**Calendar No. 719**

108TH CONGRESS *2d Session* | SENATE | REPORT 108–360

# ARIZONA WATER SETTLEMENTS ACT

SEPTEMBER 28, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

# R E P O R T

[To accompany S. 437]

The Committee on Energy and Natural Resources, to which was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**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. 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.

(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 nonnative aquatic species.

**SEC. 3. ARBITRATION.**

(a) 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.

(b) 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.

# TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

**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 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 sub-

contracts 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. FIRMING 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);

"(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 the Arizona Water Settlements 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; and

"(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;

"(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.".

(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—

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

(B) January 1, 2010.

(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)";

(2) by striking "clause" each other place it appears and inserting "paragraph";

(3) by striking "clauses" each place it appears and inserting "paragraphs"; and

(4) 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.**

(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

**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) NO MAJOR FEDERAL ACTION.—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 of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall promptly carry out the environmental compliance activities necessary to implement the Gila River agreement, including activities under the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(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 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, the San Carlos Irrigation and Drainage District may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law;

(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 or the United States 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 Irriga-

tion 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 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 per-

formance 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.

(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 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; and

(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.

(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 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 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 ab-

original 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 to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims 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 the extent the United States holds legal title to the water rights as described in article V or VI 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 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 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.

(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.

(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.

(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

phreatophyle 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) FALLOWING 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 fallowing 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 fallowing 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 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—

(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) NO MAJOR FEDERAL ACTION.—Execution of the New Mexico Consumptive Use and Forbearance Agreement and of the New Mexico Unit Agreement shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—Upon execution of the New Mexico Unit Agreement, the Secretary shall promptly carry out the environmental compliance activities necessary to implement such agreement, including activities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(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 (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—

(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

(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 envi-

ronmental 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 agree-

ment, 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.**

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:

# "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 95µ09361 (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.—

"(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.—

"(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;

"(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 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 Novermber 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;

"(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—

"(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)—

"(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San XavierReservation, 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—

"(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.

"(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 pe-

riod 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) IN GENERAL.—Execution of an agreement described in paragraph (2) shall not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(B) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall carry out all necessary environmental compliance activities during the implementation of the agreements described in paragraph (2), including activities under—

"(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

"(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

"(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.—

"(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.—

"(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.

"(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—

(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.

(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 shall be construed to amend, alter, or limit the authority of—

(1) 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

(2) 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).

**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.

## PURPOSE

The purpose of S. 437, as ordered reported, is to provide for adjustments to the Central Arizona Project, 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.

## BACKGROUND AND NEED

S. 437 authorizes and funds the settlement of a number of water issues in central and southern Arizona. These issues involve, to a large extent, the Central Arizona Project (CAP), a federally-developed water project authorized in 1968 to deliver approximately 1.5 million acre-feet of Colorado River water annually to central Arizona. The resolution of these CAP-related issues also directly facilitates two Indian water rights settlements which are authorized by this bill. Those settlements will benefit the Gila River Indian Community and the Tohono O'odham Nation.

The CAP settlement and the two Indian water rights settlements are contained in Titles I–III of S. 437. They are inextricably linked. These matters have involved years of litigation between a large number of parties in Arizona. S. 437 will benefit a large portion of the population in Arizona by alleviating the water supply uncertainties that currently exist for several communities as a result of the ongoing litigation.

In addition to the three settlements authorized in this bill, S. 437 contains a fourth title which recognizes the need to complete a fourth settlement, that of the San Carlos Apache Tribe for its water rights claims in the Gila River. Titles I–IV are described in more detail below.

### TITLE I

The Arizona Water Settlements Act is based on a stipulation between the United States and the Central Arizona Water Conservation District (CAWCD), originally approved by the federal district court on May 9, 2000, that would resolve litigation concerning repayment and operational issues associated with the CAP. A revised Stipulation Regarding a Stay and for Ultimate Judgment Upon the Satisfaction of Conditions was filed in United States District Court, in *Central Arizona Water Conservation District* v. *United States* (No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–1720–OHX–EHC (Consolidated Action)) on April 24, 2003. The stipulation was revised to reflect a realistic timetable for passing legislation and completing conditions which are a prerequisite to finalizing the settlements. Those conditions include enacting federal legislation that would:

(a) Fix a final allocation of CAP water supplies between the federal government and local water users (47% to US/Indian tribes and 53% to non-Indian users), including a final additional allocation of 197,500 acre-feet (af) of non-Indian agricultural priority water to the United States for use in facilitating new Indian water rights settlements;

(b) Authorize a settlement of the Gila River Indian Community's water rights claims (Title II);

(c) Authorize amendments necessary to finalize the 1982 Southern Arizona Water Rights Settlement Act (SAWRSA) involving the Tohono O'odham Nation (Title III); and

(d) Authorize the Secretary of the Interior to use Lower Basin Development Fund (created by section 403 of the 1968 Colorado River Basin Project Act) revenues, without further appropriation, to pay fixed operation, maintenance, and replacement (OM&R) costs associated with the delivery of CAP water to Arizona Indian tribes, fund Indian water rights settlement costs, fund water delivery systems to allow Indian tribes to utilize their CAP water allocation, and fund future Indian water rights settlements.

The stipulation's conditions must be satisfied by April 2012 or it will expire and the underlying litigation will continue. Title I of S. 437 addresses conditions (a) and (d) as set forth above.

TITLE II

Title II of S. 437 is the "Gila River Indian Community Water Rights Settlement Act of 2004." This part of the bill is particularly noteworthy because the certainty associated with resolving the Community's water rights claims is key to ensuring that Title I's allocation of 197,500 acre-feet of CAP water for Arizona Indian tribes is a sufficient amount of water, not only for the Community, but to provide an additional supply available to resolve other Indian water rights claims in Arizona.

The Gila River Indian Reservation (known today as the Gila River Indian Community) was created by an Act of Congress in 1859 and enlarged by seven separate Executive Orders from 1876 to 1915. Currently, the Reservation encompasses approximately 377,000 acres of land in central Arizona. Most of these lands are located in the Gila River watershed.

The Community's settlement would fully resolve its water rights claims in the Gila River adjudication—a case currently pending before the state district court in Arizona. The claims, in terms of water quantity, are among the largest filed by the United States on behalf of an Indian tribe in a water rights adjudication. Resolution of these claims, in addition to providing the Community with a long-term water supply consistent with its claims, will help provide certainty for those non-Indian water users whose use of water is at risk due to the Community's water rights claims. The Community's settlement water budget totals 653,500 acre-feet per year (including approximately 328,000 acre-feet of CAP water) and it will receive a direct federal contribution of $200 million to assist the Community in putting its water to beneficial use. The Community will also benefit from the use of the Lower Colorado River Basin Development Fund to pay fixed OM&R costs associated with the delivery of the Community's CAP water.

The Settlement also resolves a number of long-standing issues associated with a federal court decree concerning water use in the upper Gila River in Arizona and the Virden Valley in New Mexico. The 1935 decree, issued in a suit known as the *Globe Equity* case, has been the basis for ongoing litigation concerning its interpretation. Title II will resolve a number of the issues in *Globe Equity* litigation and will therefore benefit a number of the upper Gila River water users. The Settlement also resolves a number of issues

concerning the rights of New Mexico water users to divert additional water in the upper Gila River system as authorized in the 1968 Colorado River Basin Project Act.

TITLE III

Title III of S. 437 is the Southern Arizona Water Rights Settlement Amendments Act of 2004. This Act provides a substitute amendment to the original Southern Arizona Water Rights Settlement Act (SAWRSA) that was enacted by Congress in 1982. SAWRSA settled a suit filed in 1975 by the United States, on behalf of the Papago Tribe (now the Tohono O'odham Nation) and two individual Indian allottees representing a class of Indian trust allotment landowners, against several major water users in the upper Santa Cruz Basin, including the City of Tucson and other major mining and farming interests, claiming damages and seeking to enjoin groundwater pumping (*United States* v. *Tucson*).

The terms of the original settlement called for the Tohono O'odham Nation (Nation) to receive, without charge, 66,000 acre-feet of water annually, the right to pump 10,000 acre-feet of groundwater annually at San Xavier, farm improvements, and a $15 million trust fund. Of the 66,000 acre-feet, 37,800 acre-feet was to be the Nation's contracted CAP water for the San Xavier district and the eastern Schuk Toak district. An additional 28,200 acre feet was to be acquired by the Secretary and delivered after *United States* v. *Tucson* was dismissed. This 28,200 acre-feet was to be effluent water transferred from the City to the United States. Additionally, the City along with other State and local entities was to contribute a total of $5.25 million to a cooperative fund. The fund was to help the United States pay the on-going costs of implementing the settlement.

The City, State and local interests timely performed all of their obligations under the settlement and the Nation agreed to dismiss the case. However, a dispute between the Nation and the San Xavier allottees concerning ownership of the settlement water and entitlement to financial benefits prevented final dismissal of the lawsuit and implementation of the settlement. In 1993, the allottees filed a new lawsuit (*Alvarez* v. *City of Tucson*) in which they sought, among other things, to enjoin groundwater pumping by the City and others. Motions to dismiss the lawsuits on the basis of SAWRSA have been pending before the court for some time.

For many years, the City and State worked with the Nation, the San Xavier District, and a San Xavier allottee group to help them achieve a resolution of their dispute. As a result, the Nation, the San Xavier District, the Schuk Toak District, the allottees, the City of Tucson, the State, and other parties negotiated the amendments to SAWRSA which constitute Title III.

Title III incorporates the elements of the agreement between the Nation and the allottees concerning the division of water and financial resources. It would allow the Nation greater flexibility in putting its water resources to beneficial use, and would assure implementation of the basic elements of the 1982 settlement. Title III would resolve asserted ambiguities in the existing law and assure dismissal of the pending lawsuits. It spells out specific benefits for the San Xavier allottee interests. The obligations of the U.S. to rehabilitate the existing Cooperative Farm at San Xavier for the

allottees and to expand the Farm to 2,200 acres are also clarified. Rehabilitation will include bank protection on the Santa Cruz and the elimination of sink holes. The United States' obligation to build a new farm in the San Xavier District is clarified, with the District having the option to receive cash in lieu of the new farm improvements. In addition, CAP water is identified as the source of the 28,200 acre feet the Nation is to receive when the lawsuits have been dismissed.

### TITLE IV

Title IV of S. 437 does not settle or resolve the San Carlos Apache Tribe's water rights claims in the Gila River adjudication. In the absence of a settlement, Title IV simply makes clear that Titles I–III do not limit the ability of the San Carlos Apache Tribe, or the United States as its trustee, from pursuing any claims. The Secretary is also charged with reporting to Congress on the status of any water rights settlement negotiations with the Tribe.

## LEGISLATIVE HISTORY

S. 437 was introduced by Senator Kyl on February 12, 2003 and referred to the Energy and Natural Resources Committee. Senator McCain is an original co-sponsor. Senator Johnson is also a co-sponsor. The Committee on Indian Affairs and the Committee on Energy and Natural Resources Subcommittee on Water and Power held a joint hearing on S. 437 on September 30, 2003 (S. Hrg. 108–216). At the business meeting on September 15, 2004, the Committee on Energy and Natural Resources ordered S. 437 favorably reported with an amendment in the nature of a substitute.

During the 107th Congress, a similar measure, S. 2992, was introduced by Senator Kyl and referred to the Committee on Energy and Natural Resources on September 24, 2002, but the Committee took no further action.

During the 106th Congress, a similar measure, S. 3231, was introduced by Senator Kyl and referred to the Committee on Energy and Natural Resources on October 24, 2000, but the Committee took no further action.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on September 15, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 437, if amended as described herein.

## COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes the following changes to S. 437 as introduced:

1. Provides definitions of the NM Cap Entity, the New Mexico Unit, New Mexico Unit Agreement, and New Mexico Consumptive Use and Forbearance Agreement which is an exhibit to the UVD Agreement.

2. Defines the UV impact zone according to its definition in the UVD Agreement.

3. Clarifies the viability of decisions reached by arbitration irrespective of United States participation.

4. Protects the United States from claims of not implementing the Arizona Water Settlements Act if funds in the Lower Basin Development Act or appropriations are insufficient to carry out all activities authorized.

5. Changes the name of the Central Arizona Project Settlement Act of 2003 to the Central Arizona Project Settlement Act of 2004.

6. Revises the allocation of entitlements under long-term contracts for CAP water decreasing the allocation to Indians to 650,724 acre-feet with the balance allocated to other parties.

7. Allows up to 17,000 acre-feet of CAP municipal and industrial water under contract to Asarco to be exchanged with the Gila River Indian Community.

8. Removes the restriction on amended contracts from the Central Arizona Project requiring them to conform to the shortage sharing provisions of the Gila River Agreement.

9. Provides that the Arizona Water Settlements Act supersedes any provisions in the Master agreement, Gila River Agreement, Joint Control Board Agreement, Amended and Restated Community CAP Water Delivery Contract, leases of Community CAP water, Reclaimed Water Exchange Agreement, Community Repayment Contract, the New Mexico Consumptive Use and Forbearance Agreement, Tohono O'odham Settlement Agreement, the Tucson Agreement, Asarco Agreement, and lease number H54–0916–0972 should there be any conflicts between the agreements and the Act and allows amendments to these agreements to be authorized, ratified, and confirmed to the degree that they make the agreements consistent with the Act.

10. Specifies conditions of debt collection for contractors that do not relinquish their agriculture priority water under the master agreement.

11. Provides authority to the Secretary to extend the repayment schedule by CAP contractors.

12. Specifies the priority of funds allocated by the Secretary from the Lower Basin Development Fund.

13. Specifies the amounts and conditions for payments from the Lower Colorado Basin Development Fund to the New Mexico Unit Fund.

14. Specifies the amount, annual limits, and indexing of funds allocated from the Lower Colorado Basin Development Fund for the San Carlos Irrigation Project rehabilitation.

15. Creates a Future Indian Water Settlement Subaccount in the Lower Colorado Basin Development Fund, specifies the limits and conditions on allocation of funds to that subaccount, and ties the dispersal of those funds to Congressionally authorized water rights settlements.

16. Allows the U.S. Treasury to invest portions of the Lower Colorado Basin Development Fund in an array of government investment vehicles.

17. Restricts the Secretary from using funds in the Lower Colorado Basin Development Fund for Ak-Chin OM&R charges.

18. Restricts payments from the Lower Colorado Basin Development Fund until January 1, 2010.

19. Modifies the purposes, removes the findings, and changes the title of the Gila River Indian Community Water Rights Settlement Act of 2004.

20. Authorizes the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement .

21. Modifies Secretarial authority to rehabilitate the San Carlos Irrigation Project including providing electric power at direct cost. Modifies and articulates the responsibilities and authority of the Joint Control Board and the financial responsibilities of the Secretary. Specifies responsibilities for continued operations of certain elements of the project. Allows local engineering standards to be applied, and specifies the allocation of conserved water pursuant to the terms of the Gila River Agreement.

22. Specifies the manner in which allottee benefits related to water rights and water infrastructure will be managed by the Gila River Indian Community with United States involvement and the authority and restrictions on the authority of the Community to lease, distribute, exchange, or allocate CAP water and eliminates United States responsibility for financial management and funds associated with these transactions. It also specifies methods for allottees to seek remedy.

23. Requires that the Gila River Indian Community develop and enact a water code within 18 months and lays out conditions that must be met by the code, by allottees who bring claims, and by the Community in implementing the code.

24. Significantly modifies the waiver conditions for most parties related to water quality claims.

25. Rewrites the waivers and conditions of claims by the Gila River Indian Community and the United States against the Salt River Project.

26. Reiterates that nothing in the Gila River Indian Water Rights Settlement affects the rights of the United States or the State of Arizona to take action under laws governing human health, safety, or the environment.

27. Specifies waiver conditions for claims against the Upper Valley Diverters with special emphasis on the newly defined UV impact zone consistent with the UVD Agreement.

28. Authorizes the Gila River Indian Community in performance of its obligations under the Gila River Agreement to agree to never adopt water quality standards that are more stringent than the State of Arizona.

29. Specifies the meaning of the concept of land within the exterior boundaries of the Reservation and the ability to allocate water rights to various subsets of that land including for lands acquired by fee title.

30. Modifies the creation and conditions of management and investment of the Gila River Indian Community Water OM&R Trust Fund.

31. Authorizes the Secretary to contract with the Gila Valley Irrigation District and the Franklin Irrigation District and provide funds for these districts to acquire land and associated UV decreed water rights in order to reduce the total water demand on the Gila River. The Districts take responsibility to acquire the lands. The methods for determining value of the lands, amount of land and schedules are articulated and the responsibility to the San Carlos Irrigation District for lack of land acquisition is clarified.

32. Specifies the conditions of the New Mexico Unit. Authorizes, ratifies and confirms the New Mexico Consumptive Use and For-

bearance Agreement and authorizes the Secretary to execute the NM Consumptive Use and Forbearance Agreement, and the NM Unit Agreement.

33. Directs that $15 million be provided to the UV irrigation districts to comply with the New Mexico Consumptive Use and Forbearance Agreement, such funding to be indexed according to the referenced standard.

34. Authorizes the Secretary to accept transfer of title from the Salt River Project Agriculture Improvement and Power District a transfer of the Blue Ridge Project and to modify the availability of the water for municipal and domestic uses, rename the reservoir, provide for the long-term care, operation and maintenance, specify court of jurisdiction for interpretation of legislation and remove the facilities from licensing and regulatory responsibility of the Federal Energy Regulatory Commission.

35. Removes the findings for the Southern Arizona Water Rights Settlement and replaces them with purposes.

## SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title and table of contents.

Section 2 defines terms used in Titles I and II.

Section 3 addresses the effect of the United States non-participation in any arbitration proceeding conducted pursuant to certain specified provisions. The procedures for the United States participation in arbitration are also specified. It is the Committee's understanding that any arbitration proceeding referred to in subsection (a) will concern only certain aspects of the water rights of the Community, the San Carlos Irrigation Project or the Miscellaneous Flow Lands, 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. This understanding is important because the San Carlos Irrigation Project is a unique entity in which the United States hold title to water rights but each of the San Carlos Irrigation Project parties have the rights to the benefits of those water rights.

Section 4 limits the liability of the United States for failure to carry out any obligation or activity required by the Act.

*Title I—Central Arizona Project Settlement*

Section 101 contains the short title.

Section 102 contains findings for the Act.

Section 103 clarifies that, notwithstanding any other law, the CAP system may be used to transport non-project water for any purpose for which the project was authorized, including municipal and industrial uses.

Section 104 provides for the reallocation of CAP water in accordance with the Master Agreement among the United States, the Arizona Department of Water Resources, and CAWCD.

Subsection 104(a) directs the Secretary to reallocate water relinquished by CAP non-Indian agricultural subcontractors under the Master Agreement for use by Arizona Indian tribes. Section 104(a)(1) specifies that 197,500 acre-feet of the relinquished CAP agricultural water will be available for the reallocation. Of that total, 102,000 acre-feet will be reallocated to the Gila River Indian

Community and 28,200 acre-feet to the Tohono O'odham Nation to complete the settlements approved under Titles II and III of this Act. The remaining 67,300 acre-feet will be held by the Secretary and used in the future to resolve other Indian water claims in Arizona. To encourage Indian water rights settlements, until December 31, 2030, the Secretary may only reallocate the remaining tribal water pursuant to a settlement approved by Congress. After that time, if any tribal CAP water remains, the Secretary may allocate such water without a congressionally-enacted settlement to help ensure that Arizona Indian tribes receive the benefit of the water made available in this subsection. Any water so allocated, will be credited against any tribal water rights claim. The Committee has also included in this subsection, a provision requiring the Secretary to report to Congress on the status of Indian water rights settlements and other tribal water needs in Arizona so that the Congress can evaluate whether Arizona Indian tribes are receiving the benefits intended.

Subsection 104(a) also specifically directs the Secretary to retain 6,411 acre-feet of this water until December 31, 2030, for use in a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation's claims to water in Arizona. The 6,411 af of reserved CAP water is for possible use by the Navajo Nation in association with a water supply project projected to deliver water to the Navajo Reservation in eastern Arizona. It is not the Committee's intent that the 6,411 af be interpreted to limit additional allocations of tribal CAP water to the Navajo Nation to address water needs elsewhere on its reservation in Arizona. The Committee recognizes that any use of Colorado River water, including CAP water reserved for future tribal settlements, can only be utilized if consistent with the United States Supreme Court Decree in *Arizona* v. *California,* and the 1922 Colorado River Compact. The Committee recommends that the parties to any tribal settlement that proposes using Colorado River water in a different manner seek appropriate amendments or stipulations to change the aforementioned Decree and Compact.

Section 104(a)(2) directs the Secretary to reallocate up to 96,295 acre-feet to the Arizona Department of Water Resources to be held in trust for future allocation to non-Indian municipal and industrial water users in Arizona.

Subsection 104(b) directs the Secretary, in accordance with applicable law, to reallocate 65,647 acre-feet of currently uncontracted CAP municipal and industrial water to various M&I water providers based on the recommendation of the Arizona Department of Water Resources.

Subsection 104(c) limits the total amount of CAP water entitlements under long-term contracts to 1.415 million acre-feet. Of that total, up to 47 percent will be available for use by Arizona Indian tribes or their lessees and at least 53 percent will be available for use by non-Indian water users in Arizona. Section 104(c) fixes this division of the CAP water supply between Indian and non-Indian uses in accordance with the Master Agreement.

Section 104(d) directs the Secretary of the Interior to offer amendments to CAP Indian and M&I water service contracts. The contract amendments would allow amendment of current CAP Indian and M&I contracts allowing them to be permanent with an

initial delivery term of 100 years (or longer, if a longer term is authorized by Congress or provided by existing agreements). Under section 104(d), all CAP Indian and M&I contract amendments would conform to shortage sharing agreements contained in the Tohono O'odham settlement agreement approved under Title III that have been agreed to among the United States, the State of Arizona, CAWCD and other CAP water users.

Subsection 104(e) clarifies that CAP water may not be leased, exchanged, forborne or otherwise transferred in any way for use directly or indirectly outside the State of Arizona, except pursuant to an agreement with the Arizona Water Banking Authority as part of a recognized interstate water banking program or to effect an exchange with New Mexico under the New Mexico Consumptive Use and Forbearance Agreement ratified by section 212 of this Act.

Subsection 105(a) provides that the Secretary of the Interior and the State of Arizona will jointly develop a program to "firm" 60,648 acre-feet of the CAP non-Indian agricultural priority water that is to be reallocated to Indian tribes under section 104. When the amount of water available for delivery through the CAP in any year is insufficient to meet all long-term contract entitlements, non-Indian agricultural priority water deliveries are the first to be cut. The purpose of the firming program is to insure that the non-Indian agricultural priority water in question is available for delivery with the same degree of reliability as municipal and industrial priority CAP water.

Subsection 105(b) directs the Secretary to firm 28,200 acre-feet of CAP non-Indian agricultural priority water that is to be reallocated to the Tohono O'odham Nation and 8,724 acre-feet to be reallocated to other Indian tribes. The State of Arizona is to firm 15,000 acre-feet of CAP non-Indian agricultural priority water that is to be reallocated to the Gila River Indian Community.

Subsection 105(c) authorizes appropriation of the funds necessary to carry out the Secretary's firming duties under section 105(b).

Section 106(a) authorizes, ratifies and confirms the Master Agreement, under which non-Indian agricultural water service subcontractors will relinquish some or all of their long-term CAP contract entitlements. The CAP water entitlements relinquished under the Master Agreement will be reallocated as prescribed in subsections 104(a) and (b). For any such water not relinquished, the subcontractor shall continue to be responsible for debt owed to the United States as set forth in the Master Agreement.

Subsection 106(b) specifies that debt incurred by CAP non-Indian agriculture subcontractors under section 9(d) under the Reclamation Project Act of August 4, 1939, is nonreimbursable and nonrefundable in return for, and as a condition of, relinquishing long-term CAP contract entitlements as provided in the Master Agreement. Collectively, that 9(d) debt totals more than $158 million. Under the Master Agreement, CAWCD has agreed to pay about $85 million of that debt and the United States has agreed to debt relief in an amount not to exceed $73,561,337. Section 106(b) makes the 9(d) debt that the United States has agreed to relieve, non-reimbursable and non-returnable.

Subsection 106(c) exempts the CAP service area and other specified land from the Reclamation Reform Act and any other acreage limitation or full cost pricing provisions of federal law. One of the

purposes of the Central Arizona Project is to provide a renewable water supply to agriculture to alleviate the significant groundwater overdraft in central Arizona. The Reclamation Reform Act limits the agricultural lands that may receive CAP water, and therefore has the effect of increasing groundwater pumping in central Arizona. The exemption in section 106 is consistent with the purpose of the CAP.

Subsection 107(a) amends section 403(f) of the Colorado River Basin Project Act of 1968 (Basin Project Act) to authorize new uses for certain funds deposited into the Lower Colorado River Basin Development Fund (Fund). Instead of being returned to the general fund of the Treasury, the revenues, after being credited against the annual payment owed by CAWCD, would be made available annually, without further appropriation, as described below. Section 107(a) does not affect the collection and deposit of revenues to the Development Fund, nor does it alter CAWCD's obligation to make cash payments sufficient to meet its annual repayment obligation for the CAP.

Subsection 403(f)(1) provides that the Development Fund revenues in question, as well as CAWCD's annual payments, will continue to be credited against the annual payment owed by CAWCD for the CAP. This provision is consistent with the current version of section 403(f) and with the CAP repayment contract between CAWCD and the United States.

Subsection 403(f)(2) provides that the monies from the Fund that are credited against CAWCD's annual payment under subsection (1) may thereafter be used annually, without further appropriation for payment of fixed operation, maintenance and replacement (OM&R) charges associated with the delivery of CAP water to Indian tribes; payment of $53 million to the Gila River Indian Community Water OM&R Trust Fund established by section 207 of this Act; payment of $147 million (indexed from January 1, 2000) for rehabilitation of the San Carlos Irrigation Project; payment of the following amounts, as reasonably allocated by the Secretary without regard to any trust obligation and without regard to priority, except that payments to the New Mexico Unit Fund shall be made first: $66 million (indexed from January 1, 2004) into the New Mexico Unit Fund to be made in ten equal annual payments beginning in 2012; a minimum of $34 million and a maximum of $62 million (indexed from January 1, 2004) as provided in section 212, for payment of costs associated with construction of the New Mexico Unit upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212; costs of constructing water distribution systems for the Gila River Indian Community, the San Carlos Apache Tribe and the Tohono O'odham Nation; $52,396,000 (indexed from January 1, 2000) for rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4); other costs specifically identified under sections 213 and 214 or Title III; up to $250 million to the Future Indian Water Settlement Subaccount within the Development Fund to pay the costs of Indian water rights settlements in Arizona approved by the Congress; up to $500,000 for installation of gauges on the Gila River and its tributaries to measure water levels for purposes of the New Mexico Consumptive Use and Forbearance Agreement; and payment of the costs of constructing on-reservation CAP distribution systems for

the Yavapai Apache (Camp Verde), Pasqua Yaqui and Tonto Apache tribes and the Sif Oidak District of the Tohono O'odham Nation. Any funds not used in the year they become available are carried over to the following fiscal year and are again available for the purposes outlined above.

Subsection 403(f)(3) deals with revenues to the Development Fund that are in excess of the amount required to make CAWCD's annual payment for the CAP. Development Fund revenues that fall under new subsection 403(f)(3) may be used by the Bureau of Reclamation for the following, in order of priority: payment of fixed OM&R charges associated with the delivery of CAP water to Indian tribes; payment of the final outstanding annual payment due from CAWCD under its CAP repayment contract with the United States; payment to the general fund of the Treasury in reimbursement of Indian fixed OM&R charges previously paid from the Development Fund under 403(f)(2)(A); payment to the general fund of the Treasury in reimbursement of Indian water rights settlement costs previously paid from the Development Fund under 403(f)(2)(B) through (E); payment to the general fund of the Treasury in reimbursement of any federal 9(d) debt made non-reimbursable under section 106(b); and payment to the general fund of the Treasury to return CAP construction costs, if any, deemed by the Bureau of Reclamation to be reimbursable but not covered under the CAP repayment contract between CAWCD and the United States. Any funds left over under subsection 403(f)(3) will be deposited in the general fund of the Treasury. Subsection 403(f)(4) provides for the investment of Development Fund revenues not needed to meet current requirements, which will generate additional interest income that may be used for the purposes described in 403(f)(2) and (3). Subsection 403(f)(5) provides that Development Fund revenues may not be used to fulfill any federal obligation to pay OM&R charges pursuant to P.L. 95–328, P.L. 98–530, or any settlement agreement or amendment approved by or pursuant to either of those acts.

The Committee recognizes that numerous parties have benefits that are to be funded through the Fund. Section 107(a) as amended by the Committee substitute, amends section 403(f)(2)(D) of the 1968 Act to provide that the Secretary will reasonably allocate funds among this defined group of projects and beneficiaries. The allocation process could create a competition of interests for the Secretary to consider when allocating available funds among this defined group. To address this issues, the Committee recognizes that the Gila Settlement Agreement Parties intend to limit their requests for Fund moneys in a manner that would not require the Secretary to divide available Fund moneys among the Gila Settlement Agreement Parties. The Committee expects that the Secretary will accept the agreement among the Gila Settlement Parties to limit their requests for funding, will fully fund those limited requests and will adequately fund all of the projects and beneficiaries in a time-frame that meets the expectations of such projects and beneficiaries.

To guide the Secretary, the Committee has included in this report a schedule of payments that reasonably and fairly accommodates the expectations of all parties as to the timing of benefits to be funded under the bill. To the extent funds are available in the

Fund, the Secretary should make every effort to allocate these funds in accordance with this schedule.

Of special note, section 403(f)(2)(D)(vi) provides that the Secretary will allocate up to $250 million from the Fund to a special subaccount that will accrue for future congressionally approved Arizona Indian water rights settlements. The Committee recognizes that the Secretary's timely allocation of these revenues, together with the accrual of interest thereon, is of critical importance to Arizona Tribes with unsettled water rights claims to the Gila, the Little Colorado, and the Colorado river systems. The Tribes' interest is shared by the State and the litigants opposing these tribal claims since the intent of section 403(f)(2)(D)(iv) is to aid in reaching appropriate settlements of such claims.

Finally, the Committee expects that the Secretary will provide to all beneficiaries under 403(f)(2) of the 1968 Act, as amended, an annual report of the funds allocated pursuant to that section. Such report shall include, among other things, the basis for the allocations made in that year.

Subsection 107(b) provides that no monies will be expended or withdrawn from the Development Fund pursuant to the amended section 403(f) until the date on which the Secretary publishes the findings necessary to complete the Gila River Indian Community water rights settlement or January 1, 2010, whichever is later. The required findings are set forth in section 207(c) of Title 2. Until then, funds will be identified for the purposes described in amended section 403(f), but retained in the Development Fund.

Section 107(c) makes certain technical amendments to the Basin Project Act.

Section 108 makes clear that Title 1 is not intended to alter the Law of the Colorado River or affect any existing rights to use Colorado River water except insofar as section 104 directs a reallocation of CAP water and section 106(c) amends the Reclamation Reform Act.

Section 109 repeals section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988. The repealed section required the Secretary of the Interior to reallocate certain CAP non-Indian agricultural water to non-Indian agricultural water users. That requirement is inconsistent with the Master Agreement and the reallocation prescribed in section 104.

Subection 110(a) authorizes appropriations needed to comply with various biological opinions issued by the U.S. Fish and Wildlife Service in connection with CAP features and operations. Adherence to these biological opinions is required for the Project to remain in compliance with the Endangered Species Act.

Subsection 110(b) provides that the amounts made available under section 110(a) will be treated as CAP construction costs.

Subsection 110(c) provides that reasonable and prudent alternatives in the biological opinions identified in section 110(a) may be permanently funded through agreements that require the contractor to manage funds through interest-bearing investments.

Section 111(a) repeals Title 1 effective January 1, 2008, if the Gila River Indian Community water rights settlement in Title 2 is not fully enforceable by that date. Upon repeal, any actions taken by the Secretary under Title 1—for example, the reallocation of CAP water—shall be voided and any amounts appropriated under

section 110 that remain unexpended shall be returned to the general fund of the Treasury.

Section 111(b) provides that certain CAP subcontract amendments entered into pursuant to a June 18, 2003 Federal Register notice (67 Fed. Reg. 36578) are not voided by a repeal of Title I.

*Title II—Gila River Indian Community Water Rights Settlement*

Section 201 contains the short title.

Section 202 contains purposes for the Act.

Section 203(a) authorizes, ratifies, and confirms the Gila River Agreement, except to the extent the Agreement conflicts with Title II. Any amendments executed to make the Agreement consistent with this title are also ratified.

Section 203(b) directs the Secretary to execute the Gila River Agreement to the extent it does not conflict with Title II, including all exhibits thereto and any amendments that may be necessary to make the Agreement consistent with Title II.

Section 203(c) provides the execution of the Agreement is not a major federal action under the National Environmental Policy Act (NEPA). The Bureau of Reclamation is designated the lead agency with respect to the environmental compliance activity that is to be carried out in implementing all aspects of the Gila River Agreement.

Subsection 203(d) specifies certain actions required by the Secretary related to the San Carlos Irrigation Project. The Secretary is authorized to execute a joint control board agreement to the extent such agreement is consistent with this Act. The subsection also directs the use of certain resources from the Fund for Project rehabilitation costs that are both allocable and not allocable to the Community. In addition, the Secretary is to execute a supplemental repayment contract with the San Carlos Irrigation and Drainage District that addresses labor and contracting opportunities; the allocation of conserved water to the United States; and the portion of the District's share of rehabilitation costs that are nonreimbursable. With respect to the construction and rehabilitation responsibilities authorized by section 203, the Bureau of Reclamation (BoR) is to be designated as the lead agency.

Section 204(a) provides that through the Settlement Agreement, Congress intends to provide allottees with benefits that equal or exceed the benefits presently available to them, taking several specified factors into consideration. The water rights described in the Agreement are held in trust for the Community and for allottees as provided for in section 204 of the Act. The protection afforded to allottees under this section includes a recognition that allotted lands with rights under the Globe Equity Decree are entitled to receive a similar quantity of water to the amount historically delivered and the benefit of the rehabilitation of the SCIP facilities. Allottees with land that have no rights under the Globe Equity Decree are entitled to a just and equitable allocation of water from the Community for irrigation purposes. These claims and any entitlements are to be satisfied from the water resources described in the Settlement Agreement. Before asserting certain claims against the United States, an allottee must exhaust remedies under Community law, including the Community's water code. Nothing in the Act authorizes a claim against any person, entity,

corporation, or municipal corporation, nor against the Community or the United States except as are specified in subparagraphs (E) and (F) of paragraph (3) and (e)(2)(C).

Subsection 204(b) directs the Secretary to reallocate certain CAP water previously acquired by the Secretary or acquired pursuant to S. 437. The Community's authority to lease, distribute, or exchange CAP water is set forth in the subsection.

Subsection 204(c) provides that the Community shall not be responsible for water service capital charges for CAP water.

Subsection 204(d) specifies that any new construction costs associated with delivery of the CAP water described in subsection 204(b) shall be nonreimbursable and excluded from CAWCD's repayment obligation.

Subsection 204(e) provides that the water rights recognized and confirmed to the Community and allottees are subject to 25 U.S.C. 381. The creation of a Community Water Code is also required within 18 months from the enactment of S. 437. The Water Code requirements are set forth in the subsection. The Water Code and any amendments affecting the rights of allottees is to be approved by the Secretary. The Secretary retains the responsibility for administering all Community water rights until the water code is approved.

Subsection 205(a) directs the Secretary to amend the Community CAP water delivery contract to provide that the contract is for permanent service under 43 U.S.C. §617d of the Boulder Canyon Project Act and not limited as to its term. In addition, the Community CAP contract shall authorize the Community, with approval by the Secretary, to enter into lease or exchange its CAP water for terms not exceeding 100 years within specified Arizona counties. Such leases may include provisions for renegotiation, as long as the remaining term of such modified leases do not exceed 100 years. The United States will have no claim on the consideration due to the Community pursuant to such leases, nor shall the United States have a trust obligation related to such revenue. Community CAP water is to be delivered through the CAP system, except in specified circumstances, and the Community is authorized to use its CAP water on or off of the Reservation for Community purposes consistent with other provisions in the Act. Except for CAP water leased by the Community, the OM&R charges for Community CAP water shall be paid from the Basin Development Fund consistent with this Act. Further, no water service capital charges are due or payable for Community CAP water.

Subsection 205(b) authorizes, ratifies, and confirms the Amended and Restated Community CAP Water Delivery Contract to the extent it is not in conflict with the Act, and directs the Secretary to execute the Contract.

Subsection 205(c) authorizes, ratifies, and confirms certain CAP water lease agreements between the cities and specified parties to the extent they are not in conflict with the Act, and directs the Secretary to execute the agreements.

Subsection 205(d) authorizes, ratifies, and confirms the reclaimed water exchange agreements between the cities and specified parties to the extent they do not conflict with the Act, and directs the Secretary to execute the agreements.

Subsection 205(e) reiterates that the Community or its lease and exchange partners are not obligated to pay water service capital charges or other charges for CAP water.

Subsection 205(f) prohibits exchange, lease or other action that moves Community CAP water outside the State of Arizona with listed exceptions.

Subsection 206(a) is self explanatory.

Subsection 206(b) provides that Title II is not intended to recognize or establish any individual or allottee right to water, except as otherwise provided in 204.

Subsection 207(a) authorizes the United States to execute certain waivers of claims in either its own right, its capacity as trustee for the Community and Community members, or its capacity as trustee for allottees. The Community is authorized to execute waivers in its own capacity and for its members, but not in their capacity as allottees. In addition, the United States and the Community waive any claims related to the negotiation or execution of the Settlement Agreement or the negotiation or execution of Title I or II.

Subsection 207(b) establishes the conditions and timing under which the waivers are effective.

Subsection 207(c) ties the enforceability date to a requirement that the Secretary publish a statement of findings in the Federal Register concerning a number of listed conditions.

Subsection 207(d) provides a detailed definition of "land within the exterior boundary of the Reservation" and "off-Reservation".

Subsection 207(e) establishes the extent of the water rights available for use on land held in trust for the Community, Community members and allottees.

Section 208(a) establishes the Gila River Indian Community OM&R Fund within the Lower Colorado River Basin Fund and provides for $53 million to be deposited for the purposes stated.

Section 208(b) directs the Secretary to invest the fund consistent with the American Indian Trust Fund Management Reform Act of 1994.

Subsection 208(c) provides further instructions on investment management conditions.

Subsection 208(d) establishes the conditions for expenditure and withdrawals of all or part of the Water O&R Fund; enforcement of those conditions; limitation on the liability of federal officials; and the requirements for an expenditure plan by the Community.

Subsection 208(e) specifies that the OM&R Trust Fund is not to be distributed on a per capita basis.

Subsection 208(f) establishes that the OM&R Trust Fund is not to be made available until the enforceability date or January 1, 2010, whichever is later.

Subsection 209(a) requires the Secretary to establish a Bureau of Reclamation program to repair and remediate subsidence damage that occurs after the enforceability date consistent with subsection 107(a).

Subsection 209(b) specifies that under the program, the Community, a member of the Community, or an allottee are authorized to submit a request for the repair of subsidence damage or damage to personal property caused by settling that results from underground water pumping.

Subsection 209(c) directs the Secretary to provide the repair or remediation, if the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Agreement and the party requesting the repair or remediation provides a waiver and release. The waiver and release will only become effective upon satisfactory completion of the relevant repair.

Subsection 209(d) requires the Secretary to repair, remediate, and rehabilitate the subsidence damage specified in exhibit 30.21 to the Settlement Agreement.

Subsection 210(a) and (b) provide that the Community may only obtain additional lands taken into trust by the United States through an act of Congress. Such after-acquired trust lands will not include federal reserved water rights.

Subsection 210(c) provides the sense of Congress concerning the water rights associated with future acts of Congress authorizing land to be taken into trust for the Community.

Subsection 210(d) provides that the Secretary will immediately hold land in trust for the Community if the Community acquires fee land within the Reservation and provides the Secretary with specified environmental and title documentation.

Subsection 211(a) provides for the reduction of irrigation water demand in the upper Gila River valley through the acquisition of decreed water rights and extinguishing or severing those rights to the Project for the benefit of the Community and the San Carlos Irrigation and Drainage District and through the use of fallowing agreements. This subsection describes certain alternative arrangements the Secretary may pursue to achieve these objectives and limits the transfer of the water rights associated with 900 acres to the San Carlos Irrigation Project. A mechanism is established to determine whether the payment proposed by the upper valley Districts for the acquisition authorized by this program is appropriate. With respect to the San Carlos Apache Tribe, this subsection also provides for the additional reduction of the water rights associated with at least another 500 acres and as much as 3,000 more acres if the San Carlos Apache Tribe (SCAT) reaches a comprehensive settlement that is approved by Congress. With respect to the water rights associated with 300 acres of these acres, the Secretary is to extinguish these rights. With respect to 200 acres, the Secretary is to transfer the water associated with those acres to the San Carlos Irrigation Project. Any remaining balance is to be transferred to the San Carlos Apache Tribe.

As part of the Settlement, persons in the upper Gila River valleys will extinguish 1000 acres of water rights without financial compensation. The acquisition and extinguishment or severance and transfer of additional water rights in the upper Gila River Valley will benefit the Gila River Indian Community and other interests of the United States. The Committee recognizes, however, that the Gila Valley Irrigation District and the Franklin Irrigation District and other persons in the upper Gila River valleys do not have the financial ability to acquire and extinguish additional rights. Consequently, section 211 directs that the Secretary will provide the Irrigation Districts with the funding to acquire and extinguish or sever and transfer 2000 acres of water rights in the upper Gila River Valley. If the Secretary does not provide any funding for acquisition as provided by section 211, the Irrigation Districts will

not be required to acquire and extinguish or sever and transfer those rights. If the Secretary partially funds the acquisition, as provided in the UVD agreement, the Irrigation Districts will acquire and extinguish or sever and transfer water rights in proportion to the amounts actually funded.

Subsection 211(b) directs the Secretary and the UVD settling parties to establish a program to extinguish the water rights associated with decreed lands that have not been recently irrigated. This program is to be carried out at no cost to the UVD settling parties.

Subsection 212(a) requires the Secretary to refrain from executing the Settlement Agreement until all of the relevant parties have executed the New Mexico Consumptive Use and Forbearance Agreement and it has been approved by the State of New Mexico.

Subsection 212(b) authorizes, ratifies, and confirms the New Mexico Consumptive Use and Forbearance Agreement except to the extent it is inconsistent with Title II. The Secretary is also authorized to execute the New Mexico Consumptive Use and Forbearance Agreement and any amendments needed to make it consistent with this title.

Subsection 212(c) describes the New Mexico Unit Agreement and the provisions it must include. The Secretary is authorized to execute the New Mexico Unit Agreement in a time certain.

Subsection 212(d) amends the Colorado Basin Project Act of 1968 as set forth in the subsection.

Subsection 212(e) specifies the costs allocable to, or payable by, the New Mexico CAP entity.

Subsection 212(f) excludes costs associated with the New Mexico Unit and water delivered under the New Mexico Consumptive Use and Forbearance Agreement from the repayment obligation of the Central Arizona Water Conservation District.

Subsection 212(g) reiterates that the Secretary is authorized to design, build, or operate the New Mexico Unit of the CAP and that this authority and responsibility may be transferred as specified. This provision is not a new authorization. It is a follow-up to, and consistent with, the authorization of the New Mexico Unit of the CAP ("Hooker Dam or suitable alternative"), contained in section 301(a)(4) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4)).

Subsection 212(h) provides that the execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement are not major federal actions under NEPA. The Secretary, however, shall promptly carry out the environmental reviews necessary to evaluate and implement those agreements. The Committee expects that any consideration of water use under Section 212 will be accompanied by the consideration of a full range of alternatives that apply to address water supply needs in southwest New Mexico. Furthermore, the Committee recognizes the unique and valuable ecology of the Gila Basin. Accordingly, in conducting the environmental reviews, the Committee expects that the best available science will be used to fully assess and develop mitigation for the ecological impacts on Southwest New Mexico, the Gila River, its tributaries and associated riparian corridors. There must also be consideration given to the historic uses of and future demands for water in the Basin and the traditions, cultures and

customs affecting those uses. The Bureau of Reclamation is designated as the lead agency for such review. The committee urges that upon request of the State of New Mexico, that the State be allowed to serve as a joint lead agency.

Subsection 212(i) establishes the New Mexico Unit Fund to be funded from the Lower Colorado Basin Development Fund, as modified by Title I of the Act. It also establishes the authorized uses of this fund which include development of a New Mexico Unit or other water utilization alternatives that address water demands in the Southwest Water Planning Region of New Mexico.

Subsection 212(j) provides that additional funding may be available for the New Mexico Unit if the State of New Mexico provides notice of its intent to construct certain facilities by December 31, 2014 and the Secretary issues a Record of Decision based on a review of the project pursuant to applicable federal law.

Subsection 212(k) provides that additional funding may also be made available for construction of the New Mexico Unit if the rate of return accruing to the Lower Colorado Basin Fund exceeds 4%.

Subsection 212(l) provides a disclaimer with respect to the Decree in Arizona v. California, (376 U.S. 340).

Subsection 212(m) provides a limitation on the approval of other Gila River exchanges by the Secretary that would amend, alter, or conflict with the exchange authorized by the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

Subsection 213(a) waives the sovereign immunity of the United States and the Community for certain specified claims under the Settlement Agreement or the New Mexico Consumptive Use and Forbearance Agreement.

Subsection 213(b) provides that this title does not quantify or otherwise affect the water rights or claims of any other Indian tribe other than the Community. Those tribes include the Ak-Chin Indian Community, Cocopah Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Fort Yuma-Quechan Tribe, Gila River Indian Community, Navajo Nation, Pascua Yaqui Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute, Tohono O'odham Nation, Tonto Apache Tribe, Havasupai Tribe, The Hopi Nation, Hualapai Tribe, Kaibab-Paiute Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, Yavapai-Prescott Indian Tribe, and the Zuni Tribe. It is also the Committee's intent that nothing in Title II affects the water rights or any other rights or authorities of the United States in its own capacity or on behalf of, or as trustee for, any Indian tribe or individual Indian other than the Community and its members except to the extent expressly provided in the Gila River agreement or this title.

Subsection 213(c) precludes the United States from obtaining reimbursement for the costs of the Agreement through assessments of Indian owned land.

Subsection 213(d) provides that the lease or exchange of Community CAP water shall not affect any future allocation or reallocation of CAP water by the Secretary.

Subsection 213(e) directs the Secretary to execute amendment No. 1 to the Community CAP repayment contract to provide that costs incurred under that contract are non-reimbursable.

Subsection 213(f) authorizes, ratifies, and confirms the September 6, 1917 agreement between the United States and the Salt River Valley Water Users' Association and the rights of the Salt River Project to store and deliver water from the Salt and Verde Rivers as specified.

Subsection 213(g) directs that $15 million in funding be provided to the UV irrigation districts to comply with the New Mexico Consumptive Use and Forbearance Agreement, such funding to be indexed according to the referenced standard.

Congress recognizes that the $15,000,000 paid to the UV irrigation districts may be applied to remedies other than the pipeline referenced, but the cost indexing should be scaled by reference to the pipeline as described.

Subsection 213(h) provides a limitation on liability of the United States and directs the Community to indemnify the United States for the purposes stated.

Subsection 213(i) authorizes the United States to acquire Blue Ridge Dam without cost to the United States to make water available to the Salt River Federal Reclamation Project.

Subsection 213(j) provides that nothing in this Act will alter federal pre-enforcement review of environmental actions or provides jurisdiction on state courts to review specified portions of section 207.

Subsection 214(a) authorizes appropriations for a number of activities that are related to the Settlement and are self-explanatory.

Subsection 214(b) designates some costs as identified costs for purposes of the Colorado River Basin Project Act.

Section 215 repeals Title II if the Secretary does not publish the statement of findings under section 207(d) by December 31, 2007 effective January 1, 2008 and amounts appropriated under paragraphs (1)–(5) of section 213(a) and section 213(b) are to be returned to the Treasury along with any interest. And any amounts paid by the Salt River Project are also to be returned.

*Title III Southern Arizona Water Rights Settlement*

Section 301 directs that the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended in its entirety by Title III. The new sections are described below.

Section 301 contains the new short title for the 1982 Act.

Section 302 establishes the purposes of the Act.

Section 303 contains definitions for the Act.

Subsection 304(a) specifies that the Secretary is obligated to deliver 37,800 acre-feet of water annually, 27,000 to the San Xavier Reservation and 10,800 to the eastern Schuk Toak District; or the water may be otherwise used in accordance with Subsection 309(a).

Subsection 304(b) specifies that the Secretary is obligated to construct, maintain and replace the delivery and distribution system necessary to deliver the water in Subsection (a).

Subsection 304(c) provides that the Secretary is obligated to complete an irrigation system for the cooperative farm, extend the irrigation system of the cooperative farm to serve a total of 2,300 net irrigable acres, construct the irrigation system for a new farm within the San Xavier Reservation or, at the District's election, pay $18,300,000 (as adjusted), and complete an irrigation system for the Schuk Toak farm.

Subsection 304(d) allows the Secretary to extend the time deadlines provided in subsection (c) if compliance is impracticable and the Secretary provides public notice.

Subsection 304(e) authorizes the Secretary to enter onto the Nation's Reservation in order to construct works on the Reservation.

Subsection 304(f) provides the condition that if the San Xavier District elects to be paid the $18,300,000 as adjusted, the District shall deposit the funds into interest bearing deposits and securities, and expend the principal and interest in accordance with a budget approved by the District and the Nation. The funds may be spent for subjugation of the land, governmental services, allottee benefits, costs of the Allottees Association, and administrative costs of the Nation or the District, but not for per capita distributions.

Subsection 305(a) requires the Secretary to deliver the 37,800 acre-feet of water described in subsection 304(a) and the 28,200 acre-feet of water described in subsection 306(a) at various points within the CAP delivery system as ordered by the Nation. The declaration of a water shortage on the Colorado River or other identified causes, does not excuse the delivery of CAP water or an equivalent quantity of water to meet the delivery obligations of 66,000 acre-feet of water annually.

Subsection 305(b) specifies that in the event that the Secretary cannot deliver CAP water, the Secretary may acquire water from other sources subject to described limitations, including a prohibition on causing depletion of groundwater at San Xavier or eastern Schuk Toak, compliance with state water law, prohibition on taking of private rights, compliance with transfers within the Tucson basin, and from effluent only with the Nation's consent.

Subsection 305(c) allows the Secretary to contract with the State, an irrigation district or other entities for the exchange of water and the use of water delivery infrastructure to deliver the water obtained in lieu of CAP water.

Subsection 305(d) provides that if the Secretary cannot deliver either CAP water or equivalent water, or if the Secretary does not complete the construction of the irrigation systems, the Secretary shall compensate for the value of the water ordered but not delivered. Compensation shall be paid to the San Xavier Cooperative Association or the Nation, as applicable.

Subsection 305(e) establishes that in satisfying the obligations of the Secretary under this Section, the Secretary may not acquire or affect the water rights of other Indian tribes.

Subsection 306(a) obligates the Secretary to deliver 28,200 acre-feet of water, 23,000 to the San Xavier Reservation and 5,200 acre-feet of water to the eastern Schuk Toak District; or otherwise used in accordance with Subsection 309(a).

Subsection 306(b) specifies that the State will contribute $3,000,000 in cash or in-kind goods and services to assist the Secretary in firming water.

Subsection 307(a) specifies that the Secretary is obligated to carry out Subsection 304(c), Subsections 305(a), (b) and (d), and Section 306 only if certain specified conditions are met.

Subsection 307(b) specifies that neither the United States nor the Tohono O'odham Nation is responsible for the operation, maintenance or replacement of irrigation systems constructed pursuant to Title III on allotted land.

Subsection 307(c) specifies that the Nation shall not be responsible for payment of CAP capital charges for water ordered for delivery under Title III.

Subsection 308(a) specifies that a portion of the water rights described in Title III are subject to a first beneficial right of the allottees.

Subsection 308(b) requires the Nation to prepare an interim allottee water rights code to be incorporated into a comprehensive water code. The water codes shall include acknowledgement of the water rights described in Title III, a process for the just and equitable distribution of water resources and compensation shall be provided to allottees, provisions for the protection of due process, and a process for the provision of water resources to fee owners of allotted land.

Subsection 308(c) requires that the Secretary shall approve the water code or provide notification and explanation of the nonconforming provisions. Until such time as the Secretary approves the water code, the Secretary retains authority under 25 U.S.C. § 381.

Subsection 308(d) requires the Secretary to develop water management plans, which plans shall meet specified minimum requirements and shall be developed in accordance with 638 contracts at a cost of $891,200 for the San Xavier plan and $237,200 for the Schuk Toak plan.

Subsection 308(e) allows the Nation to establish underground storage and recovery projects in accordance with the Tohono O'odham Settlement Agreement. The Secretary shall not have responsibility to fund or administer such projects.

Subsection 308(f) allows pumping of up to 10,000 acre-feet of groundwater at San Xavier and 3,200 acre-feet at eastern Schuk Toak; and allows for deferred pumping up to a maximum of 50,000 acre-feet in a 10 year period at San Xavier and 16,000 acre-feet for a 10 year period at Schuk Toak. The section clarifies that authorization to pump groundwater does not warrant or guarantee that groundwater exists or is recoverable. Title III may not serve as the basis of a claim by either the United States or the Nation against a person or entity withdrawing groundwater from a common water supply and the United States and the Nation are barred from asserting a claim for reserved water rights with respect to groundwater.

Subsection 308(g) allows pumping from an exempt well to be exempt from the pumping limitations of this Title.

Subsection 308(h) allows the Nation to pump additional groundwater in accordance with the requirements of the Tohono O'odham Settlement Agreement if the Secretary is unable to deliver water as specified in subsections 304(a) or 306(a).

Subsection 308(i) specifies that nothing in Section 308 affects the obligation of the Secretary to pay compensation pursuant to Subsection 305(d).

Subsection 309(a) allows the Nation to use water supplies granted or confirmed by this Title for any use subject to the provisions of Title III.

Subsection 309(b) establishes the geographical use area of the waters rights granted or confirmed by Title III.

Subsection 309(c) establishes the parameters for exchanges and leases of CAP water under Sections 304(a) and 306(a) and storage

credits under Section 308(e) including a contract validly agreed to by the Nation and approved by the United States with a term not to exceed 100 years, a prohibition against permanent alienation, and water delivery within the CAP service area.

Subsection 309(d) specifies that the rights of the Nation to transfer water are conditioned on the Nation's obligation to ensure, to the maximum extent practicable, the availability of water supplies to satisfy the first right of beneficial use under Section 307(a)(1)(G)(i) to the allottees.

Subsection 309(e) establishes that the transferee or lessee of CAP water from the Nation is not obligated to pay to CAWCD any water service capital charge.

Subsection 309(f) specifies that the Nation's use or lack of use of water granted or confirmed under this Title shall not diminish or impair such water rights.

Subsection 309(g) provides that the agreement of December 11, 1980 between the Nation and the Secretary shall be amended in accordance with the terms of Title III and the Tohono O'odham settlement agreement.

Subsection 309(h) authorizes the Secretary to execute the Tohono O'odham Settlement Agreement, the Tucson agreement, the Asarco agreement, an existing water well Asarco lease and any new water well leases with Asarco, and the FICO agreement and to the extent these agreements are not in conflict with this Act, they are authorized, ratified and confirmed.

Subsection 309(i) directs the Secretary to disburse to the Nation all proceeds from the Tucson interim water lease.

Subsection 309(j) entitles the Nation to all gross proceeds which are defined as the proceeds from the Tucson interim water lease, the Asarco agreement, and any agreement similar to the Asarco agreement limited by the proceeds from 20,000 acre-feet per year.

Subsection 309(k) specifies that Title III does not establish the rights attached to reserved water rights.

Subsection 310(a) reauthorizes the cooperative fund established by the 1982 Act, restates the funds previously contributed by the State parties, identifies interest accrued on all amounts in the cooperative fund since its inception on October 12, 1982 and revenues received from the sale or lease of effluent and storage credits from the storage of that effluent.

Subsection 310(b) allows the Secretary to use the cooperative fund to pay variable costs for the delivery of water under section 304 and section 306; fixed OM&R costs for the delivery of the 37,800 acre-feet per year and the 28,200 acre-feet per year to the extent funds are not available from the Lower Colorado River Basin Development Fund; costs of acquiring alternative water supplies; and any compensation provided in section 305(d). The Secretary may only expend interest income accruing to the cooperative fund and may expend such funds without further appropriation.

Subsection 310(c) directs the Secretary of the Treasury to invest monies in the cooperative fund and the interest shall become a part of the cooperative fund.

Subsection 310(d) requires funds to be transferred from the general fund of the Treasury to the cooperative fund as required.

Subsection 310(e) limits the damages arising under Title III or any contract for the delivery of water recognized by Title III to the

amounts available for expenditure in that year from the cooperative fund.

Subsection 311(a) specifies that the Secretary's obligations are subject to the Indian Self-Determination and Education Assistance Act with certain exceptions.

Subsection 311(b) defines the San Xavier District as an eligible contractor under the Indian Self-Determination and Education Assistance Act.

Subsection 311(c) restates the Secretary's obligation to design and carry out a groundwater monitoring program for the San Xavier Reservation and the eastern Schuk Toak District not to exceed sums of $215,000 for San Xavier and $175,000 for Schuk Toak. The Secretary is obligated to consult with the Nation, the San Xavier and Schuk Toak Districts and State and local entities and shall have no continuing obligations beyond those specified in this subsection.

Subsection 311(d) restates the Secretary's obligation to conduct a water resources study within the Nation's Reservation but outside the Tucson management area. Subsection 317(a) limits the amount of the Water Resources Study to $4,000,000.

Subsection 311(e) restates the right of the Nation to benefit from funding and other assistance if a federal entity is established for arid land resources research.

Subsection 311(f) establishes a new study by the Secretary at a sum not to exceed $250,000, on the feasibility of a land exchange between Asarco and the Nation.

Subsection 312(a) specifies that the Nation shall waive certain claims for injuries to water rights; failure to protect, acquire and develop water rights; claims resulting from off-Reservation diversion; and claims related to negotiation or execution of the Tohono O'odham settlement.

Subsection 312(b) specifies that the allottee classes shall waive certain claims for injuries to water rights, failure to protect, acquire and develop water rights; claims resulting from off-Reservation diversion; and claims related to negotiation or execution of the Tohono O'odham settlement.

Subsection 312(c) specifies that the United States shall waive certain claims for water rights; claims for injuries to water rights; claims related to off-Reservation diversion; claims on behalf of the allottees for injuries to water rights against the Nation; and claims against Asarco on behalf of the allottee class for the fourth cause of action in the pending federal Alvarez litigation.

Subsection 312(d) provides the Nation and the United States as Trustee the right to assert certain claims related to groundwater protection under State law.

Subsection 312(e) provides that any party to the Tohono O'odham settlement agreement may waive and release additional claims on terms and conditions agreed to by the parties.

Subsection 312(f) establishes the rights of and prohibits claims by allottees including the benefits granted to the allottees, entitlements to water, rights and limits to water rights and prohibitions.

Subsection 312(g) authorizes the Nation and the San Xavier Cooperative Association to maintain a civil action against the United States to recover monetary damages for the breach of the Sec-

retary's obligations. An award of damages shall be offset by funds made available by Congress or paid by the Secretary.

Subsection 312(h) acknowledges and establishes that the State Gila River adjudication court has jurisdiction to enforce Title III, the Tohono O'odham settlement agreement, other agreements referred to in the settlement agreement, and claims by allottees and fee owners of allotted land not barred, waived and released by Title III and the settlement agreement. The sovereign immunity of the Nation and the United States are waived for declaratory judgment and injunctive relief, but not for monetary relief, and for claims and remedies prescribed in agreements authorized by Title III; but as to other parties with immunity to suit, only to the extent that such other party waives its immunity. The Nation shall be provided notice by an allottee of an intent to file litigation, accompanied by a request for consultation. The Nation shall be joined in such litigation.

Subsection 312(i) clarifies that the Nation shall have regulatory jurisdiction to manage, control and administer the water resources of the Nation, its members, districts and allottees. Disputes regarding regulatory jurisdiction are vested in the Courts of the Nation.

Subsection 312(j) establishes the concurrent jurisdiction of the federal court in claims brought under subsection (h).

Subsection 313(a) allows the Nation to obtain additional lands taken into trust by the United States but only through an Act of Congress. Such after-acquired trust lands shall not include federal reserved water rights, nor is it the intent of Congress that any after-acquired lands include federal reserved water rights. After-acquired lands shall only include water rights consistent with state water law.

Subsection 313(b) exempts land acquired pursuant to the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798) from subsection (a).

Subsection 314(a) makes costs associated with the delivery of the 37,800 acre-feet per year or the 28,200 acre-feet per year nonreimbursable and excluded from the repayment obligation of CAWCD.

Subsection 314(b) specifies that the United States may make no claim for the Nation or allottees for reimbursement of the costs associated with the construction of facilities, the delivery of CAP water or the implementation of this Title and against the Nation for reimbursement of costs associated with the construction of facilities at the San Lucy Farm and at such other lands acquired pursuant to the Gila Bend Indian Reservation Lands Replacement Act or other trust or allotted land.

Subsection 315(a) reauthorizes the $15,000,000 trust fund for use in carrying out this Title.

Subsection 315(b) specifies that the Nation may use both principal and interest from the trust fund for any governmental purpose and may be invested by the Nation in accordance with policies the Nation may adopt.

Subsection 315(c) establishes that the Secretary shall not be responsible for the review, approval or audit of the use and expenditure of the trust funds and shall not be liable for claims brought for use or expenditure related to this trust fund.

Subsection 315(d) specifies that the Nation shall reserve from the trust fund the principal sum of $3,000,000 for the cost of land subjugation, plus interest on that amount for a period of 10 years from the enforceability date after which the restrictions on the fund terminate and the remaining funds may be used by the Nation under subsection (b)(1).

Subsection 316(a) specifies that nothing in Title III supports or invalidates the doctrine of federal reserved water rights as applied to groundwater; limits the ability of the Nation to contract with the Arizona Water Banking Authority; prohibits the Nation, an allottee, or a fee owner of allotted land from acquiring water rights in addition to those granted in this Title III; abrogates rights or remedies under 28 U.S.C. § 1346 or § 1491; affects the rights of the United States and the Nation regarding the 8,000 af/annum of CAP water for Sif Oidak District; applies to exempt wells; or diminishes the right to use water under contracts in existence prior to the enforceability date, or the Asarco Agreement.

Subsection 316(b) specifies that the receipt of an exchange of water or a lease pursuant to Title III does not affect a future allocation of CAP water by the Secretary.

Subsection 316(c) requires that the United States shall not have any trust or other obligation regarding any funds monitored, funded or administered by Title III and the Nation agrees to indemnify the United States for claims arising out of receipts or expenditure of funds described in this subsection.

Subsection 317(a) authorizes appropriations of $3,500,000 plus adjustments for construction of the irrigation systems, $18,300,000 plus an adjustment from January 1, 2008 through the date on which the cash is paid to the San Xavier District, $891,200 for water management planning for San Xavier and $237,200 for water management planning for Schuk Toak, $4,000,000 for water resources study, $215,000 for groundwater monitoring for San Xavier and $175,000 for eastern Schuk Toak, and $250,000 for an Asarco land exchange study.

Subsection 317(b) specifies that amounts made available under Subsection 317(a) shall be authorized costs for expenditure from the Lower Colorado River Basin Fund as provided in Subsection 107(a) of this Act.

*Title IV—San Carlos Apache Tribe Settlement*

Section 401 expressly provides that none of the provisions of Titles I, II, or III limit the authority of the United States or the San Carlos Apache Tribe (SCAT or Tribe), or the United States in its capacity as trustee for the Tribe or its members or allottees to assert claims on their behalf, including any claim for water rights, injury to water rights, or injury to water quality.

While this section confirms the Federal Government's and the Tribe's ability to pursue any and all legal remedies and claims available to them without any effect from this Act, it is the Committee's expectation, given the testimony and communications before it, that the Tribe and the parties to the settlements included in S. 437 are committed to negotiating a settlement of the Tribe's remaining water rights claims in the Gila River basin. The Committee encourages and supports this approach. Accordingly, S. 437 includes provisions intended to assist in facilitating a settlement.

For example, much of the controversy associated with water use on the Gila River centers around the interpretation and enforcement of the Globe Equity Decree. While preserving the Tribe's claims, S. 437 establishes a program for the reduction of irrigated acreage within the upper valley irrigation districts which should reduce water use requirements in the upper Gila River. Under section 211(a)(2)(C), the acreage reduction program will be expanded if the Tribe enters into a comprehensive water rights settlement. S. 437 also includes a provision that conserved water from the San Carlos Irrigation Project will be made available to maintain a permanent pool of water for fish and wildlife purposes in San Carlos Reservoir. Notwithstanding these provisions, the Committee recognizes that the Tribe itself will determine the range of benefits it needs to settle its remaining water rights claims.

Section 402 directs the Secretary to provide up to three annual reports on the progress in reaching a settlement agreement covering the Tribe's claims to the Gila River.

## Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

## Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 437. The bill is not a regulatory measure in the sense of imposing government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 437.

## Executive Communications

The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

### Statement of Bennett W. Raley, Assistant Secretary, Water and Science, Department of the Interior

Good morning, Mr. Chairman and members of the Committee. I am Bennett W. Raley, Assistant Secretary for Water and Science at the Department of the Interior. I am accompanied by Aurene Martin, Acting Assistant Secretary for Indian Affairs. I appreciate the opportunity to appear before this Committee to discuss S. 437, a bill to authorize the Arizona Water Rights Settlement Act of 2003.

S. 437 is the single most far-reaching piece of federal legislation regarding water use within Arizona since Congress authorized the Central Arizona Project thirty-five

years ago. S. 437 is an impressive and complex bill, designed to provide a comprehensive resolution of critical water use issues facing the State of Arizona, and Arizona Indian tribes today. This legislation provides certainty regarding the use of water in Arizona in a number of ways: it provides water to settle outstanding water rights claims of certain Arizona tribes; provides financing of infrastructure so that all tribes can put CAP water to use; and it provides water for future water rights settlements. It also provides water necessary to accommodate the explosive population growth in the cities of central Arizona; it provides certainty for farmers who currently utilize imported water supplies from the Colorado River; and it also provides a mechanism to secure water to protect against future droughts. These arrangements, necessary to all users of Colorado River water in Arizona are accomplished utilizing local tax revenues to accomplish the financing of all undertakings under the global settlement embodied in the legislation.

The Administration supports the core concepts of the settlements that are achieved through S. 437 and the overarching goal of resolving many important water challenges facing the State of Arizona, with the caveats discussed below. We believe that the comprehensive approach that is embodied in S. 437 is the right way to resolve these longstanding disputes regarding the use of the CAP and this portion of Arizona's allocation of the Colorado River.

Before providing detailed comments on particular provisions of the bill, some of which will require addressing outstanding concerns, it is necessary to review the overall structure and goals of S. 437. As we move forward, this Administration remains committed to working with the Committee, Senator Kyl, and the settlement parties to reach mutually agreeable solutions to all remaining issues. The resolution of these outstanding issues is an extremely high priority for the Department of the Interior.

BACKGROUND

Even in the days before statehood, Arizona's leaders saw the need to bring Colorado River water to the interior portions of the State. During the 1940's and 50's California developed facilities allowing the utilization of more than its apportionment from the Colorado River and quickly began full use of its share of the river, and more. During that same time, Arizona began developing its own plans for utilization of its 2.8 maf apportionment. However, California effectively prevented Arizona from implementing its plan, arguing that development and use of water from Colorado River tributaries within Arizona counted against its apportionment and limited significant additional development and diversion from the mainstream by Arizona.

Unable to reach resolution on this issue, in 1952 Arizona brought an original action in the U.S. Supreme Court, asking the Court to clarify and support Arizona's apportionment from the Colorado. After 12 years of fact finding by

a Special Master and arguments by the two states, the Supreme Court issued a decision in 1963 affirming Arizona's 2.8 maf apportionment.

Despite Arizona's victory in the Supreme Court, California was still able to extract a final concession from Arizona. In exchange for California's support of Congressional authorization in 1968 for the Central Arizona Project (CAP), Arizona was forced to allow its CAP water to have a subservient priority to California water use during times of shortage on the Colorado River system. This was a significant concession since CAP water use represents more than half of Arizona's Lower Basin apportionment—approximately 1.5 maf of its 2.8 maf. The CAP brings this critical supply from the Colorado River through Phoenix, to Tucson, Arizona via a primary canal of more than 330 miles.

After decades of fighting to get the CAP authorized and constructed, in the early 1990s, Arizona faced financial and water supply disputes over how the Project—and the State's allocation from the Colorado River—would be utilized.

For most of the 1990s uncertainty existed for Arizona: uncertainty over who would receive water from the CAP, and uncertainty over the costs of the project and who would repay those costs. Perhaps most importantly to the State, uncertainty existed over the ability of the State to store water and protect against the eventual shortages on the Colorado—which have a unique impact on Arizona water users due to the junior status imposed by Congress in 1968.

The uncertainty also involved complex and contentious litigation filed in 1995 between the Federal Government and the Central Arizona Water Conservation District, the political entity which operates the CAP and repays the local costs of the project. After years of litigation over the CAP, extensive negotiations were conducted to resolve the complicated CAP issues so that the needs of all project beneficiaries would be adequately addressed.

During these discussions it became clear that financial repayment and other operational issues could not be resolved until there was a firm agreement on the amount of CAP water that would be allocated to Federal uses, i.e., allocations to Indian tribes in Arizona. When these discussions were initiated, 32 percent of the CAP water was allocated for Federal uses, 56 percent for non-Federal uses and 12 percent was un-contracted.

Both the United States and the State of Arizona were interested in dedicating uncontracted water to allow settlement of outstanding Indian water rights claims and to meet emerging needs for municipal purposes. The amount of water needed for future Indian water rights settlements within Arizona turned in large part on consideration of the large pending claim of the Gila River Indian Community (Community) in the on-going general stream adjudication of the Gila River system. The Gila River Indian Reserva-

tion encompasses approximately 372,000 acres south of, and adjacent to, Phoenix, Arizona.

The claim filed by the United States on behalf of the Community in the Gila River adjudication was for 1.5 million AFA. This represents the largest single Indian claim in Arizona—and one of the largest Indian claims in the West. If this claim were successful, the amount of water available to central Arizona cities, towns, utilities, industrial and commercial users, and major agricultural interests would be greatly reduced.

Consequently, on-going negotiations of that claim were put on a parallel track with the CAP litigation negotiations, with the understanding that tandem resolution of the issues would be necessary. The underlying premise of the settlement that emerged—including the framework of this legislation—is to achieve a comprehensive resolution of all outstanding CAP issues. This, in turn, will allow sustainable operation of the CAP in a manner that provides benefits and equitable treatment to all intended project beneficiaries. The alternative, piecemeal and sequential resolution of all of the outstanding disputes on the CAP, would be doomed to fail.

The linkage embodied in this legislation integrates U.S. obligations under Federal statutes and the trust relationship with Indian tribes. As with the initial authorization of the CAP in 1968, we are presented with a unique opportunity to provide a final settlement of many of the complex Federal, State, Local, Tribal and private water issues in the State.

In May of 2000, the Department and CAWCD reached agreement on a stipulated settlement of the CAP litigation. This stipulation serves as a blueprint for a comprehensive resolution of the suite of CAP issues I have identified above. The stipulation requires that a number of conditions must occur before it is effective or final. Under the stipulation, these conditions must occur before December 2012 or the stipulation will terminate.

The *CAWCD* v. *U.S.* settlement stipulation is contingent on Congressional enactment of a Gila River Indian Community Settlement; Amendment of the Southern Arizona Indian Water Rights Settlement (SAWRSA); and the identification of a firm funding mechanism for the CAP, GRIC and SAWRSA settlements.

*Settlement Stipulation & S. 437: The Arizona Water Rights Settlement Act of 2003*

S. 437 approves three separate and significant settlements: the settlement stipulation reached in the *CAWCD* v. *U.S.* litigation (addressing CAP operational and repayment issues), the Gila River settlement (addressing water rights claims of the Gila River Indian Community), and the SAWRSA settlement (addressing water rights claims of the Tohono O'Odham Nation).

The basic structure of the stipulation developed in 2000 is preserved in S. 437, subject to certain conditions. The

main components of the settlement contained in S. 437 are to provide: (1) additional water to resolve tribal claims; (2) certainty regarding allocation of available water supply; (3) additional water supplies for Arizona's growing cities; (4) financial and operational certainty for CAWCD (operator and repayment entity of CAP); (5) affordable water for non-Indian agriculture; (6) appropriate repayment of CAP costs; (7) structures and programs to bank water for Arizona's future; (8) and a firm funding mechanism to provide affordable water to tribes, while developing the infrastructure necessary to allow all of Arizona's tribes to fully utilize their CAP supplies.

The structure of S. 437 represents Arizona's extensive efforts to resolve these contentious issues. The bill is strongly supported by the relevant Arizona State Agencies, Members of Congress with Arizona constituencies, the Gila River Community, the Tohono O'odham tribe, and a wide array of Arizona interests. In light of the diverse parties, competing interests and longstanding controversies involved, S. 437, if amended to address certain issues, represents the best prospect to restructure the CAP in a context that reconciles the Public, Tribal and Private interests—including statutory obligations of the United States.

I will summarize each of the three titles contained in S. 437 and comment on some of the provisions of each that are of concern to the Administration.

*Title I—Central Arizona Project Settlement*

The critical components of the CAP stipulated settlement are set forth in Title I of S. 437. They include: (1) a final allocation of CAP water supplies so that 47% of Project water is dedicated to Arizona Indian tribes and 53% is dedicated to Arizona cities, industrial users and agriculture; (2) setting aside a final additional allocation pool of 197,500 acre-feet for use in facilitating the GRIC settlement and future Arizona Indian water rights settlements; (3) a final allocation of 65,647 AFA of remaining high priority (M&I) water to Arizona cities and towns; (4) relief from debt incurred under section 9(d) of the 1939 Reclamation Projects Act by agricultural water uses, which allows these users to relinquish their long term CAP water contracts so that the water can be used for the Indian water rights settlements and future municipal use; and (5) allowing the Colorado River Lower Basin Development Fund (LBDF), the Treasury fund where CAP repayment funds are deposited, to be used for the costs of Indian water rights settlements, completing tribal water delivery systems and reducing the cost of CAP water for tribes to affordable levels.

S. 437's utilization of the Colorado River Lower Development Fund is intended to meet the terms of the stipulation by providing for, among other things, subsidizing fixed OM&R costs for Indian tribes, including OM&R costs for the Gila River Indian Community, rehabilitation of the San Carlos Irrigation Project (SCIP), construction of In-

dian Distribution Systems, and funds for future Indian water settlements.

The financing mechanism assumed in S. 437 is complex, and operates outside of the normal appropriations process. Given this, the Administration is currently reviewing the funding provision to determine whether it is an appropriate way to satisfy the contingencies of the settlement. There may be other funding mechanisms that meet the firm funding requirement of the settlement. We look forward to working with the Committee on this issue.

*Title II—Gila River Indian Community Water Rights Settlement*

Title II of S. 437 is the Gila River Indian Community Settlement. This settlement would resolve all of the Community's water rights claims in the general stream adjudication of the Gila River system, litigation that covers much of the water supply of central Arizona. This litigation has been the subject of negotiation and settlement talks for more than 13 years.

The major components of the settlement are: (1) confirmation of existing, and dedication of additional, water supplies for the Community in satisfaction of its water rights claims; (2) use of existing facilities to deliver the additional water supplies; (3) funding for on-Reservation agricultural development; and (4) protection of the Reservation groundwater supplies.

While the United States supports a settlement of the Gila River Community's water claims, and believes the majority of the provisions of the Settlement Act in this title are consistent with that objective, we do have concerns, detailed below, that we want to work on with the Committee, Senator Kyl and the various parties to promptly resolve.

*A. Inclusion of a settlement with the San Carlos Apache Tribe*

In resolving the water rights claims of the Gila River Indian Community, we must remain mindful not to place the United States in a position of having conflicting obligations to two Indian tribes. The Gila River Indian Community and the San Carlos Apache Tribe have reservations and existing decreed water rights in the same watershed. In litigation underlying the settlement, the United States has argued in favor of both the Gila River Indian Community's and the San Carlos Apache's water rights under the 1935 Globe Equity Decree. That Federal Consent Decree addresses the water rights of those tribes, as well as the rights of most non-Indian water users, in the mainstem of the Gila River above the confluence of the Gila and Salt rivers. The GRIC settlement will alter operations under the Gila Decree. These changes have the potential to impact the rights of the San Carlos Apache Tribe.

We believe that additional efforts to resolve the concerns of the San Carlos Apache Tribe should be taken, and Inte-

rior has engaged in a serious effort to do that. The Department has taken a number of steps in this regard and is prepared to do more. Interior officials have met with the San Carlos Tribal leaders on numerous occasions, and our sincere hope is that we can reach resolution on a wide array of issues so that agreement on the San Carlos Apache Tribe's water rights can be added to this legislation as it proceeds. We look forward to working with the Committee and the Tribes on this matter.

*B. Waivers of the United States enforcement authorities*

S. 437, as introduced, also includes significant waivers of the United States ability to enforce environmental statutes relating to water quality in the Gila River basin. The settling parties seek to limit their exposure to environmental liability. However, the Administration believes the waivers, as currently drafted, may provide undue immunity from environmental liability and shift costs for cleanup to the Federal government. This could restrict the ability for the federal government to clean up the most contaminated waste sites in the Gila River Basin. For example, the legislation waives claims by the United States against both parties to the settlement as well as non-parties. As drafted, this legislation can also be interpreted to provide a waiver for future claims under certain environmental statutes, including those under the Superfund authority. This could restrict the ability for the federal government to cleanup the most serious hazardous waste sites in the Gila River Basin. These water quality waivers were not included in prior water rights settlements affecting Indian Tribes and are not necessary in this legislation.

Following the introduction of S. 437, the Department of Justice entered into discussions with the settlement parties regarding the waivers. These discussions continue to progress. The Administration is committed to continuing these discussions to find a solution to these significant issues, as this legislation must maintain the Federal government's ability to protect human health and environnment.

*C. Overly broad waiver of the United States sovereign immunity*

The Administration also is concerned, as we believe that S. 437 contains an overly-broad waiver of United States sovereign immunity. We believe that this provision is unnecessary, as sovereign immunity waivers in the McCarran Amendment allow a suit against the United States to administer its adjudicated water rights. Further, if such a waiver is retained, it should be narrowly drafted. The Administration also has some concern about the scope of certain waivers under Section 312 of the bill.

*D. Impacts of the intended water exchanges*

S. 437 authorizes several water exchanges between the Community and various parties in the State, including the Phelps Dodge Corporation, ASARCO and several municipalities in the Upper Gila River watershed. While we support the mechanism of water exchanges, we want to work with the committee to ensure that the current language adequately takes into account the water rights of the San Carlos Apache Tribe, parties affected in the State of New Mexico (under the Colorado River Basin Project Act), listed species and critical habitat under the Endangered Species Act (ESA), and rights to divert water in relation to the Globe Equity Decree. Previous analyses indicate that appurtenant structures and dams involved in this agreement could lead to more extensive and frequent Gila River drying, which, in turn, could lead to potential ESA conflicts.

*E. Fifth amendment takings concern*

Title II places the ownership of all settlement water in the hands of Gila River Indian Community, notwithstanding the fact that the Gila Decree (the 1935 Globe Equity Decree) framed its award under that Decree "for the reclamation and irrigation of the irrigable Indian allotments on said reservation." We would like to refine the language of the bill to reduce the likelihood that an individual allottee may assert a "takings" claim based on the settlement. Both Interior and Justice are committed to working with the settlement parties and the proponents of S. 437 to reduce any risk of a Fifth Amendment taking and to assure that the rights of individual Indian allottees are protected.

*F. Costs associated*

Federal contributions to the proposed settlement within this Title include the fulfillment of existing statutory and programmatic responsibilities and the assumption of new obligations designed to put GRIC in a position to utilize the water resources confirmed or granted in the settlement. There are also numerous costs contained within this title, which the United States does not believe are reasonably related to the costs avoided and benefits received, and we look forward to working with the Committee and Senator Kyl prior to further consideration of this legislation to ensure the costs contained in the legislation are appropriate.

For example, given the correlative benefits, we support the rehabilitation and completion of the Indian portion of the San Carlos Irrigation Project (SCIP)—an irrigation project that was initiated in the 1930's but never completed and which has fallen into significant disrepair. However, we believe that the language of S. 437, requiring the Secretary to provide for the "rehabilitation, operation, maintenance and replacement" of the San Carlos Irrigation Project, needs to be refined. Our view is that both the

cost control and indexing mechanisms for these expenditures need to be revisited.

Similarly, when looking at the government's cost of addressing subsidence damages on the reservation, we recognize the settlement requires the United States to repair past and future subsidence damage. We believe that federal liability for such damages should be limited.

Additionally, in some instances we believe that existing costs have been shifted from State parties to the United States, and those costs may be more appropriately addressed by other existing Federal programs. We believe disbursements from the Lower Basin Fund should be limited to those costs which have a direct relationship to the core concepts of the settlements addressed in S. 437.

We also believe that a closer look should be given to some of the costs included in the provisions of Title II, dealing with the Upper Gila River. One example is the costs identified to line San Carlos Irrigation and Drainage District (the non-Indian component of SCIP) canals so that water can be conserved. The Administration supports this concept but believes a greater share of the conserved water should be provided to the United States for possible use in settling the San Carlos Apache Tribe's water rights claims in the Gila River.

*Title III—Amendments to the Southern Arizona Water Rights Settlement Act (SAWRSA)*

The Southern Arizona Water Rights Settlement Act, known as "SAWRSA," Pub. L. 97–293, was enacted in 1982 to resolve Indian water rights claims arising within the San Xavier and Shuk Toak Districts of the Tohono O'odham Nation. SAWRSA did not settle all outstanding Tohono O'odham water rights claims. Claims for the Sif Oidak District and other Reservation lands remain to be settled.

As originally enacted, SAWRSA allocated 37,000 AFA of CAP water to the San Xavier and Shuk Toak Districts of the Nation, together with another 28,200 AFA of water to be delivered from any source by the United States to the Districts. All of the water is to be delivered without cost to the Nation. The original settlement also requires the United States to rehabilitate and extend an historic allotee farming operation and design and construct irrigation facilities sufficient to put remaining settlement water to use.

Construction of all irrigation facilities and the full implementation of SAWRSA has not occurred, principally because of a disagreement over proper allocation of settlement benefits between the Nation and allottees within the San Xavier District. Because of this disagreement, the allottees have refused to join in the dismissal of *United States* v. *City of Tucson*, CIV. 75–39 TUC–WDB (D. Ariz.), the litigation which lead to the enactment of the settlement. SAWRSA requires the United States, the Nation and the allottees to dismiss the litigation as a condition of full effectiveness of the settlement.

For over ten years, the Department of the Interior, the City of Tucson and other state parties have been engaged in discussions with the Nation and the allottees in an attempt to agree on amendments that would resolve disputed issues. The Nation and the allottees have now agreed on how settlement water resources and funds should be distributed. The agreements between the Nation and the allottees are contained in Title III of S. 437. Essentially, the Nation and the allottees have agreed upon allocation of water resources, construction of new irrigation facilities and sharing of settlement funds.

In general, the Administration supports these agreements and we look forward to working with the Committee to clarify or refine a few items we remain concerned about. Chief among these is the so called "net proceeds" issue that revolves around the United States ability to make the Cooperative Fund a self sustaining fund and potential federal liability if it is not self sustaining or is under-funded.

CONCLUSION

It is important to emphasize that the Administration fundamentally supports this important settlement effort if it is amended to address concerns discussed above, and we look forward to working with the Committee to revise specific provisions of the legislation so that we can support the bill without reservation.

The Administration lauds the tremendous efforts dedicated by all parties to find a workable solution to this complex set of issues and supports the core settlement concepts and framework as set forth in S. 437. We recognize that this legislation will resolve long-standing and critical water challenges facing the State of Arizona. We look forward to working with the Committee, Senator Kyl, and the settlement parties to craft legislation that accomplishes these goals in a manner that comports with Federal financial policy and legal considerations.

This concludes my testimony. I would be pleased to answer any questions that the members of the Committee may have.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing rules of the Senate, changes in existing law made by S. 437, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## COLORADO RIVER BASIN PROJECT ACT

P.L. 90–537

**SEC. 101** * * *

* * * * * * *

**SEC. 304(f). NEW MEXICO USERS; WATER EXCHANGE CONTRACTS.**

[(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive user of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of eighteen thousand 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 against California (376 U.S. 340). Such increased consumptive uses shall not begin until, and 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 chapter, 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 waters involved.]

*(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) The Secretary shall further offer to contract with water users in New Mexico for water from the Gila River, its tributaries, and underground water sources in amounts that will permit consumptive uses of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of an additional thirty thousand acre-feet, including reservoir evaporation. Such further increases in consumptive use shall not begin until, and shall continue only so long as, works capable of augmenting the water supply of the Colorado River system have been completed and water sufficiently in excess of two million eight hundred thousand acre-feet per annum is available from the main stream of the Colorado River for consumptive use in Arizona to provide water for the exchanges herein authorized and provided. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved.]

[(3)]*(2)* All additional consumptive uses provided for in clauses (1) and (2) of this subsection shall be subject to all rights in New Mexico and Arizona as established by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59) and to all other rights existing on September 30, 1968, in New Mexico and Arizona to water from the Gila River, its tributaries, and underground water sources, and shall be junior thereto and shall be made only to the extend possible without economic injury or cost to the holders of such rights.

* * * * * * *

**SEC. 403. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.**

(a) ESTABLISHMENT.—There is hereby established a separate fund in the Treasury of the United States to be known as the Lower Colorado River Basin Development Fund (hereafter called the "development fund"), which shall remain available until expended as hereafter provided.

* * * * * * *

(e) APPROPRIATION BY CONGRESS REQUIRED FOR CONSTRUCTION OF WORKS [REVENUES] *Except as provided in subsection (f), revenues* credited to the development fund shall not be available for construction of the works comprised within any unit of the project herein or hereafter authorized except upon appropriation by the Congress.

[(f) RETURN OF COSTS AND INTEREST.—Moneys credited to the development fund pursuant to subsection (b) and clauses (1) and (3) of subsection (c) of this section and the portion of revenues derived from the sale of power and energy for use in Arizona pursuant to clause (2) of subsection (c) of this section in excess of the amount necessary to meet the requirements of clauses (1) and(2) of subsection (d) of this section shall be paid annually to the general fund of the Treasury to return—

[(1) the costs of each unit of the projects or separable feature thereof authorized pursuant to title III of this Act which are allocated to irrigation, commercial power, or municipal and industrial water supply, pursuant to this Act within a period not exceeding fifty years from the date of completion of each such unit or separable feature, exclusive of any development period authorized by law: Provided, That return of the cost, if any, required by section 307 shall not be made until after the payout period of the Central Arizona Project as authorized herein; and

[(2) interest (including interest during construction) on the unamortized balance of the investment in the commercial power and municipal and industrial water supply features of the project at a rate determined by the Secretary of the Treasury in accordance with the provisions of subsection (h) of this section, and interest due shall be a first charge.]

*(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);*

*(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 the Arizona Water Settlements 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; and*

*(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;*

*(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 Act of August 4, 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.*

(g) REPAYMENT OF COSTS.—All revenues credited to the development fund in accordance with [clause (c)(2)] *subsection (c)(2)* of this section (excluding only those revenues derived from the sale of power and energy for use in Arizona during the payout period of the Central Arizona Project as authorized herein) and such other revenues as remain in the development fund after making the payments required by subsections (d) and (f) of this section shall be available (1) to make payments, if any, as required by sections 307 and 502 of this Act (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof[,] the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(b)(1) of the Colorado River Salinity Control Act [(a)(2), (a)(3), and (b)(1)] and (3) upon appropriation by the Congress, to assist in the repayment of reimbursable costs incurred in connection with units hereafter constructed to provide for the augmentation of the water supplies of the Colorado River for use below Lee Ferry as may be authorized as a result of the investigations and recommendations made pursuant to section 201 and subsection 203(a) of this Act.

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Public Law 100–512, 100th Congress

AN ACT TO PROVIDE FOR THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY IN MARICOPA COUNTY, ARIZONA, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

* * * * * * *

**SEC. 11. MISCELLANEOUS PROVISIONS.**

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

* * * * * * *

[(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the

Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.]

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## Public Law 97–293, 97th Congress

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I

#### CONSTRUCTION OF DAM MODIFICATIONS

SEC. 101. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall include raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, replacing the existing Shoshone Powerplant, enlarging a spillway, construction of a visitor's center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: *Provided,* That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract.

* * * * * * *

### [TITLE III

#### [CONGRESSIONAL FINDINGS

[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 cost 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

[(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 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 day 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.

[(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.

[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—

[(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, or municipal corporation, under the laws of the United States or the State of Arizona; and

[(2) the suit referred to in paragraph (a)(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.

[STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

[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 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).

[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 compliant 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.

COOPEERATIVE FUND

[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) operations, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

[(B) any costs of acquisition an 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;

2 [(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 this 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 con-

tributed 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.

[SHORT TITLE

[SEC. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".]

# *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 95µ09361 (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.—*

*(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 addi-*

*tion 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.—*

*(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;*

*(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 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 Novermber 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;*

*(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—*

*(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)—*

*(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San XavierReservation, 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—*

*(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.*

*(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) IN GENERAL.—Execution of an agreement described in paragraph (2) shall not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*(B) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall carry out all necessary environmental compliance activities during the implementation of the agreements described in paragraph (2), including activities under—*

*(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and*

*(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).*

*(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.—*

*(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 con-*

*tinuing 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.—*

*(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 Reserva-*

*tion 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 fu-*

*ture 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.*

*(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).*

# APPENDIX

Exhibit 29.1.1

Dollars ($1,000)

| Year | GRIC SCIP Rehab 107(2)(C) (1) | GRIC SCIP Rehab 107(2)(C) (2) | GRIC PMIP 107(2)(D)(ii)(I) (1) | GRIC PMIP 107(2)(D)(ii)(II) (2) | SCIDD Lining 107(2)(D)(iv) (1) | SCIDD Lining 107(2)(D)(iv) (2) | San Carlos CAP-IDD 107(2)(D)(iv)(II) (3), (4) | SAWRSA Distribution System 107(2)(D)(iv)(III) (5) | Rec. Oversight 107(2)(D)(v)(I) (3), (4) | San Xavier Buyout 107(2)(D)(iv)(II) (5) | Cooperative Fund 107(2)(D)(iv)(III) (5) | Safford Loan 107(2)(D)(v)(I) (5), (6) | SRP HCP 107(2)(D)(v)(II) (5) | UVD Rights Red. 107(2)(D)(v)(III) (3) | Env. Compliance 107(2)(D)(v)(IV) (3), (4) | Firming Costs 107(2)(D)(v)(V) (5) | Other SAWRSA Costs 107(2)(D)(vi)(I) (5) | Future Settlements 107(2)(D)(vi) (5) | Gila Valley Irrig. Distr. 107(2)(D)(vi)(II) (5) | NM Unit 107(2)(D)(i) (3), (7) | Total Cost |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2002 | | | | | | | | | | | | | | | | | | | | | $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 | | | | $500 | | | | | | | | | $28,500 |
| 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 | $9,700 | | $1,400 | $2,000 | | $500 | | | $0 | $16,752 | | $70,071 |
| 2011 | $15,000 | 6.92% | $12,500 | 3.40% | $7,000 | 9.34% | $10,000 | | $400 | $9,705 | | $1,400 | $2,000 | $6,000 | $600 | | $2,000 | $0 | | | $66,605 |
| 2012 | $15,000 | 6.92% | $15,000 | 4.08% | $7,000 | 9.34% | $10,000 | | $400 | | | $1,400 | $2,000 | | $600 | $2,500 | $2,000 | $0 | | $9,040 | $64,940 |
| 2013 | $15,000 | 6.92% | $15,000 | 4.08% | $8,000 | 10.67% | $10,000 | | $400 | | | $1,400 | $2,000 | | $400 | $2,500 | $1,768 | $16,667 | | $9,040 | $82,175 |
| 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% | | | $200 | | | | | | | $2,500 | | $16,667 | | $9,040 | $76,907 |
| 2019 | $25,000 | 11.54% | $17,500 | 4.76% | $5,000 | 6.67% | | | $200 | | | | | | | $2,500 | | $16,667 | | $9,040 | $75,907 |
| 2020 | $21,632 | 9.99% | $17,500 | 4.76% | $4,958 | 6.61% | | | $200 | | | | | | | | | $16,667 | | $9,040 | $69,997 |
| 2021 | | | $17,500 | 4.76% | | | | | $200 | | | | | | | | | $16,667 | | $9,020 | $43,387 |
| 2022 | | | $25,000 | 6.80% | | | | | $200 | | | | | | | | | $16,667 | | | $41,867 |
| 2023 | | | $25,000 | 6.80% | | | | | $200 | | | | | | | | | $16,666 | | | $41,866 |
| 2024 | | | $25,000 | 6.80% | | | | | $200 | | | | | | | | | $16,666 | | | $41,866 |
| 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 | | | $16,840 | 6.12% | | | | | | | $4,000 | | | | | | | | | | $20,840 |
| 2029 | | | | 4.05% | | | | | | | $4,000 | | | | | | | | | | $4,000 |
| 2030 | | | | | | | | | | | $4,000 | | | | | | | | | | $4,000 |
| 2031 | | | | | | | | | | | $4,000 | | | | | | | | | | $4,000 |
| 2032 | | | | | | | | | | | $4,000 | | | | | | | | | | $4,000 |
| 2033 | | | | | | | | | | | $4,000 | | | | | | | | | | $4,000 |
| 2034 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2035 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2036 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2037 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2038 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2039 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2040 | | | | | | | | | | | | | | | | | | | | | $0 |
| 2041 | | | | | | | | | | | | | | | | | | | | | $0 |
| Total | $216,632 | | $461,900 | | $74,958 | | $86,936 | $42,019 | $4,600 | $19,405 | $32,000 | $13,984 | $10,000 | | $7,500 | $20,000 | $5,768 | $250,000 | $16,752 | $90,380 | $1,360,334 |
| Post 2010 | $216,632 | 100.00% | $346,840 | 100.00% | $74,958 | 100.00% | $52,436 | $2,319 | $4,600 | $19,405 | $32,000 | $10,984 | $10,000 | | $7,500 | $20,000 | $5,768 | $250,000 | $16,752 | $90,380 | $1,168,074 |

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 event of shortfalls in the fund.
(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 ColoradoRiver Basin Projects Act (as amended). New Mexico first phase funding is not subject to adjustment in the event of shortfalls in the fund.