **USE WATER IN THE GILA RIVER**
7 **SYSTEM AND SOURCE.**

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

NOTICE OF PROPOSED SETTLEMENT

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11 In re Proposed Tohono O’odham Nation Water Rights Settlement.

12 **IMPORTANT NOTICE FOR CLAIMANTS IN THE GILA RIVER ADJUDICATION**

13
14 Several parties to the Gila River general stream adjudication (“Gila River Adjudication”) have asked the
15 Superior Court to approve a proposed settlement of all claims within the Tucson Active Management Area, the Santa
16 Cruz Active Management Area and that part of the Upper Santa Cruz Basin not within either of the Active
17 Management Areas (“Tucson Management Area”) for water rights of the Tohono O’odham Nation (the “Nation”),
individual Indian trust allotment landowners (“Allottees”), and the United States acting on behalf of the Nation and the
Allottees. The claimed water rights of the Nation, the Allottees, and the United States on behalf of the Nation and the
Allottees, for the San Xavier Reservation and the eastern portion of the Schuk Toak District (as shown on the map,
Attachment A), are subject to adjudication by this Court.

18 The parties to this proposed settlement (the “Settling Parties”) include: the Tohono O’odham Nation, the
19 Allottees, the United States of America, the State of Arizona, the City of Tucson, Farmers Investment Co. and Asarco
Incorporated.

20 **YOU ARE HEREBY NOTIFIED** that the Court is conducting special proceedings to determine whether this
21 proposed settlement should be approved. If the Court approves the proposed settlement and enters a final judgment
22 adjudicating the water rights claims within the Tucson Management Area of the Nation, the Allottees, and the United
States on behalf of the Nation and Allottees, as set forth in a stipulation reflecting the principal terms of the settlement,
the judgment will be binding upon all claimants in the Gila River Adjudication.

23 The Court has ordered the Arizona Department of Water Resources (“ADWR”) to prepare a factual analysis or
technical assessment of the proposed settlement. ADWR’s report must be completed by October 24, 2006.

24 The Court has ordered the Settling Parties to provide interested parties in the Gila River Adjudication and the
25 public with information about the proposed settlement. A meeting will be held at 7:00 p.m. on November 13, 2006, at
the City of Tucson Mayor and Council Chambers, 255 West Alameda Street, Tucson, Arizona 85701.

26 Claimants in the Gila River Adjudication will have until December 13, 2006 to file any objections they might
27 have to the proposed settlement. The Court will thereafter schedule hearings on the proposed settlement and any
28 objections to the proposed settlement.

1 You or your predecessor has filed a statement of claimant for water uses in the Gila River system and source.
2 Your claimed water rights may be affected by the proposed settlement. To help you determine whether you should file
3 an objection to the proposed settlement, you should review the application filed by the parties to the proposed
4 settlement; the Court's Order of July 11, 2006, authorizing these special proceedings; and the settlement documents.
5 All these materials may be examined during business hours at the Arizona Department of Water Resources, 3550 N.
6 Central Avenue, Phoenix, Arizona 85012, the Tucson Active Management Area, 400 W. Congress, Suite 518, Tucson,
7 Arizona 85701, or at Arizona Department of Water Resource's website (www.azwater.gov). Also, copies of the
8 proposed settlement may be examined at the office of the Superior Court Clerk in each Arizona county.

9 If you decide to file an objection to the proposed settlement, you must do so on or before December 13, 2006.
10 Any claimant in the Gila River Adjudication may file an objection with the Adjudication Court asserting that:

11 a. The approval of the stipulation setting forth the terms of the settlement, and the proposed final
12 judgment and decree adjudicating the water rights claims of the Nation, the Allottees, and the United States on behalf
13 of the Nation and the Allottees, as set forth in the settlement agreement, would cause material injury to the objector's
14 claimed water right;

15 b. The conditions described in the Arizona Supreme Court's Special Procedural Order Providing for the
16 Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991, which warrant
17 this special proceeding have not been satisfied; or

18 c. The water rights established in the settlement agreement, set forth in the stipulation and adjudicated
19 in the proposed final judgment and decree, are more extensive than the Indian tribe or federal agency would have been
20 able to establish at trial.

21 Objections must also include:

22 a. The name, address, and signature of the objector;

23 b. A description of the water rights asserted in the objector's claim;

24 c. A statement of the legal basis for the objection, and the specific factual grounds upon which the
25 objection is based;

26 d. A list of any witnesses and exhibits that the objector intends to present at any hearing on the
27 objection;

28 e. Any request for discovery relating to the objection and a statement as to the need for such discovery;
and

f. Any other information the Adjudication Court may require in the order for summary proceedings.

Objections must be filed with the Clerk of the Superior Court, Maricopa County, Attention: Water Case No.
W1-208, 601 W. Jackson, Phoenix, Arizona 85003.

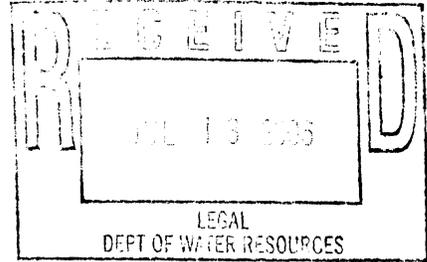
If you have any questions concerning the proposed settlement and these special proceedings to consider the
proposed settlement, you may wish to contact an attorney of your choice.

This Notice was approved on _____, and mailed pursuant to the order of the Court.

DATED this ___ day of _____, 2006.

Judge of the Superior Court

1 Marvin B. Cohen (Bar No. 000923)
Judith M. Dworkin (Bar No. 010849)
2 SACKS TIERNEY P.A.
4250 N. Drinkwater Boulevard, 4th Floor
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5 Robert B. Hoffman, Esq. (Bar No. 004415)
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8 And Farmers Water Co.

9 Patrick Barry (Bar No. 006056)
UNITED STATES OF AMERICA
10 DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
11 Indian Resources Section
P.O. Box 44378
12 Washington, D.C. 20026-4378
Telephone: (202) 305-0254
13 Attorney for United States of America

14 **SUPERIOR COURT OF ARIZONA**

15 **MARICOPA COUNTY**

16 **IN RE THE GENERAL**
17 **ADJUDICATION OF ALL RIGHTS TO**
18 **USE WATER IN THE GILA RIVER**
19 **SYSTEM AND SOURCE.**

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

STIPULATION OF PARTIES TO THE
TOHONO O'ODHAM SETTLEMENT
AGREEMENT AND REQUEST FOR
ENTRY OF JUDGMENT AND DECREE

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24 THIS STIPULATION, dated as of July 11, 2006, is entered into among the United
25 States of America acting on behalf of the Tohono O'odham Nation ("Nation") and
26 individual Indian trust allotment landowners located within the San Xavier Indian
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1 Reservation (“Allottees”), the City of Tucson (“Tucson”); and Farmers Investment Co. and
2 Farmers Water Co. (collectively, “FICO”).

3 1. **RECITALS**

4 1.1 The water rights claims within the Tucson Management Area of the Nation,
5 the Allottees and the United States on behalf of the Nation and the Allottees are to be
6 permanently settled by agreement among the Nation, the Allottees, the United States on
7 behalf of the Nation and the Allottees, the State of Arizona, Tucson, FICO and Asarco, the
8 parties to the Tohono O’odham Settlement Agreement (“Settlement Agreement”). A copy
9 of the Settlement Agreement including all related and incorporated agreements between the
10 undersigned parties is attached hereto as Exhibit A and by this reference incorporated
11 herein. The terms of the Settlement Agreement were ratified and approved by Congress in
12 the Southern Arizona Water Rights Settlement Amendments Act of 2004, P.L. 108-451
13 (“Settlement Act”). Pursuant to section 302(b)(1)(a) of the Settlement Act, the parties have
14 revised the Settlement Agreement to conform it to the Settlement Act.

15 1.2 The water rights claims filed by the United States and listed in the
16 Application for Special Proceedings are subject to the jurisdiction of this Court.

17 1.3 The parties to this Stipulation are submitting the Settlement Agreement to this
18 Court for its approval pursuant to Section 302 of the Settlement Act and the Arizona
19 Supreme Court’s Special Procedural Order Providing for the Approval of Federal Water
20 Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991.

21 1.4 Proceedings to determine the nature and extent of the rights to water of the
22 United States on behalf of the Nation and the Allottees are pending in the Gila River
23 Adjudication Proceedings.

24 1.5 Recognizing that final resolution of these and other pending proceedings may
25 take many years, entail great expense, prolong uncertainty concerning the availability of
26 water supplies, and seriously impair the long-term economic well-being of all parties in the
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1 region, the Nation, its neighboring non-Indian communities and others have agreed to settle
2 permanently the water rights disputes.

3 1.6 In keeping with its trust responsibility to Indian tribes and to promote tribal
4 sovereignty and economic self-sufficiency, it is the policy of the United States to settle
5 whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

6 1.7 Upon execution of this Court's order for special proceedings, the undersigned
7 parties will promptly file the complete Settlement Agreement, including all related and
8 incorporated agreements in every Arizona County, and at the Department of Water
9 Resources ("DWR"). The Settlement Agreement is intended to be enforceable among the
10 parties to this Stipulation and the Settlement Agreement in pursuing their claims in these
11 proceedings.

12 NOW, THEREFORE, in consideration of the promises and agreement hereinafter set forth,
13 the parties hereto stipulate as follows:

14 2. **DEFINITIONS**

15 2.1 Except as specifically defined herein, the capitalized terms used in this
16 Stipulation shall be defined as stated in the Settlement Agreement.

17 3. **STIPULATIONS AND AGREEMENTS**

18 3.1 The Settlement Agreement includes as exhibits additional and subsidiary
19 documents in the forms of agreements, terms of legislation, stipulations, forms of
20 judgment, concepts and policies. Each exhibit to the Settlement Agreement is binding only
21 on the specific parties to such exhibit unless expressly provided otherwise. No party to the
22 Settlement Agreement has, by reason of the Settlement Agreement, any third-party
23 enforcement or other rights under any exhibit to the Settlement Agreement to which it is
24 not a party.

25 3.2 The description of the terms of the Settlement Agreement set forth in this
26 Stipulation is not intended to supersede the terms of the Settlement Agreement. In the
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1 event any aspect of the Stipulation varies from or conflicts with the terms of the Settlement
2 Agreement, the terms of the Settlement Agreement shall control.

3 **4. THE NATION'S WATER RIGHTS**

4 4.1 The Nation shall have the following rights to water in the Tucson
5 Management Area, which shall be held in trust by the United States on behalf of the Nation
6 and the Allottees as described in paragraph 4.1 of the Settlement Agreement:

7 <u>SOURCE</u>	8 <u>AMOUNT</u>
9 <u>Underground water</u>	10 <u>13,200 Acre-feet/yr*</u>
11 San Xavier Reservation	12 10,000 Acre-feet/yr*
13 Eastern Schuk Toak District	14 3,200 Acre-feet/yr*
15 <u>Total CAP Indian Priority Water Currently</u>	
16 <u>Under Contract</u>	17 <u>37,800 Acre-feet/yr</u>
18 San Xavier Reservation	19 27,000 Acre-feet/yr
20 Eastern Schuk Toak District	21 10,800 Acre-feet/yr
22 <u>Total New CAP NIA Priority Water</u>	23 <u>28,200 Acre-feet/yr</u>
24 San Xavier Reservation	25 23,000 Acre-feet/yr
26 Eastern Schuk Toak District	27 5,200 Acre-feet/yr
28 TOTAL	<u>79,200 Acre-feet/yr*</u>

*The availability of groundwater is not guaranteed.

16 4.2 The Nation may use water listed in paragraph 4.1 for any use.

17 4.3 Except as provided in Section 309(b)(1)(C) of the Settlement Act, the Nation
18 may use water listed in paragraph 4.1 at any location within the Nation's Reservation.

19 4.4 The Nation may use water listed in paragraph 4.1 outside the Nation's
20 Reservation and within the State as follows:

21 4.4.1 Groundwater supplies may be used pursuant to the Asarco Agreement;

22 4.4.2 CAP water may be used within the CAP service area; and

23 4.4.3 Water derived from Marketable Credits may be used only in
24 accordance with State law.

25 4.5 No CAP water may be leased, exchanged, forborne or otherwise transferred
26 by the Nation for any direct or indirect use outside the State.

1 4.6 Except as otherwise provided in the Settlement Agreement, the quantities of
2 water associated with the sources described in subparagraph 4.1 shall not be construed to
3 limit or guarantee the quantities of water available for those sources in any Year.

4 **5. THE SECRETARY'S WATER DELIVERY OBLIGATIONS**

5 5.1 Pursuant to the terms of the Settlement Act, the Secretary of the Interior shall
6 deliver 66,000 acre-feet per Year of CAP water, notwithstanding any declaration by the
7 Secretary of a shortage on the Colorado River.

8 5.2 The Secretary shall provide compensation if the Secretary is unable to acquire
9 and deliver sufficient quantities of CAP water or an equivalent quantity of water as defined
10 in the Settlement Act.

11 5.3 The Secretary shall firm 28,200 acre-feet per Year of CAP NIA Priority Water
12 for the benefit of the Nation, to the equivalent of CAP M&I Priority Water for a period of
13 100 Years after the Enforceability Date. The State of Arizona shall assist the Secretary by
14 providing \$3,000,000 in cash or in-kind goods and services.

15 **6. THE TUCSON AGREEMENT**

16 6.1 The parties to the Tucson Agreement are Tucson, the Nation, the Allottees
17 and the United States on behalf of the Nation and the Allottees.

18 6.2 Tucson agrees to pay \$300,000 to a Sinkhole Repair Fund controlled by the
19 San Xavier District for repair of sinkholes on the San Xavier Indian Reservation. The
20 payments will be made in five (5) equal annual installments. Allottees, tribal members and
21 the Nation may request funds from the Fund. After ten (10) years from the effective date of
22 the Tucson Agreement, if the Fund has not been used for five (5) years, the District may use
23 any remaining funds for land and water protection projects on the San Xavier Indian
24 Reservation.

25 6.3 The Nation and the United States on behalf of the Nation waive and release
26 claims against Tucson for injuries to land on the San Xavier Indian Reservation as a result
27 of sinkholes. The Allottees and the United States on behalf of the Allottees waive and
28

1 release claims against Tucson for injuries to land on the San Xavier Indian Reservation as a
2 result of sinkholes, land subsidence or erosion. Claims by the Nation against Tucson for
3 land subsidence, erosion or other injuries to the land with the San Xavier Indian
4 Reservation or eastern Schuk Toak District must follow certain administrative procedures
5 established in the Tucson Agreement.

6 6.4 The Tucson Agreement is enforceable in either this proceeding or in federal
7 court. Remedies are limited to equitable, declaratory and injunctive relief. Money
8 damages may not be awarded except as provided in the Tucson Agreement.

9 **7. THE ASARCO AGREEMENT**

10 7.1 The parties to the Asarco Agreement are Asarco, the Nation, the Allottees, the
11 San Xavier District and the United States on behalf of the Nation and the Allottees.

12 7.2 The Asarco Agreement provides for the Nation to deliver up to 10,000 acre-
13 feet per year of CAP water to Asarco to replace groundwater pumping by Asarco on or near
14 the San Xavier Indian Reservation. Asarco will pay the Nation \$15 per acre-foot for water
15 that Asarco would otherwise pump on the San Xavier Indian Reservation under the
16 Nation's Well Site Lease to Asarco, and \$20 per acre foot for water that Asarco would
17 otherwise pump off the Reservation. These rates will be increased by 13% every five years
18 to account for inflation. The replacement of groundwater by CAP water will generate
19 marketable in lieu groundwater credits for the Nation. This Agreement will expire in 25
20 years unless the Nation desires to continue to deliver water to Asarco for an addition 10 to
21 25 years.

22 7.3 Asarco will construct and maintain the infrastructure for delivery of CAP
23 water but may borrow \$800,000 from the Nation for a term of 14 years at 6% interest.

24 7.4 Pursuant to Arizona statute, the Nation earns long-term storage credits for
25 Asarco's use of CAP water in substitution for groundwater. The parties to this Agreement
26 have valued storage credits at \$40 per acre-foot.

1 7.5 The Nation, Allottees and the United States on behalf of the Nation and
2 Allottees waive and release claims of water rights and injuries to water rights against
3 Asarco for Asarco's pumping of groundwater in accordance with its Arizona state law
4 water rights. Asarco waives and releases any claims it may have against the Nation, the
5 District, the Allottees and the United States on behalf of the Nation and the Allottees for
6 groundwater pumping in accordance with the Settlement Act.

7 7.6 If Asarco begins to use CAP water instead of pumping groundwater, the
8 Asarco Agreement provides for a contingent settlement of the groundwater contamination
9 claim against Asarco included in the *Alvarez v. Tucson* litigation. Asarco payments for CAP
10 water will be deposited into an account designated as the Groundwater Contamination
11 Settlement Account. Monies in the Fund will be invested and managed by the San Xavier
12 Allottees Association Board of Directors. If Asarco commences to take CAP water, Asarco
13 is obligated to contribute \$1.5 million to the Settlement Account within a 14 year period. If
14 Asarco commences to take CAP water, the Allottees agree to file a motion to certify a non-
15 opt out subclass and to dismiss the groundwater contamination claim against Asarco with
16 prejudice within 30 days after Asarco begins to use the Nation's CAP water.

17 7.7 The Asarco Agreement limits remedies for violations of this Agreement to
18 equitable, declaratory and injunctive relief. The Agreement prohibits money damage
19 awards except for damages related to the obligations for Asarco to make payments to the
20 Nation, the San Xavier District and the Fund.

21 **8. THE FICO AGREEMENT**

22 8.1 The parties to the FICO Agreement are FICO, the Nation, the Allottees, the
23 San Xavier District and the United States on behalf of the Nation and the Allottees.

24 8.2 FICO agrees to limit groundwater pumping within two miles of the San
25 Xavier Indian Reservation to no more than an average of 850 acre-feet per year and to limit
26 groundwater pumping from all of FICO's lands to 36,000 acre feet per year not including
27 groundwater in storage. FICO further agrees not to sell groundwater credits acquired under
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1 Arizona law to anyone who would pump the credits from a location within three (3) miles
2 of the boundaries of the Nation's Reservation.

3 8.3 The Nation, Allottees and the United States on behalf of the Nation and
4 Allottees waive and release claims of water rights and injuries to water rights against FICO
5 for FICO's pumping of groundwater in accordance with its Arizona state law water rights.
6 FICO waives and releases any claims it may have against the Nation, the Allottees and the
7 United States on behalf of the Nation and the Allottees for groundwater pumping in
8 accordance with the Settlement Act.

9 8.4 The FICO Agreement limits remedies for violations of this Agreement to
10 equitable, declaratory and injunctive relief.

11 9. THE NATION'S RIGHT TO LEASE CAP WATER

12 9.1 The Nation may lease CAP water, to water users outside of the Nation's
13 Reservation for a term not to exceed 100 years in accordance with section 309(c) of the
14 Settlement Act.

15 9.2 For leases with terms in excess of 25 years, the Nation shall offer the lease to
16 users within the Tucson Management Area. If the Nation receives no proposals from users
17 within the Tucson Management Area, the Nation may offer the lease to users outside the
18 Tucson Management Area but within the CAP service area, subject to a right by Qualified
19 Entities within the Tucson Management Area of making counteroffers. A counteroffer
20 matches or is superior to a proposal from an entity outside the Tucson Management Area if
21 it matches the price and other substantive terms of the proposed transaction.

22 10. ALLOTTEE WATER RIGHTS

23 10.1 Subject to the provisions of the Settlement Act, the Nation shall allocate as a
24 first right of beneficial use to the Allottees, the San Xavier District and other persons within
25 the San Xavier District, 35,000 acre-feet of CAP water, 10,000 acre-feet of groundwater,
26 groundwater withdrawn from exempt wells, deferred pumping storage credits and storage
27 credits that cannot be lawfully recovered outside the Nation's Reservation.

1 10.2 The Settlement Act and the Settlement Agreement provide that the Nation
2 shall have the right, subject to applicable Federal law, to allocate Water to all users on the
3 Reservation pursuant to the Water Code, to be enacted by the Nation and approved (in part)
4 by the Secretary as provided in the Settlement Act, and manage, regulate and control the
5 water resources of the Nation and the water resources granted or confirmed by the
6 Settlement Act.

7 10.3 The Settlement Act and Settlement Agreement provide the means and manner
8 for the consideration and determination by the Nation of any request by any water users on
9 the Reservation (including any water users on allotted land), for an allocation of water,
10 including a process for appeal and adjudication of denied or disputed distributions of water
11 and for resolution of contested administrative decisions.

12 **11. WAIVERS OF CLAIMS AND RESERVATIONS OF RIGHTS**

13 11.1 The Settlement Agreement provides for the waiver of claims for water rights
14 and injuries to water rights and retention of rights in subparagraphs 15.1 through 15.4,
15 inclusive.

16 **12. OTHER PROVISIONS**

17 12.1 No modification of the Settlement Agreement shall be effective unless it is in
18 writing, signed by all parties, and is approved by the Gila River Adjudication Court.
19 Notwithstanding the foregoing, exhibits to the Settlement Agreement may be amended by
20 the parties to such exhibits to the Settlement Agreement in accordance with their terms,
21 without court approval, unless such approval is required in the exhibit to the Settlement
22 Agreement or by law; provided, however, that no amendment of any exhibit may violate
23 any provisions of the Act, or the Settlement Agreement, or adversely affect the rights under
24 this Agreement of any Party who is not a signatory of such an amendment.

25 12.2 Execution of the Settlement Agreement by the Governor of the State
26 constitutes the commitment of the State to use good faith efforts to carry out the terms and
27 conditions of subparagraphs 5.10.2, 8.8, and 17.2 of the Settlement Agreement. Except as
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1 provided in the preceding sentence, it is not intended that the Settlement Agreement shall
2 be determinative of any decision to be made by any State agency in any administrative,
3 adjudicatory, rule making, or other proceeding or matter. Except as provided in the
4 Settlement Agreement, nothing therein shall be construed as a waiver of any rights that the
5 State has as to its natural resources.

6 12.3 Any party shall have the right to petition the Gila River Adjudication Court or
7 a court of the United States having jurisdiction, for such declaratory and injunctive relief as
8 may be necessary to enforce the terms, conditions and limitations of this Agreement and
9 monetary relief as provided in this Agreement and as limited by section 312(h) of the
10 SAWRSA Amendments. Nothing contained herein shall grant or give the right to any Party
11 to petition any court of the Nation or any state court other than the Gila River Adjudication
12 Court for monetary relief or for any declaratory or injunctive relief to enforce the terms,
13 conditions and limitations provided in this Agreement, except as provided in section 312(i)
14 of the SAWRSA Amendments.

15 12.4 No part of the Settlement Agreement should be construed, in whole or in part,
16 as providing consent by any of the non-Indian parties to the legislative, executive or
17 judicial jurisdiction or authority of the Nation in connection with activities, rights, or duties
18 contemplated by the Settlement Agreement and conducted by any of those parties outside
19 the exterior boundaries of the Nation's Reservation. The Settlement Agreement should not
20 be construed as a commercial dealing, contract, lease or other arrangement that creates a
21 consensual relationship between any non-Indian party and the Nation so as to provide a
22 basis for the Nation's legislative, executive or judicial jurisdiction or authority over the
23 non-Indian parties to this Settlement Agreement under *Montana v. United States*, 450 U.S.
24 544 (1981) for activities conducted outside the exterior boundaries of the Nation's
25 Reservation. The activities, rights or duties conducted or undertaken by the non-Indian
26 parties pursuant to the Settlement Agreement outside the exterior boundaries of the Nation's
27 Reservation shall not be construed as conduct that threatens or affects the political integrity.
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1 economic security or health and welfare of the Nation so as to provide a basis for the
2 exercise of the Nation's legislative, executive or judicial jurisdiction or authority over the
3 non-Indian parties to the Settlement Agreement under *Montana v. United States* 450 U.S.
4 544 (1981). Benefits and rights accruing to the non-Indian parties to the Settlement
5 Agreement are provided as consideration for benefits and rights accruing to the Nation, and
6 shall not be construed as privileges, benefits, tribal services or other advantages of civilized
7 society provided by the Nation that would justify the imposition of the Nation's legislative,
8 executive or judicial authority over those parties in regard to the activities, rights and duties
9 conducted outside the exterior boundaries of the Reservation. The enactment of legislation
10 authorizing or ratifying the Settlement Agreement shall not be construed as a congressional
11 delegation of authority to the Nation of legislative, executive or judicial jurisdiction or
12 authority over the non-Indian parties hereto.

13 12.5 Nothing in the Settlement Agreement shall be construed to quantify or
14 otherwise affect the water rights, claims or entitlements to water of any tribe, band or
15 community other than the Nation.

16 NOW, THEREFORE, the parties to this Stipulation request that, upon this Court's
17 approval of the Stipulation and Settlement Agreement, and upon the date the Secretary of
18 the Interior causes to be published in the Federal Register a statement of findings that the
19 conditions set forth in Section 302(b) of the Settlement Act have occurred, this Court enter
20 the Judgment and Decree attached as Exhibit B hereto fully, finally and permanently
21 adjudicating the rights within the Tucson Management Area of the Nation, the Allottees
22 and the United States acting on behalf of the Nation and the Allottees, to the water supplies
23 within this Court's jurisdiction as provided by the terms of the Settlement Agreement.

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DATED this 17th day of July, 2006.

SACKS TIERNEY P.A.

By 
Marvin S. Cohen
Judith M. Dworkin
Attorneys for City of Tucson

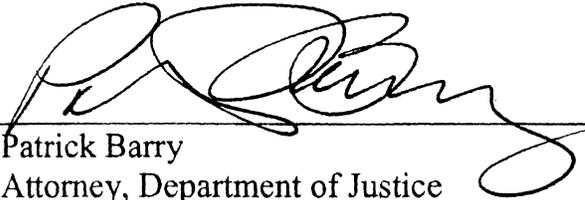
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SOMACH, SIMMONS & DUNN

By  for
Robert B. Hoffman
Attorney for Farmers Investment Co. and
Farmers Water Co.

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UNITED STATES OF AMERICA

By 

Patrick Barry
Attorney, Department of Justice
Environmental and Natural Resources Division
Indian Resource Section
P.O. Box 44378
Washington, D.C. 20026-4378
(202) 305-0254

1 COPY OF THE FOREGOING MAILED

2 this _____ day of _____, 2006, to:

3 Gila River Adjudication W-1, W-2, W-3, W-4
4 Court Approved Mailing List dated July 7, 2006.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION) No. W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN THE) No. W-2 (Verde)
GILA RIVER SYSTEM AND SOURCE.) No. W-3 (Upper Gila)
) No. W-4 (San Pedro)
)
) CONTESTED CASE NO. W1-208
)
) JUDGMENT AND DECREE
)
)
)
)
)

The Court has considered the Tohono O’odham Settlement Agreement restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478, and executed by all parties thereto on or before June 12, 2006, which permanently resolves the water rights claims of the Tohono O’odham Nation ("Nation"), individual Indian trust allotment landowners located within San Xavier Indian Reservation ("Allottees") and the United States on behalf of the Nation and the Allottees to that portion of the Gila River System and Source within the Tucson Management Area and the Stipulation filed with this Court on _____, 2006. A copy of the Tohono O’odham Settlement Agreement is attached as Exhibit A to the Stipulation of Parties to the Tohono O’odham Settlement Agreement and Request for Entry of Judgment and Decree ("Stipulation").

This Judgment and Decree will only become effective and enforceable if and when the United States Secretary of the Interior publishes in the Federal Register a notice of completion of all actions necessary to make the settlement effective, as required by Section

1 302(b) of the Arizona Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478.

2 The parties are directed to file a notice with the Court upon such publication.

3 NOW, THEREFORE, it is hereby adjudged and decreed effective as of the
4 publication of the Federal Register notice referred to above as follows:

5 1. The capitalized terms used in this Judgment and Decree shall be defined as
6 stated in the Tohono O'odham Settlement Agreement.

7 2. The Stipulation is hereby approved in its entirety.

8 3. The Tohono O'odham Settlement Agreement is hereby approved and
9 incorporated herein in its entirety.

10 4. Subject to the terms of paragraph 4 of the Tohono O'odham Settlement
11 Agreement, the Nation and the Allottees shall have rights to a total of 79,200 acre-feet per
12 year of water within the Tucson Management Area, which shall be held in trust by the
13 United States on behalf of the Nation and the Allottees.

14 5. Included within the 79,200 acre-feet is 66,000 acre-feet per year of CAP
15 water of which 37,800 acre-feet per year has a priority of CAP Indian Priority Water and
16 28,200 acre-feet per year has a priority of CAP NIA Priority Water.

17 6. Subject to the terms of paragraph 8 of the Tohono O'odham Settlement
18 Agreement and included within the 79,200 acre-feet per year, the Nation has a right to
19 withdraw 13,200 acre-feet per year from non-exempt wells on the Nation's Reservation
20 within the Tucson Management Area.

21 7. The Nation may use the water provided in the Tohono O'odham Settlement
22 Agreement for any use and at any location within the Nation's Reservation.

23 8. Except as provided in subparagraph 4.4 of the Tohono O'odham Settlement
24 Agreement, none of the water that is the subject of the Tohono O'odham Settlement
25 Agreement may be leased, exchanged, transferred or in any way used off the Reservation.

26 9. In exchange for the benefits realized under the Tohono O'odham Settlement
27 Agreement and as authorized by the Act, the Nation has waived and released claims
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1 enumerated in paragraph 15.1 of the Tohono O’odham Settlement Agreement, certain
2 Allottees have waived and released claims as defined and enumerated in paragraph 15.2 of
3 the Tohono O’odham Settlement Agreement and the United States on behalf of the Nation
4 and the Allottees has waived and released claims enumerated in paragraph 15.3 of the
5 Tohono O’odham Settlement Agreement. The waivers and releases are effective on the
6 Enforceability Date.

7 10. The Water Rights and other benefits granted, confirmed or recognized to or
8 for the Nation, the Allottees and the United States on behalf of the Nation and the Allottees
9 by the Tohono O’odham Settlement Agreement and the Act shall be in replacement of, in
10 substitution for, and in full satisfaction of all claims for Water Rights and Injuries to Water
11 Rights by the Nation, the Allottees and the United States on behalf of the Nation and the
12 Allottees in the Tucson Management Area. Except as provided in Paragraph 12 of this
13 Stipulation, the claims of the Nation, the Allottees and the United States on behalf of the
14 Nation and the Allottees to water of the Gila River System and Source within the Tucson
15 Management Area are fully, finally and permanently adjudicated by this Judgment and
16 Decree.

17 11. Nothing in this Judgment and Decree or the Settlement Agreement shall be
18 construed to quantify or otherwise affect the water rights or entitlements to water of any
19 Arizona Indian tribe, band or community, or the United States on their behalf, other than
20 the Nation and the United States acting on behalf of the Nation.

21 12. Nothing in the Tohono O’odham Settlement Agreement shall affect the right
22 of any party, other than the Nation and the United States, to assert any priority date or
23 quantity of water for water rights claimed by such party in the Gila River Adjudication or
24 other court of competent jurisdiction.

25 13. This Court retains jurisdiction over this matter for enforcement of this
26 Judgment and Decree and the Tohono O’odham Settlement Agreement, including the entry
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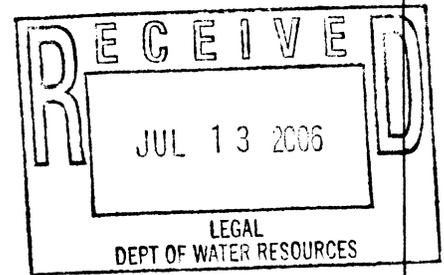
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of injunctions, restraining orders or other remedies under law or equity and to carry out the provisions of sections 312(d) and 312(h) of the Act.

DATED this ___ day of _____, 200_.

Judge of the Superior Court

APPENDIX E: Order for Special Proceedings



SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS TO
USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE.

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

ORDER FOR SPECIAL PROCEEDINGS
FOR CONSIDERATION OF THE TOHONO
O'ODHAM NATION WATER RIGHTS
SETTLEMENT

Contested Case Name: *In re Proposed Tohono O'odham Nation Water Rights Settlement.*

HSR Involved: None.

Descriptive Summary: Order of Judge Eddward P. Ballinger, Jr., approving application by Applicants filed July 11, 2006, to commence special proceedings to consider the Settlement of the claim for water rights within the Tucson Management Area of the Tohono O'odham Nation and individual Indian trust allotment landowners ("Allottees") and of the United States acting on behalf of the Nation and the Allottees. The Tucson Management Area is (A) that area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 and subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area and (B) the portion of the Upper Santa Cruz Basin that is not located within the area described in (A) above.

1 **Date of Filing:** July 11, 2006.

2 **Number of Pages:** 8 without attachments.

3 This matter came before the Court on July 11, 2006, upon the application of the
4 United States of America, the City of Tucson and Farmers Investment Co. (“Applicants”)
5 (Applicants and the State of Arizona, ASARCO, the Nation and the Allottees are
6 hereinafter referred to as the “Settling Parties”) for an order for special proceedings,
7 pursuant to the Special Procedural Order Providing for the Approval of Federal Water
8 Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court
9 on May 16, 1991. The application shall be referred to hereinafter as the “Application for
10 Special Proceedings.” The Supreme Court’s May 16, 1991 Order shall be referred to
11 hereinafter as the “Special Procedural Order.”

12 Entry of an order for special proceedings is requested for the Court to consider a
13 stipulation filed on July 11, 2006 (the "Stipulation"), which sets forth the terms of the
14 Settlement Agreement, and incorporates and attaches as exhibits thereto copies of: (1) an
15 agreement settling all claims for water rights of the Nation, the Allottees and United States
16 on behalf of the Nation and the Allottees within the area defined as the Tucson
17 Management Area (the "Settlement Agreement") and (2) a proposed judgment and decree
18 (“Proposed Judgment”) adjudicating the water rights of the Nation, the Allottees and the
19 United States on behalf of the Nation and the Allottees within the Tucson Management
20 Area, as established in the Settlement Agreement. The Court, having considered the
21 Application for Special Proceedings ex parte, as is authorized by paragraph B(1) of the
22 Special Procedural Order, finds the following:

23 1. The Settling Parties have reached a proposed settlement (“Settlement”) of all
24 claims of the Nation, the Allottees and the United States on behalf of the Nation and the
25 Allottees for water rights within the Tucson Management Area, whose claimed water rights
26 are subject to determination in this proceeding (the “Gila River Adjudication”). Congress
27 ratified the Settlement in passing the Southern Arizona Water Rights Settlement
28 Amendments Act of 2004, Title III of Public Law.108-451 (“Settlement Act”). The U.S.

1 District Court for the District of Arizona found the Settlement, in all respects, to be fair,
2 reasonable adequate and in the best interests of the Allottees. *United States v. City of*
3 *Tucson*, Case No. CV-75-39 TUC FRZ, Final Judgment/Partial Judgment, June 14, 2006 is
4 attached as Exhibit 1 to the Application.

5 2. The Application for Special Proceedings satisfies the requirements of
6 paragraph B(1) of the Special Procedural Order issued by the Arizona Supreme Court as it
7 contains: (1) the Stipulation of the Applicants, which sets forth the terms of the Settlement
8 Agreement and incorporates and attaches as exhibits thereto copies of the Settlement
9 Agreement and the Proposed Judgment; (2) a request that the Court enter an order
10 approving the Stipulation and the Proposed Judgment; (3) a description of the special
11 circumstances that prevent the consideration of the Settlement in the normal course of the
12 Gila River Adjudication; (4) a proposed order to commence the special proceedings, (5) a
13 proposed notice of Settlement; and (6) information indicating the location of copies of the
14 Settlement Agreement and supporting documents available for review.

15 3. The Settling Parties have satisfied paragraph A of the Supreme Court's
16 Special Procedural Order which specifies the conditions warranting special procedures to
17 consider the proposed settlement:

18 a. The Settlement involves the claimed water rights within the Tucson
19 Management Area of the United States acting on behalf of the Nation and the Allottees,
20 which are the subject of statement of claimant numbers 39-74333, 39-74335 and 39-74336.
21 The claims of the United States acting on behalf of the Nation and the Allottees are within
22 the jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of*
23 *Arizona*, 463 U.S. 545 (1983) and *United States v. Superior Court et al.*, 144 Ariz. 265, 697
24 P.2d 658 (1985).

25 b. The claimed water rights of Settling Parties Tucson, FICO and Asarco are
26 adverse to those of the Nation.

27 c. The Settlement Agreement establishes the water rights of the Nation, the
28 Allottees and the United States acting on behalf of the Nation and the Allottees. A

1 description of the water rights of the Nation, the Allottees and the United States acting on
2 behalf of the Nation and the Allottees as established in Paragraph 4 of the Settlement
3 Agreement, is set forth in Attachment A to this Order, which description is incorporated
4 herein.

5 d. The Settlement has been confirmed by Congress in the Settlement Act,
6 but the confirmation by Congress is conditioned upon approval of the Settlement by this
7 Court.

8 e. There are special circumstances preventing the consideration of the
9 Settlement Agreement in the normal course of the Gila River Adjudication. Those special
10 circumstances are that the enforceability of the Settlement Act is conditioned upon the
11 entry of an order by this Court approving the Proposed Judgment, sufficiently prior to
12 December 31, 2007 to permit the Secretary of the Interior to publish findings in the Federal
13 Register that this requirement, among others, has been met. In the normal course of the
14 Gila River Adjudication, the claims for water rights of the Nation and the Allottees would
15 not be considered by the Court prior to December 31, 2007.

16 4. The claimed water rights of Tucson, FICO and Asarco will not be adjudicated
17 in this special proceeding, but will instead be adjudicated in the normal course of the Gila
18 River Adjudication.

19 5. The proposed settlement of all of the claims for water rights of the Tohono
20 O'odham Nation, the Allottees, and of the United States on behalf of the Tohono O'odham
21 Nation and Allottees is a lengthy agreement involving several parties. The Hydrographic
22 Survey Report (HSR) concerning present and potential water uses of the Tohono O'odham
23 Nation and Allottees, which would be prepared by the Arizona Department of Water
24 Resources ("ADWR") in the normal course of the Gila River Adjudication to assist the
25 Court and parties, has not been completed and is not even scheduled to be completed. As a
26 consequence, it is appropriate for the Court to order ADWR to prepare a factual analysis
27 and technical assessment of the proposed settlement as is authorized by paragraph B(3)(f)
28 of the Supreme Court's Special Procedural Order.

1 NOW, THEREFORE, IT IS ORDERED:

2 1. The Application for Special Proceedings to consider the Settlement of the claims
3 for water rights within the Tucson Management Area of the Nation, the Allottees and the
4 United States acting on behalf of the Nation and the Allottees is granted. The conditions
5 warranting special procedures have been satisfied. The Settling Parties shall serve by mail
6 copies of their Application for Special Proceedings and this Order upon all persons listed in
7 the Court-approved mailing list for the Gila River Adjudication.

8 2. The special proceedings shall be conducted in accordance with the Special
9 Procedural Order Providing for the Approval of Federal Water Rights Settlements,
10 Including Those of Indian Tribes, issued by the Arizona Supreme Court on May 16, 1991.

11 3. The Court will consider the Settlement under the criteria enumerated by the
12 Arizona Supreme Court in paragraph D (6) of its Special Procedural Order. Except as
13 otherwise provided in the Stipulation and Settlement Agreement, if this Court approves the
14 Stipulation regarding the Settlement and enters the Proposed Judgment adjudicating the
15 water rights of the Nation, the Allottees and the United States acting on behalf of the
16 Nation and the Allottees, the Proposed Judgment will be binding upon all parties to the Gila
17 River Adjudication.

18 4. ADWR, shall file with the Court no later than October 24, 2006, a factual
19 analysis and technical assessment of the proposed settlement. ADWR's report shall
20 including the following: (1) a review of the terms of the settlement; (2) a summary of the
21 statements of claimant filed by or on behalf of the Tohono O'odham Nation and the
22 Allottees within the Tucson Management Area; (3) a brief description of the history,
23 physical characteristics, and natural resources (including an estimate of the arable acreage)
24 of that portion of the Tohono O'odham Nation within the Tucson Management Area,
25 emphasizing those facts, events, and plans which may be important in ascertaining the
26 water rights of the reservation within the Tucson Management Area; (4) a determination of
27 whether there is a reasonable basis for this Court to conclude that the water rights of the
28 Tohono O'odham Nation, the Allottees and the United States on behalf of the Tohono

1 O'odham Nation and the Allottees as established in the Settlement Agreement and the
2 Proposed Final Judgment and Decree, are no more extensive than the Tohono O'odham
3 Nation, the Allottees, and the United States on behalf of the Tohono O'odham Nation and
4 the Allottees, would be able to prove to a degree of reasonable probability at the trial of
5 these claimed rights in the due course of the Gila River Adjudication; (5) the probable
6 depletion of water resources in the Gila River system and source as a result of the proposed
7 settlement; (6) the probable impact of the proposed settlement upon categories of other
8 claimants in the adjudication; (7) the probable impact of the proposed settlement upon the
9 groundwater uses on or in the vicinity of the reservation and upon the groundwater
10 regulatory program administered by ADWR; and (8) other important impacts or
11 consequences that might result from the proposed settlement. The Settling Parties are
12 ordered to meet with ADWR and to provide ADWR with information and documents
13 necessary for ADWR to complete its factual analysis and technical assessment (including
14 information comparing the proposed settlement to the amount of water the Tohono
15 O'odham Nation the Allottees, and the United States on behalf of the Tohono O'odham
16 Nation and the Allottees could reasonably prove at a trial of its claimed water rights).
17 Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon
18 each of the Settling Parties and each person appearing on the Court-approved mailing list
19 for the Gila River Adjudication.

20 5. The Settling Parties shall provide interested parties in the Gila River
21 Adjudication and the public with information about the Settlement at a public meeting. The
22 meeting will include a statement that the meeting has been ordered by the Court, a
23 disclaimer indicating that the interests of the parties to the Settlement ("Settling Parties")
24 may be adverse to the interests of other parties in the Gila River Adjudication, a description
25 of the terms and conditions of the Settlement, and an announcement of the date objections
26 to the Settlement must be filed. At the meeting, the Settling Parties shall make copies of
27 this Order (including attachments) available to those persons who are present. The meeting
28

1 will be held at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street,
2 Tucson, Arizona 85701, at 7:00 p.m. on November 13, 2006.

3 6. The Settling Parties shall serve by first-class mail a notice upon all claimants
4 (and all assignees and transferees of claimants, to the extent they appear in ADWR's
5 records) in the Gila River Adjudication, notifying them of the application to approve the
6 Settlement involving the water rights within the Tucson Management Area of the Nation,
7 the Allottees and the United States acting on behalf of the Nation and the Allottees; the
8 pendency of this special proceeding; the time, date, and location of the informational
9 meeting described in the preceding paragraph; and advising them where complete copies of
10 the application for special proceedings and this Order may be found. The Court approves
11 the use of the Notice of Settlement attached hereto as Attachment B. The Settling Parties
12 shall publish a copy of the Notice of Settlement in two newspapers of general circulation
13 within the geographical area encompassed by the Gila River Adjudication.

14 7. Objections to the application to approve the Settlement shall be filed with the
15 Clerk of the Court in and for Maricopa County no later than December 13, 2006.

16 8. Any Settling Party may file a response to an objection no later than twenty (20)
17 days after the time for filing objections has expired.

18 9. The Settling Parties shall promptly provide ADWR with a complete copy of the
19 Settlement Agreement including copies of all attachments and documents referred to or
20 incorporated therein, a copy of the Settlement Act, and a copy of any printed congressional
21 reports concerning the Settlement Act. ADWR shall make its set of these documents
22 available for public inspection and copying at its headquarters and at the Tucson AMA
23 office during its normal business hours. The Settling Parties shall also provide a complete
24 copy of the Settlement Agreement, including copies of all attachments, and a copy of the
25 Settlement Act, to the offices of the Clerks of the Superior Court in every Arizona county.

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4 **Attachment A**

5 **Description of the Proposed Water Rights**
6 **as Agreed upon in the Tohono O'odham Settlement Agreement**
7 **and Set Forth in the Stipulation**

8 1. The Tohono O'odham Settlement Agreement ("Settlement Agreement")
9 resolves the claims for water rights of the Tohono O'odham Nation ("Nation"), individual
10 Indian trust allotment landowners located with the San Xavier Indian Reservation
11 ("Allottees"), and the United States acting on behalf of the Nation and the Allottees. The
12 rights of the Nation, the Allottees, and the United States on behalf of the Nation and the
13 Allottees as specified in Sections 304(a), 306(a) and 308(f) of the Southern Arizona Water
14 Rights Settlement Amendments Act of 2004, Public Law 108-451 ("Settlement Act"), as
15 agreed upon in the Settlement Agreement and set forth in the proposed stipulation
16 ("Stipulation") and proposed judgment and decree ("Proposed Judgment") are summarized
17 in this Description.¹

18 2. The capitalized terms used in this Description have the definitions provided
19 in the Settlement Agreement.

20 3. Water Rights. As described in paragraph 4.1 of the Settlement Agreement,
21 the Nation shall have the rights to water in the Tucson Management Area as follows:
22 Sixty-six thousand (66,000) acre-feet per Year of CAP water of which fifty thousand
23 (50,000) acre-feet per Year are deliverable to the San Xavier Indian Reservation and
24 sixteen thousand (16,000) acre-feet per Year are deliverable to the eastern Schuk Toak
25 District. In addition, ten thousand (10,000) acre-feet per Year of groundwater may be
26 pumped within the San Xavier Indian Reservation and three thousand two hundred (3,200)

27 ¹ The description of water rights set forth in this Attachment A is not intended to supersede
28 the terms of the agreement among the Settling Parties. In the event any aspect of the
description contained herein varies from or conflicts with the terms of the Settlement
Agreement, the terms of the Settlement Agreement are controlling and should be consulted.

1 acre-feet per Year of groundwater may be pumped within the eastern Schuk Toak District.
2 The availability of groundwater is not guaranteed by the Settlement Agreement. The
3 Settlement Act and the Settlement Agreement provide that the Nation shall have the right,
4 subject to applicable Federal law, to allocate water to all users on the Reservation pursuant
5 to the Water Code to be enacted by the Nation and manage, regulate and control the water
6 resources of the Nation and the water resources granted or confirmed by the Settlement
7 Act. The Settlement Act and the Settlement Agreement provide the means and manner for
8 the consideration and determination by the Nation of any request by any water users on the
9 Reservation (including any water users on allotted land), for an allocation of water,
10 including a process for appeal and adjudication of denied or disputed distributions of water
11 and for resolution of contested administrative decisions.

12 4. CAP Water. CAP water delivered to the Nation shall be comprised of:

13 (a) thirty-seven thousand eight hundred (37,800) acre-feet per Year of Indian Priority
14 Water of which twenty-seven thousand (27,000) acre-feet per Year are deliverable to the
15 San Xavier Indian Reservation and ten thousand eight hundred (10,800) acre-feet per Year
16 are deliverable to the eastern Schuk Toak District; and (b) twenty-eight thousand two
17 hundred (28,200) acre-feet per Year of NIA Priority Water of which twenty-three thousand
18 (23,000) acre-feet per Year are deliverable to the San Xavier Indian Reservation and five
19 thousand two hundred (5,200) acre-feet per Year are deliverable to the eastern Schuk Toak
20 District. The United States has an obligation to firm the twenty-eight thousand two
21 hundred (28,200) acre-feet of NIA Priority Water for a 100-year period to same priority as
22 water with municipal and industrial delivery priority. The State of Arizona will contribute
23 three thousand dollars (\$3,000) in cash or in-kind services to the firming effort.

24 5. Water Use. The Nation may use the water for any use and at any location
25 within the Nation's Reservation. The Nation may use its water outside the Nation's
26 Reservation and within the State as follows: groundwater supplies pursuant to the terms of
27 the Asarco Agreement, CAP water within the CAP service area, and water derived from
28 marketable storage credits in accordance with state law. No CAP Water may be leased or

1 otherwise transferred by the Nation for use outside the State of Arizona.

2 6. Leasing of CAP Water. The Nation may lease CAP Water for use within the
3 CAP service area for a term not to exceed one hundred (100) years. For leases with terms
4 in excess of twenty-five (25) years, the Nation shall offer the lease to users within the
5 Tucson Management Area. If the Nation receives no proposals from users within the
6 Tucson Management Area, the Nation may offer the lease to users outside the Tucson
7 Management but within the CAP service area, subject to a right by users within the Tucson
8 Management Area of making counteroffers. A counteroffer matches or is superior to a
9 proposal from an entity outside the Tucson Management Area if it matches the price and
10 other substantive terms of the proposed transaction.

11 7. The Asarco Agreement. The Asarco Agreement provides for the Nation to
12 deliver up to ten thousand (10,000) acre-feet per Year of CAP Water to Asarco to replace
13 groundwater pumping by Asarco on or near the San Xavier Indian Reservation. The
14 replacement of groundwater pumping by CAP water will generate marketable credits for
15 the Nation pursuant to State law.

16 8. Storage and Recovery Projects. The Nation may establish and maintain one
17 or more Storage and Recovery Projects.

18 9. Deferred Pumping. The Nation may defer groundwater pumping.
19 Groundwater not pumped in any Year may be accounted for as Deferred Pumping Storage
20 Credits and pumped in a subsequent Year. Within the San Xavier Indian Reservation
21 pumping of Deferred Pumping Storage Credits shall not exceed fifty thousand (50,000)
22 acre-feet for any ten-Year period or ten thousand (10,000) acre-feet in any one Year.
23 Within eastern Schuk Toak District pumping of Deferred Pumping Storage Credits shall
24 not exceed sixteen thousand (16,000) acre-feet for any ten-Year period or three thousand
25 two hundred (3,200) acre feet per year.

26 10. Allottee Water Rights. The Nation shall allocate as a first right of beneficial
27 use to the Allottees, the San Xavier District and other persons within the San Xavier
28 District, thirty-five thousand (35,000) acre-feet per Year of CAP water, ten thousand

1 (10,000) acre-feet per Year of groundwater, groundwater withdrawn from exempt wells,
2 deferred pumping storage credits and storage credits that cannot be lawfully recovered
3 outside the Nation's Reservation.

4 11. In exchange for the benefits realized under the Settlement Agreement and as
5 authorized by the Act, the parties have executed Waivers and Releases of Claims as
6 provided in subparagraphs 15.1 through 15.4 of the Settlement Agreement.

7 12. The claims of the Nation, the Allottees and the United States on behalf of the
8 Nation and the Allottees to water within the Tucson Management Area from the Gila River
9 System and Source are fully, finally and permanently adjudicated by the Final Judgment
10 and Decree.

11 13. Nothing in the final Judgment and Decree the form of which is attached as
12 Exhibit 17.1-4 to the Settlement Agreement, or the Settlement Agreement shall be
13 construed to quantify or otherwise affect the water rights or entitlements to water of any
14 Arizona Indian tribe, band or community, or the United States on their behalf, other than
15 the Nation, the Allottees and the United States acting on behalf of the Nation and the
16 Allottees.

17 14. Nothing in the Settlement Agreement shall affect the right of any party, other
18 than the Nation, the Allottees and the United States on behalf of the Nation and the
19 Allottees, to assert any priority date or quantity of water for water rights claimed by such
20 party in the Gila River Adjudication or other court of competent jurisdiction.

21 15. The Adjudication Court shall retain jurisdiction over this matter for
22 enforcement of the Judgment and Decree and the Settlement Agreement, including the
23 entry of injunctions, restraining orders or other remedies under law or equity.

24 16. In the absence of a settlement, the United States on behalf of the Nation and
25 the Allottees would assert the maximum claims permissible under the reserved water rights
26 doctrine and claims for damage for past interference with water rights.

are adverse to the claim of the United States or the Indian tribe (in the case of a settlement of Indian water rights);

3. The settlement agreement which determines the Indian water rights or water rights for other federal reservation has been confirmed by an act of Congress or the appropriate federal agency;

4. The terms of the settlement agreement, or the act of Congress or the appropriate federal agency that confirms it require that the settlement agreement be approved by the general adjudication court or are conditioned upon such approval; and

5. There are special circumstances preventing the consideration of the settlement agreement settlement agreement in the normal course of the adjudication.

B. Application and Order for Special Proceedings.

1. Special proceedings under this order shall be conducted pursuant to an order for special proceedings issued in the general adjudication action upon the application of any one or more of the parties to the settlement agreement. The application may be filed ex parte by the parties to the settlement agreement and shall include:

a. a stipulation of the parties to the settlement agreement setting forth the terms of the settlement agreement;

b. a request that the general adjudication court enter an order approving the stipulation and a final judgment adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation;

c. the special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudica-

tion;

d. a proposed form of order directing that special proceedings be conducted to approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation; and

e. information indicating the location of copies of the settlement agreement and supporting documents, which must be made available for review.

2. Upon the filing of the application, the general adjudication court shall grant the application and enter the order for special proceedings, if the court determines that the application satisfies the conditions specified in part A. and the requirements of part B.1.

3. The order for special proceedings shall contain the following statements and directions:

a. a statement of the general adjudication court's findings, which may be based upon representations made in the application, that the conditions enumerated in part A. are satisfied and that special proceedings are thus warranted;

b. a description of the Indian water rights or water rights for other federal reservation as agreed upon in the settlement agreement and set forth in the stipulation;

c. a statement that special proceedings with respect to the settlement agreement shall be conducted in accordance with this order, a copy of which shall be attached to the order for special proceedings, and a direction that the application and order for special proceedings shall be served forthwith in accordance with

part E. of this order;

d. a statement of the terms of other general procedural orders, if any, established by the general adjudication court, which are applicable to such special proceedings and which are not inconsistent with this order;

e. a statement that if the general adjudication court approves the stipulation between the parties to the settlement agreement and enters a final judgment adjudicating the Indian water rights or water rights for other federal reservation, the judgment will be binding upon all parties to the general adjudication; and

f. at the discretion of the general adjudication court, a direction to the Arizona Department of Water Resources to prepare a factual analysis and/or technical assessment of the Indian water rights or water rights for other federal reservation affected by the settlement and report to the adjudication court within 45 days.

C. Objections and Responses.

1. Any claimant in the general adjudication may file an objection with the general adjudication court asserting that:

a. approval of the stipulation and adjudication of the Indian water rights or water rights for other federal reservation as set forth in the stipulation would cause material injury to the objector's claimed water right;

b. the conditions enumerated in part A. of this order have not been satisfied; or

c. the water rights established in the settlement agreement and

set forth in the stipulation are more extensive than the Indian tribe or federal agency would have been able to establish at trial.

2. Objections shall include:

- a. the name and address of the objector;
- b. a description of the water rights asserted in the objector's claim;
- c. a statement of the legal basis for the objection, and the specific factual grounds upon which the objection is based;
- d. a list of any witnesses and exhibits that the objector intends to present at any hearing on the objection;
- e. any request for discovery relating to the objection and a statement as to the need for such discovery;
- f. and any other information as may be required in the order for summary proceedings.

3. Objections shall be filed within 45 days after the date of service of the order for special proceedings, or if a DWR report was requested by the adjudication court, within 45 days of the service of DWR's report.

4. Any party to the settlement agreement may file a response to each objection within 20 days after the time for filing objections has expired. The response shall include;

- a. any motion for summary disposition of the objection;
- b. a list of any witnesses and exhibits that the parties to the

settlement agreement intend to present at any hearing on the objection;

c. any request for discovery and a statement as to the need for such discovery;

d. any objections to a request for discovery made by the objector;

e. a statement that the response is being concurrently served upon parties entitled to service in accordance with this order; and

f. such other information as may be required in the order for special proceedings.

D. Resolution of Objections

1. The general adjudication court shall conduct hearings to resolve motions for summary disposition of objections, to grant or deny requests for discovery, and to set for hearing objections that are not resolved by motion for summary disposition. Requests for discovery shall be granted for good cause shown, but the court shall establish a schedule within which any permitted discovery shall be completed.

2. Motions for summary disposition of objections shall be granted where an objector lacks standing to assert an objection, has no valid legal basis for an objection, where an objection raises no genuine issues of material fact regarding the alleged injury of an objector's claim of water rights or where the adjudication court, applying the standards for deciding motions for summary judgment under Ariz. R. Civ. P. 56, finds that summary disposition should be granted.

3. Where an objection is not resolved by motion for summary disposi-

tion, or where an objection is not the subject of a motion for summary disposition, the general adjudication court shall conduct expedited hearings on such objections.

4. The general adjudication court, in its discretion, may refer all or part of the summary proceedings provided by this order to the special master appointed under the provisions of A.R.S. § 45-255. The general adjudication court may request the master's recommendation on the issue of approval, but shall not delegate to the special master the court's power to approve or decline to approve the stipulation or to enter a judgment accordingly.

5. Upon completion of all hearings on objections, and upon the receipt of the report of the master, if matters have been referred to the master, the general adjudication court shall enter a judgment either approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation or declining to do so.

6. The court shall approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation if, after hearing the evidence, it determines that the parties to the settlement have established by a preponderance of the evidence that:

a. there is a reasonable basis to conclude that the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation are no more extensive than the Indian tribe or federal agency would have been able to prove at trial. In making this determination, the court

may consider in addition to other evidence offered, the statement of claimant filed by the Indian tribe or federal agency and all supporting documentation;

b. the water rights of the objector could not be established at a trial on the objector's water rights; the water rights of the objector, if established at a trial on the objector's water rights, would not be materially injured by the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation; the objector is bound by the settlement agreement because his interests were adequately represented by a party to the settlement agreement by virtue of the objector's relationship to such party; or under the express terms of the settlement agreement and the stipulation, the objector is not bound and, therefore, both the objector and the Indian tribe or federal agency may pursue their remedies against each other in the adjudication; and

c. the settlement agreement has been reached in good faith.

7. The general adjudication court's judgment approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation, or its order declining to do so, shall be reviewable by the Arizona Supreme Court pursuant to the Court's Special Procedural Order Providing for Interlocutory Appeals and Certification.

E. Service and Notice.

1. Parties to the settlement agreement shall serve a copy of the application for special proceedings together with a copy of the order for

special proceedings in the manner provided in the adjudication court's Pre-Trial Order No. 1.

2. The parties to the settlement agreement shall provide notice by mail to all claimants in the general adjudication, in a form approved by the adjudication court, notifying them of the pendency of the special proceeding, advising them as to where complete copies of the application for special proceedings and order may be found, and including whatever other information the adjudication court may require.

3. The adjudication court shall serve a copy of DWR's report, if one was requested, as provided in the adjudication court's Pre-Trial Order No. 1.

4. A claimant filing an objection shall serve it, and all subsequent filings relating to the objection upon the parties to the settlement agreement. The parties to the settlement agreement shall serve their response to an objection, and all subsequent filings relating to that objection, upon all the objecting parties. Service under this part shall be made in accordance with Ariz R. Civ. P. 5(c)(1).

5. The adjudication court may in its discretion, require additional service of the application, objection, response, and other pleadings as deemed necessary in a given application, except that the final order of the court entered pursuant to part D.5. of this order shall be served pursuant to the adjudication court's Pre-Trial Order No. 1.

6. The adjudication court may, for good cause, extend the time limits established in parts B.3.f., C.3., and C.4. of this order.

7. The Clerk of the Superior Court for Maricopa County shall maintain a docket sheet on which all documents filed in the action shall be

entered. Docket sheet entries shall identify each filed document by title of the document and a brief description of its contents. The clerk shall update the docket sheet at least biweekly and furnish copies of it on a monthly basis to the Clerks of the Superior Court for all other counties. All clerks shall post in a prominent place a notice of the availability of the docket sheet in a form approved by the general adjudication court.

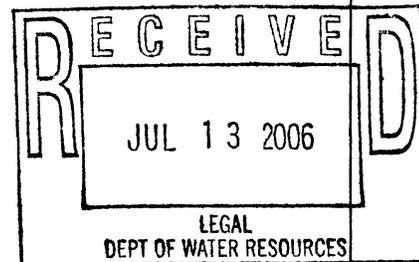
8. The Clerk of the Superior Court for Maricopa County shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this order.

DATED this _____ day of May, 1991.

STANLEY G. FELDMAN
Vice-Chief Justice

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY



**IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS TO
USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE.**

**No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)**

CONTESTED CASE NO. W1-208

NOTICE OF PROPOSED SETTLEMENT

In re Proposed Tohono O'odham Nation Water Rights Settlement.

IMPORTANT NOTICE FOR CLAIMANTS IN THE GILA RIVER ADJUDICATION

Several parties to the Gila River general stream adjudication ("Gila River Adjudication") have asked the Superior Court to approve a proposed settlement of all claims within the Tucson Active Management Area, the Santa Cruz Active Management Area and that part of the Upper Santa Cruz Basin not within either of the Active Management Areas ("Tucson Management Area") for water rights of the Tohono O'odham Nation (the "Nation"), individual Indian trust allotment landowners ("Allottees"), and the United States acting on behalf of the Nation and the Allottees. The claimed water rights of the Nation, the Allottees, and the United States on behalf of the Nation and the Allottees, for the San Xavier Reservation and the eastern portion of the Schuk Toak District (as shown on the map, Attachment A), are subject to adjudication by this Court.

The parties to this proposed settlement (the "Settling Parties") include: the Tohono O'odham Nation, the Allottees, the United States of America, the State of Arizona, the City of Tucson, Farmers Investment Co. and Asarco Incorporated.

YOU ARE HEREBY NOTIFIED that the Court is conducting special proceedings to determine whether this proposed settlement should be approved. If the Court approves the proposed settlement and enters a final judgment adjudicating the water rights claims within the Tucson Management Area of the Nation, the Allottees, and the United States on behalf of the Nation and Allottees, as set forth in a stipulation reflecting the principal terms of the settlement, the judgment will be binding upon all claimants in the Gila River Adjudication.

The Court has ordered the Arizona Department of Water Resources ("ADWR") to prepare a factual analysis or technical assessment of the proposed settlement. ADWR's report must be completed by October 24, 2006.

The Court has ordered the Settling Parties to provide interested parties in the Gila River Adjudication and the public with information about the proposed settlement. A meeting will be held at 7:00 p.m. on November 13, 2006, at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street, Tucson, Arizona 85701.

Claimants in the Gila River Adjudication will have until December 13, 2006 to file any objections they might have to the proposed settlement. The Court will thereafter schedule hearings on the proposed settlement and any objections to the proposed settlement.

1 You or your predecessor has filed a statement of claimant for water uses in the Gila River system and source.
2 Your claimed water rights may be affected by the proposed settlement. To help you determine whether you should file
3 an objection to the proposed settlement, you should review the application filed by the parties to the proposed
4 settlement; the Court's Order of July 11, 2006, authorizing these special proceedings; and the settlement documents.
5 All these materials may be examined during business hours at the Arizona Department of Water Resources, 3550 N.
6 Central Avenue, Phoenix, Arizona 85012, the Tucson Active Management Area, 400 W. Congress, Suite 518, Tucson,
7 Arizona 85701, or at Arizona Department of Water Resource's website (www.azwater.gov). Also, copies of the
8 proposed settlement may be examined at the office of the Superior Court Clerk in each Arizona county.

9 If you decide to file an objection to the proposed settlement, you must do so on or before December 13, 2006.
10 Any claimant in the Gila River Adjudication may file an objection with the Adjudication Court asserting that:

11 a. The approval of the stipulation setting forth the terms of the settlement, and the proposed final
12 judgment and decree adjudicating the water rights claims of the Nation, the Allottees, and the United States on behalf
13 of the Nation and the Allottees, as set forth in the settlement agreement, would cause material injury to the objector's
14 claimed water right;

15 b. The conditions described in the Arizona Supreme Court's Special Procedural Order Providing for the
16 Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991, which warrant
17 this special proceeding have not been satisfied; or

18 c. The water rights established in the settlement agreement, set forth in the stipulation and adjudicated
19 in the proposed final judgment and decree, are more extensive than the Indian tribe or federal agency would have been
20 able to establish at trial.

21 Objections must also include:

22 a. The name, address, and signature of the objector;

23 b. A description of the water rights asserted in the objector's claim;

24 c. A statement of the legal basis for the objection, and the specific factual grounds upon which the
25 objection is based;

26 d. A list of any witnesses and exhibits that the objector intends to present at any hearing on the
27 objection;

28 e. Any request for discovery relating to the objection and a statement as to the need for such discovery;
and

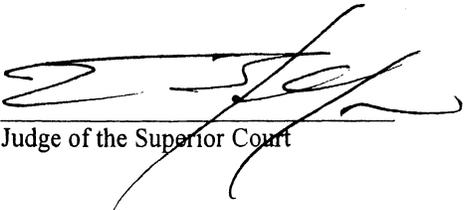
f. Any other information the Adjudication Court may require in the order for summary proceedings.

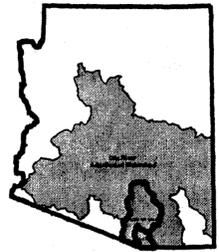
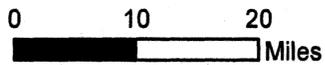
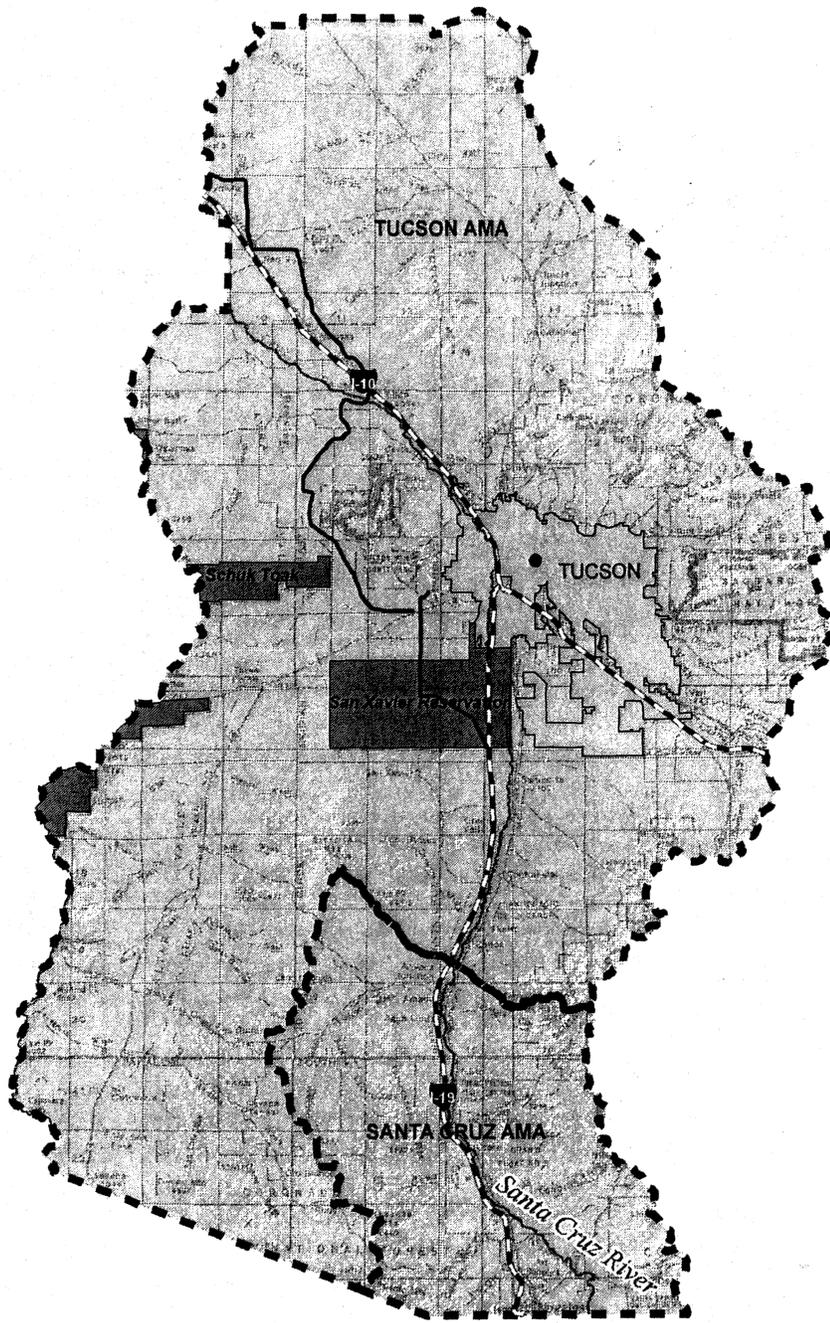
Objections must be filed with the Clerk of the Superior Court, Maricopa County, Attention: Water Case No.
W1-208, 601 W. Jackson, Phoenix, Arizona 85003.

If you have any questions concerning the proposed settlement and these special proceedings to consider the
proposed settlement, you may wish to contact an attorney of your choice.

This Notice was approved on July 11, 2006, and mailed pursuant to the order of the Court.

DATED this 12 day of July, 2006.


Judge of the Superior Court



- River
- CAP Canal
- Interstate
- AMA
- Indian Reservation
- City

Southern Arizona Water Rights Settlement Act (SAWRSA)

APPENDIX F: State Legislation

A.R.S. § 45-2491

A. The authority shall act as agent for this state in meeting this state's obligation to deliver water in times of shortage pursuant to Public Law 108- 451, fulfilling the requirements of §§ 105, 207(c)(I)(ii) and 302(b)(8), and the Indian firming measures established pursuant to this article. In carrying out this obligation the authority may:

1. Store water at permitted recharge facilities for the purpose of Indian firming.
2. Enter into contracts or agreements with the United States and Indian communities for storage, recovery or direct delivery of water for Indian firming.
3. Enter into leasing agreements with one or more Indian communities in partnership with other entities for non-Indian agricultural priority or Indian priority central Arizona project water.
4. Enter into contracts for the use of water sources including Colorado river water, surface water other than Colorado river water and effluent.
5. Enter into contracts with eligible entities for the use of imported groundwater from allowable groundwater basins pursuant to §§ 45-552, 45- 553 and 45-554 for the purposes of Indian firming.
6. Enter into agreements with a multi-county water conservation district established pursuant to title 48, chapter 22 for delivery of water to Indian communities.
7. Subject to periodic review of progress toward meeting this state's Indian firming obligation, allow for the use of existing long-term storage credits developed from withdrawal fees collected pursuant to § 45-611, subsection C, paragraph 3.
8. Transfer long-term storage credits to a multi-county water conservation district established pursuant to title 48, chapter 22 for recovery and subsequent delivery to Indian communities in times of shortage.
9. Enter into agreements for the recovery of long-term storage credits for purposes of Indian firming.

B. Indian firming measures established pursuant to this article shall include funding from the following sources:

1. Legislative appropriations provided for Indian firming on an annual basis to carry out Indian firming measures.

2. To the extent necessary to carry out Indian firming measures after expenditure of legislative appropriations, the authority may use withdrawal fees collected from the Phoenix, Pinal and Tucson active management area water management accounts.

CHAPTER 16
TOHONO O'ODHAM WATER
SETTLEMENT PROGRAM

ARTICLE 1. GENERAL PROVISIONS

- Section
45-2701. Definitions.
45-2702. Jurisdiction.

ARTICLE 2. SAN XAVIER RESERVATION
WATER PROTECTION PROGRAM

- 45-2711. Applications to drill nonexempt wells in the Tucson active management area; well impact analysis; requirements; exception.
45-2712. Notice of well applications to nation; objection; hearing; appeal.

ARTICLE 1. GENERAL PROVISIONS

45-2701. Definitions

Text of section as conditionally enacted by Laws 2005, Ch. 143, § 10; see notes

Unless the context otherwise requires, the terms defined in sections 45-402 and 45-802.01

have the same meaning in this chapter and for the purposes of this chapter:

1. "Exempt well" means a well that qualifies as an exempt well under section 45-454 in effect on January 1, 2005.
2. "Nation" means the Tohono O'odham nation organized under a constitution approved in accordance with section 16 of the act of June 18, 1934 (25 United States Code section 476).
3. "Nonexempt well" means any well, including a recovery well, that does not qualify as an exempt well or a replacement well.
4. "Replacement well" means a well that qualifies as a replacement well at approximately the same location under the rules adopted by the director pursuant to section 45-579, subsection B and that is no more than six hundred sixty feet from the well it is replacing.
5. "Reservation" means the San Xavier Indian reservation established by executive order of July 1, 1874.

6. "Tohono O'odham settlement agreement" means the agreement dated April 30, 2003 between the nation, this state and other parties, as amended before the effective date of this section, a copy of which is on file in the department.

²⁰⁰⁵
Recent legislative year: Laws 2005, Ch. 143, § 10.

Editor's note.

Laws 2005, Ch. 143, § 15 provides: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

45-2702. Jurisdiction

Text of section as conditionally enacted by Laws 2005, Ch. 143, § 10; see notes

The superior court that has jurisdiction over the general adjudication of all rights to use water in the Gila river system and source has jurisdiction over all civil actions relating to the interpretation and enforcement of all of the following:

1. Title III of the Arizona water settlements act (P.L. 108-451), including sections 312(d) and 312(h).
2. The Tohono O'odham settlement agreement.

3. The groundwater protection program established pursuant to article 2 of this chapter.

2005

Recent legislative year: Laws 2005, Ch. 143, § 10.
Editor's note.

Laws 2005, Ch. 143, § 15 provides: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

ARTICLE 2. SAN XAVIER RESERVATION WATER PROTECTION PROGRAM

45-2711. Applications to drill nonexempt wells in the Tucson active management area; well impact analysis; requirements; exemption

Text of section as conditionally enacted by Laws 2005, Ch. 143, § 10; see notes

A. Except as provided in subsections B and E of this section, in the Tucson active management area, on receipt of an application to drill a new nonexempt well, including a notice of intention to drill a new nonexempt well under section 45-596, the director shall conduct a hydrologic analysis to determine the projected impacts of the proposed withdrawals from the well on the water levels at the exterior boundaries of the reservation. The director shall conduct the analysis using the methodology used by the director to determine well impacts under the rules adopted by the director under section 45-598. If the director determines that the projected withdrawals from the well over the initial five-year period of withdrawals will cause a water level decline of ten feet or more at any point on the exterior boundaries of the reservation, the director shall deny the application unless the applicant obtains and submits to the director the nation's written consent to drill the well.

B. Except as provided in subsection E of this section, if the director receives an application to drill a new nonexempt well, including a notice of intention to drill a new nonexempt well under section 45-596, at a location within two miles of the exterior boundaries of the reservation and the combined maximum

pumping capacity of all proposed wells included in the application that will be located within two miles of the exterior boundaries of the reservation is five hundred gallons per minute or more, the director shall deny the application to drill the well unless the applicant submits one of the following to the director:

1. A hydrologic study demonstrating to the director's satisfaction both of the following:

(a) That the water level at the proposed well site is declining at less than an average rate of two feet per year based on annual water level data collected during the five years before the date the application was filed.

(b) That the projected withdrawals from all of the proposed wells to be located within two miles of the exterior boundaries of the reservation over the initial five-year period of withdrawals will not cause a water level decline of ten feet or more at any point on the exterior boundaries of the reservation.

2. A hydrologic study demonstrating to the director's satisfaction that the projected withdrawals from all of the proposed wells to be located within two miles of the exterior boundaries of the reservation over the initial five-year period of withdrawals will not cause a water level decline of five feet or more at any point on the exterior boundaries of the reservation.

3. The nation's written consent to the drilling of the well.

C. In determining the water level declines caused by a proposed well under subsection B, paragraph 1 or 2 of this section, or in determining the average annual water level change at a proposed well site under subsection B, paragraph 1 of this section, the following shall not be considered:

1. The effects on water levels of pumping from wells within the reservation.

2. The effects on water levels of underground storage facilities located within two miles of the exterior boundaries of the reservation and recovery wells located within two miles of the exterior boundaries of the reservation, except that in determining the average annual water level change at a proposed well site under subsection B, paragraph 1 of this section, the storage of water at an underground storage facility located within two miles of the exterior boundaries of the reservation shall be considered if the water is stored by the applicant or by another person on behalf of the applicant.

D. For purposes of subsection B of this section, if an applicant submits two or more applications to drill a new nonexempt well within an eighteen-month period, the applications shall be considered one application.

E. This section does not apply to an application to drill a recovery well under section 45-834.01 if the recovery well will be located within two miles of the exterior boundaries of the reservation and will be permitted to recover only water stored at an underground storage facility located within one mile of the recovery well.

F. The director shall not issue a permit under section 45-513, 45-514, 45-516, 45-517, 45-518, 45-519 or 45-519.01 if the applicant for the permit proposes to withdraw groundwater from a new well or wells and the director is required to deny the application under this section.

G. An application for a permit to withdraw groundwater pursuant to chapter 2, article 7 of this title shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the applicant proposes to withdraw groundwater from a new well or wells within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. This subsection does not apply to an application for a general industrial use permit under section 45-515.

H. A notice of intention to drill under section 45-596 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the proposed well or wells are nonexempt wells to be located within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-596, subsection D, the director shall not authorize the drilling of a well under section 45-596 if the director is required to deny the notice of intention to drill under this section.

I. An application for a permit to construct a new well or replacement well in a new location under section 45-599 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the proposed well or wells are within two miles of the exterior boundaries of the reservation and

the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-599, subsection C, the director shall deny an application for a permit for a new well or a replacement well in a new location under section 45-599 if the director is required to deny the application under this section.

J. An application for a recovery well permit under section 45-834.01 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection b, paragraph 3 of this section if the proposed recovery well or wells are within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-834.01, subsection B, the director shall deny an application for a recovery well under section 45-834.01 if the director is required to deny the application under this section.

2005

Recent legislative year: Laws 2005, Ch. 143, § 10.

Editor's note.

Laws 2005, Ch. 143, § 15 provides: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

45-2712. Notice of well applications to nation; objection; hearing; appeal

Text of section as conditionally enacted by Laws 2005, Ch. 143, § 10; see notes

A. Before making a decision on an application described in section 45-2711, subsection B, the director shall mail written notice of the application to the nation, including a copy of the application, and provide the nation an opportunity to object to the application in the manner provided in subsection B of this section.

B. The nation may file with the director a written objection to an application described in section 45-2711, subsection B within sixty days after the director mails written notice of the application to the nation. The grounds for objection are limited to whether the application

should be denied under section 45-2711, subsection B.

C. If the nation files a timely objection to an application pursuant to subsection B of this section, the director shall schedule an administrative hearing on the objection within sixty days after receiving the objection. The administrative hearing shall be held by an administrative law judge of the office of administrative hearings under title 41, chapter 6, article 10 and the nation shall be a party to the hearing. Notwithstanding any other law, the administrative law judge shall issue a recommended decision to the director within thirty days after the close of the hearing and the director shall issue a final administrative decision within thirty days after receiving the administrative law judge's recommended decision. The director's final administrative decision is subject to judicial review by the superior court having jurisdiction over the general adjudication of all rights to use water in the Gila river system and source if a party to the administrative hearing files an action for judicial review within thirty days after the date the director mails notice of the final administrative decision to the party.

D. If the director receives an application to drill a replacement well in the Tucson active management area at a location within two miles of the exterior boundaries of the reservation, before making a decision on the application, the director shall mail written notice of the application to the nation, including a copy of the application, and provide the nation an opportunity to object to the application in the manner provided in subsection E of this section.

E. The nation may file with the director a written objection to an application described in subsection D of this section. The written objection shall be filed within sixty days after the director mails written notice of the application to the nation. The grounds for objection are limited to whether the proposed well qualifies as a replacement well. If the nation files a timely objection to the application, the hearing and appeal provisions set forth in subsection C of this section apply.

F. If the director fails to comply with a requirement in this section, the nation may bring an action in the superior court having jurisdiction over the general adjudication of all rights to use water in the Gila river system and source to obtain an order compelling the director's compliance.

²⁰⁰⁵

Recent legislative year: Laws 2005, Ch. 143, § 10.

Editor's note.

Laws 2005, Ch. 143, § 15 provides: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

45-841.01. Accrual of long-term storage credits; Indian water rights settlements

Text of section as amended by Laws 2005, Ch. 143, § 2.

For version of this section conditionally effective as amended by Laws 2005, Ch. 143, § 3, see the following section.

A. To further the implementation of Indian water rights settlements in this state, an Indian community may accrue long-term storage credits as prescribed by this section.

B. This section applies only to the settlement of a water rights claim by a federally recognized Indian community in this state if the settlement provides for off-reservation storage of its central Arizona project water and only after the settlement results in a dismissal with prejudice of a class action claim that has been pending in the United States district court for more than five years.

C. Before accruing any long-term storage credits under this section, both of the following conditions apply:

1. A party seeking to participate in the accrual of long-term storage credits under this section shall file written notice with the director that the requirements of subsection B of this section have been met.

2. The director shall find that the requirements of subsection B of this section have been met.

D. Before accruing any long-term storage credits under this section, a party seeking to participate in the accrual of long-term storage credits under this section shall file with the director all of the following information:

1. A written notice of the party's intent to begin the delivery of central Arizona project water that is available to the Indian community to the holder of grandfathered groundwater rights in an active management area.

2. A sworn statement by the holder of the grandfathered groundwater rights that the holder will use the water delivered off of Indian community lands on a gallon-for-gallon substitute basis instead of groundwater that otherwise would have been pumped pursuant to the grandfathered groundwater rights from within an active management area.

3. A listing and description of the grandfathered groundwater rights that will not be exercised by the holder because of the delivery of the water that is delivered by the Indian community.

4. A hydrologic report assessing the effect of nonexercise of grandfathered groundwater rights under this section on any underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal for the grandfathered groundwater rights.

E. The director shall review the hydrologic report filed pursuant to subsection D, paragraph 4 of this section and shall make such modifications to the state demonstration project's underground storage facility permit as the director deems appropriate.

F. If the director determines that the parties have complied with subsection D of this section, the Indian community may begin accruing long-term storage credits for the delivery of central Arizona project water to the holder of the grandfathered groundwater rights, but only if the following apply:

1. By March 31 of each year, the holder of the grandfathered groundwater rights files an annual report with the director for the preceding calendar year. The annual report shall include the following information:

(a) The total quantity of water received from the Indian community during the year for use by the holder under this section.

(b) A listing of those grandfathered groundwater rights that were not exercised during the year by the holder because of the receipt of central Arizona project water delivered by the Indian community.

(c) Such other information as the director may reasonably require.

2. The director finds that the water reported as received by the grandfathered groundwater right holder was used on a gallon-for-gallon substitute basis for groundwater.

3. The Indian community has offered to sell the Arizona water banking authority ten per cent of any long-term storage credits accruable by the Indian community under this section at a price per acre-foot at the time of sale equal to the authority's cost of delivering and storing water at an underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal of any of the grandfathered groundwater rights identified in the list filed with the director pursuant to subsection D, paragraph 3 of this section, except that any credits purchased pursuant to such offer may not be recovered within five miles of the exterior reservation boundary of the Indian community.

G. The water that is received under this section by the holder of the grandfathered groundwater right is deemed to be groundwater for all purposes of chapter 2 of this title as if the holder had withdrawn it from a well. The holder is responsible for all records, reports and fees required by chapter 2 of this title relating to the water received.

H. The director shall establish a long-term storage account for the Indian community in accordance with section 45-852.01 and each year shall credit to that long-term storage account ninety-five per cent of the water received by the holder of the grandfathered groundwater right during the preceding year that meets the requirements of subsection F of this section.

I. Long-term storage credits accrued pursuant to this section may be used or assigned in any manner that is consistent with this chapter.

J. The maximum amount of long-term storage credits that may be accrued by an Indian community under this section in any year is ten thousand acre-feet.

Recent legislative year: Laws 2002, Ch. 208, § 2; Laws 2005, Ch. 143, § 2.

Editor's note.

Laws 2005, Ch. 143, § 16B provides as follows: "Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met."

Laws 2005, Ch. 143, § 15 provides as follows: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

45-841.01. Accrual of long-term storage credits; Indian water rights settlements

Text of section as amended by Laws 2005, Ch. 143, § 3, conditionally effective; see notes. For version effective until the condition is met, see the preceding section.

A. To further the implementation of Indian water rights settlements in this state, an Indian community may accrue long-term storage credits as prescribed by this section.

B. This section applies only to the settlement of a water rights claim by a federally recognized Indian community in this state if the settlement provides for off-reservation storage of its central Arizona project water and only after the settlement results in a dismissal with prejudice of a class action claim that has been pending in the United States district court for more than five years.

C. Before accruing any long-term storage credits under this section, both of the following conditions apply:

1. A party seeking to participate in the accrual of long-term storage credits under this section shall file written notice with the director that the requirements of subsection B of this section have been met.

2. The director shall find that the requirements of subsection B of this section have been met.

D. Before accruing any long-term storage credits under this section, a party seeking to participate in the accrual of long-term storage credits under this section shall file with the director all of the following information:

1. A written notice of the parties' intent to begin the delivery of central Arizona project water that was made available to the Indian

community by the water rights settlement to the holder of grandfathered groundwater rights in an active management area.

2. A sworn statement by the holder of the grandfathered groundwater rights that the holder will use the water delivered off of Indian community lands on a gallon-for-gallon substitute basis instead of groundwater that otherwise would have been pumped pursuant to the grandfathered groundwater rights from within an active management area.

3. A listing and description of the grandfathered groundwater rights that will not be exercised by the holder because of the delivery of the water that is delivered by the Indian community.

4. A hydrologic report assessing the effect of nonexercise of grandfathered groundwater rights under this section on any underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal for the grandfathered groundwater rights.

E. The director shall review the hydrologic report filed pursuant to subsection D, paragraph 4 of this section and shall make such modifications to the state demonstration project's underground storage facility permit as the director deems appropriate.

F. If the director determines that the parties have complied with subsection D of this section, the Indian community may begin accruing long-term storage credits for the delivery of central Arizona project water to the holder of the grandfathered groundwater rights, but only if the following apply:

1. By March 31 of each year, the holder of the grandfathered groundwater rights files an annual report with the director for the preceding calendar year. The annual report shall include the following information:

(a) The total quantity of water received from the Indian community during the year for use by the holder under this section.

(b) A listing of those grandfathered groundwater rights that were not exercised during the year by the holder because of the receipt of central Arizona project water delivered by the Indian community.

(c) Such other information as the director may reasonably require.

2. The director finds that the water reported as received by the grandfathered groundwater right holder was used on a gallon-for-gallon substitute basis for groundwater.

3. The Indian community has offered to sell

the Arizona water banking authority ten per cent of any long-term storage credits accruable by the Indian community under this section at a price per acre-foot at the time of sale equal to the authority's cost of delivering and storing water at an underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal of any of the grandfathered groundwater rights identified in the list filed with the director pursuant to subsection D, paragraph 3 of this section, except that any credits purchased pursuant to such offer may not be recovered within five miles of the exterior reservation boundary of the Indian community.

G. The water that is received under this section by the holder of the grandfathered groundwater right is deemed to be groundwater for all purposes of chapter 2 of this title as if the holder had withdrawn it from a well. The holder is responsible for all records, reports and fees required by chapter 2 of this title relating to the water received.

H. The director shall establish a long-term storage account for the Indian community in accordance with section 45-852.01 and each year shall credit to that long-term storage account ninety-five per cent of the water received by the holder of the grandfathered groundwater right during the preceding year that meets the requirements of subsection F of this section.

I. Long-term storage credits accrued pursuant to this section may be used or assigned in any manner that is consistent with this chapter.

J. The maximum amount of long-term storage credits that may be accrued by an Indian community under this section in any year is ten thousand acre-feet.

Recent legislative year: Laws 2005, Ch. 143, § 3. ²⁰⁰⁵

Editor's note.

Laws 2005, Ch. 143, § 16B provides as follows: "Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met."

Laws 2005, Ch. 143, § 15 provides as follows: "A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

"B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment."

**APPENDIX G: Expected Funding of Programs and Benefits
From the Lower Colorado River Basin Development Fund**

Exhibit 29.1.1

Dollars (\$1,000)

Year	GRIC SCIP Rehab	GRIC SCIP Rehab	GRIC PMIP	GRIC PMIP	SCIDD Lining	SCIDD Lining	San Carlos CAP-IDD	SAWRSA Distribution System	Rec. Oversight	San Xavier Buyout	Cooperative Fund	Safford Loan	SRP HCP	UVD Rights Red.	Env. Compliance	Firming Costs	Other SAWRSA Costs	Future Settlements	Gila Valley Irrig. Distr.	NM Unit	Total Cost
2002	(1),(5)	(2,(5))	(1),(5)	(2),(5)	(1),(5)	(2),(5)	(3), (4)	(3),(4)	(3), (4)	(3)	(3)	(5), (6)	(5)	(3), (4)	(3), (4)	(3), (4)	(3)	(5)	(5)	(3), (7)	\$0
2003			\$24,958				\$1,500	\$3,700													\$30,158
2004			\$16,832				\$2,000	\$3,000													\$21,832
2005			\$13,270				\$3,000	\$7,000				\$600									\$23,870
2006			\$15,000				\$7,000	\$8,000				\$600									\$30,600
2007			\$15,000				\$7,000	\$6,000				\$600									\$28,600
2008			\$15,000				\$7,000	\$6,000				\$600									\$28,600
2009			\$15,000				\$7,000	\$6,000				\$600									\$28,600
2010	\$10,000	4.62%	\$10,000	2.72%	\$7,000	9.34%	\$10,000	\$2,319	\$400	\$18,300		\$1,400	\$2,000		\$500		\$2,000	\$0	\$16,752		\$80,671
2011	\$15,000	6.92%	\$12,500	3.40%	\$7,000	9.34%	\$10,000		\$400			\$1,400	\$2,000	\$6,000	\$600		\$2,000	\$0			\$56,900
2012	\$15,000	6.92%	\$15,000	4.08%	\$7,000	9.34%	\$10,000		\$400			\$1,400	\$2,000		\$600	\$2,500	\$1,518	\$0	\$9,040		\$64,458
2013	\$15,000	6.92%	\$15,000	4.08%	\$8,000	10.67%	\$10,000		\$400			\$1,400	\$2,000		\$400	\$2,500		\$16,667	\$9,040		\$80,407
2014	\$20,000	9.23%	\$15,000	4.08%	\$8,000	10.67%	\$10,000		\$400			\$1,400	\$2,000		\$400	\$2,500		\$16,667	\$9,040		\$85,407
2015	\$20,000	9.23%	\$15,000	4.08%	\$8,000	10.67%	\$2,436		\$400			\$1,400		\$1,500	\$2,500	\$2,500		\$16,667	\$9,040		\$79,443
2016	\$25,000	11.54%	\$17,500	4.76%	\$7,000	9.34%			\$400			\$1,400			\$2,500	\$2,500		\$16,667	\$9,040		\$82,007
2017	\$25,000	11.54%	\$17,500	4.76%	\$7,000	9.34%			\$400			\$1,184				\$2,500		\$16,667	\$9,040		\$79,291
2018	\$25,000	11.54%	\$17,500	4.76%	\$6,000	8.00%			\$400							\$2,500		\$16,667	\$9,040		\$77,107
2019	\$25,000	11.54%	\$17,500	4.76%	\$5,000	6.67%			\$400							\$2,500		\$16,667	\$9,040		\$76,107
2020	\$21,632	9.99%	\$17,500	4.76%	\$4,958	6.61%			\$400									\$16,667	\$9,040		\$70,197
2021			\$17,500	4.76%														\$16,667	\$9,020		\$43,187
2022			\$25,000	6.80%														\$16,667			\$41,667
2023			\$25,000	6.80%														\$16,666			\$41,666
2024			\$25,000	6.80%														\$16,666			\$41,666
2025			\$22,500	6.12%														\$16,666			\$39,166
2026			\$22,500	6.12%							\$4,000							\$16,666			\$43,166
2027			\$22,500	6.12%							\$4,000							\$16,666			\$43,166
2028			\$22,500	6.12%							\$4,000										\$26,500
2029			\$14,895	4.05%							\$4,000										\$18,895
2030																					\$0
2031																					\$0
2032																					\$0
2033																					\$0
2034																					\$0
2035																					\$0
2036																					\$0
2037																					\$0
2038																					\$0
2039																					\$0
2040																					\$0
2041																					\$0
Total	\$216,632		\$482,455		\$74,958		\$86,936	\$42,019	\$4,400	\$18,300	\$16,000	\$13,984	\$10,000		\$7,500	\$20,000	\$5,518	\$250,000	\$16,752	\$90,380	\$1,363,334
Post 2010	\$216,632	100.00%	\$367,395	100.00%	\$74,958	100.00%	\$52,436	\$2,319	\$4,400	\$18,300	\$16,000	\$10,984	\$10,000		\$7,500	\$20,000	\$5,518	\$250,000	\$16,752	\$90,380	\$1,171,074

Notes

- (1) These costs are escalated costs are included only for comparison with other costs in this exhibit and are not to be used for funding purposes.
- (2) The percentages are calculated as a ratio of the unescalated total funding. Funding for these activities will be based on the percentages shown in these columns.
- (3) These costs are to be funded pursuant to the schedule and are not subject to adjustment in the event of shortfalls in the fund.
- (4) These costs are based on estimates made using the best available information at the time the estimate was made. Accordingly, Reclamation may adjust the estimates and schedules as needed to reflect costs at the time the work is done.
- (5) These costs are to be funded pursuant to the schedule set forth in this column and are subject to adjustment in the manner prescribed in subparagraph 29.3 of the Settlement Agreement.
- (6) Safford schedule is based on projections of interest rate and may be adjusted if interest rates change substantially from the projections.
- (7) The priority of funding for New Mexico will be as set forth in section 403(f)(2)(D)(i) of the Lower Colorado River Basin Projects Act (as amended). New Mexico first phase funding is not subject to adjustment in the event of shortfalls in the fund.

APPENDIX H: Statement of Claimants



STATEMENT OF CLAIMANT FORM FOR OTHER USES¹

File No. 39- 74335 Date Filed: 7-29-87 WFN

UPPER SANTA CRUZ RIVER WATERSHED SUPERIOR COURT OF MARICOPA COUNTY

FEE REQUESTED 8-26-87

United States on behalf of the Tohono O'odham (Papago) San Xavier

1. Claimant Name: Indian Community Claimant Address: P.O. Box 10 City Phoenix State: Arizona Zip Code 85001 Telephone 241-2310

2. Basis of Claim:

- A. Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No. B. Appropriation Right acquired after June 12, 1919. Application No. Permit No. or Certificate of Water Right No. C. Decreed water right. Principal litigants, court, date and case no.: D. [X] Right to withdraw groundwater. E. [X] Other, describe: Federal Reserved Right; Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293)

3. Claimed Priority Date: Time Immemorial (month/day/year)

4. Use:

- A. [X] Municipal E. [X] Recreation, Fish & Wildlife B. [X] Commercial or Industrial F. [X] Other, describe: Domestic C. [X] Mining D. [X] Stockwatering other than from a stockpond

5. Source of Water:

- A. Stream: name, tributary to B. Spring: name, tributary to C. Lake or Reservoir: name, tributary to D. [X] Groundwater

6. Legal description of the Point of Diversion: (attach additional sheet if required) Wells within the boundaries of the San Xavier Reservation. % Section Township N/S Range E/W

7. If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe: Irrigation, Domestic, and Stockpond

8. Means of Diversion:

- A. Instream pump B. Gravity flow into ditch, canal or pipeline. C. Well: Arizona Department of Water Resources Well Registration No. 55- D. [X] Other, describe: Wells within the boundaries of the San Xavier Reservation

¹See Instructions for explanation of uses in this category

9. Means of Conveyance:

A. Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: _____

B. Other, describe: Wells and conveyance facilities

10. Place of Use, if other than point of diversion: (attach additional sheet if required)

County Pima

Legal Subdivision	Section	Township	Range
<u>See Attachment</u>	_____	____N/S	____E/W
_____	_____	____N/S	____E/W

11. Claimed Right: See Attachment

A. Maximum Flow Rate: _____

cubic-feet per second
 gallons per minute
 Arizona miner's inches

B. Annual Volume of Water Use: 10,000 acre-feet and such additional wells having a capacity of less than 35 gallons per minute for domestic and livestock.

C. Storage Right: _____ acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant _____

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? _____

15. Attach Filing Fee to Form. Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. Additional comments: See Attachment

(attach additional sheet if required)

17. Notarized Statement:

I (We), James H. Stevens
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

(seal)

My Commission Expires:

My Commission Expires Dec. 16, 1990

Lola J. Freitag
Notary Public

or, _____
Authorized Personnel of the Department of Water Resources



96 STAT. 1280

PUBLIC LAW 97-293—OCT. 12, 1982

**LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES;
DISPOSITION OF WATER**

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

Upper Santa Cruz River Watershed
Superior Court of Maricopa County
Statement of Claimant
Federal Reserved Water Rights



The attached water rights claim is submitted by the United States of America as trustee for the Tohono O'odham (formerly Papago) San Xavier Indian Community.

It is the position of the United States that this claim does not in any way effect a waiver of the Community's immunity from suit. It is the position of the government that the Community's immunity from suit has not been waived by the McCarran Amendment (43 U.S.C. §666). The Community can become a party to this proceeding only if it chooses to intervene in its own behalf.

This water rights claim is based on the best information available to the United States as of July 1987, and is as accurate and complete as the information allows. However, the United States intends to continue discussions and investigations in order to refine existing data. Such refinement may necessitate the amendment of this claim sometime in the future in order to reflect updated information.

I. Name and address of Claimant:

United States of America
Department of Interior
Bureau of Indian Affairs, as Trustee for the
Tohono O'odham (formerly Papago) San Xavier Indian Community
P. O. Box 10
Phoenix, Arizona 85001

II. Name of Indian Reservation:
San Xavier (Papago) Indian Reservation

III. The basis for the reserved water right claim.

A. Authority

The legal basis for this claim is the federal reserved water rights doctrine as recognized by the Supreme Court of the United States. See Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), and United States v. Cappaert, 426 U.S. 128 (1978). The claim asserted herein is based on the intention of the Congress and the President to create a homeland for the Tohono O'odham (formerly Papago) Indians in a geographical area where water "... would be essential to the life of the Indian people and to the animals they hunted and the crops they raised" (Arizona v. California, supra, 373 U.S. at 599), and for the development of the "arts of civilization" (Winters v. United States, supra, 207 U.S. at 576). Through this claim the United States claims sufficient water to provide for the agricultural, recreational, municipal/domestic, industrial, power, development, wildlife, stockwatering and other present and future water uses to fulfill the purposes of the Papago Indian Reservation and to maintain the reservation as a permanent tribal homeland for the Tohono O'odham (formerly Papago) Indians.

Public Law 97-293 of October 12, 1982 (Southern Arizona Water Rights Settlement Act) provided for a settlement of the Tribe's water rights claims for the San Xavier and Eastern Schuk Toak portions of the reservation. Section 306(a) of the Act (attached) provided a limitation on the Tribe's annual use of water from the San Xavier area, and this claim reflects that limitation.



B. Legal description of lands.

The San Xavier (Papago) Indian Reservation lies within Township 15 thru 16 South, Ranges 12 thru 13 east (see attached maps).

- IV. Historical water use. The Tohono O'odhams (formerly Papago) Indians have used surface and ground water for irrigation, stock, and domestic purposes in Southern Arizona since time immemorial.
- V. The quantity and priorit(ies) of the reserved water right(s) claim(s). Irrigation has been practiced by the Tohono O'odham (formerly Papago) Indians since time immemorial. With a time immemorial priority date, a claim is made for 10,000 acre-feet annually for domestic, stockwatering, mining, recreation, and commercial/industrial purposes, plus such additional water from wells having a capacity of less than thirty-five gallons per minute for domestic and livestock purposes (see Section 10(a) of P.L. 97-293).



The San Xavier (Papago) Reservation was established by Executive Order of July 1, 1874.

- VI. Plans for additional water use of claimed reserved water rights, including a time schedule.

Due to a variety of circumstances, specific plans and time schedules are not available at this time related to the anticipated future uses. When such plans and time schedules become available to the United States, the government will submit the plans and schedules to the Court.

Payment of Fees

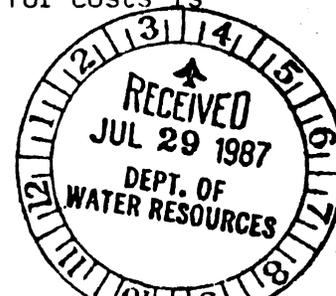
In support of this claim the United States is tendering the fees required by A.R.S. §45-254(F). However, this suit was not instituted by the United States. Rather, the United States was required to participate in order to

protect its rights to use water against the interests of other parties. Jurisdiction over the United States in this case is governed by the McCarran Amendment, 43 U.S.C. §666 (1952). United States v. Superior Court, 144 Az 265, 679 p.2d 658 (1952). The McCarran Amendment provides in part that "no judgment for costs shall be entered against the United States in any such suit." This proviso restates and reinforces the common law rule that, in absence of a statute directly authorizing it, courts could not give judgment against the United States for costs and expenses.^{1/}

The United States intends to seek recovery of all filing fees tendered in this case as well as other legitimate costs associated with this litigation after final judgment has been rendered.

The McCarran Amendment constitutes a waiver of the sovereign immunity of the United States by permitting it to be joined as a defendant in a suit qualifying water rights. Colorado River Water Conservation District v United States 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). In Block v. North Dakota, 461 U.S. 273 (1983), the Supreme court repeated the familiar rule of construction of statutes which waive federal sovereign immunity:

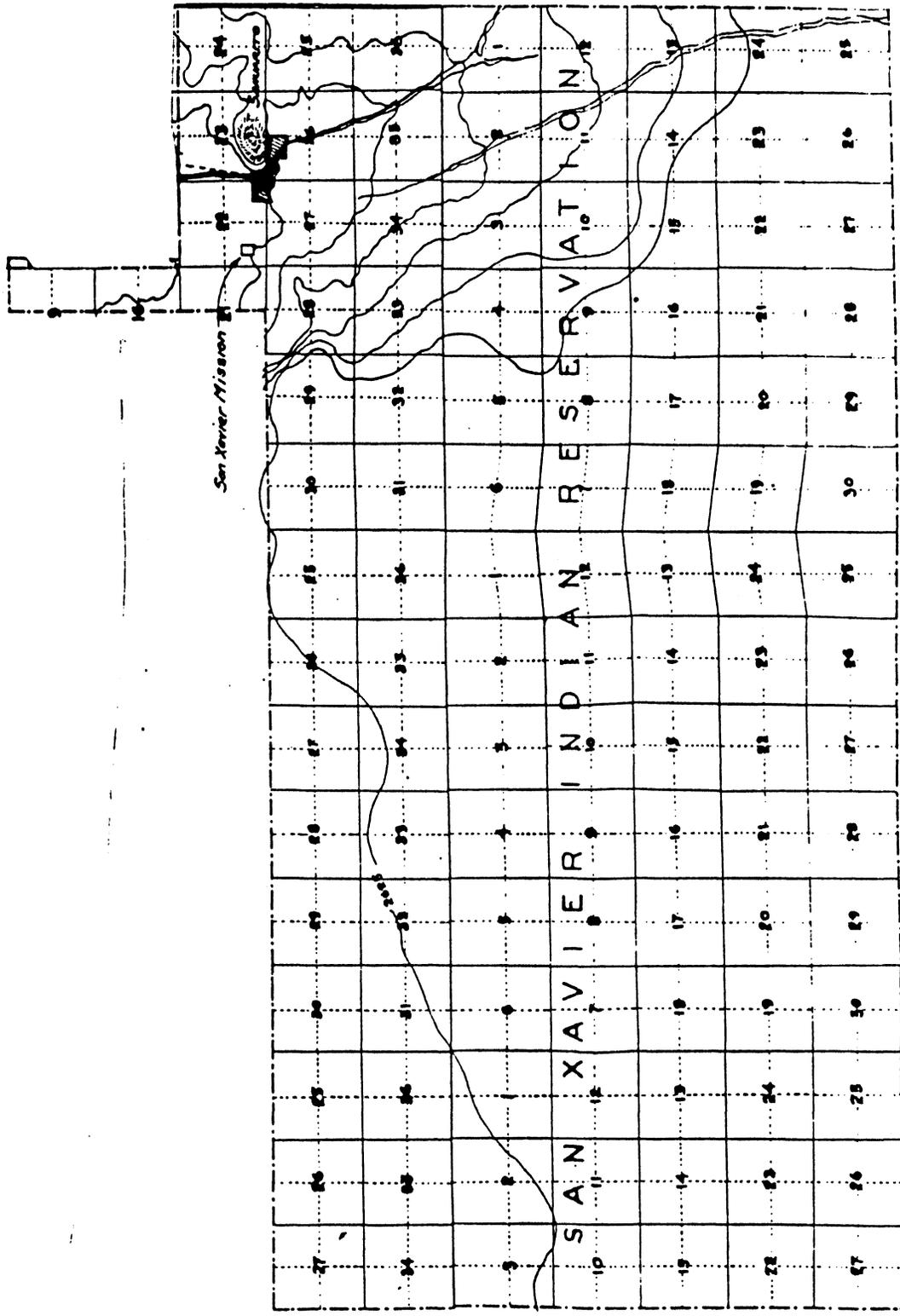
^{1/} In 1966, Congress, by enactment of Public Law 89-507, waived the government's sovereign immunity from a judgment of costs and expenses insofar as that immunity was based on common law principles rather than on a statutory prohibition. Act of July 18, 1966, 80 Stat. 308, as amended 28 U.S.C §2412. However, the 1966 waiver does not apply to cases, such as this case, where the immunity from a judgment for costs is "specifically provided for by statute." 28 U.S.C. §2412(a).



The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied. (Citations omitted). Id. at 287.

The Court went on to hold that there is no reason why the federal sovereignty rule should not be applied to states. Id. at 288-289. And in Aycrigg v. United States, 124 F. Supp. 416, 418 (N.D. Cal. 1954) the Court held that the rule of strict construction of the sovereign immunity waiver was applied to costs "with especial rigor."





R.13 E.

R.12 E.

R.11 E.

G. & S. R. B. & M.

SAN XAVIER INDIAN RESERVATION, ARIZONA

PAPAGO RESERVATION
ARIZONA

Papago

Executive Order
07/01/1874

The following lands located around San Xavier del Bac, in Arizona, were withdrawn from sale or entry and set apart for the use of the Papago and such other Indians as it may be desirable to place thereon:

Beginning at the northeast corner of Section 9, T. 15 S., R. 13 E.; thence west one-half mile to the quarter-section corner; thence south 3 miles to the section line between sections 21 and 28 of same township; thence west along north boundary of Sections 28, 29, and 30, up to the northwest corner of Section 30, same township; continuing thence due west 9 miles to a point; thence south 7 miles to a point; thence east 3 miles to the southwest corner of Section 30, T. 16 S., R. 12 E.; thence east along the south boundary of Sections 30, 29, 28, 27, 26, and 25, T. 16 S., R. 12 E., and Sections 30, 29, 28, 27, 26, and 25, T. 16 S., R. 13 E., to the Southeast corner of Section 25, same township; thence north along the range line between R. 13 and 14 E. to the northeast corner of Section 24, T. 15 S., R. 13 E.; thence west to the northwest corner of Section 22; same township; thence north to the place of beginning, to be known as the Papago Indian Reserve. SAN XAVIER



REPORTING

Recordkeeping.
43 USC 390zz.

SEC. 228. Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

COMMISSIONER OF RECLAMATION

43 USC 373a.

SEC. 229. The Act of May 26, 1926 (44 Stat. 657), is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

SEVERABILITY

43 USC 390zz-1.

SEC. 230. If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

Southern
Arizona
Water Rights
Settlement
Act of 1982.

TITLE III

CONGRESSIONAL FINDINGS

Papago Tribe,
water rights
claims.

SEC. 301. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—



(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 302. For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 303. (a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and



(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

Water management plan, establishment.

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

Appropriation authorization.

(4) There are authorized to be appropriated up to \$3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

Study.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

Study.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.



DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided

in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—



(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

Appropriation
authorization.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

25 USC 386a.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 305. (a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.



(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

Payment of
damages.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES;
DISPOSITION OF WATER

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—



(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.



**OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER;
DISMISSAL AND WAIVER OR CLAIMS OF PAPAGO TRIBE AND ALLOTTEES**

SEC. 307. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

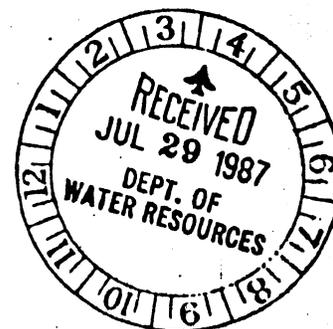
(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation,



Waiver and
release.

or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

Effective date.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

Studies and analysis.

SEC. 308. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed

Management.



by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

Reimbursement.

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 309. (a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of \$15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 310. The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

SEC. 311. Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 312. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

- (1) price guarantees, loan guarantees, or purchase agreements,
- (2) loans, and
- (3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.



COOPERATIVE FUND

Establishment.

SEC. 313. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) \$5,250,000 to be contributed as follows:

(i) \$2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) \$1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) \$1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) \$5,250,000; and

(B) Such sums up to \$16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).



Appropriation authorization.

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

Trustee.
Investments.

(e) If, before the date three years after the date of the enactment of this title—

Termination.

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.



COMPLIANCE WITH BUDGET ACT

Sec. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

Effective date.

SHORT TITLE

Sec. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 1409 (H.R. 5118):

HOUSE REPORTS: No. 97-422 accompanying H.R. 5118 (Comm. on Interior and Insular Affairs), No. 97-855 (Comm. of Conference).

SENATE REPORTS: No. 97-375 accompanying H.R. 5118 (Comm. on Indian Affairs), 97-420 (Comm. on Energy and Natural Resources), No. 97-568 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Mar. 4, H.R. 5118 considered and passed House.
 May 11, H.R. 5118 considered and passed Senate, amended.
 May 12, H.R. 5118 House concurred in Senate amendment with amendments.
 May 13, Senate concurred in House amendments.
 June 1, H.R. 5118 vetoed by President.
 June 22, considered and passed Senate.
 Aug. 17, considered and passed House, amended.
 Aug. 20, Senate concurred in House amendments with amendments.
 Sept. 24, Senate agreed to conference report.
 Sept. 29, House agreed to conference report.

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

Trustee.
Investments.

(e) If, before the date three years after the date of the enactment of this title—

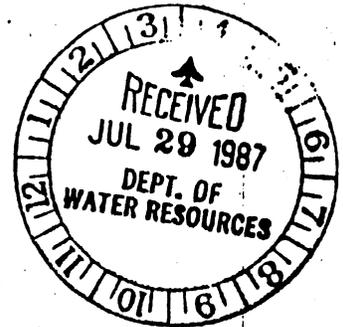
Termination.

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.



COMPLIANCE WITH BUDGET ACT

SEC. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

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Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 1409 (H.R. 5118):

HOUSE REPORTS: No. 97-422 accompanying H.R. 5118 (Comm. on Interior and Insular Affairs), No. 97-855 (Comm. of Conference).

SENATE REPORTS: No. 97-375 accompanying H.R. 5118 (Comm. on Indian Affairs), 97-420 (Comm. on Energy and Natural Resources), No. 97-568 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Mar. 4, H.R. 5118 considered and passed House.

May 11, H.R. 5118 considered and passed Senate, amended.

May 12, H.R. 5118 House concurred in Senate amendment with amendments.

May 13, Senate concurred in House amendments.

June 1, H.R. 5118 vetoed by President.

June 22, considered and passed Senate.

Aug. 17, considered and passed House, amended.

Aug. 20, Senate concurred in House amendments with amendments.

Sept. 24, Senate agreed to conference report.

Sept. 29, House agreed to conference report.

DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

FILE REFERENCE NUMBER
39-09-74333
THRU 39-09-74336

(4 FILINGS)
FILING FEE FOR STATEMENT OF CLAIMANT .30
ADJUDICATION OF SANTA CRUZ RIVER

US ON BEHALF OF TONGO O'ODHAM
INDIAN COMMUNITY
PO BOX 16
PHOENIX AZ 85001

TOTAL .30

PROCESS DATE : 06/27/87
FILING DATE : 07/29/87



STATEMENT OF CLAIMANT FORM FOR OTHER USES¹

File No. 39- 74336 Date Filed: 7-29-87 WFN

UPPER SANTA CRUZ RIVER WATERSHED SUPERIOR COURT OF MARICOPA COUNTY

FEE REQUESTED 8-26-87

United States on behalf of the Tohono O'odham (Papago) Schuk Toak District of the Sells Papago Reservation

1. Claimant Name: District of the Sells Papago Reservation Claimant Address: P.O. Box 10 City Phoenix State: Arizona Zip Code 85001 Telephone 241-2310

- 2. Basis of Claim: A. Appropriation Right acquired prior to June 12, 1919. B. Appropriation Right acquired after June 12, 1919. C. Decreed water right. D. Right to withdraw groundwater. E. Other, describe: Federal Reserved Right; Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293)

3. Claimed Priority Date: Time Immemorial (month/day/year)

- 4. Use: A. Municipal B. Commercial or Industrial C. Mining D. Stockwatering other than from a stockpond E. Recreation, Fish & Wildlife F. Other, describe: Domestic

- 5. Source of Water: A. Stream B. Spring C. Lake or Reservoir D. Groundwater

6. Legal description of the Point of Diversion: (attach additional sheet if required) Wells within Eastern Schuk Toak District of the Sells Papago Reservation

7. If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe: Domestic and Stockpond

- 8. Means of Diversion: A. Instream pump B. Gravity flow into ditch, canal or pipeline. C. Well: Arizona Department of Water Resources Well Registration No. 55- D. Other, describe Wells within the boundaries of Eastern Schuk Toak District of the Sells Papago Reservation

¹See Instructions for explanation of uses in this category

9. Means of Conveyance:
A. Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: _____

B. Other, describe: Wells and related conveyance facilities

10. Place of Use, if other than point of diversion: (attach additional sheet if required)
County Pima

Legal Subdivision	Section	Township	Range
<u>See Attachment</u>	_____	_____N/S	_____E/W
_____	_____	_____N/S	_____E/W

11. Claimed Right: See Attachment
A. Maximum Flow Rate: _____
 cubic-feet per second
 gallons per minute
 Arizona miner's inches
B. Annual Volume of Water Use: _____ acre-feet See Section 306(a) of P.L. 97-293
C. Storage Right: _____ acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant _____

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? _____

15. Attach Filing Fee to Form. Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. Additional comments: See Attachment

(attach additional sheet if required)

17. Notarized Statement: James H. Stevens
I (We), _____
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

(seal)

My Commission Expires:
My Commission Expires Dec. 16, 1990

Lela J. Mentry
Notary Public

or, _____
Authorized Personnel of the Department of Water Resources



96 STAT. 1280

PUBLIC LAW 97-293—OCT. 12, 1982

**LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES;
DISPOSITION OF WATER**

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

Upper Santa Cruz River Watershed

Superior Court of Maricopa County
Statement of Claimant
Federal Reserved Water Rights

The attached water rights claim is submitted by the United States of America as trustee for the Tohono O'odham (formerly Papago) Schuk Toak District of the Sells Papago Reservation.

It is the position of the United States that this claim does not in any way effect a waiver of the Community's immunity from suit. It is the position of the government that the Community's immunity from suit has not been waived by the McCarran Amendment (43 U.S.C. §666). The Community can become a party to this proceeding only if it chooses to intervene in its own behalf.

This water rights claim is based on the best information available to the United States as of July 1987, and is as accurate and complete as the information allows. However, the United States intends to continue discussions and investigations in order to refine existing data. Such refinement may necessitate the amendment of this claim sometime in the future in order to reflect updated information.

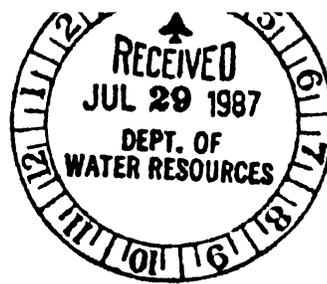
I. Name and address of Claimant:

United States of America
Department of Interior
Bureau of Indian Affairs, as Trustee for the
Tohono O'odham (formerly Papago) Schuk Toak District
P. O. Box 10
Phoenix, Arizona 85001

II. Name of Indian Reservation:
Papago Indian Reservation

III. The basis for the reserved water right claim.

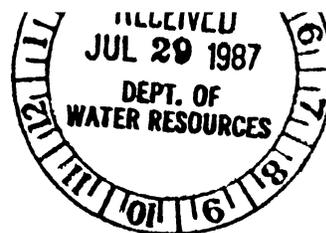




A. Authority

The legal basis for this claim is the federal reserved water rights doctrine as recognized by the Supreme Court of the United States. See Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), and United States v. Cappaert, 426 U.S. 128 (1978). The claim asserted herein is based on the intention of the Congress and the President to create a homeland for the Tohono O'odham (formerly Papago) Indians in a geographical area where water "... would be essential to the life of the Indian people and to the animals they hunted and the crops they raised" (Arizona v. California, supra, 373 U.S. at 599), and for the development of the "arts of civilization" (Winters v. United States, supra, 207 U.S. at 576). Through this claim the United States claims sufficient water to provide for the agricultural, recreational, municipal/domestic, industrial, power, development, wildlife, stockwatering and other present and future water uses to fulfill the purposes of the Papago Indian Reservation and to maintain the reservation as a permanent tribal homeland for the Tohono O'odham (formerly Papago) Indians.

Public Law 97-293 of October 12, 1982 (Southern Arizona Water Rights Settlement Act) provided for a settlement of the Tribe's water rights claim for the San Xavier and Eastern Schuk Toak portions of the reservation. Section 306(a) of the Act (attached) provided a limitation on the Tribe's annual use of water from the Eastern Schuk Toak District, and this claim reflects that limitation.



B. Legal description of lands.

The Schuk Toak District of the Papago Indian Reservation lies within Township 12 thru 17 South, Ranges 5 thru 11 east (see attached maps).

This claim is only for that portion within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

- IV. Historical water use. The Tohono O'odhams (formerly Papago) Indians have used surface and ground water for irrigation, stock, and domestic purposes in Southern Arizona since time immemorial.
- V. The quantity and priorit(ies) of the reserved water right(s) claim(s). Irrigation has been practiced by the Tohono O'odham (formerly Papago) Indians since time immemorial. With a time immemorial priority date, a claim is made for that quantity of water equal to the quantity being withdrawn on January 1, 1981 for domestic, stockwatering, and commercial/industrial purposes, and such additional water from wells having a capacity of less than thirty-five gallons per minute for domestic and livestock purposes. (See Section 306(a) of P.L. 97-293).

The Papago (Sells) Reservation was established by Executive Order of February 1, 1917 an Act of February 21, 1931, and included five separate reservations established by Executive Orders in 1912 (see attachment).

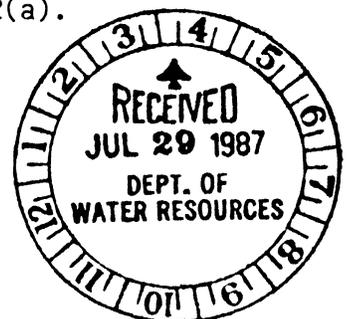
VI. Plans for additional water use of claimed reserved water rights, including a time schedule.

Due to a variety of circumstances, specific plans and time schedules are not available at this time related to the anticipated future uses. When such plans and time schedules become available to the United States, the government will submit the plans and schedules to the Court.

Payment of Fees

In support of this claim the United States is tendering the fees required by A.R.S. §45-254(F). However, this suit was not instituted by the United States. Rather, the United States was required to participate in order to protect its rights to use water against the interests of other parties. Jurisdiction over the United States in this case is governed by the McCarran Amendment, 43 U.S.C. §666 (1952). United States v. Superior Court, 144 Az 265, 679 p.2d 658 (1952). The McCarran Amendment provides in part that "no judgment for costs shall be entered against the United States in any such suit." This proviso restates and reinforces the common law rule that, in absence of a statute directly authorizing it, courts could not give judgment against the United States for costs and expenses.^{1/}

^{1/} In 1966, Congress, by enactment of Public Law 89-507, waived the government's sovereign immunity from a judgment of costs and expenses insofar as that immunity was based on common law principles rather than on a statutory prohibition. Act of July 18, 1966, 80 Stat. 308, as amended 28 U.S.C §2412. However, the 1966 waiver does not apply to cases, such as this case, where the immunity from a judgment for costs is "specifically provided for by statute." 28 U.S.C. §2412(a).



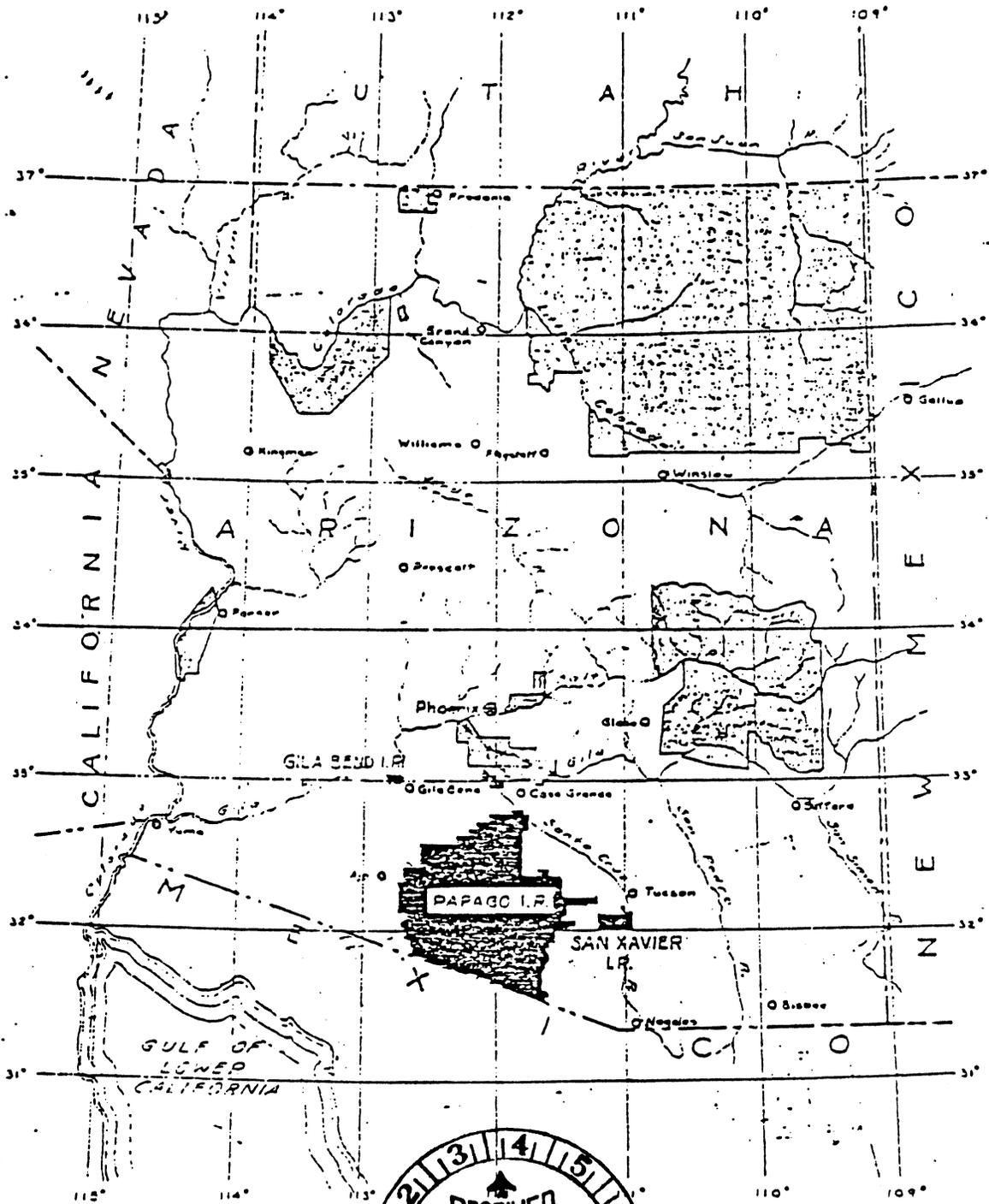
The United States intends to seek recovery of all filing fees tendered in this case as well as other legitimate costs associated with this litigation after final judgment has been rendered.

The McCarran Amendment constitutes a waiver of the sovereign immunity of the United States by permitting it to be joined as a defendant in a suit qualifying water rights. Colorado River Water Conservation District v United States 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). In Block v. North Dakota, 461 U.S. 273 (1983), the Supreme court repeated the familiar rule of construction of statutes which waive federal sovereign immunity:

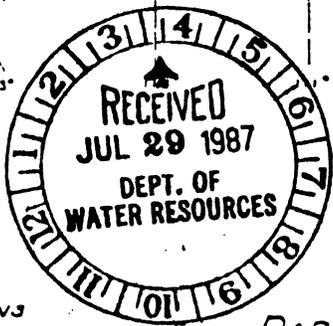
The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied. (Citations omitted). Id. at 287.

The Court went on to hold that there is no reason why the federal sovereignty rule should not be applied to states. Id. at 288-289. And in Aycrigg v. United States, 124 F. Supp. 416, 418 (N.D. Cal. 1954) the Court held that the rule of strict construction of the sovereign immunity waiver was applied to costs "with especial rigor."

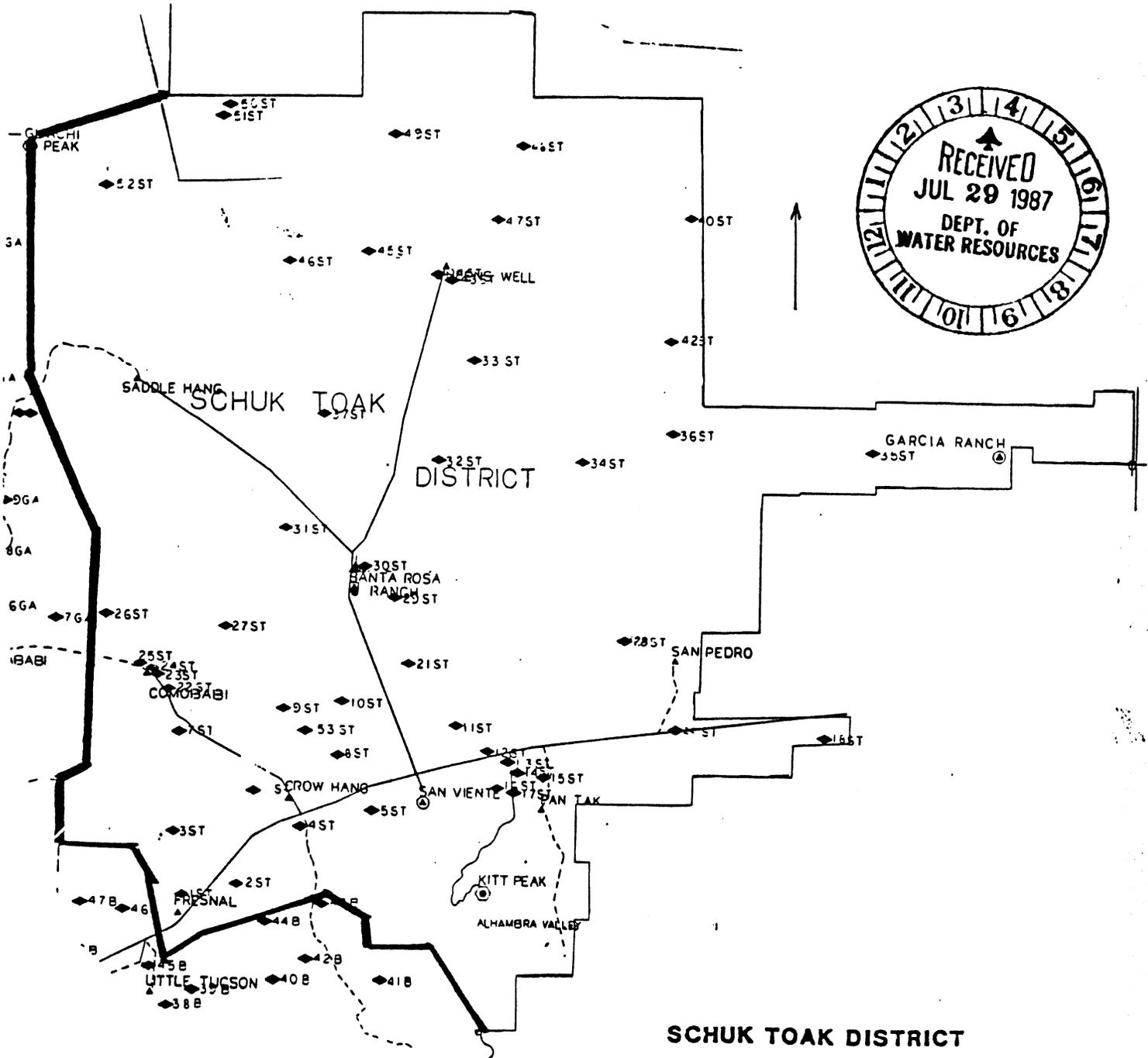




- LEGEND**
-  PAPAGO RESERVATIONS
 -  OTHER INDIAN LANDS

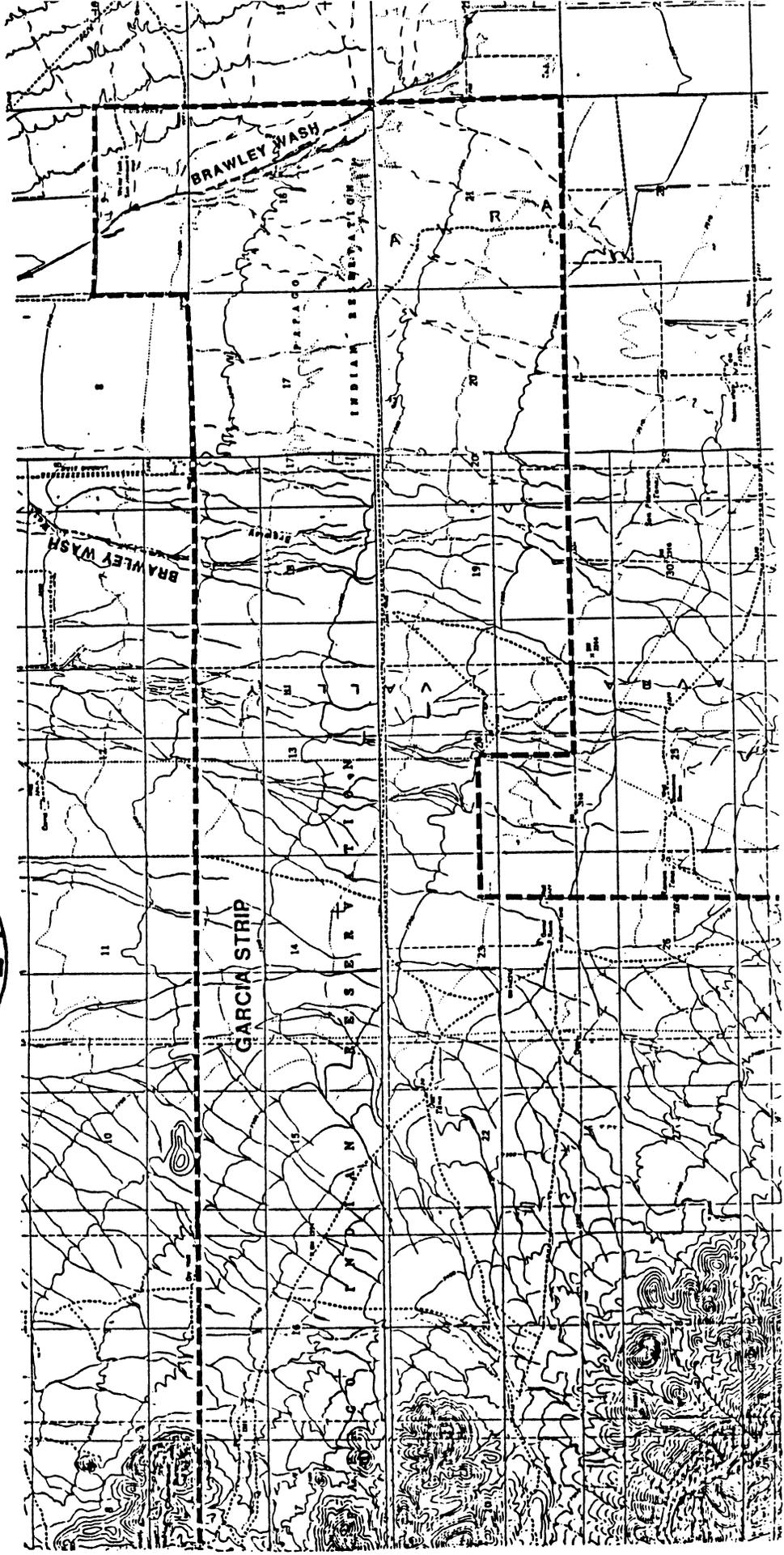


LOCATION MAP
OF
PAPAGO RESERVATIONS
ARIZONA



SCHUK TOAK DISTRICT
Papapo Reservation

◆ STOCK PONDS



Eastern
SCHUK TOAK DISTRICT



Papapo
RESERVATION BOUNDARY

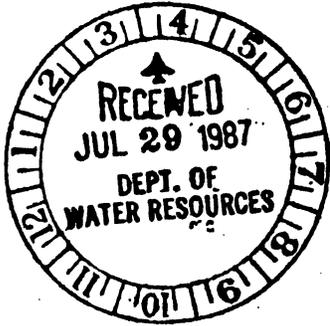
PAPAGO RESERVATION
ARIZONA

Papago

Executive Order
07/01/1874

The following lands located around San Xavier del Bac, in Arizona, were withdrawn from sale or entry and set apart for the use of the Papago and such other Indians as it may be desirable to place thereon:

Beginning at the northeast corner of Section 9, T. 15 S., R. 13 E.; thence west one-half mile to the quarter-section corner; thence south 3 miles to the section line between sections 21 and 28 of same township; thence west along north boundary of Sections 28, 29, and 30, up to the northwest corner of Section 30, same township; continuing thence due west 9 miles to a point; thence south 7 miles to a point; thence east 3 miles to the southwest corner of Section 30, T. 16 S., R. 12 E.; thence east along the south boundary of Sections 30, 29, 28, 27, 26, and 25, T. 16 S., R. 12 E., and Sections 30, 29, 28, 27, 26, and 25, T. 16 S., R. 13 E., to the Southeast corner of Section 25, same township; thence north along the range line between R. 13 and 14 E. to the northeast corner of Section 24, T. 15 S., R. 13 E.; thence west to the northwest corner of Section 22; same township; thence north to the place of beginning, to be known as the Papago Indian Reserve. SAN XAVIER



Executive Order
No. 1374
06/16/1911

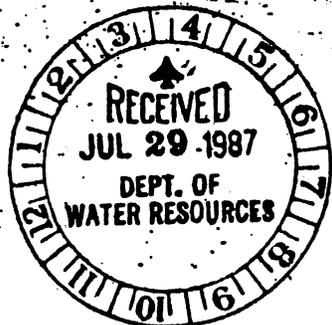
Lands reserved in Pima County, Arizona, for school, agency, and other necessary uses for benefit of Papago Indians, SE/4SE/4 Sec. 25, T. 17 S., R. 4 E.; S/2NE/4SW/4SW/4, S/2SW/4SW/4, NW/4SW/4SW/4, beginning at SW corner of the NW/4SW/4 Sec. 30, thence east 2.5 chs.; thence north 20 chs; thence west 2.5 chs.; thence south 20 chs. to place of beginning, all in Sec. 30, T. 17 S., R. 5 E.; N/2NW/4 Sec. 7, T. 21 S., R. 6 E.

Executive Order
No. 1538
05/28/1912

The following-described lands in Pinal County, Arizona were reserved from settlement, entry sale, or other disposition and set apart as Indian reservations for the use of several bands or villages of Papago Indians settled thereon, and such other Indians as the Secretary of the Interior may see fit to settle thereon:

Maricopa band or village. S/2 Section 13. All of Sections 24, 25, and 36, T. 4, R. 2. SW/4 and, S/2 of SE/4 of section 18. All of Sections 19, 29, 30, 31, 32, and 33, T. 4, R. 3. All of T. 5, R. 2. All of Sections 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 22, 23, 24, 25, 26, and 27, T. 5, R. 3. All of Sections 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, and 30, T. 5, R. 4. -- (Amended by E. O. 10/08/1912 and E.O. 09/02/1912). AK-CHIN

Chur-chaw band or village. All of Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T. 7, R. 5. All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Township 8, Range 5. All of Sections 5, 6, 7, 8, 17, and 18, T. 8, R. 6.



Cocklebur band or village. All of T. 8, R. 4. All of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T. 8, R. 3.

Tat-murl-ma-kot band or village. All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, T. 9, R. 4. All south and east of the Gila and Salt River principal meridian; provided that nothing herein shall affect any valid existing rights of any person. -- (Chur-chaw, Cocklebur and Tat-murl-ma-kot Revoked by E.O. 02/01/1917.)

Act
08/24/1912
(37 Stat. 522)

\$5,000.00 - Develop water supply; \$1,900 - investigate enlargement of irrigation system.

E. O.
No. 1598
09/02/1912

Amends E. O. No. 1538 (above), eliminating following lands reserved for Maricopa Village: S/2 Section 15, T. 4 S., R. 2 E.; all of T. 5 S., R. 2 E., except Secs. 1 and 12; NE/4 Sec. 19, NE/4, E/2NW/4 Sec. 29, NE/4, N/2NW/4 Sec. 33, T. 4 S., R. 3 E.; S/2 Sec. 25, S/2 Sec. 26, S/2 Sec. 27, T. 5 S., R. 3 E.; E/2 Sec. 15, E/2 Sec. 22, E/2 Sec. 27, SW/4 Sec. 27, S/2 Sec. 28, S/2 Sec. 29, S/2 Sec. 30, T. 5 S., R. 4 E. AK-CHIN

E. O.
10-08-1912

Amends E. O. §1538 (5/28/1912) above by eliminating therefrom: S/2 Sec. 13, T. 4 S., R. 2 E., and revokes that part of E. O. §1598 (09/02/1912) above by eliminating therefrom: S/2 Sec. 15, T. 4 S., R. 2 E. AK-CHIN

E. O.
No. 1655
12/05/1912

Lands in T. 17 S., R. 4 E.; T. 17 S., R. 5 E.; T. 21 S., R. 6 E.; reserved by E. O. No. 1374 (above) restored to public domain; in lieu therefor following three tracts withdrawn from entry:

- 1 148.24 acres
- 2 - 4,000.00 acres
- 3 - 76.60 acres

S. O.
02/14/1914
02/16/1914

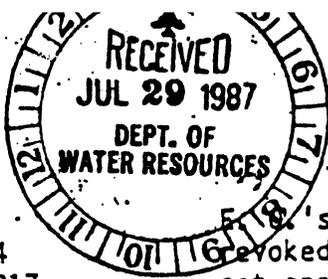
Set aside the NW/4NW/4NE/4 of Section 16, T. 15 S., R. 13 E. for cemetery purposes.

E. O.
10/27/1914

Extended 25 year trust period on allotments for further 10 years.

E. O.
No. 2300
01/14/1916

Exclusive of tribal rights to minerals, all surveyed lands and all unsurveyed lands which when surveyed will fall within townships and ranges described, certain lands set apart for Papago reservation (See E. O. for descriptions). Such reservation shall not interfere with prospecting for minerals or filing of entries, nor affect existing legal rights.



PAPAGO RESERVATION
ARIZONA

Papago

E. O.
No. 2524
02/01/1917

Sections of 06/16/1911, 05/28/1912, 12/05/1912, and 01/14/1916
revoked and exclusive of tribal right to minerals, other lands
set apart for reservation. (See E. O. for descriptions). All
mineral lands within reservation subject to exploration, loca-
tion, and entry continued; townsites necessary for mineral
development may be located within reservation and patented;
existing legal rights not affected. That part of E. O. No.
1538 (above) withdrawing areas for Chur-chaw, and Tat-murl-ma-
kot bands revoked.

Act
06/23/1926
(44 Stat. 762)

Appropriated \$125,000.00 for construction of road across
reservation from Tucson to Ajo - State to maintain.

Act
06/28/1926
(44 Stat. 775)

Authorized purchase of 440 acres (Steinfeld and Tierney
tracts) in T. 17 S., R. 4 E., and appropriated \$9,500.00 for
same.

Act
05/21/1928
(45 Stat. 617)

Appropriated \$15,000 for construction of fence along the east
boundary beginning at the International border (Border created
by Proclamation dated 05/27/1907 [35 Stat. 2136]) and extending
northerly for approximately 60 miles.

Act
02/21/1931
(46 Stat. 1202-
1203)

Reserved all vacant, unreserved public lands in ~~T. 11, 12, 13,~~
Correct land designations are: T11S, R. 1,2,3,4,5E; T12S, to be
R. 1,2,5,7E & R. 1,2W; T13S, R.1,7E & R.1,2,3W; T14S,
R.6,7,8E & R.2,3,4W; T15S, R.6,7,8E; T16S, R.6,7E. on

Purchase
06/13/1931

Warranty Deed - Benjamin J. McKinney and Mayela G. McKinney
to the United States of America - 2040.00 acres in Sec. 9,
T. 14 S., R. 4 E.; Secs. 35, 36, T. 17 S., R. 4 E.; Sec. 15,
T. 11 S., R. 1 E.; Sec. 29, T. 11 S., R. 4 E., Gila and Salt
River meridian, Arizona, together with all improvements and
appurtenances; ALSO all improvements and equipment situated
on state leases and script land held by vendors in Secs. 8
and 25, T. 12 S., R. 1 W.; Sec. 17 T. 12 S., R. 1 E., Gila
and Salt River meridian, Arizona - \$10.00 and other valuable
considerations.

Purchase
10/15/1931

Bill of Sale - John F. Brown to the United States of America -
\$10.00 and other good and valuable considerations - 1 drilled
well cased with 8" casing, together with all other property
and improvements located upon, appurtenant to or used in con-
nection with SE/4SW/4 Sec. 34, T. 11 S., R. 4 E., Gila and
Salt River meridian, Arizona.

Purchase
10/28/1931

Warranty Deed - Santa Rosa Land and Cattle Company to United
State of America - lots and land located in Secs. 7, 18,
T. 15 S., R. 7 E.; Secs. 26, 27, 35, T. 16 S., R. 7 E.; Sec.
33, T. 14 S., R. 7 E., Gila and Salt River meridian, Arizona.
\$65,089.20 (No acreages appear on deed)

PAPAGO RESERVATION
ARIZONA

Papago

Purchase
10/1931

Warranty Deed - J.C. Kinney and Alice Kinney to the United State of America - SE/4SE/4 Sec. 27, T. 13 S., R. 7 E., Gila and Salt River meridian, Arizona - \$10.00 and other good and valuable considerations.

Purchase
05/09/1947

Warranty Deed - Thomas Childs and Martha Lopez Childs to the United States of America in trust for Papago Tribe - 640 acres in Secs. 3, 10, T. 11 S., R. 6 W.; Sec. 28, T. 12 S., R. 5 W., Gila and Salt River meridian, Arizona, SUBJECT to reservation by Thomas Childs and Martha Lopez Childs a life estate in land and \$1.00 and other valuable considerations.

Purchase

By Papago tribe at delinquent tax sale of 44 patented (Sheridan) mining claims - 920.27 in Secs. 24, 25, T. 11 S., R. 2 E.; Secs. 17, 18, 19, 20, 29, 30, T. 11 S., R. 3 E., Gila and Salt River meridian, Arizona. See statement regarding purchase of Emperor and Dutchess Mining Claims.

Secretarial Order
07/08/1935

Assistant Secretary of the Interior approved the recommendation of Assistant Commissioner that the S/2S/2 Sec. 25, N/2 Sec. 36, T. 17 S., R. 4 E., W/2NW/4NW/4 Sec. 31, T. 17 S., R. 5 E., Gila and Salt River meridian, Arizona, containing 500 acres, be reserved and set aside for Agency purposes in connection with the Papago reservation. (No record of any portion being restored as of October 1960).

Act
07/28/1937
(50 Stat. 536)

Extended boundary to include: W/2 Sec. 4, W/2 Sec. 9, T. 17 S., R. 8 E.; All of T. 18 S., R. 2 W.; All fractional T. 19 S., R. 2 W.; and All fractional T. 18 S., T. 19 S., R. 3 W., except Secs. 6, 7, 18, 19, 30, and 31, T. 18 S., R. 3 W., to be tribal; provision made for lieu lands for State lands within reservation.

Act
08/28/1937
(50 Stat. 862-863)

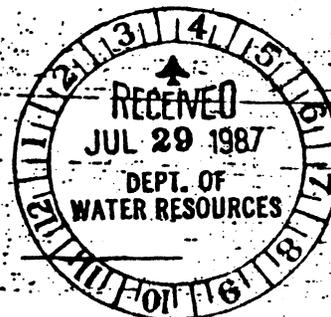
Amended Sec. 3 of Act of 06/18/1934 (48 Stat. 984) and revoked D. O. 10/28/1932, which withdrew lands within reservation from mineral entry, and restored same to entry, subject to certain conditions including deposit of yearly rental of 5 cents an acre to tribe, or deposit of \$1.00 an acre in lieu of rental.

Act
07/28/1937
(50 Stat. 536)
(P.L. 217 -
75th Congress)

\$40,016.37 for purchase of Menager Dam property - SW/4NE/4, S/2NW/4 Sec. 35, T. 18 S., R. 3 W.; NW/4NW/4 Sec. 2, T. 19 S., R. 3 W., containing 320 acres. (Land patented 04/19/1932 to Lucy M. Ruiz). (includes entitlement to use of Taylor Grazing rights for 1,200 head of cattle year long.)

Act
05/11/1938
(52 Stat. 347-348)

Act excepted Papago Reservation from its leasing provisions.

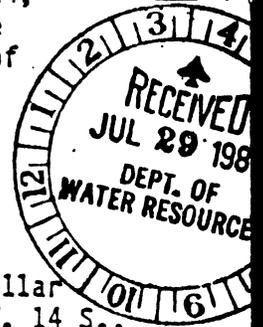


PAPAGO RESERVATION
ARIZONA

Papago

General Land
Office "K"
Letter
04/05/1939
Reaffirmed
State Director
BLM Letter
09/28/1973

Reaffirmed that all of Sections 1, 2, 11, 12, 13 and 14, T. 12 S., R. 5 1/2 E. are within the boundaries of the Papago Indian Reservation (46 Stat. 1202 - 1203, Act of 02/21/1931).



Act
06/13/1939
(53 Stat. 819)

Authorized purchase of 320 acres private lands (Marstellar tract), water rights and improvements in S/2 Sec. 9, T. 14 S., R. 11 E.; \$5,570.00 appropriated; title to be in the United States in trust for tribe.

Warranty Deed
05/10/1940

Grover and edna Marstellar to the United States of America in trust for the Papago Tribe for consideration of \$5,570: S/2 of Section 9, T. 14 S., R. 11 E.

Warranty Deed
circa 1940

Jesus and Brigida Romero conveyed to the United States in trust for the Indians of the Papago Reservation for consideration of \$1,500 the NE/4 of Section 10 and the NW/4 of Section 11, T. 13 S., R. 8 E. Funds for this purchase appropriated by the Act of May 10, 1939 (P.L. 68, 76th Congress).

Quitclaim Deed
06/13/1949

The State of Arizona quitclaimed all its interest in Section 16, T. 14 S., R. 11 E. to the United States of America in Trust for the Papago Tribe. See BLM Case File PHX 083307.

Act
03/12/1954
(68 Stat. 26)

Authorized and directed the Secretary to convey by quitclaim deed to the City of Tucson, Arizona, all right, title and interest of the United States in and to a tract of land situate in the County of Pima, State of Arizona, described as a metes and bounds description of NW/4NW/4 of Section 24, T. 14 S., R. 13 E. (Quitclaim Deed dated March 10, 1955 from Secretary the City of Tucson).

and accept and in exchange therefore

a conveyance in fee simple to the United States by the City of Tucson, Arizona, the East 190 feet of the South 290.40 feet of the NW/4NW/4 of Section 24, T. 14 S., R. 13 E. (Bargain and Sale Deed dated October 18, 1954 from City of Tucson to the United States of America).

Act
05/27/1955
(69 Stat. 67)

Withdrew tribal lands from mineral entry and made minerals part of reservation; to be held in the United States in trust for Tribe. Provisions not applicable to lands mineral patented or to initiated valid claims prior to date of Act.

Quitclaim Deed
01/30/1961

United States of America through Administrator of General Services quitclaimed to Benjamin and Carlota Jacobs the East 345.90 feet of the South 290.40 feet of NW/4NW/4 of Section 24, T. 14 S., R. 13 E. EXCEPT the East 190.0 feet thereof.

PAPAGO RESERVATION
ARIZONA

Papago

Quitclaim Deed
04/29/1968

State of Arizona quitclaimed to the United States of America
Section 2, Lots 1, 2 & 3, NE/4, E/2NW/4, SW/4NW/4, N/2SE/4
T. 19 S., R. 3 W., 445.40 acres.

U.S. of America
vs. Col. Frank
Childs - U.S.
District Court
22601.
06/30/1970

Judgement which upholds opinion of Court of Appeals and
declares property of Thomas Childs is inherited by the Childs
children and not the Papago Tribe. 640 acres of land
involved.

Superintendent
Memorandum
08/02/1974

Revoked the reserve status of the land described in
Secretarial Order 02/14/1914 and 02/16/1914 and restored same
to the Papago Tribe.

Warranty Deed
12/20/1974
Amended by
Warranty Deed
03/31/1976
to correct
legal description

Warren and Susan Eyer conveyed to the United States of
America in trust for the Papago Tribe of Arizona a parcel
land located in the SE/4 of Section 3, T. 5 S., R. 9 E.
G&SRB&M, Pinal County Arizona; LESS five (5) acres Butte
Cemetery, and LESS highways, canals, power lines, telephone
lines and other rights-of-way of record and about one (1)
acre deeded to Clemens Cattle Company in 1946. FLORENCE AKA
Saint Elizabeth Village.

Act
09/10/78
(92 Stat. 595)
P.L. 95-361)

Declared to be an addition to and a part of the Reservation.
Beginning at the NE corner of Parcel No. 1 within Section 3,
T. 5 S., R. 9 E., G&SRM, AZ Lands in trust. (See Warranty
Deeds 12/20/1974 and 03/31/1976) FLORENCE

30 acres of Rancho De Martinez purchased by Government April 22, 1916.

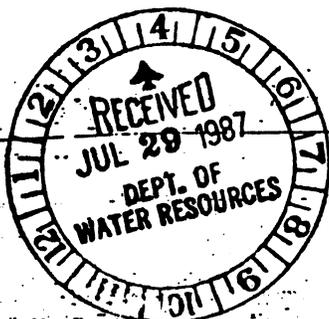
14.4 acres of Allotment No. 169 alienated by fee simple patent issued June 3, 1909

Fee simple patent issued to Allottee No. 161 on January 7, 1909 - alienated by
sale April 17, 1909.

Papago Indian Reservation divided into nine fenced districts authorized by vote of
village representatives October 7, 1934.

Purchase

By Papago Tribe, two patented lode mining claims, Emperor,
Lot No. 44, 20.66 acres, and Dutchess, Lot No. 45, 12.23
acres, Sec. 15, T. 16 S., R. 5 E., G&SRM, Arizona. Recorded
in Pima County on September 28, 1946, in Deed of Mines Book
34, page 494. Deed (which includes claims referred to on
next page) from State of Arizona to Papago Tribe, and show-
ing consideration of \$2,002.62, recorded in Book 34 of Mining
Deeds, Page 494 (Land held in fee by Papago Tribe).



Public Law 95-361
95th Congress

An Act

J. R. P. M.

To provide that a certain tract of land in Pinal County, Arizona, held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation.

Sept. 10, 1978
[H.R. 8397]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described tract of land located in Pinal County, Arizona, and held in trust by the United States for the Papago Indian Tribe, is hereby declared to be an addition to and a part of the Papago Indian Reservation:

Papago Indian
Tribe.
Lands in trust.

Beginning at the northeast corner of parcel numbered 1 within section 3, township 5 south, range 9 east, Gila and Salt River meridian, Arizona, described as follows:

- line AP 1—AP 2 south 81 degrees 55 minutes west, 2.443 chains,
- line AP 2—AP 3 south 20 degrees 35 minutes east, 0.800 chains,
- line AP 3—AP 4 south 66 degrees 31 minutes east, 1.614 chains,
- line AP 4—AP 5 south 0 degrees 55 minutes east, 3.030 chains,
- line AP 5—AP 6 south 89 degrees 05 minutes west, 2.879 chains,
- line AP 6—AP 7 north 0 degrees 55 minutes west, 4.212 chains,
- line AP 7—AP 8 south 74 degrees 10 minutes west, 3.036 chains
(end of course, intersect the north and south centre line of the southeast quarter of section 3),

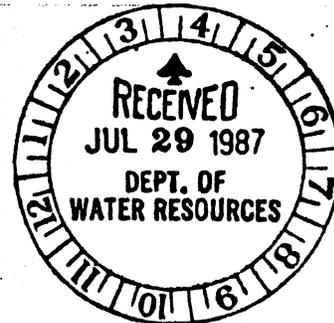
line AP 8—AP 9 (on the north and south centre line of the southeast quarter) south 0 degrees 39 minutes east, 32.10 chains
(end of course, the east 1/16 section corner of sections 3 and 10),

line AP 9—AP 10 (between sections 3 and 10) north 88 degrees 55 minutes east, 6.69 chains,

line AP 10—AP 1 north 0 degrees 42 minutes west, 33.33 chains
(end of course, the place of beginning); consisting of 20 acres.

In accordance with applicable Federal law and regulations, these lands, which were conveyed to the United States in trust for the Papago Indian Tribe under the provisions of section 5 of the Act of June 18, 1934 (48 Stat. 985), are to be treated as and receive the same benefits and protection as other tribal trust lands within the boundaries of the Papago Indian Reservation. 25 USC 465.

Approved September 10, 1978.



LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1020 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 95-1133 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Apr. 17, considered and passed House.
Aug. 25, considered and passed Senate.

29-139 O - 78 (194)

OCT 06 1978

RECEIVED
PROP. MGMT.

6 1978

DIRECTOR

REPORTING

Recordkeeping.
43 USC 390zz.

SEC. 228. Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

COMMISSIONER OF RECLAMATION

43 USC 373a.

SEC. 229. The Act of May 26, 1926 (44 Stat. 657), is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

SEVERABILITY

43 USC 390zz-1.

SEC. 230. If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE III

CONGRESSIONAL FINDINGS

Southern
Arizona
Water Rights
Settlement
Act of 1982.

Papago Tribe,
water rights
claims.

SEC. 301. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—



- (A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and
- (B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 302. For purposes of this title—

- (1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.
- (2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).
- (3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).
- (4) The term "Secretary" means the Secretary of the Interior.
- (5) The term "subjugate" means to prepare land for the growing of crops through irrigation.
- (6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.
- (7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.
- (8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.
- (9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.



WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 303. (a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

- (A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and
- (B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

Water management plan, establishment.

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

Appropriation authorization.

(4) There are authorized to be appropriated up to \$3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

Study.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

Study.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.



DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided

in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

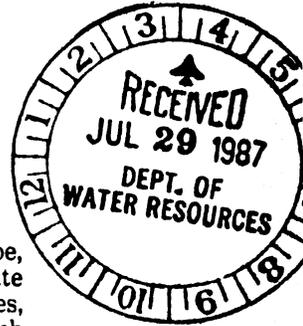
(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—





(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

Appropriation
authorization.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

25 USC 386a.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 305. (a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES;
DISPOSITION OF WATER

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—



Payment of
damages.

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.



**OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER;
DISMISSAL AND WAIVER OR CLAIMS OF PAPAGO TRIBE AND ALLOTTEES**

SEC. 307. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation,



Waiver and
release.

or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

Effective date.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

Studies and analysis.

SEC. 308. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

Management.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed



by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

Reimbursement.

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 309. (a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of \$15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 310. The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

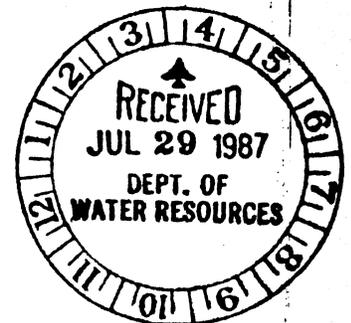
SEC. 311. Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 312. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

- (1) price guarantees, loan guarantees, or purchase agreements,
- (2) loans, and
- (3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.



COOPERATIVE FUND

Establishment.

Sec. 313. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) \$5,250,000 to be contributed as follows:

(i) \$2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) \$1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) \$1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) \$5,250,000; and

(B) Such sums up to \$16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

Appropriation
authorization.



(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

Trustee.
Investments.

(e) If, before the date three years after the date of the enactment of this title—

Termination.

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.



COMPLIANCE WITH BUDGET ACT

SEC. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

Effective date.

SHORT TITLE

SEC. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 1409 (H.R. 5118):

HOUSE REPORTS: No. 97-422 accompanying H.R. 5118 (Comm. on Interior and Insular Affairs), No. 97-855 (Comm. of Conference).

SENATE REPORTS: No. 97-375 accompanying H.R. 5118 (Comm. on Indian Affairs), 97-420 (Comm. on Energy and Natural Resources), No. 97-568 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 128 (1982):

- Mar. 4, H.R. 5118 considered and passed House.
- May 11, H.R. 5118 considered and passed Senate, amended.
- May 12, H.R. 5118 House concurred in Senate amendment with amendments.
- May 13, Senate concurred in House amendments.
- June 1, H.R. 5118 vetoed by President.
- June 22, considered and passed Senate.
- Aug. 17, considered and passed House, amended.
- Aug. 20, Senate concurred in House amendments with amendments.
- Sept. 24, Senate agreed to conference report.
- Sept. 29, House agreed to conference report.

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

RECEIPT

FILE REFERENCE NUMBER
39-C9-74333
THRU 39-G9-74336

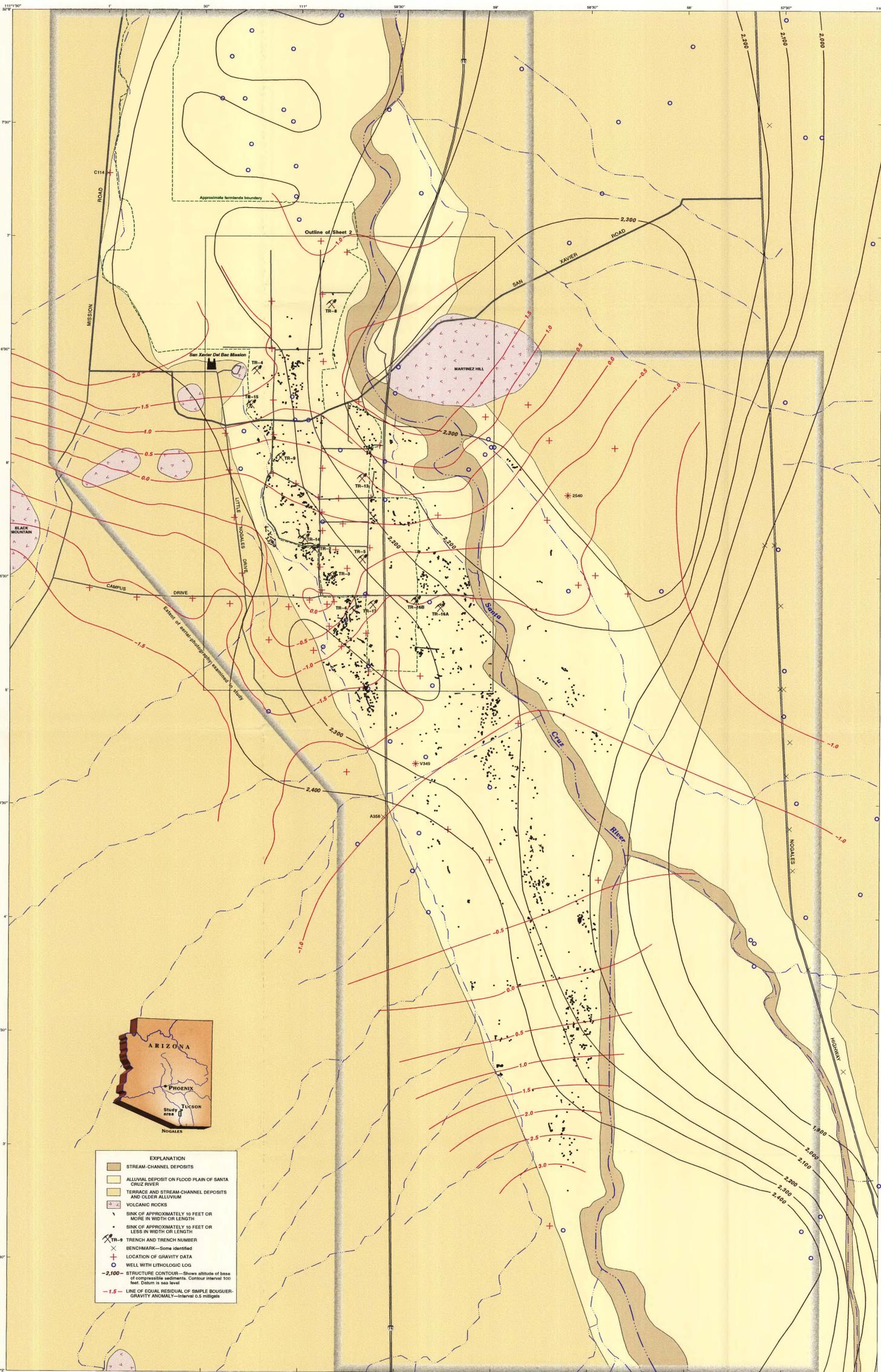
(4 FILINGS)
FILING FEE FOR STATEMENT OF CLAIMANT 13,290.40
ADJUDICATION OF SANTA CRUZ RIVER

US ON BEHALF OF TOHONG O'ODHAM
INDIAN COMMUNITY
PO BOX 10
PHOENIX AZ 85001

TOTAL 13,290.40

PROCESS DATE : 10/30/87
FILING DATE : 07/29/87

APPENDIX I: USGS Investigation of Sinkhole Formation



INTRODUCTION

Land subsidence in the form of sinks and depressions has occurred on and near the farmlands of the San Xavier District of the Tohono O'odham Nation in Pima County near Tucson, Arizona. The sinks occur on alluvial deposits along the flood plain of the Santa Cruz River in the Tucson Basin. Sinks on and near the farmlands were first described near the turn of the century and also were noted during construction of Interstate 19 in the 1960's (Arizona State Highway Department, written communication, 1995). The sinks increased in number and size and became a hindrance to farming activities in the mid-1980's. Formation of sinks on the farmlands has apparently accelerated since the mid-1990's and has damaged the irrigation system and some fields. Sinks also have been reported immediately north of the San Xavier District on the flood plain of the Santa Cruz River. This investigation was undertaken by the U.S. Geological Survey, in cooperation with the San Xavier District, Tohono O'odham Nation and the Bureau of Reclamation (BOR), to determine the causes of the sinks. Possible mechanisms for the formation of sinks include several types of compaction and erosion of near-surface material.

Methods

Several methods were used in the investigation to help determine whether the sinks are a result of aquifer-system compaction or several types of near-surface processes. Aquifer-system compaction was evaluated by mapping the distribution of compressible materials in the local aquifer system, measuring land subsidence at benchmarks, and relating water-level changes to the formation of sinks. Detailed mapping of the distribution and morphology of the sinks was essential for evaluating their causes. Near-surface processes were evaluated through inspection of trench logs, soil characteristics, and laboratory analyses of soil samples from the trenches. Electromagnetic induction and ground-penetrating radar methods were used to evaluate their ability to identify areas that have potential for sink development and to detect subsurface voids.

Drillers' logs, geophysical well logs, and geologic logs were used to determine the distribution of compressible sediments in the local aquifer system. Gravity surveys were used to map the local geologic structure. The altitude of several benchmarks were re-surveyed along a profile east of the farmlands and in the sink areas. Water-level declines were determined through a review of historical and current water-level data.

Distribution and morphology of sinks were mapped by stereoscopic viewing of high-resolution aerial photographs at a scale of about 1:7,500 that were taken in December 1995 and February 1996. Locations of sinkholes were digitized to produce a geographic-information system (GIS) coverage. Horizontal control was provided by surveying the positions of several features on photographs using the global-positioning system (GPS). Many sinks were verified by field observations. Thirteen trenches were excavated to depths of 12 to 19 ft. Trenches were inspected visually for soil characteristics, vertical extent of sinks, and possible conduits for the transport of water and sediment, which could include included voids, root casts, cracks, joints, burrows, and gravel layers. In-place density determinations were made in selected soil layers at several trenches. Laboratory analyses of samples collected from the trenches included particle-size distribution, moisture content, Atterberg limits, organic content, and clay mineralogy. Geologic logs from previous boreholes and trenches in the area were reviewed to compare with observations of trenches dug in this study.

Shallow electromagnetic surveys were made using EM31-D and EM34-3 instruments to determine the relation of electrical conductivity of the upper 100 ft of sediments and the distribution of sinks. The electrical conductivity of the subsurface is controlled by the sediment's grain size, mineralogy, clay content, orientation, porosity, moisture content, and water conductivity.

HYDROGEOLOGY

The Tucson Basin is a north- to northwestward-trending alluvial basin bounded by mountains of igneous, metamorphic, and sedimentary rocks (Reynolds, 1988; Davidson, 1973). Volcanic rocks crop out in the study area at Black Mountain and Martinez Hill. The valley floor is underlain by unconsolidated to indurated alluvial deposits with interbedded volcanic rocks. The three main sedimentary units underlying the valley floor are the Pantano Formation of Oligocene age, the Tinaja beds of Miocene to Pliocene age, and the Fort Lowell Formation of Pleistocene age. These units vary lithologically from well-sorted conglomerate to unconsolidated gravel, sand, silt, clay, and mudstone. Clay content generally increases with depth from the Fort Lowell Formation to the Tinaja beds. The combined thickness of the three units ranges from several tens to hundreds of feet near the basin boundaries to more than 10,000 ft near the basin center (Eberly and Stanley, 1978). Recent unconsolidated stream and flood plain deposits (Davidson, 1973) overlie the three main sedimentary units and generally are less than 50 ft thick.

The regional aquifer system in the Tucson Basin comprises the Pantano Formation, the lower and upper Tinaja beds, and the Fort Lowell Formation (Anderson, 1988). Unconsolidated alluvial deposits along the Santa Cruz River also were part of the upper part of the aquifer system and in the sink areas. Water-level declines were determined through a review of historical and current water-level data.

Ground-water conditions in the study area have changed greatly since the late 1800's. The water table was near the land surface along the flood plain of the Santa Cruz River in the study area before extensive ground-water pumping. Ground water generally flowed to the north and discharged to the perennial Santa Cruz River and to springs in the adjacent wetlands (Betsworth, 1990). Inflow by the river and expansion of ground-water with drawdowns resulted in water-level declines and changes in ground-water flow directions. In the present ground-water flow system, recharge generally occurs from infiltration of ephemeral runoff in washes including the Santa Cruz River channel and along the flood plain from infiltration of excess irrigation water. Ground-water flows toward irrigation points at the farmlands and toward municipal and industrial supply wells north and east of the study area.

Water levels in the study area declined from near the land surface to about 33 ft below the land surface by the early 1950's. The rate of decline increased to about 3 ft/yr from about 1960 through the 1970's. Between 1980 and 1990, water-level declines since about 1960 ranged from 22 to 84 ft on the farmlands and were a maximum of 162 ft at a well 7 mi south of the farmlands. Depths to water in the study area currently range from 100 to 197 ft below the land surface.

Land subsidence near the farmlands has been caused by a declining water table and resultant compaction of silt and clay layers (Schumann and Poland, 1970; Anderson, 1988; Hanson, 1989; and Schumann and Anderson, 1989). Subsidence of 2 to 6 in. has been measured between 1953 and 1984 at benchmarks about 2 mi east of the farmlands along Nogales Highway. Maximum subsidence corresponds to a gravity and structural low that contains the greatest thickness of compressible sediments. About 4 in. of subsidence occurred between 1953 and 1980 (Anderson, 1988). The measurements include those from a benchmark near water levels and aquifer-system compaction have been monitored since 1979. Compaction measured at the extensometer in the upper 761 ft of sediments, including 643 ft of saturated sediments, has been less than 1 in. since 1980.

No measurable subsidence was detected at four benchmark near the farmlands in fall 1995 and winter 1996 using differential GPS techniques. The recently surveyed altitudes of benchmark marks 2540 and C114 were about 2 in. above the altitudes surveyed in 1976 and 1995, respectively. The apparent increase in altitude at the benchmark marks probably resulted from the use of different datums for the initial and repeat surveys. The altitudes of benchmark marks 2346, A258, and 225 mi south of Martinez Hill, were within 1 in. of the altitudes surveyed in 1960. A bedrock benchmark from outside the study area used in the 1960 survey also was used in the repeat survey.

Land subsidence is evident south of the farmlands as well with a concrete pad elevated by about 4 in. above the land surface and at nearby benchmark V349, which is protruding a few inches more above the land surface than when it was installed in 1960. Surface erosion does not appear to be a cause of the altitude changes. The area has the potential for aquifer compaction because it is on the flood plain and near the structural and gravity low immediately west of the area of maximum subsidence on Nogales Highway. The elevated well pad and benchmark and the lack of measurable subsidence indicate compaction probably has occurred in the upper 10 ft of sediments above the bottom of the benchmark and well-casing construction. Unfortunately, the well-casing depth and depth to the bottom of the benchmark are unknown. The depth of the benchmark probably is greater than 10 ft.

Subsidence on the farmlands could not be measured owing to the lack of benchmark marks. Data from additional benchmark marks would improve knowledge of the distribution and magnitude of subsidence and compaction in areas that the current measurements are unable to quantify.

DESCRIPTION OF SINKS

More than 1,700 sinks were mapped, and their morphology was described using stereo-pair aerial photographs. Field verification indicated that although some sinkholes as small as a few inches in diameter were visible on the aerial photographs, many other small ones were not visible. The scale of the photographs allowed the shapes of sinks larger than about 10 ft to be described and digitized. Those smaller than about 10 ft were digitized as point features.

Distribution

Sinks occur from near the San Xavier Mission to about 4 mi south of the mission and from about Little Nogales Drive to about 1 mi east of the Santa Cruz River. Sinks are confined to the flood plain of the Santa Cruz River and are most abundant near the farmlands but occur in both irrigated and nonirrigated areas. The most striking features of the sink distribution are the patterns of densely spaced sinks and sink-free zones that parallel the river channel and a major channel on the west edge of the flood plain. The density of sink distribution is greatest along a north- to northwestward-trending 1,500-foot-wide band that parallels the western boundary of the flood plain for about 2 mi north of San Xavier Road to Interstate 19 and includes the farmlands. Many areas on the farmlands with the greatest density of sinks and coalesced sinks are near irrigation structures. Other areas of high sink density occur along a band that parallels the river channel and lies within about 0.5 mi of the channel. A 1,500- to 3,000-foot-wide band that is nearly free of sinks separates the two prominent bands. No apparent relation exists between sink size and location relative to the river. A few sinks occur east of the river channel from 0.5 to 2 mi south of Martinez Hill.

Morphology

Sinks range in shape from circular to linear and range in depth from shallow depressions of a few inches to 20 ft with steep sides. The width and length of sinks range from a few inches to more than 20 ft. Sinks were grouped by size, shape, and steepness of their side slopes (table 1). About 30 percent of the sinks are larger than 10 ft in length or width. Almost 60 percent of the sinks are circular (table 1) and about one-third are steep-sided and some sinks have steep and gently sloping sides. The width of some sinks narrows with depth. Some sinks have coalesced to form larger features that have varied shapes. The trend of linear sinks generally is subparallel to the trend of the flood plain and drainage channels on the flood plain.

Table 1. Morphology of sinks

Size	Number of features	Side-slope steepness		Shape	
		Description	Number of features	Description	Number of features
Less than 10	1,018	Steep	536	Circular	1,018
Approximately 10	221	Shallow depression	1,038	Elongate	512
Greater than 10	516	Gently sloping	39	Linear	35
Total	1,755	Mix	142	Irregular	390

FIELD INVESTIGATIONS OF NEAR-SURFACE MATERIALS

Near-surface investigations were done to see if there is a correlation between soil conditions with the formation of sinks and to identify subsurface voids and cracks that may serve as conduits for the subsurface transport of sediment. The character of near-surface materials was investigated by describing soils in 13 trenches, analyzing soil samples from the trenches, and conducting electromagnetic and ground-penetrating radar surveys. Thirteen trenches were dug by backhoe to a maximum depth of 19 ft. Eight trenches (2, 3, 4, 6, 9, 14, 15, and 16) were dug to active sinks; whereas four trenches (5, 8, 13, and 17) were dug in areas without sinks. Another trench (16A) was dug next to a depression thought to be an old, partially filled sink. The trenches were excavated in two phases to allow for evaluation of field procedures used during Phase 1 and modification to improve procedures for Phase 2. Electromagnetic and ground-penetrating radar methods were evaluated for their ability to identify areas with sinks and to locate subsurface voids.

Several distinct soil layers were identified in the trenches. Layers ranged in texture from clay to coarse sand and generally were less than 6.5 ft thick. Soil samples from 13 trenches were analyzed by the BOR for clay mineralogy, moisture content, organic content, particle-size distribution, and dispersivity.

Samples from the clayey layers in the trenches were analyzed for clay mineralogy in the laboratory. The predominant clay mineral was inactive of the calcium montmorillonite variety, which ranged from trace amounts to 65 percent by volume. Illite ranged from trace amounts to 10 percent by volume. Kaolinite was present in trace amounts. Feldspar was the predominant nonclay mineral and ranged from 15 to 70 percent by volume. Clays below 6.5 ft commonly were characterized as dispersive on the basis of the crumb tests (James Swapp, Materials Engineer Specialist, BOR, written communication, 1995). Dispersive clays were not found in the upper 6.5 ft of sediments but could have been removed by percolating water.

The lithology of the upper 16 ft penetrated by the trenches is different in areas with sinks than in areas without sinks. Several layers were identified in each trench that can be generalized into three layers. The uppermost layer generally is 1 to 6.5 ft of clay and silt that typically had a platy structure in the upper part and a laminated structure in the lower part. In areas with sinks, the upper layer sometimes thickened from inches to several feet directly below sinks. The middle layer is 3 to 13 ft thick and in some cases extends to the bottom of trenches. Lithology of the middle layer is distinctly different in areas with sinks than in areas without sinks. In areas with sinks, the middle layer includes several thin layers of various textures but generally can be characterized as a heterogeneous clay and silt with sand stringers. In areas without sinks, the middle layer is dominated by layers of sand that range from 1 to 15 ft thick, and probably represents a paleochannel. Thin layers of silt and clay of uniform thickness are sometimes present in this layer. The lowermost layer in trenches that fully penetrated the middle layer is massive clay.

Subsurface voids ranging in size from inches to several feet in diameter often were found below and near sinks in the two upper layers. Voids were not found below about 6.5 ft. Orientations of the voids appeared to be random. Medium to coarse-grained and moderately to poorly sorted sand lenses of less than 1 ft thickness were found near or immediately below the bottoms of several sinks and voids. Small diameter (col 1 in.) root casts were common in silt- and clayey sloping sides.

Near-vertical veins of clay and silt were found in four trenches dug at sinks during the second phase of trenching. These veins extended from the bottoms of sinks to at least 0.5 ft below the land surface; a vein found below a sinkhole in Trench 16B extended to at least 11.5 ft below the land surface. Similar veins may have been in trenches dug during the first phase but were not detected. Veins extended beneath a linear trend of small sinks parallel to the long axis of the sinks. Open voids and sand-filled voids were found along the veins in the upper 6.5 ft. Thickening of shallow layers was common near the veins and below sinks indicating that depressions may have existed before or during deposition of the shallow layers. Veins commonly splayed upwards into multiple veins near the bottom of sinks forming a funnel structure similar to prehistoric near-surface subsidence cracks found in alluvial deposits in California (Bull, 1972). Moisture and organic content of the veins were similar to moisture and organic content found in the surrounding soil matrix.

Open cracks were found only in Trench 8, 130 ft west of the Santa Cruz riverbank in an area of few sinks. This crack is probably related to instability of the incised riverbank.

Electromagnetic surveys traversed several sinks and trench sites. The surveys indicated that areas with sinks generally had higher values of electrical conductivity than areas without sinks. Relatively high apparent electrical conductivities (20 to 100 mhos/m) were found in areas where sinks are prevalent in comparison to uniformly low values (20 mhos/m or less) in areas where sinks are absent. The high conductivities in sink areas appear to be related to greater clay and moisture content on the basis of data from trenching.

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CONVERSION FACTORS AND VERTICAL DATUM

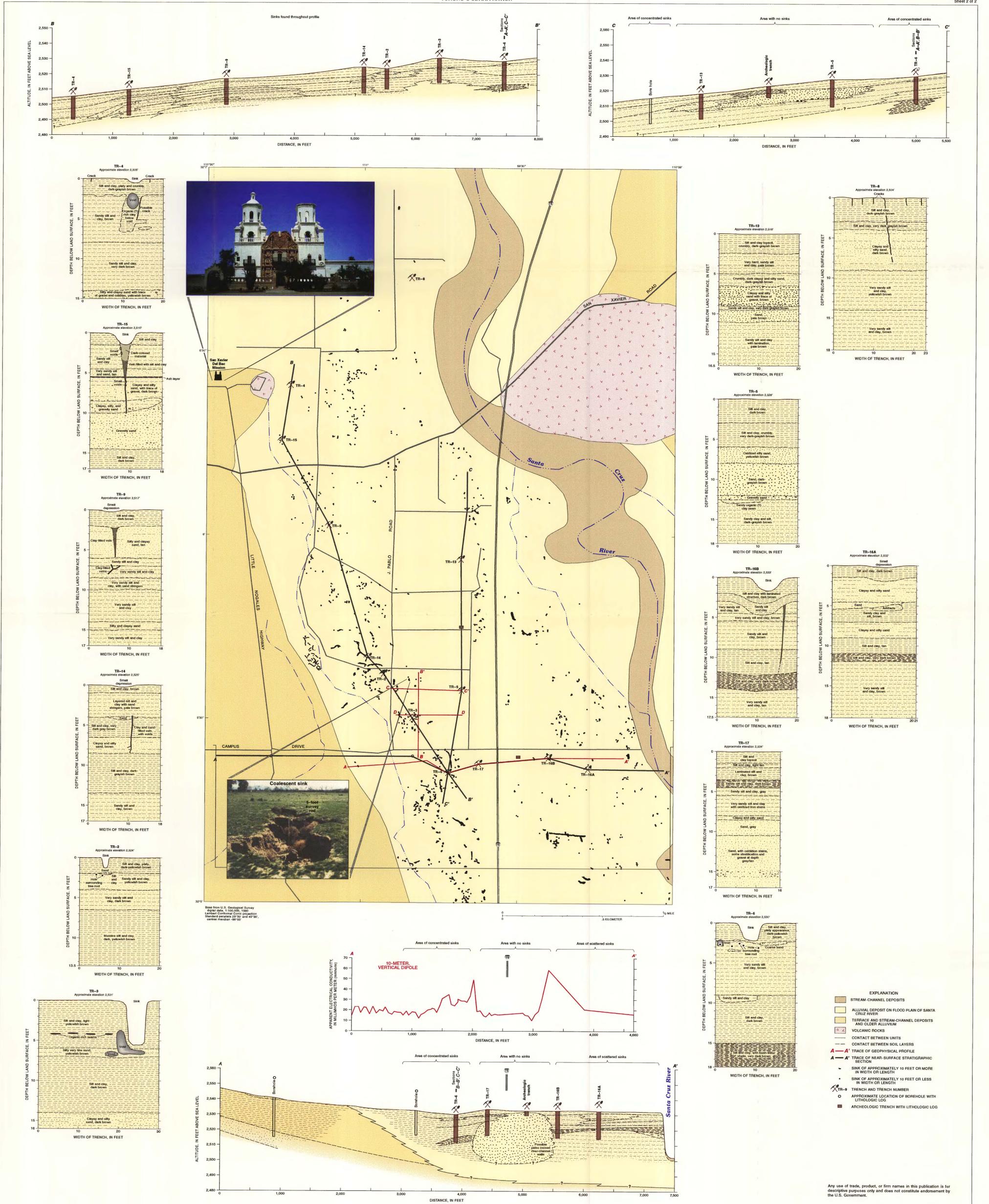
Multiply	By	To obtain
inch (in.)	2.54	centimeter
foot (ft)	0.3048	meter
mile (mi)	1.609	kilometer

Electrical conductivity is given in millimhos per meter (mmhos/m), which is equal to millisiemens per meter (mS/m).

Sea level: In this report, "sea level" refers to the National Geodetic Vertical Datum of 1929 (NGVD of 1929)—a geoidic datum derived from a general adjustment of the first order level nets of the United States and Canada, formerly called Sea Level Datum of 1929.

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SAN XAVIER DISTRICT, TOHONO O'ODHAM NATION, PIMA COUNTY ARIZONA**

By John P. Hoffmann, Donald R. Pool, A.D. Konieczki, and Michael C. Carpenter
1997



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