

## Union Calendar No. 483

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 885

**[Report No. 108-793]**

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.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2003

Mr. HAYWORTH (for himself, Mr. KOLBE, Mr. FRANKS of Arizona, Mr. GRIJALVA, and Mr. PASTOR) introduced the following bill; which was referred to the Committee on Resources

NOVEMBER 20, 2004

Additional sponsors: Mr. SHADEGG, Mr. BACA, and Mr. FLAKE

NOVEMBER 20, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on February 25, 2003]

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## A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Ari-*  
 5 *zona Water Settlements Act”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
 7 *Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Definitions.*

*Sec. 3. Arbitration.*

*Sec. 4. Antideficiency.*

**TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT**

*Sec. 101. Short title.*

*Sec. 102. Findings.*

*Sec. 103. General permissible uses of the Central Arizona Project.*

*Sec. 104. Allocation of Central Arizona Project water.*

*Sec. 105. Firming of Central Arizona Project Indian water.*

*Sec. 106. Acquisition of agricultural priority water.*

*Sec. 107. Lower Colorado River Basin Development Fund.*

*Sec. 108. Effect.*

*Sec. 109. Repeal.*

*Sec. 110. Authorization of appropriations.*

*Sec. 111. Repeal on failure of enforceability date under title II.*

**TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS  
 SETTLEMENT**

*Sec. 201. Short title.*

*Sec. 202. Purposes.*

*Sec. 203. Approval of the Gila River Indian Community Water Rights Settlement  
 Agreement.*

*Sec. 204. Water rights.*

*Sec. 205. Community water delivery contract amendments.*

*Sec. 206. Satisfaction of claims.*

*Sec. 207. Waiver and release of claims.*

*Sec. 208. Gila River Indian Community Water OM&R Trust Fund.*

*Sec. 209. Subsidence remediation program.*

*Sec. 210. After-acquired trust land.*

*Sec. 211. Reduction of water rights.*

*Sec. 212. New Mexico Unit of the Central Arizona Project.*

*Sec. 213. Miscellaneous provisions.*

*Sec. 214. Authorization of appropriations.*

*Sec. 215. Repeal on failure of enforceability date.*

*TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT*

*Sec. 301. Southern Arizona water rights settlement.*

*Sec. 302. Southern Arizona water rights settlement effective date.*

*TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS  
SETTLEMENT*

*Sec. 401. Effect of titles I, II, and III.*

*Sec. 402. Annual report.*

*Sec. 403. Authorization of appropriations.*

1 **SEC. 2. DEFINITIONS.**

2 *In titles I and II:*

3 (1) *ACRE-FEET.*—*The term “acre-feet” means*  
4 *acre-feet per year.*

5 (2) *AFTER-ACQUIRED TRUST LAND.*—*The term*  
6 *“after-acquired trust land” means land that—*

7 (A) *is located—*

8 (i) *within the State; but*

9 (ii) *outside the exterior boundaries of*  
10 *the Reservation; and*

11 (B) *is taken into trust by the United States*  
12 *for the benefit of the Community after the en-*  
13 *forceability date.*

14 (3) *AGRICULTURAL PRIORITY WATER.*—*The term*  
15 *“agricultural priority water” means Central Arizona*  
16 *Project non-Indian agricultural priority water, as de-*  
17 *finied in the Gila River agreement.*

18 (4) *ALLOTTEE.*—*The term “allottee” means a*  
19 *person who holds a beneficial real property interest in*  
20 *an Indian allotment that is—*

1                   (A) located within the Reservation; and

2                   (B) held in trust by the United States.

3                   (5) *ARIZONA INDIAN TRIBE.*—The term “Arizona  
4 *Indian tribe*” means an Indian tribe (as defined in  
5 *section 4 of the Indian Self-Determination and Edu-*  
6 *cation Assistance Act (25 U.S.C. 450b)) that is lo-*  
7 *cated in the State.*

8                   (6) *ASARCO.*—The term “Asarco” means Asarco  
9 *Incorporated, a New Jersey corporation of that name,*  
10 *and its subsidiaries operating mining operations in*  
11 *the State.*

12                   (7) *CAP CONTRACTOR.*—The term “CAP con-  
13 *tractor*” means a person or entity that has entered  
14 *into a long-term contract (as that term is used in the*  
15 *repayment stipulation) with the United States for de-*  
16 *livery of water through the CAP system.*

17                   (8) *CAP OPERATING AGENCY.*—The term “CAP  
18 *operating agency*” means the entity or entities au-  
19 *thorized to assume responsibility for the care, oper-*  
20 *ation, maintenance, and replacement of the CAP sys-*  
21 *tem.*

22                   (9) *CAP REPAYMENT CONTRACT.*—

23                   (A) *IN GENERAL.*—The term “CAP repay-  
24 *ment contract*” means the contract dated Decem-  
25 *ber 1, 1988 (Contract No. 14-0906-09W-09245,*

1           *Amendment No. 1) between the United States*  
2           *and the Central Arizona Water Conservation*  
3           *District for the delivery of water and the repay-*  
4           *ment of costs of the Central Arizona Project.*

5           *(B) INCLUSIONS.—The term “CAP repay-*  
6           *ment contract” includes all amendments to and*  
7           *revisions of that contract.*

8           *(10) CAP SUBCONTRACTOR.—The term “CAP*  
9           *subcontractor” means a person or entity that has en-*  
10          *tered into a long-term subcontract (as that term is*  
11          *used in the repayment stipulation) with the United*  
12          *States and the Central Arizona Water Conservation*  
13          *District for the delivery of water through the CAP*  
14          *system.*

15          *(11) CAP SYSTEM.—The term “CAP system”*  
16          *means—*

17                 *(A) the Mark Wilmer Pumping Plant;*

18                 *(B) the Hayden-Rhodes Aqueduct;*

19                 *(C) the Fannin-McFarland Aqueduct;*

20                 *(D) the Tucson Aqueduct;*

21                 *(E) the pumping plants and appurtenant*  
22          *works of the Central Arizona Project aqueduct*  
23          *system that are associated with the features de-*  
24          *scribed in subparagraphs (A) through (D); and*

1           (F) any extensions of, additions to, or re-  
2           placements for the features described in subpara-  
3           graphs (A) through (E).

4           (12) *CENTRAL ARIZONA PROJECT*.—The term  
5           “Central Arizona Project” means the reclamation  
6           project authorized and constructed by the United  
7           States in accordance with title III of the Colorado  
8           River Basin Project Act (43 U.S.C. 1521 et seq.).

9           (13) *CENTRAL ARIZONA WATER CONSERVATION*  
10          *DISTRICT*.—The term “Central Arizona Water Con-  
11          servation District” means the political subdivision of  
12          the State that is the contractor under the CAP repay-  
13          ment contract.

14          (14) *CITIES*.—The term “Cities” means the cities  
15          of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoe-  
16          nix, and Scottsdale, Arizona.

17          (15) *COMMUNITY*.—The term “Community”  
18          means the Gila River Indian Community, a govern-  
19          ment composed of members of the Pima Tribe and the  
20          Maricopa Tribe and organized under section 16 of the  
21          Act of June 18, 1934 (25 U.S.C. 476).

22          (16) *COMMUNITY CAP WATER*.—The term “Com-  
23          munity CAP water” means water to which the Com-  
24          munity is entitled under the Community water deliv-  
25          ery contract.

1           (17) *COMMUNITY REPAYMENT CONTRACT.*—

2           (A) *IN GENERAL.*—*The term “Community*  
3 *repayment contract” means Contract No. 6–*  
4 *0907–0903–09W0345 between the United States*  
5 *and the Community dated July 20, 1998, pro-*  
6 *viding for the construction of water delivery fa-*  
7 *cilities on the Reservation.*

8           (B) *INCLUSIONS.*—*The term “Community*  
9 *repayment contract” includes any amendments*  
10 *to the contract described in subparagraph (A).*

11          (18) *COMMUNITY WATER DELIVERY CONTRACT.*—

12          (A) *IN GENERAL.*—*The term “Community*  
13 *water delivery contract” means Contract No. 3–*  
14 *0907–0930–09W0284 between the Community*  
15 *and the United States dated October 22, 1992.*

16          (B) *INCLUSIONS.*—*The term “Community*  
17 *water delivery contract” includes any amend-*  
18 *ments to the contract described in subparagraph*  
19 *(A).*

20          (19) *CRR PROJECT WORKS.*—

21          (A) *IN GENERAL.*—*The term “CRR project*  
22 *works” means the portions of the San Carlos Ir-*  
23 *rigation Project located on the Reservation.*

24          (B) *INCLUSION.*—*The term “CRR Project*  
25 *works” includes the portion of the San Carlos Ir-*

1            *rigation Project known as the “Southside*  
2            *Canal”, from the point at which the Southside*  
3            *Canal connects with the Pima Canal to the*  
4            *boundary of the Reservation.*

5            (20) *DIRECTOR.*—*The term “Director” means—*

6                    (A) *the Director of the Arizona Department*  
7                    *of Water Resources; or*

8                    (B) *with respect to an action to be carried*  
9                    *out under this title, a State official or agency*  
10                   *designated by the Governor or the State legisla-*  
11                   *ture.*

12            (21) *ENFORCEABILITY DATE.*—*The term “en-*  
13            *forceability date” means the date on which the Sec-*  
14            *retary publishes in the Federal Register the statement*  
15            *of findings described in section 207(c).*

16            (22) *FEE LAND.*—*The term “fee land” means*  
17            *land, other than off-Reservation trust land, owned by*  
18            *the Community outside the exterior boundaries of the*  
19            *Reservation as of December 31, 2002.*

20            (23) *FIXED OM&R CHARGE.*—*The term “fixed*  
21            *OM&R charge” has the meaning given the term in the*  
22            *repayment stipulation.*

23            (24) *FRANKLIN IRRIGATION DISTRICT.*—*The term*  
24            *“Franklin Irrigation District” means the entity of*



1        *that name that is a political subdivision of the State*  
2        *and organized under the laws of the State.*

3            (25) *GILA RIVER ADJUDICATION PRO-*  
4        *CEEDINGS.—The term “Gila River adjudication pro-*  
5        *ceedings” means the action pending in the Superior*  
6        *Court of the State of Arizona in and for the County*  
7        *of Maricopa styled “In Re the General Adjudication*  
8        *of All Rights To Use Water In The Gila River System*  
9        *and Source” W–091 (Salt), W–092 (Verde), W–093*  
10       *(Upper Gila), W–094 (San Pedro) (Consolidated).*

11            (26) *GILA RIVER AGREEMENT.—*

12            (A) *IN GENERAL.—The term “Gila River*  
13        *agreement” means the agreement entitled the*  
14        *“Gila River Indian Community Water Rights*  
15        *Settlement Agreement”, dated February 4, 2003.*

16            (B) *INCLUSIONS.—The term “Gila River*  
17        *agreement” includes—*

18            (i) *all exhibits to that agreement (in-*  
19        *cluding the New Mexico Risk Allocation*  
20        *Agreement, which is also an exhibit to the*  
21        *UVD Agreement); and*

22            (ii) *any amendment to that agreement*  
23        *or to an exhibit to that agreement made or*  
24        *added pursuant to that agreement consistent*

1                   with section 203(a) or as approved by the  
2                   Secretary.

3                   (27) *GILA VALLEY IRRIGATION DISTRICT.*—The  
4                   term “Gila Valley Irrigation District” means the en-  
5                   tity of that name that is a political subdivision of the  
6                   State and organized under the laws of the State.

7                   (28) *GLOBE EQUITY DECREE.*—

8                   (A) *IN GENERAL.*—The term “Globe Equity  
9                   Decree” means the decree dated June 29, 1935,  
10                  entered in *United States of America v. Gila Val-*  
11                  *ley Irrigation District, Globe Equity No. 59, et*  
12                  *al., by the United States District Court for the*  
13                  *District of Arizona.*

14                  (B) *INCLUSIONS.*—The term “Globe Equity  
15                  Decree” includes all court orders and decisions  
16                  supplemental to that decree.

17                  (29) *HAGGARD DECREE.*—

18                  (A) *IN GENERAL.*—The term “Haggard De-  
19                  cree” means the decree dated June 11, 1903, en-  
20                  tered in *United States of America, as guardian*  
21                  *of Chief Charley Juan Saul and Cyrus Sam,*  
22                  *Maricopa Indians and 400 other Maricopa Indi-*  
23                  *ans similarly situated v. Haggard, et al., Cause*  
24                  *No. 19, in the District Court for the Third Judi-*

1           *cial District of the Territory of Arizona, in and*  
2           *for the County of Maricopa.*

3           (B) *INCLUSIONS.*—*The term “Haggard De-*  
4           *cree” includes all court orders and decisions sup-*  
5           *plemental to that decree.*

6           (30) *INCLUDING.*—*The term “including” has the*  
7           *same meaning as the term “including, but not limited*  
8           *to”.*

9           (31) *INJURY TO WATER QUALITY.*—*The term “in-*  
10          *jury to water quality” means any contamination,*  
11          *diminution, or deprivation of water quality under*  
12          *Federal, State, or other law.*

13          (32) *INJURY TO WATER RIGHTS.*—

14                (A) *IN GENERAL.*—*The term “injury to*  
15                *water rights” means an interference with, dimi-*  
16                *nut ion of, or deprivation of water rights under*  
17                *Federal, State, or other law.*

18                (B) *INCLUSION.*—*The term “injury to water*  
19                *rights” includes a change in the underground*  
20                *water table and any effect of such a change.*

21                (C) *EXCLUSION.*—*The term “injury to*  
22                *water rights” does not include subsidence dam-*  
23                *age or injury to water quality.*

24          (33) *LOWER COLORADO RIVER BASIN DEVELOP-*  
25          *MENT FUND.*—*The term “Lower Colorado River*

1 *Basin Development Fund*” means the fund established  
2 by section 403 of the Colorado River Basin Project  
3 Act (43 U.S.C. 1543).

4 (34) *MASTER AGREEMENT*.—The term “master  
5 agreement” means the agreement entitled “Arizona  
6 Water Settlement Agreement” among the Director, the  
7 Central Arizona Water Conservation District, and the  
8 Secretary, dated August 16, 2004.

9 (35) *NM CAP ENTITY*.—The term “NM CAP enti-  
10 ty” means the entity or entities that the State of New  
11 Mexico may authorize to assume responsibility for the  
12 design, construction, operation, maintenance, and re-  
13 placement of the New Mexico Unit.

14 (36) *NEW MEXICO CONSUMPTIVE USE AND FOR-*  
15 *BEARANCE AGREEMENT*.—

16 (A) *IN GENERAL*.—The term “New Mexico  
17 Consumptive Use and Forbearance Agreement”  
18 means that agreement entitled the “New Mexico  
19 Consumptive Use and Forbearance Agreement,”  
20 entered into by and among the United States,  
21 the Community, the San Carlos Irrigation and  
22 Drainage District, and all of the signatories to  
23 the UVD Agreement, and approved by the State  
24 of New Mexico, and authorized, ratified, and ap-  
25 proved by section 212(b).

1           (B) *INCLUSIONS.*—*The “New Mexico Con-*  
2           *sumptive Use and Forbearance Agreement” in-*  
3           *cludes—*

4                   (i) *all exhibits to that agreement (in-*  
5                   *cluding the New Mexico Risk Allocation*  
6                   *agreement, which is also an exhibit to the*  
7                   *UVD agreement); and*

8                   (ii) *any amendment to that agreement*  
9                   *made or added pursuant to that agreement.*

10           (37) *NEW MEXICO UNIT.*—*The term “New Mexico*  
11           *Unit” means that unit or units of the Central Ari-*  
12           *zona Project authorized by sections 301(a)(4) and 304*  
13           *of the Colorado River Basin Project Act (43 U.S.C.*  
14           *1521(a)(4), 1524) (as amended by section 212).*

15           (38) *NEW MEXICO UNIT AGREEMENT.*—

16                   (A) *IN GENERAL.*—*The term “New Mexico*  
17                   *Unit Agreement” means that agreement entitled*  
18                   *the “New Mexico Unit Agreement,” to be entered*  
19                   *into by and between the United States and the*  
20                   *NM CAP entity upon notice to the Secretary*  
21                   *from the State of New Mexico that the State of*  
22                   *New Mexico intends to have the New Mexico*  
23                   *Unit constructed or developed.*

24                   (B) *INCLUSIONS.*—*The “New Mexico Unit*  
25                   *Agreement” includes—*

- 1                   (i) all exhibits to that agreement; and  
2                   (ii) any amendment to that agreement  
3                   made or added pursuant to that agreement.

4                   (39) *OFF-RESERVATION TRUST LAND.*—The term  
5                   “off-Reservation trust land” means land outside the  
6                   exterior boundaries of the Reservation that is held in  
7                   trust by the United States for the benefit of the Com-  
8                   munity as of the enforceability date.

9                   (40) *PHELPS DODGE.*—The term “Phelps Dodge”  
10                  means the Phelps Dodge Corporation, a New York  
11                  corporation of that name, and Phelps Dodge’s subsidi-  
12                  aries (including Phelps Dodge Morenci, Inc., a Dela-  
13                  ware corporation of that name), and Phelps Dodge’s  
14                  successors or assigns.

15                  (41) *REPAYMENT STIPULATION.*—The term “re-  
16                  payment stipulation” means the Revised Stipulation  
17                  Regarding a Stay of Litigation, Resolution of Issues  
18                  During the Stay, and for Ultimate Judgment Upon  
19                  the Satisfaction of Conditions, filed with the United  
20                  States District Court for the District of Arizona in  
21                  Central Arizona Water Conservation District v.  
22                  United States, et al., No. CIV 95–09625–09TUC–  
23                  09WDB(EHC), No. CIV 95–091720–09PHX–09EHC  
24                  (Consolidated Action), and that court’s order dated

1 *April 28, 2003, and any amendments or revisions*  
2 *thereto.*

3 (42) *RESERVATION.*—

4 (A) *IN GENERAL.*—*Except as provided in*  
5 *sections 207(d) and 210(d), the term “Reserva-*  
6 *tion” means the land located within the exterior*  
7 *boundaries of the reservation created under sec-*  
8 *tions 3 and 4 of the Act of February 28, 1859*  
9 *(11 Stat. 401, chapter LXVI) and Executive Or-*  
10 *ders of August 31, 1876, June 14, 1879, May 5,*  
11 *1882, November 15, 1883, July 31, 1911, June*  
12 *2, 1913, August 27, 1914, and July 19, 1915.*

13 (B) *EXCLUSION.*—*The term “Reservation”*  
14 *does not include the land located in sections 16*  
15 *and 36, Township 4 South, Range 4 East, Salt*  
16 *and Gila River Base and Meridian.*

17 (43) *ROOSEVELT HABITAT CONSERVATION*  
18 *PLAN.*—*The term “Roosevelt Habitat Conservation*  
19 *Plan” means the habitat conservation plan approved*  
20 *by the United States Fish and Wildlife Service under*  
21 *section 10(a)(1)(B) of the Endangered Species Act of*  
22 *1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental*  
23 *taking of endangered, threatened, and candidate spe-*  
24 *cies resulting from the continued operation by the*

1     *Salt River Project of Roosevelt Dam and Lake, near*  
2     *Phoenix, Arizona.*

3             (44) *ROOSEVELT WATER CONSERVATION DIS-*  
4     *TRICT.—The term “Roosevelt Water Conservation*  
5     *District” means the entity of that name that is a po-*  
6     *litical subdivision of the State and an irrigation dis-*  
7     *trict organized under the law of the State.*

8             (45) *SAFFORD.—The term “Safford” means the*  
9     *city of Safford, Arizona.*

10            (46) *SALT RIVER PROJECT.—The term “Salt*  
11     *River Project” means the Salt River Project Agricul-*  
12     *tural Improvement and Power District, a political*  
13     *subdivision of the State, and the Salt River Valley*  
14     *Water Users’ Association, an Arizona Territorial cor-*  
15     *poration.*

16            (47) *SAN CARLOS APACHE TRIBE.—The term*  
17     *“San Carlos Apache Tribe” means the San Carlos*  
18     *Apache Tribe, a tribe of Apache Indians organized*  
19     *under Section 16 of the Indian Reorganization Act of*  
20     *June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).*

21            (48) *SAN CARLOS IRRIGATION AND DRAINAGE*  
22     *DISTRICT.—The term “San Carlos Irrigation and*  
23     *Drainage District” means the entity of that name*  
24     *that is a political subdivision of the State and an ir-*



1        *rigation and drainage district organized under the*  
2        *laws of the State.*

3            (49) *SAN CARLOS IRRIGATION PROJECT.—*

4                    (A) *IN GENERAL.—The term “San Carlos*  
5                    *Irrigation Project” means the San Carlos irriga-*  
6                    *tion project authorized under the Act of June 7,*  
7                    *1924 (43 Stat. 475).*

8                    (B) *INCLUSIONS.—The term “San Carlos*  
9                    *Irrigation Project” includes any amendments*  
10                   *and supplements to the Act described in subpara-*  
11                   *graph (A).*

12            (50) *SECRETARY.—The term “Secretary” means*  
13        *the Secretary of the Interior.*

14            (51) *SPECIAL HOT LANDS.—The term “special*  
15        *hot lands” has the meaning given the term in sub-*  
16        *paragraph 2.34 of the UVD agreement.*

17            (52) *STATE.—The term “State” means the State*  
18        *of Arizona.*

19            (53) *SUBCONTRACT.—*

20                    (A) *IN GENERAL.—The term “subcontract”*  
21                    *means a Central Arizona Project water delivery*  
22                    *subcontract.*

23                    (B) *INCLUSION.—The term “subcontract”*  
24                    *includes an amendment to a subcontract.*

1           (54) *SUBSIDENCE DAMAGE.*—The term “*subsidence damage*” means injury to land, water, or other  
2           real property resulting from the settling of geologic  
3           strata or cracking in the surface of the Earth of any  
4           length or depth, which settling or cracking is caused  
5           by the pumping of underground water.  
6

7           (55) *TBI ELIGIBLE ACRES.*—The term “*TBI eligible acres*” has the meaning given the term in sub-  
8           paragraph 2.37 of the UVD agreement.  
9

10          (56) *UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.*—The term “*uncontracted municipal*  
11          and industrial water” means Central Arizona Project  
12          municipal and industrial priority water that is not  
13          subject to subcontract on the date of enactment of this  
14          Act.  
15

16          (57) *UV DECREED ACRES.*—

17                (A) *IN GENERAL.*—The term “*UV decreed*  
18                acres” means the land located upstream and to  
19                the east of the Coolidge Dam for which water  
20                may be diverted pursuant to the Globe Equity  
21                Decree.

22                (B) *EXCLUSION.*—The term “*UV decreed*  
23                acres” does not include the reservation of the  
24                San Carlos Apache Tribe.

1           (58) *UV DECREED WATER RIGHTS.*—*The term*  
2           *“UV decreed water rights” means the right to divert*  
3           *water for use on UV decreed acres in accordance with*  
4           *the Globe Equity Decree.*

5           (59) *UV IMPACT ZONE.*—*The term “UV impact*  
6           *zone” has the meaning given the term in subpara-*  
7           *graph 2.47 of the UVD agreement.*

8           (60) *UV SUBJUGATED LAND.*—*The term “UV*  
9           *subjugated land” has the meaning given the term in*  
10           *subparagraph 2.50 of the UVD agreement.*

11           (61) *UVD AGREEMENT.*—*The term “UVD agree-*  
12           *ment” means the agreement among the Community,*  
13           *the United States, the San Carlos Irrigation and*  
14           *Drainage District, the Franklin Irrigation District,*  
15           *the Gila Valley Irrigation District, Phelps Dodge, and*  
16           *other parties located in the upper valley of the Gila*  
17           *River, dated September 2, 2004.*

18           (62) *UV SIGNATORIES PARTIES.*—*The term “UV*  
19           *signatories” means the parties to the UVD agreement*  
20           *other than the United States, the San Carlos Irriga-*  
21           *tion and Drainage District, and the Community.*

22           (63) *WATER OM&R FUND.*—*The term “Water*  
23           *OM&R Fund” means the Gila River Indian Commu-*  
24           *nity Water OM&R Trust Fund established by section*  
25           *208.*

1           (64) *WATER RIGHT.*—*The term “water right”*  
2           *means any right in or to groundwater, surface water,*  
3           *or effluent under Federal, State, or other law.*

4           (65) *WATER RIGHTS APPURTENANT TO NEW*  
5           *MEXICO 381 ACRES.*—*The term “water rights appur-*  
6           *tenant to New Mexico 381 acres” means the water*  
7           *rights—*

8                     (A) *appurtenant to the 380.81 acres de-*  
9                     *scribed in the decree in Arizona v. California,*  
10                    *376 U.S. 340, 349 (1964); and*

11                   (B) *appurtenant to other land, or for other*  
12                    *uses, for which the water rights described in sub-*  
13                    *paragraph (A) may be modified or used in ac-*  
14                    *cordance with that decree.*

15           (66) *WATER RIGHTS FOR NEW MEXICO DOMESTIC*  
16            *PURPOSES.*—*The term “water rights for New Mexico*  
17            *domestic purposes” means the water rights for domes-*  
18            *tic purposes of not more than 265 acre-feet of water*  
19            *for consumptive use described in paragraph IV(D)(2)*  
20            *of the decree in Arizona v. California, 376 U.S. 340,*  
21            *350 (1964).*

22           (67) *1994 BIOLOGICAL OPINION.*—*The term*  
23            *“1994 biological opinion” means the biological opin-*  
24            *ion, numbered 2–21–90–F–119, and dated April 15,*  
25            *1994, relating to the transportation and delivery of*

1 *Central Arizona Project water to the Gila River*  
2 *basin.*

3 (68) 1996 BIOLOGICAL OPINION.—*The term*  
4 *“1996 biological opinion” means the biological opin-*  
5 *ion, numbered 2–21–95–F–462 and dated July 23,*  
6 *1996, relating to the impacts of modifying Roosevelt*  
7 *Dam on the southwestern willow flycatcher.*

8 (69) 1999 BIOLOGICAL OPINION.—*The term*  
9 *“1999 biological opinion” means the draft biological*  
10 *opinion numbered 2–21–91–F–706, and dated May*  
11 *1999, relating to the impacts of the Central Arizona*  
12 *Project on Gila Topminnow in the Santa Cruz River*  
13 *basin through the introduction and spread of non-*  
14 *native aquatic species.*

15 **SEC. 3. ARBITRATION.**

16 (a) *NO PARTICIPATION BY THE UNITED STATES.—*

17 (1) *IN GENERAL.—No arbitration decision ren-*  
18 *dered pursuant to subparagraph 12.1 of the UVD*  
19 *agreement or exhibit 20.1 of the Gila River agreement*  
20 *(including the joint control board agreement attached*  
21 *to exhibit 20.1) shall be considered invalid solely be-*  
22 *cause the United States failed or refused to partici-*  
23 *pate in such arbitration proceedings that resulted in*  
24 *such arbitration decision, so long as the matters in*  
25 *arbitration under subparagraph 12.1 of the UVD*

1       *agreement or exhibit 20.1 of the Gila River Agreement*  
2       *concern aspects of the water rights of the Community,*  
3       *the San Carlos Irrigation Project, or the Miscella-*  
4       *neous Flow Lands (as defined in subparagraph 2.18A*  
5       *of the UVD agreement) and not the water rights of the*  
6       *United States in its own right, any other rights of the*  
7       *United States, or the water rights or any other rights*  
8       *of the United States acting on behalf of or for the ben-*  
9       *efit of another tribe.*

10           (2) *ARBITRATION INEFFECTIVE.*—*If an issue oth-*  
11       *erwise subject to arbitration under subparagraph 12.1*  
12       *of the UVD agreement or exhibit 20.1 of the Gila*  
13       *River Agreement cannot be arbitrated or if an arbi-*  
14       *tration decision will not be effective because the*  
15       *United States cannot or will not participate in the*  
16       *arbitration, then the issue shall be submitted for deci-*  
17       *sion to a court of competent jurisdiction, but not a*  
18       *court of the Community.*

19           (b) *PARTICIPATION BY THE SECRETARY.*—*Notwith-*  
20       *standing any provision of any agreement, exhibit, attach-*  
21       *ment, or other document ratified by this Act, if the Sec-*  
22       *retary is required to enter arbitration pursuant to this Act*  
23       *or any such document, the Secretary shall follow the proce-*  
24       *dures for arbitration established by chapter 5 of title 5,*  
25       *United States Code.*

1 **SEC. 4. ANTIDEFICIENCY.**

2 *The United States shall not be liable for failure to*  
3 *carry out any obligation or activity required by this Act,*  
4 *including all titles and all agreements or exhibits ratified*  
5 *or confirmed by this Act, funded by—*

6 *(1) the Lower Basin Development Fund estab-*  
7 *lished by section 403 of the Colorado River Basin*  
8 *Project Act (43 U.S.C. 1543), if there are not enough*  
9 *monies in that fund to fulfill those obligations or*  
10 *carry out those activities; or*

11 *(2) appropriations, if appropriations are not*  
12 *provided by Congress.*

13 **TITLE I—CENTRAL ARIZONA**  
14 **PROJECT SETTLEMENT**

15 **SEC. 101. SHORT TITLE.**

16 *This title may be cited as the “Central Arizona Project*  
17 *Settlement Act of 2004”.*

18 **SEC. 102. FINDINGS.**

19 *Congress finds that—*

20 *(1) the water provided by the Central Arizona*  
21 *Project to Maricopa, Pinal, and Pima Counties in the*  
22 *State of Arizona, is vital to citizens of the State; and*

23 *(2) an agreement on the allocation of Central*  
24 *Arizona Project water among interested persons, in-*  
25 *cluding Federal and State interests, would provide*  
26 *important benefits to the Federal Government, the*

1        *State of Arizona, Arizona Indian Tribes, and the citi-*  
2        *zens of the State.*

3        **SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL**  
4        **ARIZONA PROJECT.**

5        *In accordance with the CAP repayment contract, the*  
6        *Central Arizona Project may be used to transport non-*  
7        *project water for—*

8                (1) *domestic, municipal, fish and wildlife, and*  
9                *industrial purposes; and*

10               (2) *any purpose authorized under the Colorado*  
11               *River Basin Project Act (43 U.S.C. 1501 et seq.).*

12        **SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT**  
13        **WATER.**

14        (a) *NON-INDIAN AGRICULTURAL PRIORITY WATER.—*

15               (1) *REALLOCATION TO ARIZONA INDIAN*  
16               *TRIBES.—*

17                        (A) *IN GENERAL.—The Secretary shall re-*  
18                        *allocate 197,500 acre-feet of agricultural priority*  
19                        *water made available pursuant to the master*  
20                        *agreement for use by Arizona Indian tribes, of*  
21                        *which—*

22                                (i) *102,000 acre-feet shall be reallo-*  
23                                *cated to the Gila River Indian Community;*

24                                (ii) *28,200 acre-feet shall be reallocated*  
25                                *to the Tohono O’odham Nation; and*



1                   (iii) subject to the conditions specified  
2                   in subparagraph (B), 67,300 acre-feet shall  
3                   be reallocated to Arizona Indian tribes.

4                   (B) CONDITIONS.—The reallocation of agri-  
5                   cultural priority water under subparagraph  
6                   (A)(iii) shall be subject to the conditions that—

7                   (i) such water shall be used to resolve  
8                   Indian water claims in Arizona, and may  
9                   be allocated by the Secretary to Arizona In-  
10                  dian Tribes in fulfillment of future Arizona  
11                  Indian water rights settlement agreements  
12                  approved by an Act of Congress. In the ab-  
13                  sence of an Arizona Indian water rights set-  
14                  tlement that is approved by an Act of Con-  
15                  gress after the date of enactment of this Act,  
16                  the Secretary shall not allocate any such  
17                  water until December 31, 2030. Any alloca-  
18                  tions made by the Secretary after such date  
19                  shall be accompanied by a certification that  
20                  the Secretary is making the allocation in  
21                  order to assist in the resolution of an Ari-  
22                  zona Indian water right claim. Any such  
23                  water allocated to an Arizona Indian Tribe  
24                  pursuant to a water delivery contract with  
25                  the Secretary under this clause shall be

1           *counted on an acre-foot per acre-foot basis*  
2           *against any claim to water for that Tribe's*  
3           *reservation;*

4           *(ii) notwithstanding clause (i), the*  
5           *Secretary shall retain 6,411 acre-feet of*  
6           *water for use for a future water rights set-*  
7           *tlement agreement approved by an Act of*  
8           *Congress that settles the Navajo Nation's*  
9           *claims to water in Arizona. If Congress does*  
10          *not approve this settlement before December*  
11          *31, 2030, the 6,411 acre-feet of CAP water*  
12          *shall be available to the Secretary under*  
13          *clause (i); and*

14          *(iii) the agricultural priority water*  
15          *shall not, without specific authorization by*  
16          *Act of Congress, be leased, exchanged,*  
17          *forborne, or otherwise transferred by an Ar-*  
18          *izona Indian tribe for any direct or indirect*  
19          *use outside the reservation of the Arizona*  
20          *Indian tribe.*

21          *(C) REPORT.—The Secretary, in consulta-*  
22          *tion with Arizona Indian tribes and the State,*  
23          *shall prepare a report for Congress by December*  
24          *31, 2016, that assesses whether the potential ben-*  
25          *efits of subparagraph (A) are being conveyed to*

1           *Arizona Indian tribes pursuant to water rights*  
2           *settlements enacted subsequent to this Act. For*  
3           *those Arizona Indian tribes that have not yet set-*  
4           *tled water rights claims, the Secretary shall de-*  
5           *scribe whether any active negotiations are taking*  
6           *place, and identify any critical water needs that*  
7           *exist on the reservation of each such Arizona In-*  
8           *Indian tribe. The Secretary shall also identify and*  
9           *report on the use of unused quantities of agricul-*  
10          *tural priority water made available to Arizona*  
11          *Indian tribes under subparagraph (A).*

12           (2) *REALLOCATION TO THE ARIZONA DEPART-*  
13          *MENT OF WATER RESOURCES.—*

14                   (A) *IN GENERAL.—Subject to subparagraph*  
15                   *(B) and subparagraph 9.3 of the master agree-*  
16                   *ment, the Secretary shall reallocate up to 96,295*  
17                   *acre-feet of agricultural priority water made*  
18                   *available pursuant to the master agreement to*  
19                   *the Arizona Department of Water Resources, to*  
20                   *be held under contract in trust for further alloca-*  
21                   *tion under subparagraph (C).*

22                   (B) *REQUIRED DOCUMENTATION.—The re-*  
23                   *allocation of agricultural priority water under*  
24                   *subparagraph (A) is subject to the condition that*

1           *the Secretary execute any appropriate documents*  
2           *to memorialize the reallocation, including—*

3                     *(i) an allocation decision; and*

4                     *(ii) a contract that prohibits the direct*  
5                     *use of the agricultural priority water by the*  
6                     *Arizona Department of Water Resources.*

7           *(C) FURTHER ALLOCATION.—With respect*  
8           *to the allocation of agricultural priority water*  
9           *under subparagraph (A)—*

10                    *(i) before that water may be further al-*  
11                    *located—*

12                    *(I) the Director shall submit to*  
13                    *the Secretary, and the Secretary shall*  
14                    *receive, a recommendation for realloca-*  
15                    *tion;*

16                    *(II) as soon as practicable after*  
17                    *receiving the recommendation, the Sec-*  
18                    *retary shall carry out all necessary re-*  
19                    *views of the proposed reallocation, in*  
20                    *accordance with applicable Federal*  
21                    *law; and*

22                    *(III) if the recommendation is re-*  
23                    *jected by the Secretary, the Secretary*  
24                    *shall—*

1                   (aa) request a revised rec-  
2                   ommendation from the Director;  
3                   and

4                   (bb) proceed with any re-  
5                   views required under subclause  
6                   (II); and

7                   (ii) as soon as practicable after the  
8                   date on which agricultural priority water is  
9                   further allocated, the Secretary shall offer to  
10                  enter into a subcontract for that water in  
11                  accordance with paragraphs (1) and (2) of  
12                  subsection (d).

13               (D) *MASTER AGREEMENT.*—The realloca-  
14               tion of agricultural priority water under sub-  
15               paragraphs (A) and (C) is subject to the master  
16               agreement, including certain rights provided by  
17               the master agreement to water users in Pinal  
18               County, Arizona.

19               (3) *PRIORITY.*—The agricultural priority water  
20               reallocated under paragraphs (1) and (2) shall be  
21               subject to the condition that the water retain its non-  
22               Indian agricultural delivery priority.

23               (b) *UNCONTRACTED CENTRAL ARIZONA PROJECT MU-*  
24               *NICIPAL AND INDUSTRIAL PRIORITY WATER.*—

1           (1) *REALLOCATION.*—*The Secretary shall, on the*  
2 *recommendation of the Director, reallocate 65,647*  
3 *acre-feet of uncontracted municipal and industrial*  
4 *water, of which—*

5                   (A) *285 acre-feet shall be reallocated to the*  
6 *town of Superior, Arizona;*

7                   (B) *806 acre-feet shall be reallocated to the*  
8 *Cave Creek Water Company;*

9                   (C) *1,931 acre-feet shall be reallocated to the*  
10 *Chaparral Water Company;*

11                   (D) *508 acre-feet shall be reallocated to the*  
12 *town of El Mirage, Arizona;*

13                   (E) *7,211 acre-feet shall be reallocated to the*  
14 *city of Goodyear, Arizona;*

15                   (F) *147 acre-feet shall be reallocated to the*  
16 *H2O Water Company;*

17                   (G) *7,115 acre-feet shall be reallocated to the*  
18 *city of Mesa, Arizona;*

19                   (H) *5,527 acre-feet shall be reallocated to*  
20 *the city of Peoria, Arizona;*

21                   (I) *2,981 acre-feet shall be reallocated to the*  
22 *city of Scottsdale, Arizona;*

23                   (J) *808 acre-feet shall be reallocated to the*  
24 *AVRA Cooperative;*

1           (K) 4,986 acre-feet shall be reallocated to  
2           the city of Chandler, Arizona;

3           (L) 1,071 acre-feet shall be reallocated to the  
4           Del Lago (Vail) Water Company;

5           (M) 3,053 acre-feet shall be reallocated to  
6           the city of Glendale, Arizona;

7           (N) 1,521 acre-feet shall be reallocated to the  
8           Community Water Company of Green Valley,  
9           Arizona;

10          (O) 4,602 acre-feet shall be reallocated to the  
11          Metropolitan Domestic Water Improvement Dis-  
12          trict;

13          (P) 3,557 acre-feet shall be reallocated to the  
14          town of Oro Valley, Arizona;

15          (Q) 8,206 acre-feet shall be reallocated to the  
16          city of Phoenix, Arizona;

17          (R) 2,876 acre-feet shall be reallocated to the  
18          city of Surprise, Arizona;

19          (S) 8,206 acre-feet shall be reallocated to the  
20          city of Tucson, Arizona; and

21          (T) 250 acre-feet shall be reallocated to the  
22          Valley Utilities Water Company.

23          (2) *SUBCONTRACTS.*—

24                 (A) *IN GENERAL.*—As soon as practicable  
25                 after the date of enactment of this Act, and in

1           *accordance with paragraphs (1) and (2) of sub-*  
2           *section (d) and any other applicable Federal*  
3           *laws, the Secretary shall offer to enter into sub-*  
4           *contracts for the delivery of the uncontracted mu-*  
5           *nicipal and industrial water reallocated under*  
6           *paragraph (1).*

7           *(B) REVISED RECOMMENDATION.—If the*  
8           *Secretary is precluded under applicable Federal*  
9           *law from entering into a subcontract with an en-*  
10          *tity identified in paragraph (1), the Secretary*  
11          *shall—*

12                   *(i) request a revised recommendation*  
13                   *from the Director; and*

14                   *(ii) on receipt of a recommendation*  
15                   *under clause (i), reallocate and enter into a*  
16                   *subcontract for the delivery of the water in*  
17                   *accordance with subparagraph (A).*

18          *(c) LIMITATIONS.—*

19                   *(1) AMOUNT.—*

20                   *(A) IN GENERAL.—The total amount of en-*  
21                   *titlements under long-term contracts (as defined*  
22                   *in the repayment stipulation) for the delivery of*  
23                   *Central Arizona Project water in the State shall*  
24                   *not exceed 1,415,000 acre-feet, of which—*

25                   *(i) 650,724 acre-feet shall be—*



1                   (I) under contract to Arizona In-  
2                   dian tribes; or

3                   (II) available to the Secretary for  
4                   allocation to Arizona Indian tribes;  
5                   and

6                   (ii) 764,276 acre-feet shall be under  
7                   contract or available for allocation to—

8                   (I) non-Indian municipal and in-  
9                   dustrial entities;

10                  (II) the Arizona Department of  
11                  Water Resources; and

12                  (III) non-Indian agricultural en-  
13                  tities.

14                  (B) *EXCEPTION.*—Subparagraph (A) shall  
15                  not apply to Central Arizona Project water de-  
16                  livered to water users in Arizona in exchange for  
17                  Gila River water used in New Mexico as pro-  
18                  vided in section 304 of the Colorado River Basin  
19                  Project Act (43 U.S.C. 1524) (as amended by  
20                  section 212).

21                  (2) *TRANSFER.*—

22                  (A) *IN GENERAL.*—Except pursuant to the  
23                  master agreement, Central Arizona Project water  
24                  may not be transferred from—

1           (i) a use authorized under paragraph  
2           (1)(A)(i) to a use authorized under para-  
3           graph (1)(A)(ii); or

4           (ii) a use authorized under paragraph  
5           (1)(A)(ii) to a use authorized under para-  
6           graph (1)(A)(i).

7           (B) *EXCEPTIONS.*—

8           (i) *LEASES.*—A lease of Central Ari-  
9           zona Project water by an Arizona Indian  
10          tribe to an entity described in paragraph  
11          (1)(A)(ii) under an Indian water rights set-  
12          tlement approved by an Act of Congress  
13          shall not be considered to be a transfer for  
14          purposes of subparagraph (A).

15          (ii) *EXCHANGES.*—An exchange of  
16          Central Arizona Project water by an Ari-  
17          zona Indian tribe to an entity described in  
18          paragraph (1)(A)(ii) shall not be considered  
19          to be a transfer for purposes of subpara-  
20          graph (A).

21          (iii) Notwithstanding subparagraph  
22          (A), up to 17,000 acre-feet of CAP munic-  
23          ipal and industrial water under the sub-  
24          contract among the United States, the Cen-  
25          tral Arizona Water Conservation District,

1                   *and Asarco, subcontract No. 3-07-30-*  
2                   *W0307, dated November 7, 1993, may be re-*  
3                   *allocated to the Community on execution of*  
4                   *an exchange and lease agreement among the*  
5                   *Community, the United States, and Asarco.*

6           (d) *CENTRAL ARIZONA PROJECT CONTRACTS AND*  
7 *SUBCONTRACTS.—*

8                   (1) *IN GENERAL.—Notwithstanding section 6 of*  
9                   *the Reclamation Project Act of 1939 (43 U.S.C. 485e),*  
10                   *and paragraphs (2) and (3) of section 304(b) of the*  
11                   *Colorado River Basin Project Act (43 U.S.C.*  
12                   *1524(b)), as soon as practicable after the date of en-*  
13                   *actment of this Act, the Secretary shall offer to enter*  
14                   *into subcontracts or to amend all Central Arizona*  
15                   *Project contracts and subcontracts in effect as of that*  
16                   *date in accordance with paragraph (2).*

17                   (2) *REQUIREMENTS.—All subcontracts and*  
18                   *amendments to Central Arizona Project contracts and*  
19                   *subcontracts under paragraph (1)—*

20                               (A) *shall be for permanent service (within*  
21                               *the meaning of section 5 of the Boulder Canyon*  
22                               *Project Act of 1928 (43 U.S.C. 617d));*

23                               (B) *shall have an initial delivery term that*  
24                               *is the greater of—*

25   (i) *100 years; or*

1                   (ii) a term—

2                               (I) authorized by Congress; or

3                               (II) provided under the appro-  
4                   appropriate Central Arizona Project contract  
5                   or subcontract in existence on the date  
6                   of enactment of this Act;

7                   (C) shall conform to the shortage sharing  
8                   criteria described in paragraph 5.3 of the  
9                   Tohono O’odham settlement agreement;

10                   (D) shall include the prohibition and excep-  
11                   tion described in subsection (e); and

12                   (E) shall not require—

13                               (i) that any Central Arizona Project  
14                   water received in exchange for effluent be  
15                   deducted from the contractual entitlement of  
16                   the CAP contractor or CAP subcontractor;  
17                   or

18                               (ii) that any additional modification  
19                   of the Central Arizona Project contracts or  
20                   subcontracts be made as a condition of ac-  
21                   ceptance of the subcontract or amendments.

22                   (3) *APPLICABILITY.*—This subsection does not  
23                   apply to—

24                               (A) a subcontract for non-Indian agricul-  
25                   tural use; or

1                   (B) a contract executed under paragraph  
2                   5(d) of the repayment stipulation.

3           (e) *PROHIBITION ON TRANSFER.*—

4                   (1) *IN GENERAL.*—*Except as provided in para-*  
5                   *graph (2), no Central Arizona Project water shall be*  
6                   *leased, exchanged, forborne, or otherwise transferred*  
7                   *in any way for use directly or indirectly outside the*  
8                   *State.*

9                   (2) *EXCEPTIONS.*—*Central Arizona Project*  
10                   *water may be—*

11                           (A) *leased, exchanged, forborne, or otherwise*  
12                           *transferred under an agreement with the Arizona*  
13                           *Water Banking Authority that is in accordance*  
14                           *with part 414 of title 43, Code of Federal Regu-*  
15                           *lations; and*

16                           (B) *delivered to users in Arizona in ex-*  
17                           *change for Gila River water used in New Mexico*  
18                           *as provided in section 304 of the Colorado River*  
19                           *Basin Project Act (43 U.S.C. 1524) (as amended*  
20                           *by section 212).*

21                   (3) *EFFECT OF SUBSECTION.*—*Nothing in this*  
22                   *subsection prohibits any entity from entering into a*  
23                   *contract with the Arizona Water Banking Authority*  
24                   *or a successor of the Authority under State law.*

1 **SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN**  
2 **WATER.**

3 (a) *FIRMING PROGRAM.*—*The Secretary and the State*  
4 *shall develop a firming program to ensure that 60,648 acre-*  
5 *feet of the agricultural priority water made available pur-*  
6 *suant to the master agreement and reallocated to Arizona*  
7 *Indian tribes under section 104(a)(1), shall, for a 100-year*  
8 *period, be delivered during water shortages in the same*  
9 *manner as water with a municipal and industrial delivery*  
10 *priority in the Central Arizona Project system is delivered*  
11 *during water shortages.*

12 (b) *DUTIES.*—

13 (1) *SECRETARY.*—*The Secretary shall—*

14 (A) *firm 28,200 acre-feet of agricultural*  
15 *priority water reallocated to the Tohono*  
16 *O’odham Nation under section 104(a)(1)(A)(ii);*  
17 *and*

18 (B) *firm 8,724 acre-feet of agricultural pri-*  
19 *ority water reallocated to Arizona Indian tribes*  
20 *under section 104(a)(1)(A)(iii).*

21 (2) *STATE.*—*The State shall—*

22 (A) *firm 15,000 acre-feet of agricultural*  
23 *priority water reallocated to the Community*  
24 *under section 104(a)(1)(A)(i);*

1           (B) firm 8,724 acre-feet of agricultural pri-  
2           ority water reallocated to Arizona Indian tribes  
3           under section 104(a)(1)(A)(iii); and

4           (C) assist the Secretary in carrying out ob-  
5           ligations of the Secretary under paragraph  
6           (1)(A) in accordance with section 306 of the  
7           Southern Arizona Water Rights Settlement  
8           Amendments Act (as added by section 301).

9           (c) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
10          authorized to be appropriated to the Secretary such sums  
11          as are necessary to carry out the duties of the Secretary  
12          under subsection (b)(1).

13       **SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY**  
14                               **WATER.**

15          (a) *APPROVAL OF AGREEMENT.*—

16               (1) *IN GENERAL.*—Except to the extent that any  
17               provision of the master agreement conflicts with any  
18               provision of this title, the master agreement is author-  
19               ized, ratified, and confirmed. To the extent that  
20               amendments are executed to make the master agree-  
21               ment consistent with this title, such amendments are  
22               also authorized, ratified, and confirmed.

23               (2) *EXHIBITS.*—The Secretary is directed to and  
24               shall execute the master agreement and any of the ex-

1        *hibits to the master agreement that have not been exe-*  
2        *cuted as of the date of enactment of this Act.*

3            (3) *DEBT COLLECTION.*—*For any agricultural*  
4        *priority water that is not relinquished under the mas-*  
5        *ter agreement, the subcontractor shall continue to*  
6        *pay, consistent with the master agreement, the por-*  
7        *tion of the debt associated with any retained water*  
8        *under section 9(d) of the Reclamation Project Act of*  
9        *1939 (43 U.S.C. 485h(d)), and the Secretary shall*  
10       *apply such revenues toward the reimbursable section*  
11       *9(d) debt of that subcontractor.*

12           (4) *EFFECTIVE DATE.*—*The provisions of sub-*  
13       *sections (b) and (c) shall take effect on the date of en-*  
14       *actment of this Act.*

15        (b) *NONREIMBURSABLE DEBT.*—

16           (1) *IN GENERAL.*—*In accordance with the master*  
17       *agreement, the portion of debt incurred under section*  
18       *9(d) of the Reclamation Project Act of 1939 (43*  
19       *U.S.C. 485h(d)), and identified in the master agree-*  
20       *ment as nonreimbursable to the United States, shall*  
21       *be nonreimbursable and nonreturnable to the United*  
22       *States in an amount not to exceed \$73,561,337.*

23           (2) *EXTENSION.*—*In accordance with the master*  
24       *agreement, the Secretary may extend, on an annual*  
25       *basis, the repayment schedule of debt incurred under*



1        *section 9(d) of the Reclamation Project Act of 1939*  
2        *(43 U.S.C. 485h(d)) by CAP subcontractors.*

3        *(c) EXEMPTION.—The Reclamation Reform Act of*  
4        *1982 (43 U.S.C. 390aa et seq.) and any other acreage limi-*  
5        *tation or full cost pricing provisions of Federal law shall*  
6        *not apply to—*

7                *(1) land within the exterior boundaries of the*  
8        *Central Arizona Water Conservation District or*  
9        *served by Central Arizona Project water;*

10               *(2) land within the exterior boundaries of the*  
11        *Salt River Reservoir District;*

12               *(3) land held in trust by the United States for*  
13        *an Arizona Indian tribe that is—*

14                        *(A) within the exterior boundaries of the*  
15        *Central Arizona Water Conservation District; or*

16                        *(B) served by Central Arizona Project*  
17        *water; or*

18                *(4) any person, entity, or land, solely on the*  
19        *basis of—*

20                        *(A) receipt of any benefits under this Act;*

21                        *(B) execution or performance of the Gila*  
22        *River agreement; or*

23                        *(C) the use, storage, delivery, lease, or ex-*  
24        *change of Central Arizona Project water.*

1 **SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT**

2 **FUND.**

3 (a) *IN GENERAL.*—Section 403 of the Colorado River  
4 Basin Project Act (43 U.S.C. 1543) is amended by striking  
5 subsection (f) and inserting the following:

6 “(f) *ADDITIONAL USES OF REVENUE FUNDS.*—

7 “(1) *CREDITING AGAINST CENTRAL ARIZONA*  
8 *WATER CONSERVATION DISTRICT PAYMENTS.*—Funds  
9 credited to the development fund pursuant to sub-  
10 section (b) and paragraphs (1) and (3) of subsection  
11 (c), the portion of revenues derived from the sale of  
12 power and energy for use in the State of Arizona pur-  
13 suant to subsection (c)(2) in excess of the amount nec-  
14 essary to meet the requirements of paragraphs (1)  
15 and (2) of subsection (d), and any annual payment  
16 by the Central Arizona Water Conservation District  
17 to effect repayment of reimbursable Central Arizona  
18 Project construction costs, shall be credited annually  
19 against the annual payment owed by the Central Ari-  
20 zona Water Conservation District to the United  
21 States for the Central Arizona Project.

22 “(2) *FURTHER USE OF REVENUE FUNDS CRED-*  
23 *ITED AGAINST PAYMENTS OF CENTRAL ARIZONA*  
24 *WATER CONSERVATION DISTRICT.*—After being cred-  
25 ited in accordance with paragraph (1), the funds and  
26 portion of revenues described in that paragraph shall

1       *be available annually, without further appropriation,*  
2       *in order of priority—*

3               “(A) *to pay annually the fixed operation,*  
4               *maintenance, and replacement charges associated*  
5               *with the delivery of Central Arizona Project*  
6               *water held under long-term contracts for use by*  
7               *Arizona Indian tribes (as defined in section 2 of*  
8               *the Arizona Water Settlements Act) in accord-*  
9               *ance with clause 8(d)(i)(1)(i) of the Repayment*  
10              *Stipulation (as defined in section 2 of the Ari-*  
11              *zona Water Settlements Act);*

12              “(B) *to make deposits, totaling \$53,000,000*  
13              *in the aggregate, in the Gila River Indian Com-*  
14              *munity Water OM&R Trust Fund established by*  
15              *section 208 of the Arizona Water Settlements*  
16              *Act;*

17              “(C) *to pay \$147,000,000 for the rehabilita-*  
18              *tion of the San Carlos Irrigation Project, of*  
19              *which not more than \$25,000,000 shall be avail-*  
20              *able annually consistent with attachment 6.5.1 of*  
21              *exhibit 20.1 of the Gila River agreement, except*  
22              *that the total amount of \$147,000,000 shall be*  
23              *increased or decreased, as appropriate, based on*  
24              *ordinary fluctuations since January 1, 2000, in*

1           *construction cost indices applicable to the types*  
2           *of construction involved in the rehabilitation;*

3           “(D) *in addition to amounts made avail-*  
4           *able for the purpose through annual appropria-*  
5           *tions, as reasonably allocated by the Secretary*  
6           *without regard to any trust obligation on the*  
7           *part of the Secretary to allocate the funding*  
8           *under any particular priority and without re-*  
9           *gard to priority (except that payments required*  
10           *by clause (i) shall be made first)—*

11           “(i) *to make deposits totaling*  
12           *\$66,000,000, adjusted to reflect changes*  
13           *since January 1, 2004, in the construction*  
14           *cost indices applicable to the types of con-*  
15           *struction involved in construction of the*  
16           *New Mexico Unit, into the New Mexico*  
17           *Unit Fund as provided by section 212(i) of*  
18           *the Arizona Water Settlements Act in 10*  
19           *equal annual payments beginning in 2012;*

20           “(ii) *upon satisfaction of the condi-*  
21           *tions set forth in subsections (j) and (k) of*  
22           *section 212, to pay certain of the costs asso-*  
23           *ciated with construction of the New Mexico*  
24           *Unit, in addition to any amounts that may*  
25           *be expended from the New Mexico Unit*

1           *Fund, in a minimum amount of*  
2           *\$34,000,000 and a maximum amount of*  
3           *\$62,000,000, as provided in section 212 of*  
4           *the Arizona Water Settlements Act, as ad-*  
5           *justed to reflect changes since January 1,*  
6           *2004, in the construction cost indices appli-*  
7           *cable to the types of construction involved*  
8           *in construction of the New Mexico Unit;*

9           *“(iii) to pay the costs associated with*  
10          *the construction of distribution systems re-*  
11          *quired to implement the provisions of—*

12                 *“(I) the contract entered into be-*  
13                 *tween the United States and the Gila*  
14                 *River Indian Community, numbered*  
15                 *6-07-03-W0345, and dated July 20,*  
16                 *1998;*

17                 *“(II) section 3707(a)(1) of the*  
18                 *San Carlos Apache Tribe Water Rights*  
19                 *Settlement Act of 1992 (106 Stat.*  
20                 *4747); and*

21                 *“(III) section 304 of the Southern*  
22                 *Arizona Water Rights Settlement*  
23                 *Amendments Act of 2004;*

24           *“(iv) to pay \$52,396,000 for the reha-*  
25          *ilitation of the San Carlos Irrigation*

1            *Project as provided in section 203(d)(4) of*  
2            *the Arizona Water Settlements Act, of which*  
3            *not more than \$9,000,000 shall be available*  
4            *annually, except that the total amount of*  
5            *\$52,396,000 shall be increased or decreased,*  
6            *as appropriate, based on ordinary fluctua-*  
7            *tions since January 1, 2000, in construc-*  
8            *tion cost indices applicable to the types of*  
9            *construction involved in the rehabilitation;*

10            *“(v) to pay other costs specifically*  
11            *identified under—*

12                    *“(I) sections 213(g)(1) and 214 of*  
13                    *the Arizona Water Settlements Act;*  
14                    *and*

15                    *“(II) the Southern Arizona Water*  
16                    *Rights Settlement Amendments Act of*  
17                    *2004;*

18            *“(vi) to pay a total of not more than*  
19            *\$250,000,000 to the credit of the Future In-*  
20            *Indian Water Settlement Subaccount of the*  
21            *Lower Colorado Basin Development Fund,*  
22            *for use for Indian water rights settlements*  
23            *in Arizona approved by Congress after the*  
24            *date of enactment of this Act, subject to the*  
25            *requirement that, notwithstanding any*

1            *other provision of this Act, any funds cred-*  
2            *ited to the Future Indian Water Settlement*  
3            *Subaccount that are not used in furtherance*  
4            *of a congressionally approved Indian water*  
5            *rights settlement in Arizona by December*  
6            *31, 2030, shall be returned to the main*  
7            *Lower Colorado Basin Development Fund*  
8            *for expenditure on authorized uses pursuant*  
9            *to this Act, provided that any interest*  
10           *earned on funds held in the Future Indian*  
11           *Water Settlement Subaccount shall remain*  
12           *in such subaccount until disbursed or re-*  
13           *turned in accordance with this section;*

14           *“(vii) to pay costs associated with the*  
15           *installation of gages on the Gila River and*  
16           *its tributaries to measure the water level of*  
17           *the Gila River and its tributaries for pur-*  
18           *poses of the New Mexico Consumptive Use*  
19           *and Forbearance Agreement in an amount*  
20           *not to exceed \$500,000; and*

21           *“(viii) to pay the Secretary’s costs of*  
22           *implementing the Central Arizona Project*  
23           *Settlement Act of 2004;*

1           “(E) in addition to amounts made available  
2 for the purpose through annual appropria-  
3 tions—

4           “(i) to pay the costs associated with  
5 the construction of on-reservation Central  
6 Arizona Project distribution systems for the  
7 Yavapai Apache (Camp Verde), Tohono  
8 O’odham Nation (Sif Oidak District),  
9 Pascua Yaqui, and Tonto Apache tribes;  
10 and

11           “(ii) to make payments to those tribes  
12 in accordance with paragraph 8(d)(i)(1)(iv)  
13 of the repayment stipulation (as defined in  
14 section 2 of the Arizona Water Settlements  
15 Act), except that if a water rights settlement  
16 Act of Congress authorizes such construc-  
17 tion, payments to those tribes shall be made  
18 from funds in the Future Indian Water Set-  
19 tlement Subaccount; and

20           “(F) if any amounts remain in the develop-  
21 ment fund at the end of a fiscal year, to be car-  
22 ried over to the following fiscal year for use for  
23 the purposes described in subparagraphs (A)  
24 through (E).



1           “(3) *REVENUE FUNDS IN EXCESS OF REVENUE*  
2           *FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER*  
3           *CONSERVATION DISTRICT PAYMENTS.*—*The funds and*  
4           *portion of revenues described in paragraph (1) that*  
5           *are in excess of amounts credited under paragraph*  
6           *(1) shall be available, on an annual basis, without*  
7           *further appropriation, in order of priority—*

8                   “(A) *to pay annually the fixed operation,*  
9                   *maintenance and replacement charges associated*  
10                   *with the delivery of Central Arizona Project*  
11                   *water under long-term contracts held by Arizona*  
12                   *Indian tribes (as defined in section 2 of the Ari-*  
13                   *zona Water Settlements Act);*

14                   “(B) *to make the final outstanding annual*  
15                   *payment for the costs of each unit of the projects*  
16                   *authorized under title III that are to be repaid*  
17                   *by the Central Arizona Water Conservation Dis-*  
18                   *trict;*

19                   “(C) *to reimburse the general fund of the*  
20                   *Treasury for fixed operation, maintenance, and*  
21                   *replacement charges previously paid under para-*  
22                   *graph (2)(A);*

23                   “(D) *to reimburse the general fund of the*  
24                   *Treasury for costs previously paid under sub-*  
25                   *paragraphs (B) through (E) of paragraph (2);*

1           “(E) to pay to the general fund of the  
2 Treasury the annual installment on any debt re-  
3 lating to the Central Arizona Project under sec-  
4 tion 9(d) of the Reclamation Project Act of 1939  
5 (43 U.S.C. 485h(d)), made nonreimbursable  
6 under section 106(b) of the Arizona Water Settle-  
7 ments Act;

8           “(F) to pay to the general fund of the  
9 Treasury the difference between—

10           “(i) the costs of each unit of the  
11 projects authorized under title III that are  
12 repayable by the Central Arizona Water  
13 Conservation District; and

14           “(ii) any costs allocated to reimburs-  
15 able functions under any Central Arizona  
16 Project cost allocation undertaken by the  
17 United States; and

18           “(G) for deposit in the general fund of the  
19 Treasury.

20           “(4) INVESTMENT OF AMOUNTS.—

21           “(A) IN GENERAL.—The Secretary of the  
22 Treasury shall invest such portion of the develop-  
23 ment fund as is not, in the judgment of the Sec-  
24 retary of the Interior, required to meet current  
25 needs of the development fund.

1                   “(B) *PERMITTED INVESTMENTS.*—

2                   “(i) *IN GENERAL.*—*Notwithstanding*  
3                   *any other provision of law, including any*  
4                   *provision requiring the consent or concur-*  
5                   *rence of any party, the investments referred*  
6                   *to in subparagraph (A) shall include 1 or*  
7                   *more of the following:*

8                   “(I) *Any investments referred to*  
9                   *in the Act of June 24, 1938 (25 U.S.C.*  
10                   *162a).*

11                   “(II) *Investments in obligations of*  
12                   *government corporations and govern-*  
13                   *ment-sponsored entities whose charter*  
14                   *statutes provide that their obligations*  
15                   *are lawful investments for federally*  
16                   *managed funds.*

17                   “(III) *The obligations referred to*  
18                   *in section 201 of the Social Security*  
19                   *Act (42 U.S.C. 401).*

20                   “(ii) *LAWFUL INVESTMENTS.*—*For*  
21                   *purposes of clause (i), obligations of govern-*  
22                   *ment corporations and government-spon-*  
23                   *sored entities whose charter statutes provide*  
24                   *that their obligations are lawful investments*  
25                   *for federally managed funds includes any of*

1           *the following securities or securities with*  
2           *comparable language concerning the invest-*  
3           *ment of federally managed funds:*

4                   “(I) *Obligations of the United*  
5                   *States Postal Service as authorized by*  
6                   *section 2005 of title 39, United States*  
7                   *Code.*

8                   “(II) *Bonds and other obligations*  
9                   *of the Tennessee Valley Authority as*  
10                   *authorized by section 15d of the Ten-*  
11                   *nessee Valley Authority Act of 1933 (16*  
12                   *U.S.C. 831n-4).*

13                   “(III) *Mortgages, obligations, or*  
14                   *other securities of the Federal Home*  
15                   *Loan Mortgage Corporation as author-*  
16                   *ized by section 303 of the Federal*  
17                   *Home Loan Mortgage Corporation Act*  
18                   *(12 U.S.C. 1452).*

19                   “(IV) *Bonds, notes, or debentures*  
20                   *of the Commodity Credit Corporation*  
21                   *as authorized by section 4 of the Act of*  
22                   *March 4, 1939 (15 U.S.C. 713a-4).*

23                   “(C) *ACQUISITION OF OBLIGATIONS.—For*  
24                   *the purpose of investments under subparagraph*  
25                   *(A), obligations may be acquired—*

1                   “(i) on original issue at the issue  
2                   price; or

3                   “(ii) by purchase of outstanding obli-  
4                   gations at the market price.

5                   “(D) SALE OF OBLIGATIONS.—Any obliga-  
6                   tion acquired by the development fund may be  
7                   sold by the Secretary of the Treasury at the mar-  
8                   ket price.

9                   “(E) CREDITS TO FUND.—The interest on,  
10                  and the proceeds from the sale or redemption of,  
11                  any obligations held in the development fund  
12                  shall be credited to and form a part of the devel-  
13                  opment fund.

14                  “(5) AMOUNTS NOT AVAILABLE FOR CERTAIN  
15                  FEDERAL OBLIGATIONS.—None of the provisions of  
16                  this section, including paragraphs (2)(A) and (3)(A),  
17                  shall be construed to make any of the funds referred  
18                  to in this section available for the fulfillment of any  
19                  Federal obligation relating to the payment of OM&R  
20                  charges if such obligation is undertaken pursuant to  
21                  Public Law 95–328, Public Law 98–530, or any set-  
22                  tlement agreement with the United States (or amend-  
23                  ments thereto) approved by or pursuant to either of  
24                  those Acts.”.

1       (b) *LIMITATION.*—Amounts made available under the  
2 amendment made by subsection (a)—

3           (1) shall be identified and retained in the Lower  
4 Colorado River Basin Development Fund established  
5 by section 403 of the Colorado River Basin Project  
6 Act (43 U.S.C. 1543); and

7           (2) shall not be expended or withdrawn from  
8 that fund until the later of—

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

12                   (B) January 1, 2010.

13       (c) *TECHNICAL AMENDMENTS.*—The Colorado River  
14 Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

15           (1) in section 403(g), by striking “clause (c)(2)”  
16 and inserting “subsection (c)(2)”; and

17           (2) in section 403(e), by striking “Revenues” and  
18 inserting “Except as provided in subsection (f), reve-  
19 nues”.

20 **SEC. 108. EFFECT.**

21       Except for provisions relating to the allocation of Cen-  
22 tral Arizona Project water and the Reclamation Reform Act  
23 of 1982 (43 U.S.C. 390aa et seq.), nothing in this title af-  
24 fects—

1           (1) *any treaty, law, or agreement governing the*  
2           *use of water from the Colorado River; or*

3           (2) *any rights to use Colorado River water exist-*  
4           *ing on the date of enactment of this Act.*

5   **SEC. 109. REPEAL.**

6           *Section 11(h) of the Salt River Pima-Maricopa Indian*  
7           *Community Water Rights Settlement Act of 1988 (102 Stat.*  
8           *2559) is repealed.*

9   **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

10          (a) *IN GENERAL.*—*There are authorized to be appro-*  
11          *priated such sums as are necessary to comply with—*

12                 (1) *the 1994 biological opinion, including any*  
13                 *funding transfers required by the opinion;*

14                 (2) *the 1996 biological opinion, including any*  
15                 *funding transfers required by the opinion; and*

16                 (3) *any final biological opinion resulting from*  
17                 *the 1999 biological opinion, including any funding*  
18                 *transfers required by the opinion.*

19          (b) *CONSTRUCTION COSTS.*—*Amounts made available*  
20          *under subsection (a) shall be treated as Central Arizona*  
21          *Project construction costs.*

22          (c) *AGREEMENTS.*—

23                 (1) *IN GENERAL.*—*Any amounts made available*  
24                 *under subsection (a) may be used to carry out agree-*  
25                 *ments to permanently fund long-term reasonable and*

1        *prudent alternatives in accepted biological opinions*  
2        *relating to the Central Arizona Project.*

3            (2) *REQUIREMENTS.—To ensure that long-term*  
4        *environmental compliance may be met without fur-*  
5        *ther appropriations, an agreement under paragraph*  
6        (1) *shall include a provision requiring that the con-*  
7        *tractor manage the funds through interest-bearing in-*  
8        *vestments.*

9        **SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE**  
10            **UNDER TITLE II.**

11            (a) *IN GENERAL.—Except as provided in subsection*  
12 (b), *if the Secretary does not publish a statement of findings*  
13 *under section 207(c) by December 31, 2007—*

14            (1) *this title is repealed effective January 1,*  
15        *2008, and any action taken by the Secretary and any*  
16        *contract entered under any provision of this title shall*  
17        *be void; and*

18            (2) *any amounts appropriated under section 110*  
19        *that remain unexpended shall immediately revert to*  
20        *the general fund of the Treasury.*

21            (b) *EXCEPTION.—No subcontract amendment executed*  
22 *by the Secretary under the notice of June 18, 2003 (67 Fed.*  
23 *Reg. 36578), shall be considered to be a contract entered*  
24 *into by the Secretary for purposes of subsection (a)(1).*



1 **TITLE II—GILA RIVER INDIAN**  
2 **COMMUNITY WATER RIGHTS**  
3 **SETTLEMENT**

4 **SEC. 201. SHORT TITLE.**

5 *This title may be cited as the “Gila River Indian Com-*  
6 *munity Water Rights Settlement Act of 2004”.*

7 **SEC. 202. PURPOSES.**

8 *The purposes of this title are—*

9 *(1) to resolve permanently certain damage*  
10 *claims and all water rights claims among the United*  
11 *States on behalf of the Community, its members, and*  
12 *allottees, and the Community and its neighbors;*

13 *(2) to authorize, ratify, and confirm the Gila*  
14 *River agreement;*

15 *(3) to authorize and direct the Secretary to exe-*  
16 *cute and perform all obligations of the Secretary*  
17 *under the Gila River agreement;*

18 *(4) to authorize the actions and appropriations*  
19 *necessary for the United States to meet obligations of*  
20 *the United States under the Gila River agreement*  
21 *and this title; and*

22 *(5) to authorize and direct the Secretary to exe-*  
23 *cute the New Mexico Consumptive Use and Forbear-*  
24 *ance Agreement to allow the Secretary to exercise the*  
25 *rights authorized by subsections (d) and (f) of section*

1       304 of the Colorado River Basin Project Act (43  
2       U.S.C. 1524).

3       **SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMU-**  
4                   **NITY WATER RIGHTS SETTLEMENT AGREE-**  
5                   **MENT.**

6       (a) *IN GENERAL.*—*Except to the extent that any provi-*  
7       *sion of the Gila River agreement conflicts with any provi-*  
8       *sion of this title, the Gila River agreement is authorized,*  
9       *ratified, and confirmed. To the extent amendments are exe-*  
10       *cuted to make the Gila River agreement consistent with this*  
11       *title, such amendments are also authorized, ratified, and*  
12       *confirmed.*

13       (b) *EXECUTION OF AGREEMENT.*—*To the extent that*  
14       *the Gila River agreement does not conflict with this title,*  
15       *the Secretary is directed to and shall execute the Gila River*  
16       *agreement, including all exhibits to the Gila River agree-*  
17       *ment requiring the signature of the Secretary and any*  
18       *amendments necessary to make the Gila River agreement*  
19       *consistent with this title, after the Community has executed*  
20       *the Gila River agreement and any such amendments.*

21       (c) *NATIONAL ENVIRONMENTAL POLICY ACT.*—

22               (1) *ENVIRONMENTAL COMPLIANCE.*—*In imple-*  
23       *menting the Gila River agreement, the Secretary shall*  
24       *promptly comply with all aspects of the National En-*  
25       *vironmental Policy Act of 1969 (42 U.S.C. 4321 et*

1 *seq.*), the *Endangered Species Act of 1973* (16 U.S.C.  
2 *1531 et seq.*), and all other applicable environmental  
3 *Acts and regulations.*

4 (2) *EXECUTION OF THE GILA RIVER AGREE-*  
5 *MENT.*—*Execution of the Gila River agreement by the*  
6 *Secretary under this section shall not constitute a*  
7 *major Federal action under the National Environ-*  
8 *mental Policy Act* (42 U.S.C. 4321 *et seq.*). *The Sec-*  
9 *retary is directed to carry out all necessary environ-*  
10 *mental compliance required by Federal law in imple-*  
11 *menting the Gila River agreement.*

12 (3) *LEAD AGENCY.*—*The Bureau of Reclamation*  
13 *shall be designated as the lead agency with respect to*  
14 *environmental compliance.*

15 (d) *REHABILITATION AND OPERATION, MAINTENANCE,*  
16 *AND REPLACEMENT OF CERTAIN WATER WORKS.*—

17 (1) *IN GENERAL.*—*In addition to any obligations*  
18 *of the Secretary with respect to the San Carlos Irriga-*  
19 *tion Project, including any operation or maintenance*  
20 *responsibility existing on the date of enactment of this*  
21 *Act, the Secretary shall—*

22 (A) *in accordance with exhibit 20.1 to the*  
23 *Gila River agreement, provide for the rehabilita-*  
24 *tion of the San Carlos Irrigation Project water*  
25 *diversion and delivery works with the funds pro-*

1            *vided for under section 403(f)(2) of the Colorado*  
2            *River Basin Project Act; and*

3            *(B) provide electric power for San Carlos*  
4            *Irrigation Project wells and irrigation pumps at*  
5            *the Secretary's direct cost of transmission, dis-*  
6            *tribution, and administration, using the least ex-*  
7            *pensive source of power available.*

8            *(2) JOINT CONTROL BOARD AGREEMENT.—*

9            *(A) IN GENERAL.—Except to the extent that*  
10           *it is in conflict with this title, the Secretary*  
11           *shall execute the joint control board agreement*  
12           *described in exhibit 20.1 to the Gila River agree-*  
13           *ment, including all exhibits to the joint control*  
14           *board agreement requiring the signature of the*  
15           *Secretary and any amendments necessary to the*  
16           *joint control board agreement consistent with*  
17           *this title.*

18           *(B) CONTROLS.—The joint control board*  
19           *agreement shall contain the following provisions,*  
20           *among others:*

21           *(i) The Secretary, acting through the*  
22           *Bureau of Indian Affairs, shall continue to*  
23           *be responsible for the operation and mainte-*  
24           *nance of Picacho Dam and Coolidge Dam*  
25           *and Reservoir, and for scheduling and de-*

1           *livering water to the Community and the*  
2           *District through the San Carlos Irrigation*  
3           *Project joint works.*

4           (ii) *The actions and decisions of the*  
5           *joint control board that pertain to construc-*  
6           *tion and maintenance of those San Carlos*  
7           *Irrigation Project joint works that are the*  
8           *subject of the joint control board agreement*  
9           *shall be subject to the approval of the Sec-*  
10          *retary, acting through the Bureau of Indian*  
11          *Affairs within 30 days thereof, or sooner in*  
12          *emergency situations, which approval shall*  
13          *not be unreasonably withheld. Should a re-*  
14          *quired decision of the Bureau of Indian Af-*  
15          *fairs not be received by the joint control*  
16          *board within 60 days following an action or*  
17          *decision of the joint control board, the joint*  
18          *control board action or decision shall be*  
19          *deemed to have been approved by the Sec-*  
20          *retary.*

21          (3) *REHABILITATION COSTS ALLOCABLE TO THE*  
22          *COMMUNITY.—The rehabilitation costs allocable to the*  
23          *Community under exhibit 20.1 to the Gila River*  
24          *agreement shall be paid from the funds available*  
25          *under paragraph (2)(C) of section 403(f) of the Colo-*

1 *rado River Basin Project Act (43 U.S.C. 1543(f)) (as*  
2 *amended by section 107(a)).*

3 (4) *REHABILITATION COSTS NOT ALLOCABLE TO*  
4 *THE COMMUNITY.—*

5 (A) *IN GENERAL.—The rehabilitation costs*  
6 *not allocable to the Community under exhibit*  
7 *20.1 to the Gila River agreement shall be pro-*  
8 *vided from funds available under paragraph*  
9 *(2)(D)(iv) of section 403(f) of the Colorado River*  
10 *Basin Project Act (43 U.S.C. 1543(f)) (as*  
11 *amended by section 107(a)).*

12 (B) *SUPPLEMENTARY REPAYMENT CON-*  
13 *TRACT.—Prior to the advance of any funds made*  
14 *available to the San Carlos Irrigation and*  
15 *Drainage District pursuant to the provisions of*  
16 *this Act, the Secretary shall execute a supple-*  
17 *mentary repayment contract with the San Car-*  
18 *los Irrigation and Drainage District in the form*  
19 *provided for in exhibit 20.1 to the Gila River*  
20 *agreement which shall, among other things, pro-*  
21 *vide that—*

22 (i) *in accomplishing the work under*  
23 *the supplemental repayment contract—*

24 (I) *the San Carlos Irrigation and*  
25 *Drainage District—*

1                   (aa) may use locally accepted  
2                   engineering standards and the  
3                   labor and contracting authorities  
4                   that are available to the District  
5                   under State law; and

6                   (bb) shall be subject to the  
7                   value engineering program of the  
8                   Bureau of Reclamation established  
9                   pursuant to OMB Circular A-  
10                  131; and

11                  (II) in accordance with FAR Part  
12                  48.101(b), the incentive returned to the  
13                  contractor through this “Incentive  
14                  Clause” shall be 55 percent after the  
15                  Contractor is reimbursed for the allow-  
16                  able costs of developing and imple-  
17                  menting the proposal and the Govern-  
18                  ment shall retain 45 percent of such  
19                  savings in the form of reduced expendi-  
20                  tures;

21                  (ii) up to 18,000 acre-feet annually of  
22                  conserved water will be made available by  
23                  the San Carlos Irrigation and Drainage  
24                  District to the United States pursuant to

1           *the terms of exhibit 20.1 to the Gila River*  
2           *agreement; and*

3                     *(iii) a portion of the San Carlos Irri-*  
4                     *gation and Drainage District's share of the*  
5                     *rehabilitation costs specified in exhibit 20.1*  
6                     *to the Gila River agreement shall be non-*  
7                     *reimbursable.*

8           (5) *LEAD AGENCY.*—*The Bureau of Reclamation*  
9           *shall be designated as the lead agency for oversight of*  
10           *the construction and rehabilitation of the San Carlos*  
11           *Irrigation Project authorized by this section.*

12           (6) *FINANCIAL RESPONSIBILITY.*—*Except as ex-*  
13           *pressly provided by this section, nothing in this Act*  
14           *shall affect—*

15                     (A) *any responsibility of the Secretary*  
16                     *under the provisions of the Act of June 7, 1924*  
17                     *(commonly known as the “San Carlos Irrigation*  
18                     *Project Act of 1924”) (43 Stat. 475); or*

19                     (B) *any other financial responsibility of the*  
20                     *Secretary relating to operation and maintenance*  
21                     *of the San Carlos Irrigation Project existing on*  
22                     *the date of enactment of this Act.*

23 **SEC. 204. WATER RIGHTS.**

24           (a) *RIGHTS HELD IN TRUST; ALLOTTEES.*—



1           (1) *INTENT OF CONGRESS.*—*It is the intent of*  
2 *Congress to provide allottees with benefits that are*  
3 *equal to or that exceed the benefits that the allottees*  
4 *currently possess, taking into account—*

5                   (A) *the potential risks, cost, and time delay*  
6 *associated with the litigation that will be re-*  
7 *solved by the Gila River agreement;*

8                   (B) *the availability of funding under title I*  
9 *for the rehabilitation of the San Carlos Irriga-*  
10 *tion Project and for other benefits;*

11                   (C) *the availability of water from the CAP*  
12 *system and other sources after the enforceability*  
13 *date, which will supplement less secure existing*  
14 *water supplies; and*

15                   (D) *the applicability of section 7 of the Act*  
16 *of February 8, 1887 (25 U.S.C. 381), and this*  
17 *title to protect the interests of allottees.*

18           (2) *HOLDING IN TRUST.*—*The water rights and*  
19 *resources described in the Gila River agreement shall*  
20 *be held in trust by the United States on behalf of the*  
21 *Community and the allottees as described in this sec-*  
22 *tion.*

23           (3) *ALLOTTED LAND.*—*As specified in and pro-*  
24 *vided for under this Act—*

1           (A) *agricultural allottees, other than*  
2 *allottees with rights under the Globe Equity De-*  
3 *creed, shall be entitled to a just and equitable allo-*  
4 *cation of water from the Community for irriga-*  
5 *tion purposes from the water resources described*  
6 *in the Gila River agreement;*

7           (B) *allotted land with rights under the*  
8 *Globe Equity Decree shall be entitled to receive—*

9                 (i) *a similar quantity of water from*  
10 *the Community to the quantity historically*  
11 *delivered under the Globe Equity Decree;*  
12 *and*

13                 (ii) *the benefit of the rehabilitation of*  
14 *the San Carlos Irrigation Project as pro-*  
15 *vided in this Act, a more secure source of*  
16 *water, and other benefits under this Act;*

17           (C) *the water rights and resources and other*  
18 *benefits provided by this Act are a complete sub-*  
19 *stitution of any rights that may have been held*  
20 *by, or any claims that may have been asserted*  
21 *by, the allottees before the date of enactment of*  
22 *this Act for land within the exterior boundaries*  
23 *of the Reservation;*

24           (D) *any entitlement to water of allottees for*  
25 *land located within the exterior boundaries of the*

1           *Reservation shall be satisfied by the Community*  
2           *using the water resources described in subpara-*  
3           *graph 4.1 in the Gila River agreement;*

4           *(E) before asserting any claim against the*  
5           *United States under section 1491(a) of title 28,*  
6           *United States Code, or under section 7 of the Act*  
7           *of February 8, 1887 (25 U.S.C. 381), an allottee*  
8           *shall first exhaust remedies available to the allot-*  
9           *tee under the Community's water code and Com-*  
10          *munity law; and*

11          *(F) following exhaustion of remedies on*  
12          *claims relating to section 7 of the Act of Feb-*  
13          *ruary 8, 1887 (25 U.S.C. 381), a claimant may*  
14          *petition the Secretary for relief.*

15          (4) *ACTIONS, CLAIMS, AND LAWSUITS.—*

16          (A) *IN GENERAL.—Nothing in this Act au-*  
17          *thorizes any action, claim, or lawsuit by an al-*  
18          *lottee against any person, entity, corporation, or*  
19          *municipal corporation, under Federal, State, or*  
20          *other law.*

21          (B) *THE COMMUNITY AND THE UNITED*  
22          *STATES.—Except as provided in subparagraphs*  
23          *(E) and (F) of paragraph (3) and subsection*  
24          *(e)(2)(C), nothing in this Act either authorizes*  
25          *any action, claim, or lawsuit by an allottee*

1           *against the Community under Federal, State, or*  
2           *other law, or alters available actions pursuant to*  
3           *section 1491(a) of title 28, of the United States*  
4           *Code, or section 381 of title 25, of the United*  
5           *States Code.*

6           **(b) REALLOCATION.—**

7           **(1) IN GENERAL.—***In accordance with this title*  
8           *and the Gila River agreement, the Secretary shall re-*  
9           *allocate and contract with the Community for the de-*  
10          *livery in accordance with this section of—*

11                   **(A)** *an annual entitlement to 18,600 acre-*  
12                   *feet of CAP agricultural priority water in ac-*  
13                   *cordance with the agreement among the Sec-*  
14                   *retary, the Community, and Roosevelt Water*  
15                   *Conservation District dated August 7, 1992;*

16                   **(B)** *an annual entitlement to 18,100 acre-*  
17                   *feet of CAP Indian priority water, which was*  
18                   *permanently relinquished by Harquahala Valley*  
19                   *Irrigation District in accordance with Contract*  
20                   *No. 3-0907-0930-09W0290 among the Central*  
21                   *Arizona Water Conservation District, the*  
22                   *Harquahala Valley Irrigation District, and the*  
23                   *United States, and converted to CAP Indian pri-*  
24                   *ority water under the Fort McDowell Indian*

1           *Community Water Rights Settlement Act of 1990*  
2           *(104 Stat. 4480);*

3           (C) *on execution of an exchange and lease*  
4           *agreement among the Community, the United*  
5           *States, and Asarco, an annual entitlement of up*  
6           *to 17,000 acre-feet of CAP municipal and indus-*  
7           *trial priority water under the subcontract among*  
8           *the United States, the Central Arizona Water*  
9           *Conservation District, and Asarco, Subcontract*  
10          *No. 3-07-30-W0307, dated November 7, 1993;*  
11          *and*

12          (D) *as provided in section 104(a)(1)(A)(i),*  
13          *an annual entitlement to 102,000 acre-feet of*  
14          *CAP agricultural priority water acquired pursu-*  
15          *ant to the master agreement.*

16          (2) *SOLE AUTHORITY.—In accordance with this*  
17          *section, the Community shall have the sole authority,*  
18          *subject to the Secretary’s approval pursuant to section*  
19          *205(a)(2), to lease, distribute, exchange, or allocate*  
20          *the CAP water described in this subsection, except*  
21          *that this paragraph shall not impair the right of an*  
22          *allottee to lease land of the allottee together with the*  
23          *water rights appurtenant to the land. Nothing in this*  
24          *paragraph shall affect the validity of any lease or ex-*  
25          *change ratified in section 205(c) or 205(d).*

1       (c) *WATER SERVICE CAPITAL CHARGES.*—*The Com-*  
2 *munity shall not be responsible for water service capital*  
3 *charges for CAP water.*

4       (d) *ALLOCATION AND REPAYMENT.*—*For the purpose*  
5 *of determining the allocation and repayment of costs of any*  
6 *stages of the Central Arizona Project constructed after the*  
7 *date of enactment of this Act, the costs associated with the*  
8 *delivery of water described in subsection (b), whether that*  
9 *water is delivered for use by the Community or in accord-*  
10 *ance with any assignment, exchange, lease, option to lease,*  
11 *or other agreement for the temporary disposition of water*  
12 *entered into by the Community—*

13             (1) *shall be nonreimbursable; and*

14             (2) *shall be excluded from the repayment obliga-*  
15 *tion of the Central Arizona Water Conservation Dis-*  
16 *trict.*

17       (e) *APPLICATION OF PROVISIONS.*—

18             (1) *IN GENERAL.*—*The water rights recognized*  
19 *and confirmed to the Community and allottees by the*  
20 *Gila River agreement and this title shall be subject to*  
21 *section 7 of the Act of February 8, 1887 (25 U.S.C.*  
22 *381).*

23             (2) *WATER CODE.*—

24                 (A) *IN GENERAL.*—*Not later than 18*  
25 *months after the enforceability date, the Commu-*

1            *nity shall enact a water code, subject to any ap-*  
2            *plicable provision of law (including subsection*  
3            *(a)(3)), that—*

4                    *(i) manages, regulates, and controls the*  
5                    *water resources on the Reservation;*

6                    *(ii) governs all of the water rights that*  
7                    *are held in trust by the United States; and*

8                    *(iii) provides that, subject to approval*  
9                    *of the Secretary—*

10                    *(I) the Community shall manage,*  
11                    *regulate, and control the water re-*  
12                    *sources described in the Gila River*  
13                    *agreement and allocate water to all*  
14                    *water users on the Reservation pursu-*  
15                    *ant to the water code;*

16                    *(II) the Community shall estab-*  
17                    *lish conditions, limitations, and per-*  
18                    *mit requirements relating to the stor-*  
19                    *age, recovery, and use of the water re-*  
20                    *sources described in the Gila River*  
21                    *agreement;*

22                    *(III) any allocation of water shall*  
23                    *be from the pooled water resources de-*  
24                    *scribed in the Gila River agreement;*

1                   (IV) charges for delivery of water  
2                   for irrigation purposes to water users  
3                   on the Reservation (including water  
4                   users on allotted land) shall be assessed  
5                   on a just and equitable basis without  
6                   regard to the status of the Reservation  
7                   land on which the water is used;

8                   (V) there is a process by which  
9                   any user of or applicant to use water  
10                  for irrigation purposes (including  
11                  water users on allotted land) may re-  
12                  quest that the Community provide  
13                  water for irrigation use in accordance  
14                  with this title;

15                  (VI) there is a due process system  
16                  for the consideration and determina-  
17                  tion by the Community of any request  
18                  by any water user on the Reservation  
19                  (including water users on allotted  
20                  land), for an allocation of water, in-  
21                  cluding a process for appeal and adju-  
22                  dication of denied or disputed distribu-  
23                  tions of water and for resolution of  
24                  contested administrative decisions; and



1                   (VII) there is a requirement that  
2                   any allottee with a claim relating to  
3                   the enforcement of rights of the allottee  
4                   under the water code or relating to the  
5                   amount of water allocated to land of  
6                   the allottee must first exhaust remedies  
7                   available to the allottee under Commu-  
8                   nity law and the water code before ini-  
9                   tiating an action against the United  
10                  States or petitioning the Secretary  
11                  pursuant to subsection (a)(3)(F).

12                  (B) APPROVAL.—Any provision of the water  
13                  code and any amendments to the water code that  
14                  affect the rights of the allottees shall be subject to  
15                  the approval of the Secretary, and no such provi-  
16                  sion or amendment shall be valid until approved  
17                  by the Secretary.

18                  (C) INCLUSION OF REQUIREMENT IN WATER  
19                  CODE.—The Community is authorized to and  
20                  shall include in the water code the requirement  
21                  in subparagraph (A)(VII) that any allottee with  
22                  a claim relating to the enforcement of rights of  
23                  the allottee under the water code or relating to  
24                  the amount of water allocated to land of the al-  
25                  lottee must first exhaust remedies available to the

1            *allottee under Community law and the water*  
2            *code before initiating an action against the*  
3            *United States.*

4            (3) *ADMINISTRATION.*—*The Secretary shall ad-*  
5            *minister all rights to water granted or confirmed to*  
6            *the Community and allottees by the Gila River agree-*  
7            *ment and this Act until such date as the water code*  
8            *described in paragraph (2) has been enacted and ap-*  
9            *proved by the Secretary, at which time the Commu-*  
10           *nity shall have authority, subject to the Secretary's*  
11           *authority under section 7 of the Act of February 8,*  
12           *1887 (25 U.S.C. 381), to manage, regulate, and con-*  
13           *trol the water resources described in the Gila River*  
14           *agreement, subject to paragraph (2), except that this*  
15           *paragraph shall not impair the right of an allottee to*  
16           *lease land of the allottee together with the water rights*  
17           *appurtenant to the land.*

18 **SEC. 205. COMMUNITY WATER DELIVERY CONTRACT**

19            **AMENDMENTS.**

20            (a) *IN GENERAL.*—*The Secretary shall amend the*  
21            *Community water delivery contract to provide, among other*  
22            *things, in accordance with the Gila River agreement, that—*

23            (1) *the contract shall be—*

1           (A) for permanent service (as that term is  
2           used in section 5 of the Boulder Canyon Project  
3           Act (43 U.S.C. 617d)); and

4           (B) without limit as to term;

5           (2) the Community may, with the approval of  
6           the Secretary, including approval as to the Sec-  
7           retary's authority under section 7 of the Act of Feb-  
8           ruary 8, 1887 (25 U.S.C. 381)—

9           (A) enter into contracts or options to lease  
10          (for a term not to exceed 100 years) or contracts  
11          or options to exchange, Community CAP water  
12          within Maricopa, Pinal, Pima, La Paz,  
13          Yavapai, Gila, Graham, Greenlee, Santa Cruz,  
14          or Coconino Counties, Arizona, providing for the  
15          temporary delivery to others of any portion of  
16          the Community CAP water; and

17          (B) renegotiate any lease at any time dur-  
18          ing the term of the lease, so long as the term of  
19          the renegotiated lease does not exceed 100 years;

20          (3)(A) the Community, and not the United  
21          States, shall be entitled to all consideration due to the  
22          Community under any leases or options to lease and  
23          exchanges or options to exchange Community CAP  
24          water entered into by the Community; and

1           (B) *the United States shall have no trust obliga-*  
2 *tion or other obligation to monitor, administer, or ac-*  
3 *count for—*

4                   (i) *any funds received by the Community as*  
5 *consideration under any such leases or options to*  
6 *lease and exchanges or options to exchange; or*

7                   (ii) *the expenditure of such funds;*

8           (4)(A) *all Community CAP water shall be deliv-*  
9 *ered through the CAP system; and*

10           (B) *if the delivery capacity of the CAP system*  
11 *is significantly reduced or is anticipated to be signifi-*  
12 *cantly reduced for an extended period of time, the*  
13 *Community shall have the same CAP delivery rights*  
14 *as other CAP contractors and CAP subcontractors, if*  
15 *such CAP contractors or CAP subcontractors are al-*  
16 *lowed to take delivery of water other than through the*  
17 *CAP system;*

18           (5) *the Community may use Community CAP*  
19 *water on or off the Reservation for Community pur-*  
20 *poses;*

21           (6) *as authorized by subparagraph (A) of section*  
22 *403(f)(2) of the Colorado River Basin Project Act (43*  
23 *U.S.C. 1543(f)(2)) (as amended by section 107(a))*  
24 *and to the extent that funds are available in the*  
25 *Lower Colorado River Basin Development Fund es-*

1 *tablished by section 403 of that Act (43 U.S.C. 1543),*  
2 *the United States shall pay to the CAP operating*  
3 *agency the fixed OM&R charges associated with the*  
4 *delivery of Community CAP water, except for Com-*  
5 *munity CAP water leased by others;*

6 *(7) the costs associated with the construction of*  
7 *the CAP system allocable to the Community—*

8 *(A) shall be nonreimbursable; and*

9 *(B) shall be excluded from any repayment*  
10 *obligation of the Community; and*

11 *(8) no CAP water service capital charges shall be*  
12 *due or payable for Community CAP water, whether*  
13 *CAP water is delivered for use by the Community or*  
14 *is delivered under any leases, options to lease, ex-*  
15 *changes or options to exchange Community CAP*  
16 *water entered into by the Community.*

17 *(b) AMENDED AND RESTATED COMMUNITY WATER*  
18 *DELIVERY CONTRACT.—To the extent it is not in conflict*  
19 *with the provisions of this Act, the Amended and Restated*  
20 *Community CAP Water Delivery Contract set forth in ex-*  
21 *hibit 8.2 to the Gila River agreement is authorized, ratified,*  
22 *and confirmed, and the Secretary is directed to and shall*  
23 *execute the contract. To the extent amendments are executed*  
24 *to make the Amended and Restated Community CAP Water*

1 *Delivery Contract consistent with this title, such amend-*  
2 *ments are also authorized, ratified, and confirmed.*

3       (c) *LEASES.—To the extent they are not in conflict*  
4 *with the provisions of this Act, the leases of Community*  
5 *CAP water by the Community to Phelps Dodge, and any*  
6 *of the Cities, attached as exhibits to the Gila River agree-*  
7 *ment, are authorized, ratified, and confirmed, and the Sec-*  
8 *retary is directed to and shall execute the leases. To the ex-*  
9 *tent amendments are executed to make such leases consistent*  
10 *with this title, such amendments are also authorized, rati-*  
11 *fied, and confirmed.*

12       (d) *RECLAIMED WATER EXCHANGE AGREEMENT.—To*  
13 *the extent it is not in conflict with the provisions of this*  
14 *Act, the Reclaimed Water Exchange Agreement among the*  
15 *cities of Chandler and Mesa, Arizona, the Community, and*  
16 *the United States, attached as exhibit 18.1 to the Gila River*  
17 *agreement, is authorized, ratified, and confirmed, and the*  
18 *Secretary shall execute the agreement. To the extent amend-*  
19 *ments are executed to make the Reclaimed Water Exchange*  
20 *Agreement consistent with this title, such amendments are*  
21 *also authorized, ratified, and confirmed.*

22       (e) *PAYMENT OF CHARGES.—Neither the Community*  
23 *nor any recipient of Community CAP water through lease*  
24 *or exchange shall be obligated to pay water service capital*  
25 *charges or any other charges, payments, or fees for the CAP*

1 *water, except as provided in the lease or exchange agree-*  
2 *ment.*

3 *(f) PROHIBITIONS.—*

4 *(1) USE OUTSIDE THE STATE.—None of the*  
5 *Community CAP water shall be leased, exchanged,*  
6 *forborne, or otherwise transferred in any way by the*  
7 *Community for use directly or indirectly outside the*  
8 *State.*

9 *(2) USE OFF RESERVATION.—Except as author-*  
10 *ized by this section and subparagraph 4.7 of the Gila*  
11 *River agreement, no water made available to the*  
12 *Community under the Gila River agreement, the*  
13 *Globe Equity Decree, the Haggard Decree, or this title*  
14 *may be sold, leased, transferred, or used off the Res-*  
15 *ervation other than by exchange.*

16 *(3) AGREEMENTS WITH THE ARIZONA WATER*  
17 *BANKING AUTHORITY.—Nothing in this Act or the*  
18 *Gila River agreement limits the right of the Commu-*  
19 *nity to enter into any agreement with the Arizona*  
20 *Water Banking Authority, or any successor agency or*  
21 *entity, in accordance with State law.*

22 **SEC. 206. SATISFACTION OF CLAIMS.**

23 *(a) IN GENERAL.—The benefits realized by the Com-*  
24 *munity, Community members, and allottees under this title*  
25 *shall be in complete replacement of and substitution for,*

1 *and full satisfaction of, all claims of the Community, Com-*  
2 *munity members, and allottees for water rights, injury to*  
3 *water rights, injury to water quality and subsidence dam-*  
4 *age, except as set forth in the Gila River agreement, under*  
5 *Federal, State, or other law with respect to land within the*  
6 *exterior boundaries of the Reservation, off-Reservation trust*  
7 *land, and fee land.*

8       **(b) NO RECOGNITION OF WATER RIGHTS.**—*Notwith-*  
9 *standing subsection (a) and except as provided in section*  
10 *204(a), nothing in this title has the effect of recognizing*  
11 *or establishing any right of a Community member or allot-*  
12 *tee to water on the Reservation.*

13 **SEC. 207. WAIVER AND RELEASE OF CLAIMS.**

14       **(a) IN GENERAL.**—

15               **(1) CLAIMS AGAINST THE STATE AND OTHERS.**—

16                       **(A) CLAIMS FOR WATER RIGHTS AND IN-**  
17 **JURY TO WATER RIGHTS BY THE COMMUNITY**  
18 **AND THE UNITED STATES ON BEHALF OF THE**  
19 **COMMUNITY.**—*Except as provided in subpara-*  
20 *graph 25.12 of the Gila River agreement, the*  
21 *Community, on behalf of the Community and*  
22 *Community members (but not members in their*  
23 *capacities as allottees), and the United States, on*  
24 *behalf of the Community and Community mem-*  
25 *bers (but not members in their capacities as*



1            *allottees), as part of the performance of their ob-*  
2            *ligations under the Gila River agreement, are*  
3            *authorized to execute a waiver and release of any*  
4            *claims against the State (or any agency or polit-*  
5            *ical subdivision of the State) or any other per-*  
6            *son, entity, corporation, or municipal corpora-*  
7            *tion under Federal, State, or other law for—*

8                    *(i)(I) past, present, and future claims*  
9                    *for water rights for land within the exterior*  
10                   *boundaries of the Reservation, off-Reserva-*  
11                   *tion trust land, and fee land arising from*  
12                   *time immemorial and, thereafter, forever;*  
13                   *and*

14                   *(II) past, present, and future claims*  
15                   *for water rights arising from time immemo-*  
16                   *rial and, thereafter, forever, that are based*  
17                   *on aboriginal occupancy of land by the*  
18                   *Community and Community members, or*  
19                   *their predecessors;*

20                   *(ii)(I) past and present claims for in-*  
21                   *jury to water rights for land within the ex-*  
22                   *terior boundaries of the Reservation, off-*  
23                   *Reservation trust land, and fee land arising*  
24                   *from time immemorial through the enforce-*  
25                   *ability date;*

1           (ii) past, present, and future claims  
2           for injury to water rights arising from time  
3           immemorial and, thereafter, forever, that  
4           are based on aboriginal occupancy of land  
5           by the Community and Community mem-  
6           bers, or their predecessors; and

7           (iii) claims for injury to water rights  
8           arising after the enforceability date for land  
9           within the exterior boundaries of the Res-  
10          ervation, off-Reservation trust land, and fee  
11          land resulting from the off-Reservation di-  
12          version or use of water in a manner not in  
13          violation of the Gila River agreement or  
14          State law;

15          (iii) past, present, and future claims  
16          arising out of or relating in any manner to  
17          the negotiation or execution of the Gila  
18          River agreement or the negotiation or enact-  
19          ment of titles I and II; and

20          (iv)(I) past and present claims for sub-  
21          sidence damage occurring to land within  
22          the exterior boundaries of the Reservation,  
23          off-Reservation trust land, or fee land aris-  
24          ing from time immemorial through the en-  
25          forceability date; and

1                   (ii) claims for subsidence damage aris-  
2                   ing after the enforceability date occurring to  
3                   land within the exterior boundaries of the  
4                   Reservation, off-Reservation trust land, or  
5                   fee land resulting from the diversion of un-  
6                   derground water in a manner not in viola-  
7                   tion of the Gila River agreement or State  
8                   law.

9                   (B) CLAIMS FOR WATER RIGHTS AND IN-  
10                  JURY TO WATER RIGHTS BY THE UNITED STATES  
11                  AS TRUSTEE FOR THE ALLOTTEES.—Except as  
12                  provided in subparagraph 25.12 of the Gila  
13                  River agreement, the United States, as trustee  
14                  for the allottees, as part of the performance of its  
15                  obligations under the Gila River agreement, is  
16                  authorized to execute a waiver and release of any  
17                  claims against the State (or any agency or polit-  
18                  ical subdivision of the State) or any other per-  
19                  son, entity, corporation, or municipal corpora-  
20                  tion under Federal, State, or other law, for—

21                         (i)(I) past, present, and future claims  
22                         for water rights for land within the exterior  
23                         boundaries of the Reservation arising from  
24                         time immemorial and, thereafter, forever;  
25                         and

1           (ii) past, present, and future claims  
2           for water rights arising from time immemo-  
3           rial and, thereafter, forever, that are based  
4           on aboriginal occupancy of land by  
5           allottees, or their predecessors;

6           (i)(I) past and present claims for in-  
7           jury to water rights for land within the ex-  
8           terior boundaries of the Reservation arising  
9           from time immemorial through the enforce-  
10          ability date;

11          (ii) past, present, and future claims  
12          for injury to water rights arising from time  
13          immemorial and, thereafter, forever, that  
14          are based on aboriginal occupancy of land  
15          by allottees or their predecessors; and

16          (iii) claims for injury to water rights  
17          arising after the enforceability date for land  
18          within the exterior boundaries of the Res-  
19          ervation resulting from the off-Reservation  
20          diversion or use of water in a manner not  
21          in violation of the Gila River agreement or  
22          State law;

23          (iv) past, present, and future claims  
24          arising out of or relating in any manner to  
25          the negotiation or execution of the Gila

1 *River agreement or the negotiation or enact-*  
2 *ment of titles I and II; and*

3 *(iv) past and present claims for subsid-*  
4 *ence damage occurring to land within the*  
5 *exterior boundaries of the Reservation aris-*  
6 *ing from time immemorial through the en-*  
7 *forceability date.*

8 *(C) CLAIMS FOR INJURY TO WATER QUALITY*  
9 *BY THE COMMUNITY.—Except as provided in*  
10 *subparagraph 25.12 of the Gila River agreement,*  
11 *the Community, on behalf of the Community and*  
12 *Community members (but not members in their*  
13 *capacities as allottees), as part of the perform-*  
14 *ance of its obligations under the Gila River*  
15 *agreement, is authorized to execute a waiver and*  
16 *release of any claims, and to agree to waive its*  
17 *right to request the United States to bring any*  
18 *claims, against the State (or any agency or po-*  
19 *litical subdivision of the State) or any other per-*  
20 *son, entity, corporation, or municipal corpora-*  
21 *tion under Federal, State, or other law for—*

22 *(i) past and present claims for injury*  
23 *to water quality (other than claims arising*  
24 *out of the actions that resulted in the reme-*  
25 *diations described in exhibit 25.4.1.1 to the*

1           *Gila River agreement*), including claims for  
2           *trespass, nuisance, and real property dam-*  
3           *age and claims under all current and future*  
4           *Federal, State, and other environmental*  
5           *laws and regulations, including claims*  
6           *under the Comprehensive Environmental*  
7           *Response, Compensation, and Liability Act*  
8           *of 1980 (42 U.S.C. 9601 et seq.) and the Ar-*  
9           *izona Water Quality Assurance Revolving*  
10          *Fund (Ariz. Rev. Stat. 49–281 et seq. as*  
11          *amended) arising from time immemorial*  
12          *through December 31, 2002, for land within*  
13          *the exterior boundaries of the Reservation,*  
14          *off-Reservation trust land, and fee land;*

15                 *(ii) past, present, and future claims for*  
16                 *injury to water quality (other than claims*  
17                 *arising out of actions that resulted in the*  
18                 *remediations described in exhibit 25.4.1.1 to*  
19                 *the Gila River agreement), including claims*  
20                 *for trespass, nuisance, and real property*  
21                 *damage and claims under all current and*  
22                 *future Federal, State, and other environ-*  
23                 *mental laws and regulations, including*  
24                 *claims under the Comprehensive Environ-*  
25                 *mental Response, Compensation, and Li-*

1           *ability Act of 1980 (42 U.S.C. 9601 et seq.)*  
2           *and the Arizona Water Quality Assurance*  
3           *Revolving Fund (Ariz. Rev. Stat. 49–281 et*  
4           *seq.), arising from time immemorial and,*  
5           *thereafter, forever, that are based on ab-*  
6           *original occupancy of land by the Commu-*  
7           *nity and Community members, or their*  
8           *predecessors;*

9                     *(iii) claims for injury to water quality*  
10           *(other than claims arising out of actions*  
11           *that resulted in the remediations described*  
12           *in exhibit 25.4.1.1 to the Gila River agree-*  
13           *ment) arising after December 31, 2002, in-*  
14           *cluding claims for trespass, nuisance, and*  
15           *real property damage and claims under all*  
16           *current and future Federal, State, and other*  
17           *environmental laws and regulations, includ-*  
18           *ing claims under the Comprehensive Envi-*  
19           *ronmental Response, Compensation, and Li-*  
20           *ability Act of 1980 (42 U.S.C. 9601 et seq.)*  
21           *and the Arizona Water Quality Assurance*  
22           *Revolving Fund (Ariz. Rev. Stat. 49–9281*  
23           *et seq.), that result from—*

24                     *(I) the delivery of water to the*  
25                     *Community;*

1                   (II) *the off-Reservation diversion*  
2                   *(other than pumping), or ownership or*  
3                   *operation of structures for the off-Res-*  
4                   *ervation diversion (other than pump-*  
5                   *ing), of water;*

6                   (III) *the off-Reservation pumping,*  
7                   *or ownership or operation of structures*  
8                   *for the off-Reservation pumping, of*  
9                   *water in a manner not in violation of*  
10                  *the Gila River agreement or of any ap-*  
11                  *plicable pumping limitations under*  
12                  *State law;*

13                  (IV) *the recharge, or ownership or*  
14                  *operation of structures for the recharge,*  
15                  *of water under a State permit; and*

16                  (V) *the off-Reservation applica-*  
17                  *tion of water to land for irrigation,*  
18                  *except that the waiver provided in this*  
19                  *clause shall extend only to the State (or any*  
20                  *agency or political subdivision of the State)*  
21                  *or any other person, entity, or municipal or*  
22                  *other corporation to the extent that the per-*  
23                  *son, entity, or corporation is engaged in an*  
24                  *activity specified in this clause.*



1           (D) *PAST AND PRESENT CLAIMS FOR IN-*  
2 *JURY TO WATER QUALITY BY THE UNITED*  
3 *STATES.—Except as provided in subparagraph*  
4 *25.12 of the Gila River agreement and except for*  
5 *any claims arising out of the actions that re-*  
6 *sulted in the remediations described in exhibit*  
7 *25.4.1.1 to the Gila River agreement, the United*  
8 *States, acting as trustee for the Community,*  
9 *Community members and allottees, and as part*  
10 *of the performance of its obligations under the*  
11 *Gila River agreement, to the extent consistent*  
12 *with this section, is authorized to execute a waiv-*  
13 *er and release of any claims arising from time*  
14 *immemorial through December 31, 2002, for in-*  
15 *jury to water quality where all of the following*  
16 *conditions are met:*

17           (i) *The claims are brought solely on be-*  
18 *half of the Community, members, or*  
19 *allottees.*

20           (ii) *The claims are brought against the*  
21 *State (or any agency or political subdivi-*  
22 *sion of the State) or any person, entity, cor-*  
23 *poration, or municipal corporation.*

24           (iii) *The claims arise under Federal,*  
25 *State, or other law, including claims, if*

1           any, for trespass, nuisance, and real prop-  
2           erty damage, and claims, if any, under any  
3           current or future Federal, State, or other  
4           environmental laws or regulation, including  
5           under the Comprehensive Environmental  
6           Response, Compensation, and Liability Act  
7           of 1980 (42 U.S.C. 9601 et seq.) or the Ari-  
8           zona Water Quality Assurance Revolving  
9           Fund (Ariz. Rev. Stat. 49–281 et seq.).

10           (iv) The claimed injury is to land,  
11           water, or natural resources located on trust  
12           land within the exterior boundaries of the  
13           Reservation or on off-Reservation trust  
14           land.

15           (E) *FUTURE CLAIMS FOR INJURY TO WATER*  
16           *QUALITY BY THE UNITED STATES.*—Except as  
17           provided in subparagraph 25.12 of the Gila  
18           River agreement and except for any claims aris-  
19           ing out of the actions that resulted in the remedi-  
20           ations described in exhibit 25.4.1.1 to the Gila  
21           River agreement, the United States, in its own  
22           right and as trustee for the Community, its  
23           members and allottees, as part of the perform-  
24           ance of its obligations under the Gila River  
25           agreement, to the extent consistent with this sec-

1            *tion, is authorized to execute a waiver and re-*  
2            *lease of the following claims for injury or threat*  
3            *of injury to water quality arising after December*  
4            *31, 2002, against the State (or any agency or*  
5            *political subdivision of the State) or any other*  
6            *person, entity, corporation, or municipal cor-*  
7            *poration under Federal, State, or other law:*

8                    *(i) All common law claims for injury*  
9                    *or threat of injury to water quality where*  
10                   *the injury or threat of injury asserted is to*  
11                   *the Community's, Community members' or*  
12                   *allottees' interests in trust land, water, or*  
13                   *natural resources located within the exterior*  
14                   *boundaries of the Reservation or within off-*  
15                   *Reservation trust lands caused by—*

16                            *(I) the delivery of water to the*  
17                            *Community;*

18                            *(II) the off-Reservation diversion*  
19                            *(other than pumping), or ownership or*  
20                            *operation of structures for the off-Res-*  
21                            *ervation diversion (other than pump-*  
22                            *ing), of water;*

23                            *(III) the off-Reservation pumping,*  
24                            *or ownership or operation of structures*  
25                            *for the off-Reservation pumping, of*

1                    *water in a manner not in violation of*  
2                    *the Gila River agreement or of any ap-*  
3                    *plicable pumping limitations under*  
4                    *State law;*

5                    *(IV) the recharge, or ownership or*  
6                    *operation of structures for the recharge,*  
7                    *of water under a State permit; and*

8                    *(V) the off-Reservation applica-*  
9                    *tion of water to land for irrigation.*

10                    *(ii) All natural resource damage*  
11                    *claims for injury or threat of injury to*  
12                    *water quality where the United States,*  
13                    *through the Secretary of the Interior or*  
14                    *other designated officials, would act on be-*  
15                    *half of the Community, its members or*  
16                    *allottees as a natural resource trustee pur-*  
17                    *suant to the National Contingency Plan, (as*  
18                    *currently set forth in section 300.600(b)(2)*  
19                    *of title 40, Code of Federal Regulations, or*  
20                    *as it may hereafter be amended), and where*  
21                    *the claim is based on injury to natural re-*  
22                    *sources or threat of injury to natural re-*  
23                    *sources within the exterior boundaries of the*  
24                    *Reservation or off-Reservation trust lands,*  
25                    *caused by—*

1                   (I) the delivery of water to the  
2                   Community;

3                   (II) the off-Reservation diversion  
4                   (other than pumping), or ownership or  
5                   operation of structures for the off-Res-  
6                   ervation diversion (other than pump-  
7                   ing), of water;

8                   (III) the off-Reservation pumping,  
9                   or ownership or operation of structures  
10                  for the off-Reservation pumping, of  
11                  water in a manner not in violation of  
12                  the Gila River agreement or of any ap-  
13                  plicable pumping limitations under  
14                  State law;

15                  (IV) the recharge, or ownership or  
16                  operation of structures for the recharge,  
17                  of water under a State permit; and

18                  (V) the off-Reservation applica-  
19                  tion of water to land for irrigation.

20                  (F) CLAIMS BY THE COMMUNITY AGAINST  
21                  THE SALT RIVER PROJECT.—

22                  (i) IN GENERAL.—Except as provided  
23                  in subparagraph 25.12 of the Gila River  
24                  agreement, to the extent consistent with this  
25                  section, the Community, on behalf of the

1            *Community and Community members (but*  
2            *not members in their capacities as*  
3            *allottees), as part of the performance of its*  
4            *obligations under the Gila River agreement,*  
5            *is authorized to execute a waiver and re-*  
6            *lease of claims against the Salt River*  
7            *Project (or its successors or assigns or its of-*  
8            *ficers, governors, directors, employees,*  
9            *agents, or shareholders), where all of the fol-*  
10           *lowing conditions are met:*

11                    *(I) The claims are brought solely*  
12                    *on behalf of the Community or its,*  
13                    *members.*

14                    *(II) The claims arise from the dis-*  
15                    *charge, transportation, seepage, or*  
16                    *other movement of water in, through,*  
17                    *or from drains, canals, or other facili-*  
18                    *ties or land in the Salt River Reservoir*  
19                    *District to trust land located within*  
20                    *the exterior boundaries of the Reserva-*  
21                    *tion.*

22                    *(III) The claims arise from time*  
23                    *immemorial through the enforceability*  
24                    *date.*

1                   (IV) *The claims assert a past or*  
2                   *present injury to water rights, injury*  
3                   *on the Reservation to water quality, or*  
4                   *injury to trust property located within*  
5                   *the exterior boundaries of the Reserva-*  
6                   *tion.*

7                   (ii) *EFFECT OF WAIVER.—The waiver*  
8                   *provided for in this subparagraph is effec-*  
9                   *tive as of December 31, 2002, and shall con-*  
10                  *tinue to preclude claims as they may arise*  
11                  *until the enforceability date, or until such*  
12                  *time as the Salt River Project alters its his-*  
13                  *torical operations of the drains, canals, or*  
14                  *other facilities within the Salt River Res-*  
15                  *ervoir District in a manner that would*  
16                  *cause significant harm to trust lands within*  
17                  *the exterior boundaries of the Reservation,*  
18                  *whichever occurs earlier.*

19                  (G) *CLAIMS BY THE UNITED STATES*  
20                  *AGAINST THE SALT RIVER PROJECT.—*

21                  (i) *IN GENERAL.—Except as provided*  
22                  *in subparagraph 25.12 of the Gila River*  
23                  *agreement, to the extent consistent with this*  
24                  *section, the United States, acting as trustee*  
25                  *for the Community, Community members*

1           *and allottees, and as part of the perform-*  
2           *ance of its obligations under the Gila River*  
3           *agreement, is authorized to execute a waiver*  
4           *and release of claims against the Salt River*  
5           *Project (or its successors or assigns or its of-*  
6           *ficers, governors, directors, employees,*  
7           *agents, or shareholders), where all of the fol-*  
8           *lowing conditions are met:*

9                     *(I) The claims are brought solely*  
10                    *on behalf of the Community, members,*  
11                    *or allottees.*

12                    *(II) The claims arise from the dis-*  
13                    *charge, transportation, seepage, or*  
14                    *other movement of water in, through,*  
15                    *or from drains, canals, or other facili-*  
16                    *ties or land in the Salt River Reservoir*  
17                    *District to trust land located within*  
18                    *the exterior boundaries of the Reserva-*  
19                    *tion.*

20                    *(III) The claims arise from time*  
21                    *immemorial through the enforceability*  
22                    *date.*

23                    *(IV) The claims assert a past or*  
24                    *present injury to water rights, injury*  
25                    *on the Reservation to water quality, or*



1                    *injury to trust property located within*  
2                    *the exterior boundaries of the Reserva-*  
3                    *tion.*

4                    *(ii) EFFECT OF WAIVER.—The waiver*  
5                    *provided for in this subsection is effective as*  
6                    *of December 31, 2002, and shall continue to*  
7                    *preclude claims as they may arise until the*  
8                    *enforceability date, or until such time as the*  
9                    *Salt River Project alters its historical oper-*  
10                   *ations of the drains, canals, or other facili-*  
11                   *ties within the Salt River Reservoir District*  
12                   *in a manner that would cause significant*  
13                   *harm to trust lands within the exterior*  
14                   *boundaries of the Reservation, whichever oc-*  
15                   *curs earlier.*

16                   *(H) UNITED STATES ENFORCEMENT AU-*  
17                   *THORITY.—Except as provided in subparagraphs*  
18                   *(D), (E), and (G), nothing in this Act or the*  
19                   *Gila River agreement affects any right of the*  
20                   *United States, or the State, to take any action,*  
21                   *including environmental actions, under any laws*  
22                   *(including regulations and the common law) re-*  
23                   *lating to human health, safety, or the environ-*  
24                   *ment.*

1           (2) *CLAIMS FOR SUBSIDENCE BY THE COMMU-*  
2           *NITY, ALLOTTEES, AND THE UNITED STATES ON BE-*  
3           *HALF OF THE COMMUNITY AND ALLOTTEES.—In ac-*  
4           *cordance with the subsidence remediation program*  
5           *under section 209, the Community, a Community*  
6           *member, or an allottee, and the United States, on be-*  
7           *half of the Community, a Community member, or an*  
8           *allottee, as part of the performance of obligations*  
9           *under the Gila River agreement, are authorized to*  
10          *execute a waiver and release of all claims against the*  
11          *State (or any agency or political subdivision of the*  
12          *State) or any other person, entity, corporation or mu-*  
13          *nicipal corporation under Federal, State, or other law*  
14          *for the damage claimed.*

15           (3) *CLAIMS AGAINST THE COMMUNITY.—*

16           (A) *IN GENERAL.—Except as provided in*  
17          *subparagraph 25.12 of the Gila River agreement,*  
18          *to the extent consistent with this Act, the United*  
19          *States, in all its capacities (except as trustee for*  
20          *an Indian tribe other than the Community), as*  
21          *part of the performance of obligations under the*  
22          *Gila River agreement, is authorized to execute a*  
23          *waiver and release of any and all claims against*  
24          *the Community, or any agency, official, or em-*

1            *ployee of the Community, under Federal, State,*  
2            *or any other law for—*

3                    *(i) past and present claims for subsid-*  
4                    *ence damage to trust land within the exte-*  
5                    *rior boundaries of the Reservation, off-Res-*  
6                    *ervation trust lands, and fee land arising*  
7                    *from time immemorial through the enforce-*  
8                    *ability date; and*

9                    *(ii) past, present, and future claims*  
10                   *arising out of or relating in any manner to*  
11                   *the negotiation or execution of the Gila*  
12                   *River agreement or the negotiation or enact-*  
13                   *ment of titles I and II.*

14            *(4) CLAIMS AGAINST THE UNITED STATES.—*

15                    *(A) IN GENERAL.—Except as provided in*  
16                    *subparagraph 25.12 of the Gila River agreement,*  
17                    *the Community, on behalf of the Community and*  
18                    *Community members (but not members in their*  
19                    *capacities as allottees), as part of the perform-*  
20                    *ance of obligations under the Gila River agree-*  
21                    *ment, is authorized to execute a waiver and re-*  
22                    *lease of any claim against the United States (or*  
23                    *agencies, officials, or employees of the United*  
24                    *States) under Federal, State, or other law for—*

1           *(i)(I) past, present, and future claims*  
2           *for water rights for land within the exterior*  
3           *boundaries of the Reservation, off-Reserva-*  
4           *tion trust land, and fee land arising from*  
5           *time immemorial and, thereafter, forever;*  
6           *and*

7           *(II) past, present, and future claims*  
8           *for water rights arising from time immemo-*  
9           *rial and, thereafter, forever, that are based*  
10          *on aboriginal occupancy of land by the*  
11          *Community and Community members, or*  
12          *their predecessors;*

13          *(ii)(I) past and present claims for in-*  
14          *jury to water rights for land within the ex-*  
15          *terior boundaries of the Reservation, off-*  
16          *Reservation trust land, and fee land arising*  
17          *from time immemorial through the enforce-*  
18          *ability date;*

19          *(II) past, present, and future claims*  
20          *for injury to water rights arising from time*  
21          *immemorial and, thereafter, forever, that*  
22          *are based on aboriginal occupancy of land*  
23          *by the Community and Community mem-*  
24          *bers, or their predecessors; and*

1           *(III) claims for injury to water rights*  
2           *arising after the enforceability date for land*  
3           *within the exterior boundaries of the Res-*  
4           *ervation, off-Reservation trust land, or fee*  
5           *land resulting from the off-Reservation di-*  
6           *version or use of water in a manner not in*  
7           *violation of the Gila River agreement or ap-*  
8           *plicable law;*

9           *(iii) past, present, and future claims*  
10          *arising out of or relating in any manner to*  
11          *the negotiation or execution of the Gila*  
12          *River agreement or the negotiation or enact-*  
13          *ment of titles I and II;*

14          *(iv)(I) past and present claims for sub-*  
15          *sidence damage occurring to land within*  
16          *the exterior boundaries of the Reservation,*  
17          *off-Reservation trust land, or fee land aris-*  
18          *ing from time immemorial through the en-*  
19          *forceability date; and*

20          *(II) claims for subsidence damage aris-*  
21          *ing after the enforceability date occurring to*  
22          *land within the exterior boundaries of the*  
23          *Reservation, off-Reservation trust land or*  
24          *fee land resulting from the diversion of un-*  
25          *derground water in a manner not in viola-*

1            *tion of the Gila River agreement or applica-*  
2            *ble law;*

3            *(v) past and present claims for failure*  
4            *to protect, acquire, or develop water rights*  
5            *for or on behalf of the Community and*  
6            *Community members arising before Decem-*  
7            *ber 31, 2002; and*

8            *(vi) past, present, and future claims*  
9            *relating to failure to assert any claims ex-*  
10           *pressly waived pursuant to section*  
11           *207(a)(1) (C) through (E).*

12           *(B) EXHAUSTION OF REMEDIES.—To the*  
13           *extent that members in their capacity as allottees*  
14           *assert that this title impairs or alters their*  
15           *present or future claims to water or constitutes*  
16           *an injury to present or future water rights, the*  
17           *members shall be required to exhaust their rem-*  
18           *edies pursuant to the tribal water code prior to*  
19           *asserting claims against the United States.*

20           *(5) CLAIMS AGAINST CERTAIN PERSONS AND EN-*  
21           *TITIES IN THE UPPER GILA VALLEY.—*

22           *(A) BY THE COMMUNITY AND THE UNITED*  
23           *STATES.—Except as provided in the UVD agree-*  
24           *ment, the Community, on behalf of the Commu-*  
25           *nity and Community members (but not members*

1           *in their capacities as allottees), and the United*  
2           *States on behalf of the Community and Commu-*  
3           *nity members (but not members in their capaci-*  
4           *ties as allottees), are authorized, as part of the*  
5           *performance of obligations under the UVD agree-*  
6           *ment, to execute a waiver and release of the fol-*  
7           *lowing claims against the UV signatories and*  
8           *the UV Non-signatories (and the predecessors in*  
9           *interest of each) for—*

10                   *(i)(I) past, present, and future claims*  
11                   *for water rights for land within the exterior*  
12                   *boundaries of the Reservation and the San*  
13                   *Carlos Irrigation Project arising from time*  
14                   *immemorial and, thereafter, forever; and*

15                   *(II) past, present, and future claims*  
16                   *for water rights arising from time immemo-*  
17                   *rial and, thereafter, forever, that are based*  
18                   *on aboriginal occupancy of land by the*  
19                   *Community, Community members, or pred-*  
20                   *ecessors of the Community or Community*  
21                   *members;*

22                   *(ii)(I) past, present, and future claims*  
23                   *for injuries to water rights for land within*  
24                   *the exterior boundaries of the Reservation or*  
25                   *the San Carlos Irrigation Project arising*

1           *from time immemorial and, thereafter, for-*  
2           *ever;*

3           (II) *past, present, and future claims*  
4           *for injury to water rights arising from time*  
5           *immemorial and, thereafter, forever, that*  
6           *are based on aboriginal occupancy of land*  
7           *by the Community, Community members,*  
8           *or predecessors of Community members, for*  
9           *so long as and to the extent that any indi-*  
10          *vidual beneficiary of such waiver is acting*  
11          *in a manner that is consistent with and not*  
12          *in violation of or contrary to the terms,*  
13          *conditions, requirements, limitations, or*  
14          *other provisions of the UVD agreement;*

15          (III) *claims for injury to water rights*  
16          *arising after the enforceability date for land*  
17          *within the exterior boundaries of the Res-*  
18          *ervation and the San Carlos Irrigation*  
19          *Project, resulting from the diversion, pump-*  
20          *ing, or use of water in a manner that is*  
21          *consistent with and not in violation of or*  
22          *contrary to the terms, conditions, limita-*  
23          *tions, requirements, or provisions of the*  
24          *UVD agreement; and*



1           *(IV) claims for injury to water rights*  
2           *arising after the enforceability date for*  
3           *water rights transferred to the Project pur-*  
4           *suant to section 211 resulting from the di-*  
5           *version, pumping or use of water in a man-*  
6           *ner that is consistent with and not in viola-*  
7           *tion of or contrary to the terms, conditions,*  
8           *limitations, requirements, or provisions of*  
9           *the UVD agreement;*

10           *(iii)(I) past, present, and future claims*  
11           *for injuries to water rights arising out of or*  
12           *relating to the use of water rights appur-*  
13           *tenant to New Mexico 381 acres, on the con-*  
14           *ditions that such water rights remain sub-*  
15           *ject to the oversight and reporting require-*  
16           *ments set forth in the decree in Arizona v.*  
17           *California, 376 U.S. 340 (1964), and that*  
18           *the State of New Mexico shall make avail-*  
19           *able on request a copy of any records pre-*  
20           *pared pursuant to that decree; and*

21           *(II) past, present, and future claims*  
22           *arising out of and relating to the use of*  
23           *water rights for New Mexico domestic pur-*  
24           *poses, on the conditions that such water*  
25           *rights remain subject to the oversight and*

1           *reporting requirements set forth in the de-*  
2           *cree in Arizona v. California, 376 U.S. 340*  
3           *(1964), and that the State of New Mexico*  
4           *shall make available on request a copy of*  
5           *any records prepared pursuant to that de-*  
6           *cree; and*

7                     *(iv) past, present, and future claims*  
8           *arising out of or relating to the negotiation*  
9           *or execution of the UVD agreement, or the*  
10          *negotiation or enactment of titles I and II.*

11           *(B) BY THE UNITED STATES ON BEHALF OF*  
12          *ALLOTTEES.—Except as provided in the UVD*  
13          *agreement, to the extent consistent with this sec-*  
14          *tion, the United States as trustee for the*  
15          *allottees, as part of the performance under the*  
16          *UVD agreement, is authorized to execute a waiv-*  
17          *er and release of the following claims under Fed-*  
18          *eral, State, or other law against the UV signato-*  
19          *ries and the UV Non-signatories (and the prede-*  
20          *cessors in interest of each) for—*

21                     *(i)(I) past, present, and future claims*  
22          *for water rights for land within the exterior*  
23          *boundaries of the Reservation arising from*  
24          *time immemorial, and thereafter, forever;*  
25          *and*

1           (ii) past, present, and future claims  
2           for water rights arising from time immemo-  
3           rial and, thereafter, forever, that are based  
4           on aboriginal occupancy of lands by  
5           allottees or their predecessors;

6           (ii)(I) past and present claims for in-  
7           jury to water rights for lands within the ex-  
8           terior boundaries of the Reservation arising  
9           from time immemorial, through the enforce-  
10          ability date, for so long as and to the extent  
11          that any individual beneficiary of such  
12          waiver is acting in a manner that is con-  
13          sistent with and not in violation of or con-  
14          trary to the terms, conditions, requirements,  
15          limitations, or other provisions of the UVD  
16          agreement;

17          (ii) past, present, and future claims  
18          for injury to water rights arising from time  
19          immemorial and, thereafter, forever, that  
20          are based on aboriginal occupancy of lands  
21          by allottees or their predecessors, for so long  
22          as and to the extent that any individual  
23          beneficiary of such waiver is acting in a  
24          manner that is consistent with and not in  
25          violation of or contrary to the terms, condi-

1            *tions, requirements, limitations, or other*  
2            *provisions of the UVD agreement; and*

3            *(III) claims for injury to water rights*  
4            *for land within the exterior boundaries of*  
5            *the Reservation arising after the enforce-*  
6            *ability date resulting from the diversion,*  
7            *pumping, or use of water in a manner that*  
8            *is consistent with and not in violation of or*  
9            *contrary to the terms, conditions, limita-*  
10           *tions, requirements, or provisions of the*  
11           *UVD agreement;*

12           *(iii)(I) past, present, and future claims*  
13           *for injuries to water rights arising out of or*  
14           *relating to the use of water rights appur-*  
15           *tenant to New Mexico 381 acres, on the con-*  
16           *ditions that such water rights remain sub-*  
17           *ject to the oversight and reporting require-*  
18           *ments set forth in the decree in Arizona v.*  
19           *California, 376 U.S. 340 (1964), as supple-*  
20           *mented, and that the State of New Mexico*  
21           *shall make available on request a copy of*  
22           *any records prepared pursuant to that de-*  
23           *creed; and*

24           *(II) past, present, and future claims*  
25           *arising out of or relating to the use of water*

1           *rights for New Mexico domestic purposes, on*  
2           *the conditions that such water rights re-*  
3           *main subject to the oversight and reporting*  
4           *requirements set forth in the decree in Ari-*  
5           *zona v. California, 376 U.S. 340 (1964), as*  
6           *supplemented, and that the State of New*  
7           *Mexico shall make available on request a*  
8           *copy of any records prepared pursuant to*  
9           *that decree; and*

10                   *(iv) past, present, and future claims*  
11                   *arising out of or relating to the negotiation*  
12                   *or execution of the UVD agreement, or the*  
13                   *negotiation or enactment of titles I and II.*

14           (C) *ADDITIONAL WAIVER OF CERTAIN*  
15           *CLAIMS BY THE UNITED STATES.—Except as*  
16           *provided in the UVD Agreement, the United*  
17           *States (to the extent the waiver and release au-*  
18           *thorized by this subparagraph is not duplicative*  
19           *of the waiver and release provided in subpara-*  
20           *graph (B) and to the extent the United States*  
21           *holds legal title to (but not the beneficial interest*  
22           *in) the water rights as described in article V or*  
23           *VI of the Globe Equity Decree (but not on behalf*  
24           *of the San Carlos Apache Tribe pursuant to arti-*  
25           *cle VI(2) of the Globe Equity Decree) on behalf*

1           *of lands within the San Carlos Irrigation and*  
2           *Drainage District and the Miscellaneous Flow*  
3           *Lands) shall execute a waiver and release of the*  
4           *following claims under Federal, State or other*  
5           *law against the UV signatories and the UV Non-*  
6           *signatories (and the predecessors of each) for—*

7                     *(i) past, present, and future claims for*  
8                     *water rights for land within the San Carlos*  
9                     *Irrigation and Drainage District and the*  
10                    *Miscellaneous Flow Lands arising from*  
11                    *time immemorial, and thereafter, forever;*

12                    *(ii)(I) past and present claims for in-*  
13                    *jury to water rights for land within the San*  
14                    *Carlos Irrigation and Drainage District*  
15                    *and the Miscellaneous Flow Lands arising*  
16                    *from time immemorial through the enforce-*  
17                    *ability date, for so long as and to the extent*  
18                    *that any individual beneficiary of such*  
19                    *waiver is acting in a manner that is con-*  
20                    *sistent with and not in violation of or con-*  
21                    *trary to the terms, conditions, requirements,*  
22                    *limitations, or other provisions of the UVD*  
23                    *agreement; and*

24                    *(II) claims for injury to water rights*  
25                    *arising after the enforceability date for land*

1           *within the San Carlos Irrigation and*  
2           *Drainage District and the Miscellaneous*  
3           *Flow Lands resulting from the diversion,*  
4           *pumping, or use of water in a manner that*  
5           *is consistent with and not in violation of or*  
6           *contrary to the terms, conditions, limita-*  
7           *tions, requirements, or provisions of the*  
8           *UVD agreement;*

9                     *(iii)(I) past, present, and future claims*  
10           *for injuries to water rights arising out of or*  
11           *relating to the use of water rights appur-*  
12           *tenant to New Mexico 381 acres, on the con-*  
13           *ditions that such water rights remain sub-*  
14           *ject to the oversight and reporting require-*  
15           *ments set forth in the decree in Arizona v.*  
16           *California, 376 U.S. 340 (1964), as supple-*  
17           *mented, and that the State of New Mexico*  
18           *shall make available on request a copy of*  
19           *any records prepared pursuant to that de-*  
20           *creed; and*

21                     *(II) past, present, and future claims*  
22           *arising out of or relating to the use of water*  
23           *rights for New Mexico domestic purposes, on*  
24           *the conditions that such water rights re-*  
25           *main subject to the oversight and reporting*

1            *requirements set forth in the decree in Ari-*  
2            *zona v. California, 376 U.S. 340 (1964), as*  
3            *supplemented, and that the State of New*  
4            *Mexico shall make available on request a*  
5            *copy of any records prepared pursuant to*  
6            *that decree; and*

7            *(iv) past, present, and future claims*  
8            *arising out of or relating to the negotiation*  
9            *or execution of the UVD agreement, or the*  
10           *negotiation or enactment of titles I and II.*

11           *(6) TRIBAL WATER QUALITY STANDARDS.—The*  
12           *Community, on behalf of the Community and Com-*  
13           *munity members, as part of the performance of its ob-*  
14           *ligations under the Gila River agreement, is author-*  
15           *ized to agree never to adopt any water quality stand-*  
16           *ards, or ask the United States to promulgate such*  
17           *standards, that are more stringent than water quality*  
18           *standards adopted by the State if the Community's*  
19           *adoption of such standards could result in the imposi-*  
20           *tion by the State or the United States of more strin-*  
21           *gent water quality limitations or requirements than*  
22           *those that would otherwise be imposed by the State or*  
23           *the United States on—*

24           *(A) any water delivery system used to de-*  
25           *liver water to the Community; or*



1           (B) *the discharge of water into any such*  
2           *system.*

3           (b) *EFFECTIVENESS OF WAIVER AND RELEASES.—*

4           (1) *IN GENERAL.—The waivers under para-*  
5           *graphs (1) and (3) through (5) of subsection (a) shall*  
6           *become effective on the enforceability date.*

7           (2) *CLAIMS FOR SUBSIDENCE DAMAGE.—The*  
8           *waiver under subsection (a)(2) shall become effective*  
9           *on execution of the waiver by—*

10           (A) *the Community, a Community member,*  
11           *or an allottee; and*

12           (B) *the United States, on behalf of the Com-*  
13           *munity, a Community member, or an allottee.*

14           (c) *ENFORCEABILITY DATE.—*

15           (1) *IN GENERAL.—This section takes effect on the*  
16           *date on which the Secretary publishes in the Federal*  
17           *Register a statement of findings that—*

18           (A) *to the extent the Gila River agreement*  
19           *conflicts with this title, the Gila River agreement*  
20           *has been revised through an amendment to elimi-*  
21           *nate the conflict and the Gila River agreement,*  
22           *so revised, has been executed by the Secretary*  
23           *and the Governor of the State;*

24           (B) *the Secretary has fulfilled the require-*  
25           *ments of—*

1                   (i) paragraphs (1)(A)(i) and (2) of  
2                   subsection (a) and subsections (b) and (d) of  
3                   section 104; and

4                   (ii) sections 204, 205, and 209(a);

5                   (C) the master agreement authorized, rati-  
6                   fied, and confirmed by section 106(a) has been  
7                   executed by the parties to the master agreement,  
8                   and all conditions to the enforceability of the  
9                   master agreement have been satisfied;

10                  (D) \$53,000,000 has been identified and re-  
11                  tained in the Lower Colorado River Basin Devel-  
12                  opment Fund for the benefit of the Community  
13                  in accordance with section 107(b);

14                  (E) the State has appropriated and paid to  
15                  the Community any amount to be paid under  
16                  paragraph 27.4 of the Gila River agreement;

17                  (F) the Salt River Project has paid to the  
18                  Community \$500,000 under subparagraph 16.9  
19                  of the Gila River agreement;

20                  (G) the judgments and decrees attached to  
21                  the Gila River agreement as exhibits 25.18A  
22                  (Gila River adjudication proceedings) and  
23                  25.18B (Globe Equity Decree proceedings) have  
24                  been approved by the respective courts;

1           (H) the dismissals attached to the Gila  
2 River agreement as exhibits 25.17.1A and B,  
3 25.17.2, and 25.17.3A and B have been filed  
4 with the respective courts and any necessary dis-  
5 missal orders entered;

6           (I) legislation has been enacted by the State  
7 to—

8                 (i) implement the Southside Replenish-  
9 ment Program in accordance with subpara-  
10 graph 5.3 of the Gila River agreement;

11                (ii) authorize the firming program re-  
12 quired by section 105; and

13                (iii) establish the Upper Gila River  
14 Watershed Maintenance Program in accord-  
15 ance with subparagraph 26.8.1 of the Gila  
16 River agreement;

17           (J) the State has entered into an agreement  
18 with the Secretary to carry out the obligation of  
19 the State under section 105(b)(2)(A); and

20           (K) a final judgment has been entered in  
21 Central Arizona Water Conservation District v.  
22 United States (No. CIV 95-625-TUC-  
23 WDB(EHC), No. CIV 95-1720PHX-EHC)  
24 (Consolidated Action) in accordance with the re-  
25 payment stipulation.

1           (2) *FAILURE OF ENFORCEABILITY DATE TO*  
2           *OCCUR.—If, because of the failure of the enforceability*  
3           *date to occur by December 31, 2007, this section does*  
4           *not become effective, the Community, Community*  
5           *members, and allottees, and the United States on be-*  
6           *half of the San Carlos Irrigation and Drainage Dis-*  
7           *trict, the Community, Community members, and*  
8           *allottees, shall retain the right to assert past, present,*  
9           *and future water rights claims, claims for injury to*  
10           *water rights, claims for injury to water quality, and*  
11           *claims for subsidence damage as to all land within*  
12           *the exterior boundaries of the Reservation, off-Res-*  
13           *ervation trust land, and fee land.*

14           (d) *ALL LAND WITHIN EXTERIOR BOUNDARIES OF*  
15           *THE RESERVATION.—Notwithstanding section 2(42), for*  
16           *purposes of this section, section 206, and section 210(d)—*

17                   (1) *the term “land within the exterior bound-*  
18                   *aries of the Reservation” includes—*

19                           (A) *land within the Reservation created*  
20                           *pursuant to the Act of February 28, 1859, and*  
21                           *modified by the executive orders of August 31,*  
22                           *1876, June 14, 1879, May 5, 1882, November 15,*  
23                           *1883, July 31, 1911, June 2, 1913, August 27,*  
24                           *1914, and July 19, 1915; and*

1                   (B) land located in sections 16 and 36, T.  
2                   4 S., R. 4 E., Salt and Gila River Baseline and  
3                   Meridian; and

4                   (2) the term “off-Reservation” refers to land lo-  
5                   cated outside the exterior boundaries of the Reserva-  
6                   tion (as defined in paragraph (1)).

7                   (e) NO RIGHTS TO WATER.—Upon the occurrence of  
8 the enforceability date—

9                   (1) all land held by the United States in trust  
10 for the Community, Community members, and  
11 allottees and all land held by the Community within  
12 the exterior boundaries of the Reservation shall have  
13 no rights to water other than those specifically grant-  
14 ed to the Community and the United States for the  
15 Reservation pursuant to paragraph 4.0 of the Gila  
16 River agreement; and

17                   (2) all water usage on land within the exterior  
18 boundaries of the Reservation, including the land lo-  
19 cated in sections 16 and 36, T. 4 S., R. 4 E., Salt  
20 and Gila River Baseline and Meridian, upon acquisi-  
21 tion by the Community or the United States on behalf  
22 of the Community, shall be taken into account in de-  
23 termining compliance by the Community and the  
24 United States with the limitations on total diversions



1           (3) *subsection (b).*

2           (d) *EXPENDITURES AND WITHDRAWALS.—*

3           (1) *TRIBAL MANAGEMENT PLAN.—*

4           (A) *IN GENERAL.—The Community may*  
5           *withdraw all or part of the Water OM&R Fund*  
6           *on approval by the Secretary of a tribal manage-*  
7           *ment plan as described in the Trust Fund Re-*  
8           *form Act.*

9           (B) *REQUIREMENTS.—In addition to the*  
10           *requirements under the Trust Fund Reform Act,*  
11           *the tribal management plan shall require that*  
12           *the Community only spend any funds, as pro-*  
13           *vided in the Gila River agreement, to assist in*  
14           *paying operation, maintenance, and replacement*  
15           *costs associated with the delivery of CAP water*  
16           *for Community purposes.*

17           (2) *ENFORCEMENT.—The Secretary may take ju-*  
18           *dicial or administrative action to enforce the provi-*  
19           *sions of any tribal management plan to ensure that*  
20           *the monies withdrawn from the Water OM&R Fund*  
21           *are used in accordance with this Act.*

22           (3) *LIABILITY.—If the Community exercises the*  
23           *right to withdraw monies from the Water OM&R*  
24           *Fund, neither the Secretary nor the Secretary of the*

1 *Treasury shall retain any liability for the expendi-*  
2 *ture or investment of the monies withdrawn.*

3 (4) *EXPENDITURE PLAN.*—

4 (A) *IN GENERAL.*—*The Community shall*  
5 *submit to the Secretary for approval an expendi-*  
6 *ture plan for any portion of the funds made*  
7 *available under this section that the Community*  
8 *does not withdraw under this subsection.*

9 (B) *DESCRIPTION.*—*The expenditure plan*  
10 *shall describe the manner in which, and the pur-*  
11 *poses for which, funds of the Community re-*  
12 *maining in the Water OM&R Fund will be used.*

13 (C) *APPROVAL.*—*On receipt of an expendi-*  
14 *ture plan under subparagraph (A), the Secretary*  
15 *shall approve the plan if the Secretary deter-*  
16 *mines that the plan is reasonable and consistent*  
17 *with this Act.*

18 (5) *ANNUAL REPORT.*—*The Community shall*  
19 *submit to the Secretary an annual report that de-*  
20 *scribes all expenditures from the Water OM&R Fund*  
21 *during the year covered by the report.*

22 (e) *NO DISTRIBUTION TO MEMBERS.*—*No part of the*  
23 *principal of the Water OM&R Fund, or of the interest or*  
24 *income accruing on the principal, shall be distributed to*  
25 *any Community member on a per capita basis.*



1           (f) *FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY*  
2 *DATE.*—*Amounts in the Water OM&R Fund shall not be*  
3 *available for expenditure or withdrawal by the Community*  
4 *until the enforceability date, or until January 1, 2010,*  
5 *whichever is later.*

6 **SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.**

7           (a) *IN GENERAL.*—*Subject to the availability of funds*  
8 *and consistent with the provisions of section 107(a), the*  
9 *Secretary shall establish a program under which the Bu-*  
10 *reau of Reclamation shall repair and remediate subsidence*  
11 *damage and related damage that occurs after the enforce-*  
12 *ability date.*

13           (b) *DAMAGE.*—*Under the program, the Community, a*  
14 *Community member, or an allottee may submit to the Sec-*  
15 *retary a request for the repair or remediation of—*

16                   (1) *subsidence damage; and*

17                   (2) *damage to personal property caused by the*  
18 *settling of geologic strata or cracking in the earth's*  
19 *surface of any length or depth, which settling or*  
20 *cracking is caused by pumping of underground water.*

21           (c) *REPAIR OR REMEDIATION.*—*The Secretary shall*  
22 *perform the requested repair or remediation if—*

23                   (1) *the Secretary determines that the Community*  
24 *has not exceeded its right to withdraw underground*  
25 *water under the Gila River agreement; and*

1           (2) *the Community, Community member, or al-*  
2 *lottee, and the Secretary as trustee for the Commu-*  
3 *nity, Community member, or allottee, execute a waiv-*  
4 *er and release of claim in the form specified in ex-*  
5 *hibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agree-*  
6 *ment, as applicable, to become effective on satisfactory*  
7 *completion of the requested repair or remediation, as*  
8 *determined under the Gila River agreement.*

9           (d) *SPECIFIC SUBSIDENCE DAMAGE.*—*Subject to the*  
10 *availability of funds, the Secretary, acting through the*  
11 *Commissioner of Reclamation, shall repair, remediate, and*  
12 *rehabilitate the subsidence damage that has occurred to*  
13 *land before the enforceability date within the Reservation,*  
14 *as specified in exhibit 30.21 to the Gila River agreement.*

15 **SEC. 210. AFTER-ACQUIRED TRUST LAND.**

16           (a) *REQUIREMENT OF ACT OF CONGRESS.*—*The Com-*  
17 *munity may seek to have legal title to additional land in*  
18 *the State located outside the exterior boundaries of the Res-*  
19 *ervation taken into trust by the United States for the benefit*  
20 *of the Community pursuant only to an Act of Congress en-*  
21 *acted after the date of enactment of this Act specifically au-*  
22 *thorizing the transfer for the benefit of the Community.*

23           (b) *WATER RIGHTS.*—*After-acquired trust land shall*  
24 *not include federally reserved rights to surface water or*  
25 *groundwater.*

1       (c) *SENSE OF CONGRESS.*—*It is the sense of Congress*  
2 *that future Acts of Congress authorizing land to be taken*  
3 *into trust under subsection (a) should provide that such*  
4 *land will have only such water rights and water use privi-*  
5 *leges as would be consistent with State water law and State*  
6 *water management policy.*

7       (d) *ACCEPTANCE OF LAND IN TRUST STATUS.*—

8           (1) *IN GENERAL.*—*If the Community acquires*  
9 *legal fee title to land that is located within the exte-*  
10 *rior boundaries of the Reservation (as defined in sec-*  
11 *tion 207(d)), the Secretary shall accept the land in*  
12 *trust status for the benefit of the Community upon re-*  
13 *ceipt by the Secretary of a submission from the Com-*  
14 *munity that provides evidence that—*

15           (A) *the land meets the Department of the*  
16 *Interior’s minimum environmental standards*  
17 *and requirements for real estate acquisitions set*  
18 *forth in 602 DM 2.6, or any similar successor*  
19 *standards or requirements for real estate acquisi-*  
20 *tions in effect on the date of the Community’s*  
21 *submission; and*

22           (B) *the title to the land meets applicable*  
23 *Federal title standards in effect on the date of*  
24 *the Community’s submission.*

1           (2) *RESERVATION STATUS.*—*Land taken or held*  
2           *in trust by the Secretary under paragraph (1) shall*  
3           *be deemed part of the Community’s reservation.*

4 **SEC. 211. REDUCTION OF WATER RIGHTS.**

5           (a) *REDUCTION OF TBI ELIGIBLE ACRES.*—

6           (1) *IN GENERAL.*—*Consistent with this title and*  
7           *as provided in the UVD agreement to assist in reduc-*  
8           *ing the total water demand for irrigation use in the*  
9           *upper valley of the Gila River, the Secretary shall*  
10           *provide funds to the Gila Valley Irrigation District*  
11           *and the Franklin Irrigation District (hereafter in this*  
12           *section referred to as “the Districts”) for the acquisi-*  
13           *tion of UV decreed water rights and the extinguish-*  
14           *ment of those rights to decrease demands on the Gila*  
15           *River, or severance and transfer of those rights to the*  
16           *San Carlos Irrigation Project for the benefit of the*  
17           *Community and the San Carlos Irrigation and*  
18           *Drainage District in accordance with applicable law.*

19           (2) *ACQUISITIONS.*—

20           (A) *REQUIRED PHASE I ACQUISITION.*—*Not*  
21           *later than December 31 of the third calendar*  
22           *year that begins after the enforceability date (or*  
23           *December 31 of the first calendar year that be-*  
24           *gins after the payment provided by subpara-*  
25           *graph (D)(iii), if later), the Districts shall ac-*

1           *quire the UV decreed water rights appurtenant*  
2           *to 1,000 acres of land (other than special hot*  
3           *lands).*

4           *(B) REQUIRED PHASE II ACQUISITION.—*

5           *Not later than December 31 of the sixth calendar*  
6           *year that begins after the enforceability date (or*  
7           *December 31 of the first calendar year that be-*  
8           *gins after the payment provided by subpara-*  
9           *graph (D)(iii), if later), the Districts shall ac-*  
10          *quire the UV decreed water rights appurtenant*  
11          *to 1,000 acres of land (other than special hot*  
12          *lands). The reduction of TBI eligible acres under*  
13          *this subparagraph shall be in addition to that*  
14          *accomplished under subparagraph (A).*

15          *(C) ADDITIONAL ACQUISITION IN CASE OF*

16          *SETTLEMENT.—If the San Carlos Apache Tribe*  
17          *reaches a comprehensive settlement that is ap-*  
18          *proved by Congress and finally approved by all*  
19          *courts the approval of which is required, the Sec-*  
20          *retary shall offer to acquire for fair market value*  
21          *the UV decreed water rights associated with not*  
22          *less than 500 nor more than 3,000 TBI eligible*  
23          *acres of land (other than special hot lands).*

1                   (D) *METHODS OF ACQUISITION FOR RIGHTS*  
2 *ACQUIRED PURSUANT TO SUBPARAGRAPHS (A)*  
3 *AND (B).—*

4                   (i) *DETERMINATION OF VALUE.—*

5                   (I) *APPRAISALS.—Not later than*  
6 *December 31 of the first calendar year*  
7 *that begins after the enforceability date*  
8 *in the case of the phase I acquisition,*  
9 *and not later than December 31 of the*  
10 *fourth calendar year that begins after*  
11 *the enforceability date in the case of*  
12 *the phase II acquisition, the Districts*  
13 *shall submit to the Secretary an ap-*  
14 *praisal of the average value of water*  
15 *rights appurtenant to 1,000 TBI eligi-*  
16 *ble acres.*

17                   (II) *REVIEW.—The Secretary*  
18 *shall review the appraisal submitted to*  
19 *ensure its consistency with the Uni-*  
20 *form Appraisal Standards for Federal*  
21 *Land Acquisition and notify the Dis-*  
22 *tricts of the results of the review within*  
23 *30 days of submission of the appraisal.*  
24 *In the event that the Secretary finds*  
25 *that the appraisal is not consistent*

1           *with such standards, the Secretary*  
2           *shall so notify the Districts with a full*  
3           *explanation of the reasons for that*  
4           *finding. Within 60 days of being noti-*  
5           *fied by the Secretary that the ap-*  
6           *praisal is not consistent with such*  
7           *Standards, the Districts shall resubmit*  
8           *an appraisal to the Secretary that is*  
9           *consistent with such standards. The*  
10          *Secretary shall review the resubmitted*  
11          *appraisal to ensure its consistency*  
12          *with nationally approved standards*  
13          *and notify the Districts of the results*  
14          *of the review within 30 days of resub-*  
15          *mission.*

16                   (III) *PETITION.*—*In the event*  
17                   *that the Secretary finds that such re-*  
18                   *submitted appraisal is not consistent*  
19                   *with those Standards, either the Dis-*  
20                   *tricts or the Secretary may petition a*  
21                   *Federal court in the District of Ari-*  
22                   *zona for a determination of whether*  
23                   *the appraisal is consistent with na-*  
24                   *tionally approved Standards. If such*  
25                   *court finds the appraisal is so con-*

1                    *sistent, the value stated in the ap-*  
2                    *praisal shall be final for all purposes.*  
3                    *If such court finds the appraisal is not*  
4                    *so consistent, the court shall determine*  
5                    *the average value of water rights ap-*  
6                    *purtenant to 1,000 TBI eligible acres.*

7                    *(IV) NO OBJECTION.—If the Sec-*  
8                    *retary does not object to an appraisal*  
9                    *within the time periods provided in*  
10                    *this clause (i), the value determined in*  
11                    *the appraisal shall be final for all pur-*  
12                    *poses.*

13                    *(ii) APPRAISAL.—In determining the*  
14                    *value of water rights pursuant to this para-*  
15                    *graph, any court, the Districts, the Sec-*  
16                    *retary, and any appraiser shall take into*  
17                    *account the obligations the owner of the*  
18                    *land (to which the rights are appurtenant)*  
19                    *will have after acquisition for phreatophyle*  
20                    *control as provided in the UVD agreement*  
21                    *and to comply with environmental laws be-*  
22                    *cause of the acquisition and severance and*  
23                    *transfer or extinguishment of the water*  
24                    *rights.*



1           (iii) *PAYMENT.*—No more than 30  
2           days after the average value of water rights  
3           appurtenant to 1,000 acres of land has been  
4           determined in accordance with clauses (i)  
5           and (ii), the Secretary shall pay 125 per-  
6           cent of such values to the Districts.

7           (iv) *REDUCTION OF ACREAGE.*—No  
8           later than December 31 of the first calendar  
9           year that begins after each such payment,  
10          the Districts shall acquire the UV decreed  
11          water rights appurtenant to one thousand  
12          (1,000) acres of lands that would have been  
13          included in the calculation of TBI eligible  
14          acres (other than special hot lands), if the  
15          calculation of TBI eligible acres had been  
16          undertaken at the time of acquisition. To  
17          the extent possible, the Districts shall select  
18          the rights to be acquired in compliance with  
19          subsection 5.3.7 of the UVD agreement.

20          (3) *REDUCTION OF TBI ELIGIBLE ACRES.*—Si-  
21          multaneously with the acquisition of UV decreed  
22          water rights under paragraph (2), the number of TBI  
23          eligible acres, but not the number of acres of UV sub-  
24          jugated land, shall be reduced by the number of acres  
25          associated with those UV decreed water rights.

1           (4) *ALTERNATIVES TO ACQUISITION.*—

2                   (A) *SPECIAL HOT LANDS.*—*After the pay-*  
3                   *ments provided by paragraph (2)(D)(iii), the*  
4                   *Districts may fulfill the requirements of para-*  
5                   *graphs (2) and (3) in full or in part, by entering*  
6                   *into an agreement with an owner of special hot*  
7                   *lands to prohibit permanently future irrigation*  
8                   *of the special hot lands if the UVD settling par-*  
9                   *ties simultaneously—*

10                           (i) *acquire UV decreed water rights as-*  
11                           *sociated with a like number of UV decreed*  
12                           *acres that are not TBI eligible acres; and*

13                           (ii) *sever and transfer those rights to*  
14                           *the San Carlos Irrigation Project for the*  
15                           *benefit of the Community and the San Car-*  
16                           *los Irrigation and Drainage District.*

17                   (B) *FOLLOWING AGREEMENT.*—*After the*  
18                   *payment provided by paragraph (2)(D)(iii), the*  
19                   *Districts may fulfill the requirements of para-*  
20                   *graphs (2) and (3) in full or in part, by entering*  
21                   *into an agreement with 1 or more owners of UV*  
22                   *decreed acres and the UV irrigation district in*  
23                   *which the acres are located, if any, under*  
24                   *which—*

1           (i) the number of TBI eligible acres is  
2           reduced; but

3           (ii) the owner of the UV decreed acres  
4           subject to the reduction is permitted to peri-  
5           odically irrigate the UV decreed acres under  
6           a fallowing agreement authorized under the  
7           UVD agreement.

8           (5)   DISPOSITION   OF   ACQUIRED   WATER  
9           RIGHTS.—

10           (A) IN GENERAL.—Of the UV decreed water  
11           rights acquired by the Districts pursuant to sub-  
12           paragraphs (A) and (B) of paragraph (2), the  
13           Districts shall, in accordance with all applicable  
14           law and the UVD agreement—

15           (i) sever, and transfer to the San Car-  
16           los Irrigation Project for the benefit of the  
17           Community and the San Carlos Irrigation  
18           and Drainage District, the UV decreed  
19           water rights associated with up to 900 UV  
20           decreed acres; and

21           (ii) extinguish the balance of the UV  
22           decreed water rights so acquired (except and  
23           only to the extent that those rights are asso-  
24           ciated with a fallowing agreement author-  
25           ized under paragraph (4)(B)).

1           (B) *SAN CARLOS APACHE SETTLEMENT.*—

2           *With respect to water rights acquired by the Sec-*  
3           *retary pursuant to paragraph (2)(C), the Sec-*  
4           *retary shall, in accordance with applicable*  
5           *law—*

6                     *(i) cause to be severed and transferred*  
7                     *to the San Carlos Irrigation Project, for the*  
8                     *benefit of the Community and the San Car-*  
9                     *los Irrigation and Drainage District, the*  
10                    *UV decreed water rights associated with 200*  
11                    *UV decreed acres;*

12                    *(ii) cause to be extinguished the UV de-*  
13                    *creed water rights associated with 300 UV*  
14                    *decreed acres; and*

15                    *(iii) cause to be transferred the balance*  
16                    *of those acquired water rights to the San*  
17                    *Carlos Apache Tribe pursuant to the terms*  
18                    *of the settlement described in paragraph*  
19                    *(2)(C).*

20           (6) *MITIGATION.*—*To the extent the Districts,*  
21           *after the payments provided by paragraph*  
22           *(2)(D)(iii), do not comply with the acquisition re-*  
23           *quirements of paragraph (2) or otherwise comply*  
24           *with the alternatives to acquisition provided by para-*  
25           *graph (4), the Districts shall provide mitigation to*

1 *the San Carlos Irrigation Project as provided by the*  
2 *UVD agreement.*

3 *(b) ADDITIONAL REDUCTIONS.—*

4 *(1) COOPERATIVE PROGRAM.—In addition to the*  
5 *reduction of TBI eligible acres to be accomplished*  
6 *under subsection (a), not later than 1 year after the*  
7 *enforceability date, the Secretary and the UVD set-*  
8 *tling parties shall cooperatively establish a program*  
9 *to purchase and extinguish UV decreed water rights*  
10 *associated with UV decreed acres that have not been*  
11 *recently irrigated.*

12 *(2) FOCUS.—The primary focus of the program*  
13 *under paragraph (1) shall be to prevent any land*  
14 *that contains riparian habitat from being reclaimed*  
15 *for irrigation.*

16 *(3) FUNDS AND RESOURCES.—The program*  
17 *under this subsection shall not require any expendi-*  
18 *ture of funds, or commitment of resources, by the*  
19 *UVD signatories other than such incidental expendi-*  
20 *tures of funds and commitments of resources as are*  
21 *required to cooperatively participate in the program.*

22 **SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA**  
23 **PROJECT.**

24 *(a) REQUIRED APPROVALS.—The Secretary shall not*  
25 *execute the Gila River agreement pursuant to section*

1 203(b), and the agreement shall not become effective, unless  
2 and until the New Mexico Consumptive Use and Forbear-  
3 ance Agreement has been executed by all signatory parties  
4 and approved by the State of New Mexico.

5 (b) NEW MEXICO CONSUMPTIVE USE AND FORBEAR-  
6 ANCE AGREEMENT.—

7 (1) IN GENERAL.—Except to the extent a provi-  
8 sion of the New Mexico Consumptive Use and For-  
9 bearance Agreement conflicts with a provision of this  
10 title, the New Mexico Consumptive Use and Forbear-  
11 ance Agreement is authorized, ratified, and con-  
12 firmed. To the extent amendments are executed to  
13 make the New Mexico Consumptive Use and Forbear-  
14 ance Agreement consistent with this title, such  
15 amendments are also authorized, ratified, and con-  
16 firmed.

17 (2) EXECUTION.—To the extent the New Mexico  
18 Consumptive Use and Forbearance Agreement does  
19 not conflict with this title, the Secretary shall execute  
20 the New Mexico Consumptive Use and Forbearance  
21 Agreement, including all exhibits to which the Sec-  
22 retary is a party to the New Mexico Consumptive Use  
23 and Forbearance Agreement and any amendments to  
24 the New Mexico Consumptive Use and Forbearance  
25 necessary to make it consistent with this title.

1           (c) *NEW MEXICO UNIT AGREEMENT.*—*The Secretary*  
2 *is authorized to execute the New Mexico Unit Agreement,*  
3 *which agreement shall be executed within 1 year of receipt*  
4 *by the Secretary of written notice from the State of New*  
5 *Mexico that the State of New Mexico intends to build the*  
6 *New Mexico Unit, which notice must be received not later*  
7 *than December 31, 2014. The New Mexico Unit Agreement*  
8 *shall, among other things, provide that—*

9           (1) *all funds from the Lower Colorado River*  
10 *Basin Development Fund disbursed in accordance*  
11 *with section 403(f)(2)(D) (i) and (ii) of the Colorado*  
12 *River Basin Project Act (as amended by section*  
13 *107(a)) shall be nonreimbursable (and such costs shall*  
14 *be excluded from the repayment obligation, if any, of*  
15 *the NM CAP entity under the New Mexico Unit*  
16 *Agreement);*

17           (2) *in determining payment for CAP water*  
18 *under the New Mexico Unit Agreement, the NM CAP*  
19 *entity shall be responsible only for its share of oper-*  
20 *ations, maintenance, and replacement costs (and no*  
21 *capital costs attendant to other units or portions of*  
22 *the Central Arizona Project shall be charged to the*  
23 *NM CAP entity);*

24           (3) *upon request by the NM CAP entity, the Sec-*  
25 *retary shall transfer to the NM CAP entity the re-*

1       *sponsibility to design, build, or operate and maintain*  
2       *the New Mexico Unit, or all or any combination of*  
3       *those responsibilities, provided that the Secretary*  
4       *shall not transfer the authority to divert water pursu-*  
5       *ant to the New Mexico Consumptive Use and Forbear-*  
6       *ance Agreement, provided further that the Secretary,*  
7       *shall remain responsible to the parties to the New*  
8       *Mexico Consumptive Use and Forbearance Agreement*  
9       *for the NM CAP entity's compliance with the terms*  
10      *and conditions of that agreement;*

11             *(4) the Secretary shall divert water and other-*  
12             *wise exercise her rights and authorities pursuant to*  
13             *the New Mexico Consumptive Use and Forbearance*  
14             *Agreement solely for the benefit of the NM CAP entity*  
15             *and for no other purpose;*

16             *(5) the NM CAP entity shall own and hold title*  
17             *to all portions of the New Mexico Unit constructed*  
18             *pursuant to the New Mexico Unit Agreement; and*

19             *(6) the Secretary shall provide a waiver of sov-*  
20             *ereign immunity for the sole and exclusive purpose of*  
21             *resolving a dispute in Federal court of any claim,*  
22             *dispute, or disagreement arising under the New Mex-*  
23             *ico Unit Agreement.*



1       (d) *AMENDMENT TO SECTION 304.*—Section 304(f) of  
2 *the Colorado River Basin Project Act (43 U.S.C. 1524(f))*  
3 *is amended—*

4           (1) *by striking paragraph (1) and inserting the*  
5 *following: “(1) In the operation of the Central Ari-*  
6 *zona Project, the Secretary shall offer to contract with*  
7 *water users in the State of New Mexico, with the ap-*  
8 *proval of its Interstate Stream Commission, or with*  
9 *the State of New Mexico, through its Interstate*  
10 *Stream Commission, for water from the Gila River,*  
11 *its tributaries and underground water sources in*  
12 *amounts that will permit consumptive use of water in*  
13 *New Mexico of not to exceed an annual average in*  
14 *any period of 10 consecutive years of 14,000 acre-feet,*  
15 *including reservoir evaporation, over and above the*  
16 *consumptive uses provided for by article IV of the de-*  
17 *creed of the Supreme Court of the United States in Ar-*  
18 *izona v. California (376 U.S. 340). Such increased*  
19 *consumptive uses shall continue only so long as deliv-*  
20 *ery of Colorado River water to downstream Gila*  
21 *River users in Arizona is being accomplished in ac-*  
22 *cordance with this Act, in quantities sufficient to re-*  
23 *place any diminution of their supply resulting from*  
24 *such diversion from the Gila River, its tributaries*  
25 *and underground water sources. In determining the*

1        *amount required for this purpose, full consideration*  
2        *shall be given to any differences in the quality of the*  
3        *water involved.”;*

4            *(2) by striking paragraph (2); and*

5            *(3) by redesignating paragraph (3) as para-*  
6        *graph (2).*

7        *(e) COST LIMITATION.—In determining payment for*  
8        *CAP water under the New Mexico Consumptive Use and*  
9        *Forbearance Agreement, the NM CAP entity shall be respon-*  
10       *sible only for its share of operations, maintenance, and re-*  
11       *pair costs. No capital costs attendant to other Units or por-*  
12       *tions of the Central Arizona Project shall be charged to the*  
13       *NM CAP entity.*

14       *(f) EXCLUSION OF COSTS.—For the purpose of deter-*  
15       *mining the allocation and repayment of costs of the Central*  
16       *Arizona Project under the CAP Repayment Contract, the*  
17       *costs associated with the New Mexico Unit and the delivery*  
18       *of Central Arizona Project water pursuant to the New Mex-*  
19       *ico Consumptive Use and Forbearance Agreement shall be*  
20       *nonreimbursable, and such costs shall be excluded from the*  
21       *Central Arizona Water Conservation District’s repayment*  
22       *obligation.*

23       *(g) NEW MEXICO UNIT CONSTRUCTION AND OPER-*  
24       *ATIONS.—The Secretary is authorized to design, build, and*  
25       *operate and maintain the New Mexico Unit. Upon request*

1 *by the State of New Mexico, the Secretary shall transfer*  
2 *to the NM CAP entity responsibility to design, build, or*  
3 *operate and maintain the New Mexico Unit, or all or any*  
4 *combination of those functions.*

5 *(h) NATIONAL ENVIRONMENTAL POLICY ACT.—*

6 *(1) ENVIRONMENTAL COMPLIANCE.—Upon execu-*  
7 *tion of the New Mexico Consumptive Use and For-*  
8 *bearance Agreement and the New Mexico Unit Agree-*  
9 *ment, the Secretary shall promptly comply with all*  
10 *aspects of the National Environmental Policy Act of*  
11 *1969 (42 U.S.C. 4321 et seq.), the Endangered Spe-*  
12 *cies Act of 1973 (16 U.S.C. 1531 et seq.), and all*  
13 *other applicable environmental Acts and regulations.*

14 *(2) EXECUTION OF THE NEW MEXICO CONSUMP-*  
15 *TIVE USE AND FORBEARANCE AGREEMENT AND THE*  
16 *NEW MEXICO UNIT AGREEMENT.—Execution of the*  
17 *New Mexico Consumptive Use and Forbearance*  
18 *Agreement and the New Mexico Unit Agreement by*  
19 *the Secretary under this section shall not constitute a*  
20 *major Federal action under the National Environ-*  
21 *mental Policy Act (42 U.S.C. 4321 et seq.). The Sec-*  
22 *retary is directed to carry out all necessary environ-*  
23 *mental compliance required by Federal law in imple-*  
24 *menting the New Mexico Consumptive Use and For-*

1       *bearance Agreement and the New Mexico Unit Agree-*  
2       *ment.*

3               (3) *LEAD AGENCY.*—*The Bureau of Reclamation*  
4       *shall be designated as the lead agency with respect to*  
5       *environmental compliance. Upon request by the State*  
6       *of New Mexico to the Secretary, the State of New Mex-*  
7       *ico shall be designated as joint lead agency with re-*  
8       *spect to environmental compliance.*

9               (i) *NEW MEXICO UNIT FUND.*—*The Secretary shall de-*  
10      *posit the amounts made available under paragraph*  
11      *(2)(D)(i) of section 403(f) of the Colorado River Basin*  
12      *Project Act (43 U.S.C. 1543(f)) (as amended by section*  
13      *107(a)) into the New Mexico Unit Fund, a State of New*  
14      *Mexico Fund established and administered by the New Mex-*  
15      *ico Interstate Stream Commission. Withdrawals from the*  
16      *New Mexico Unit Fund shall be for the purpose of paying*  
17      *costs of the New Mexico Unit or other water utilization al-*  
18      *ternatives to meet water supply demands in the Southwest*  
19      *Water Planning Region of New Mexico, as determined by*  
20      *the New Mexico Interstate Stream Commission in consulta-*  
21      *tion with the Southwest New Mexico Water Study Group*  
22      *or its successor, including costs associated with planning*  
23      *and environmental compliance activities and environ-*  
24      *mental mitigation and restoration.*

1           (j) *ADDITIONAL FUNDING FOR NEW MEXICO UNIT.*—  
2 *The Secretary shall pay for an additional portion of the*  
3 *costs of constructing the New Mexico Unit from funds made*  
4 *available under paragraph (2)(D)(ii) of section 403(f) of*  
5 *the Colorado River Basin Project Act (43 U.S.C. 1543(f))*  
6 *(as amended by section 107(a)) on a construction schedule*  
7 *basis, up to a maximum amount under this subparagraph*  
8 *(j) of \$34,000,000, as adjusted to reflect changes since Janu-*  
9 *ary 1, 2004, in the construction cost indices applicable to*  
10 *the types of construction involved in construction of the New*  
11 *Mexico Unit, upon satisfaction of the conditions that—*

12           (1) *the State of New Mexico must provide notice*  
13 *to the Secretary in writing not later than December*  
14 *31, 2014, that the State of New Mexico intends to*  
15 *have constructed or developed the New Mexico Unit;*  
16 *and*

17           (2) *the Secretary must have issued in the Federal*  
18 *Register not later than December 31, 2019, a Record*  
19 *of Decision approving the project based on an envi-*  
20 *ronmental analysis required pursuant to applicable*  
21 *Federal law and on a demonstration that construc-*  
22 *tion of a project for the New Mexico Unit that would*  
23 *deliver an average annual safe yield, based on a 50-*  
24 *year planning period, greater than 10,000 acre feet*  
25 *per year, would not cost more per acre foot of water*

1        *diverted than a project sized to produce an average*  
2        *annual safe yield of 10,000 acre feet per year. If New*  
3        *Mexico exercises all reasonable efforts to obtain the*  
4        *issuance of such Record of Decision, but the Secretary*  
5        *is not able to issue such Record of Decision by Decem-*  
6        *ber 31, 2019, for reasons outside the control of the*  
7        *State of New Mexico, the Secretary may extend the*  
8        *deadline for a reasonable period of time, not to extend*  
9        *beyond December 31, 2030.*

10        *(k) RATE OF RETURN EXCEEDING 4 PERCENT.—If the*  
11        *rate of return on carryover funds held in the Lower Colo-*  
12        *rado Basin Development Fund on the date that construction*  
13        *of the New Mexico Unit is initiated exceeds an average effec-*  
14        *tive annual rate of 4 percent for the period beginning on*  
15        *the date of enactment of this Act through the date of initi-*  
16        *ation of construction of the New Mexico Unit, the Secretary*  
17        *shall pay an additional portion of the costs of the construc-*  
18        *tion costs associated with the New Mexico Unit, on a con-*  
19        *struction schedule basis, using funds made available under*  
20        *paragraph (2)(D)(ii) of section 403(f) of the Colorado River*  
21        *Basin Project Act (43 U.S.C. 1543(f)) (as amended by sec-*  
22        *tion 107(a)). The amount of such additional payments shall*  
23        *be equal to 25 percent of the total return on the carryover*  
24        *funds earned during the period in question that is in excess*  
25        *of a return on such funds at an annual average effective*

1 return of 4 percent, up to a maximum total of not more  
2 than \$28,000,000, as adjusted to reflect changes since Janu-  
3 ary 1, 2004, in the construction cost indices applicable to  
4 the types of construction involved in construction of the New  
5 Mexico Unit.

6 (l) *DISCLAIMER.*—Nothing in this Act shall affect,  
7 alter, or diminish rights to use of water of the Gila River  
8 within New Mexico, or the authority of the State of New  
9 Mexico to administer such rights for use within the State,  
10 as such rights are quantified by article IV of the decree of  
11 the United States Supreme Court in *Arizona v. California*  
12 (376 U.S. 340).

13 (m) *PRIORITY OF OTHER EXCHANGES.*—The Sec-  
14 retary shall not approve any exchange of Gila River water  
15 for water supplied by the CAP that would amend, alter,  
16 or conflict with the exchanges authorized by section 304(f)  
17 of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

18 **SEC. 213. MISCELLANEOUS PROVISIONS.**

19 (a) *WAIVER OF SOVEREIGN IMMUNITY.*—If any party  
20 to the Gila River agreement or signatory to an exhibit exe-  
21 cuted pursuant to section 203(b) or to the New Mexico Con-  
22 sumptive Use and Forbearance Agreement brings an action  
23 in any court of the United States or any State court relat-  
24 ing only and directly to the interpretation or enforcement  
25 of this title or the Gila River agreement (including enforce-

1 *ment of any indemnity provisions contained in the Gila*  
2 *River agreement) or the New Mexico Consumptive Use and*  
3 *Forbearance Agreement, and names the United States or*  
4 *the Community as a party, or if any other landowner or*  
5 *water user in the Gila River basin in Arizona (except any*  
6 *party referred to in subparagraph 28.1.4 of the Gila River*  
7 *agreement) files a lawsuit relating only and directly to the*  
8 *interpretation or enforcement of subparagraph 6.2, sub-*  
9 *paragraph 6.3, paragraph 25, subparagraph 26.2, subpara-*  
10 *graph 26.8, and subparagraph 28.1.3 of the Gila River*  
11 *agreement, naming the United States or the Community as*  
12 *a party—*

13           (1) *the United States, the Community, or both,*  
14           *may be joined in any such action; and*

15           (2) *any claim by the United States or the Com-*  
16           *munity to sovereign immunity from the action is*  
17           *waived, but only for the limited and sole purpose of*  
18           *such interpretation or enforcement (including any in-*  
19           *demnity provisions contained in the Gila River agree-*  
20           *ment).*

21           (b) *EFFECT OF ACT.—Nothing in this title quantifies*  
22 *or otherwise affects the water rights, or claims or entitle-*  
23 *ments to water, of any Indian tribe, band, or community,*  
24 *other than the Community.*



1           (c) *LIMITATION ON CLAIMS FOR REIMBURSEMENT.*—  
2 *The United States shall not make a claim for reimburse-*  
3 *ment of costs arising out of the implementation of this title*  
4 *or the Gila River agreement against any Indian-owned*  
5 *land within the Reservation, and no assessment shall be*  
6 *made in regard to those costs against that land.*

7           (d) *NO EFFECT ON FUTURE ALLOCATIONS.*—*Water re-*  
8 *ceived under a lease or exchange of Community CAP water*  
9 *under this title shall not affect any future allocation or re-*  
10 *allocation of CAP water by the Secretary.*

11          (e) *COMMUNITY REPAYMENT CONTRACT.*—*To the ex-*  
12 *tent it is not in conflict with this Act, the Secretary is di-*  
13 *rected to and shall execute Amendment No. 1 to the Commu-*  
14 *nity repayment contract, attached as exhibit 8.1 to the Gila*  
15 *River agreement, to provide, among other things, that the*  
16 *costs incurred under that contract shall be nonreimbursable*  
17 *by the Community. To the extent amendments are executed*  
18 *to make Amendment No. 1 consistent with this title, such*  
19 *amendments are also authorized, ratified, and confirmed.*

20          (f) *SALT RIVER PROJECT RIGHTS AND CONTRACTS.*—

21               (1) *IN GENERAL.*—*Subject to paragraph (2), the*  
22 *agreement between the United States and the Salt*  
23 *River Valley Water Users' Association dated Sep-*  
24 *tember 6, 1917, as amended, and the rights of the Salt*  
25 *River Project to store water from the Salt River and*

1 *Verde River at Roosevelt Dam, Horse Mesa Dam,*  
2 *Mormon Flat Dam, Stewart Mountain Dam, Horse-*  
3 *shoe Dam, and Bartlett Dam and to deliver the stored*  
4 *water to shareholders of the Salt River Project and*  
5 *others for all beneficial uses and purposes recognized*  
6 *under State law and to the Community under the*  
7 *Gila River agreement, are authorized, ratified, and*  
8 *confirmed.*

9 (2) *PRIORITY DATE; QUANTIFICATION.—The pri-*  
10 *ority date and quantification of rights described in*  
11 *paragraph (1) shall be determined in an appropriate*  
12 *proceeding in State court.*

13 (3) *CARE, OPERATION, AND MAINTENANCE.—The*  
14 *Salt River Project shall retain authority and respon-*  
15 *sibility existing on the date of enactment of this Act*  
16 *for decisions relating to the care, operation, and*  
17 *maintenance of the Salt River Project water delivery*  
18 *system, including the Salt River Project reservoirs on*  
19 *the Salt River and Verde River, vested in Salt River*  
20 *Project under the 1917 agreement, as amended, de-*  
21 *scribed in paragraph (1).*

22 (g) *UV IRRIGATION DISTRICTS.—*

23 (1) *IN GENERAL.—As partial consideration for*  
24 *obligations the UV irrigation districts shall be under-*  
25 *taking, the obligation to comply with the terms and*

1 *conditions of term 5 of exhibit 2.30 (New Mexico Risk*  
2 *Allocation Terms) to the New Mexico Consumptive*  
3 *Use and Forbearance Agreement, the Gila Valley Irri-*  
4 *gation District, in 2010, shall receive funds from the*  
5 *Secretary in an amount of \$15,000,000 (adjusted to*  
6 *reflect changes since the date of enactment of this Act*  
7 *in the cost indices applicable to the type of design*  
8 *and construction involved in the design and construc-*  
9 *tion of a pipeline at or upstream from the Ft. Thom-*  
10 *as Diversion Dam to the lands farmed by the San*  
11 *Carlos Apache Tribe, together with canal connections*  
12 *upstream from the Ft. Thomas Diversion Dam and*  
13 *connection devices appropriate to introduce pumped*  
14 *water into the Pipeline).*

15 (2) *RESTRICTION.—The funds to be received by*  
16 *the Gila Valley Irrigation District shall be used solely*  
17 *for the purpose of developing programs or con-*  
18 *structing facilities to assist with mitigating the risks*  
19 *and costs associated with compliance with the terms*  
20 *and conditions of term 5 of exhibit 2.30 (New Mexico*  
21 *Risk Allocation Terms) of the New Mexico Consump-*  
22 *tive and Forbearance Agreement, and for no other*  
23 *purpose.*

24 (h) *LIMITATION ON LIABILITY OF UNITED STATES.—*

1           (1) *IN GENERAL.*—*The United States shall have*  
2           *no trust or other obligation—*

3                   (A) *to monitor, administer, or account for,*  
4                   *in any manner, any of the funds paid to the*  
5                   *Community by any party to the Gila River*  
6                   *agreement; or*

7                   (B) *to review or approve the expenditure of*  
8                   *those funds.*

9           (2) *INDEMNIFICATION.*—*The Community shall*  
10           *indemnify the United States, and hold the United*  
11           *States harmless, with respect to any and all claims*  
12           *(including claims for takings or breach of trust) aris-*  
13           *ing out of the receipt or expenditure of funds de-*  
14           *scribed in paragraph (1)(A).*

15           (i) *BLUE RIDGE PROJECT TRANSFER AUTHORIZA-*  
16           *TION.*—

17                   (1) *DEFINITIONS.*—*In this subsection:*

18                           (A) *BLUE RIDGE PROJECT.*—*The term*  
19                           *“Blue Ridge Project” means the water storage*  
20                           *reservoir known as “Blue Ridge Reservoir” situ-*  
21                           *ated in Coconino and Gila Counties, Arizona,*  
22                           *consisting generally of—*

23                                   (i) *Blue Ridge Dam and all pipelines,*  
24                                   *tunnels, buildings, hydroelectric generating*  
25                                   *facilities, and other structures of every kind,*

1           *transmission, telephone and fiber optic*  
2           *lines, pumps, machinery, tools, and appli-*  
3           *ances; and*

4                     *(ii) all real or personal property, ap-*  
5           *purtenant to or used, or constructed or oth-*  
6           *erwise acquired to be used, in connection*  
7           *with Blue Ridge Reservoir.*

8           *(B) SALT RIVER PROJECT AGRICULTURAL*  
9           *IMPROVEMENT AND POWER DISTRICT.—The term*  
10          *“Salt River Project Agricultural Improvement*  
11          *and Power District” means the Salt River*  
12          *Project Agricultural Improvement and Power*  
13          *District, a political subdivision of the State of*  
14          *Arizona.*

15          *(2) TRANSFER OF TITLE.—The United States,*  
16          *acting through the Secretary of the Interior, shall ac-*  
17          *cept from the Salt River Project Agricultural Im-*  
18          *provement and Power District the transfer of title to*  
19          *the Blue Ridge Project. The transfer of title to the*  
20          *Blue Ridge Project from the Salt River Project Agri-*  
21          *cultural Improvement and Power District to the*  
22          *United States shall be without cost to the United*  
23          *States. The transfer, change of use or change of place*  
24          *of use of any water rights associated with the Blue*

1 *Ridge Project shall be made in accordance with Ari-*  
2 *zona law.*

3 (3) *USE AND BENEFIT OF SALT RIVER FEDERAL*  
4 *RECLAMATION PROJECT.—*

5 (A) *IN GENERAL.—Subject to subparagraph*  
6 *(B), the United States shall hold title to the Blue*  
7 *Ridge Project for the exclusive use and benefit of*  
8 *the Salt River Federal Reclamation Project.*

9 (B) *AVAILABILITY OF WATER.—Up to 3,500*  
10 *acre-feet of water per year may be made avail-*  
11 *able from Blue Ridge Reservoir for municipal*  
12 *and domestic uses in Northern Gila County, Ari-*  
13 *zona, without cost to the Salt River Federal Rec-*  
14 *lamation Project.*

15 (4) *TERMINATION OF JURISDICTION.—*

16 (A) *LICENSING AND REGULATORY AUTHOR-*  
17 *ITY.—Upon the transfer of title of the Blue Ridge*  
18 *Project to the United States under paragraph*  
19 *(2), the Federal Energy Regulatory Commission*  
20 *shall have no further licensing and regulatory*  
21 *authority over Project Number 2304, the Blue*  
22 *Ridge Project, located within the State.*

23 (B) *ENVIRONMENTAL LAWS.—All other ap-*  
24 *plicable Federal environmental laws shall con-*  
25 *tinue to apply to the Blue Ridge Project, includ-*

1            *ing the Endangered Species Act of 1973 (16*  
2            *U.S.C. 1531 et seq.) and the National Environ-*  
3            *mental Policy Act of 1969 (42 U.S.C. 4321 et*  
4            *seq.).*

5            (5) *CARE, OPERATION, AND MAINTENANCE.—*

6            *Upon the transfer of title of the Blue Ridge Project*  
7            *to the United States under paragraph (2), the Salt*  
8            *River Valley Water Users' Association and the Salt*  
9            *River Project Agricultural Improvement and Power*  
10           *District shall be responsible for the care, operation,*  
11           *and maintenance of the project pursuant to the con-*  
12           *tract between the United States and the Salt River*  
13           *Valley Water Users' Association, dated September 6,*  
14           *1917, as amended.*

15           (6) *C.C. CRAGIN DAM & RESERVOIR.—Upon the*  
16           *transfer of title of the Blue Ridge Project to the*  
17           *United States under paragraph (2), Blue Ridge Dam*  
18           *and Reservoir shall thereafter be known as the "C.C.*  
19           *Cragin Dam and Reservoir".*

20           (j) *EFFECT ON CURRENT LAW; JURISDICTION OF*  
21 *COURTS.—Nothing in this section—*

22           (1) *alters law in effect on the day before the date*  
23           *of enactment of this Act with respect to pre-enforce-*  
24           *ment review of Federal environmental enforcement ac-*  
25           *tions; or*

1           (2) *confers jurisdiction on any State court to in-*  
2           *terpret subparagraphs (D), (E), and (G) of section*  
3           *207(a)(1) where such jurisdiction does not otherwise*  
4           *exist.*

5   **SEC. 214. AUTHORIZATION OF APPROPRIATIONS.**

6           (a) *AUTHORIZATION OF APPROPRIATIONS.—*

7                 (1) *REHABILITATION OF IRRIGATION WORKS.—*

8                     (A) *IN GENERAL.—There is authorized to be*  
9                     *appropriated \$52,396,000, adjusted to reflect*  
10                    *changes since January 1, 2000, under subpara-*  
11                    *graph (B) for the rehabilitation of irrigation*  
12                    *works under section 203(d)(4).*

13                    (B) *ADJUSTMENT.—The amount under sub-*  
14                    *paragraph (A) shall be adjusted by such*  
15                    *amounts, if any, as may be required by reason*  
16                    *of changes in construction costs as indicated by*  
17                    *engineering cost indices applicable to the types of*  
18                    *construction required by the rehabilitation.*

19                 (2) *BUREAU OF RECLAMATION CONSTRUCTION*  
20                 *OVERSIGHT.—There are authorized to be appropriated*  
21                 *such sums as are necessary for the Bureau of Rec-*  
22                 *lamation to undertake the oversight of the construc-*  
23                 *tion projects authorized under section 203.*

24                 (3) *SUBSIDENCE REMEDIATION PROGRAM.—*

25                 *There are authorized to be appropriated such sums as*



1        *are necessary to carry out the subsidence remediation*  
2        *program under section 209 (including such sums as*  
3        *are necessary, not to exceed \$4,000,000, to carry out*  
4        *the subsidence remediation and repair required under*  
5        *section 209(d)).*

6            (4) *WATER RIGHTS REDUCTION.—There are au-*  
7        *thorized to be appropriated such sums as are nec-*  
8        *essary to carry out the water rights reduction pro-*  
9        *gram under section 211.*

10           (5) *SAFFORD FACILITY.—There are authorized to*  
11        *be appropriated such sums as are necessary to—*

12                (A) *retire \$13,900,000, minus any amounts*  
13        *appropriated for this purpose, of the debt in-*  
14        *curring by Safford to pay costs associated with*  
15        *the construction of the Safford facility as identi-*  
16        *fied in exhibit 26.1 to the Gila River agreement;*  
17        *and*

18                (B) *pay the interest accrued on that*  
19        *amount.*

20           (6) *ENVIRONMENTAL COMPLIANCE.—There are*  
21        *authorized to be appropriated—*

22                (A) *such sums as are necessary to carry*  
23        *out—*

24                        (i) *all necessary environmental compli-*  
25        *ance activities undertaken by the Secretary*

1           *associated with the Gila River agreement*  
2           *and this title;*

3                     *(ii) any mitigation measures adopted*  
4                     *by the Secretary that are the responsibility*  
5                     *of the Community associated with the con-*  
6                     *struction of the diversion and delivery fa-*  
7                     *cilities of the water referred to in section*  
8                     *204 for use on the reservation; and*

9                     *(iii) no more than 50 percent of the*  
10                    *cost of any mitigation measures adopted by*  
11                    *the Secretary that are the responsibility of*  
12                    *the Community associated with the diver-*  
13                    *sion or delivery of the water referred to in*  
14                    *section 204 for use on the Reservation, other*  
15                    *than any responsibility related to water de-*  
16                    *livered to any other person by lease or ex-*  
17                    *change; and*

18                    *(B) to carry out the mitigation measures in*  
19                    *the Roosevelt Habitat Conservation Plan, not*  
20                    *more than \$10,000,000.*

21                    *(7) UV IRRIGATION DISTRICTS.—There are au-*  
22                    *thorized to be appropriated such sums as are nec-*  
23                    *essary to pay the Gila Valley Irrigation District an*  
24                    *amount of \$15,000,000 (adjusted to reflect changes*  
25                    *since the date of enactment of the Arizona Water Set-*

1 *tlements Act of 2004 in the cost indices applicable to*  
2 *the type of design and construction involved in the*  
3 *design and construction of a pipeline at or upstream*  
4 *from the Ft. Thomas Diversion Dam to the lands*  
5 *farmed by the San Carlos Apache Tribe, together with*  
6 *canal connections upstream from the Ft. Thomas Di-*  
7 *version Dam and connection devices appropriate to*  
8 *introduce pumped water into the Pipeline).*

9 *(b) IDENTIFIED COSTS.—*

10 *(1) IN GENERAL.—Amounts made available*  
11 *under subsection (a) shall be considered to be identi-*  
12 *fied costs for purposes of paragraph (2)(D)(v)(I) of*  
13 *section 403(f) of the Colorado River Basin Project Act*  
14 *(43 U.S.C. 1543(f)) (as amended by section 107(a)).*

15 *(2) EXCEPTION.—Amounts made available under*  
16 *subsection (a)(4) to carry out section 211(b) shall not*  
17 *be considered to be identified costs for purposes of sec-*  
18 *tion 403(f)(2)(D)(v)(I) of the Colorado River Basin*  
19 *Project Act (43 U.S.C. 1543(f)(2)(D)(v)(I)) (as*  
20 *amended by section 107(a)).*

21 **SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

22 *If the Secretary does not publish a statement of find-*  
23 *ings under section 207(c) by December 31, 2007—*

24 *(1) except for section 213(i), this title is repealed*  
25 *effective January 1, 2008, and any action taken by*

1       *the Secretary and any contract entered under any*  
 2       *provision of this title shall be void;*

3               *(2) any amounts appropriated under paragraphs*  
 4       *(1) through (7) of section 214(a), together with any*  
 5       *interest on those amounts, shall immediately revert to*  
 6       *the general fund of the Treasury;*

7               *(3) any amounts made available under section*  
 8       *214(b) that remain unexpended shall immediately re-*  
 9       *vert to the general fund of the Treasury; and*

10              *(4) any amounts paid by the Salt River Project*  
 11       *in accordance with the Gila River agreement shall*  
 12       *immediately be returned to the Salt River Project.*

13       ***TITLE III—SOUTHERN ARIZONA***  
 14       ***WATER RIGHTS SETTLEMENT***

15       ***SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLE-***  
 16       ***MENT.***

17       *The Southern Arizona Water Rights Settlement Act of*  
 18       *1982 (96 Stat. 1274) is amended to read as follows:*

19       ***“TITLE III—SOUTHERN ARIZONA***  
 20       ***WATER RIGHTS SETTLEMENT***

21       ***“SEC. 301. SHORT TITLE.***

22       *“This title may be cited as the ‘Southern Arizona*  
 23       *Water Rights Settlement Amendments Act of 2004’.*

24       ***“SEC. 302. PURPOSES.***

25       *“The purposes of this title are—*

1           “(1) to authorize, ratify, and confirm the agree-  
2           ments referred to in section 309(h);

3           “(2) to authorize and direct the Secretary to exe-  
4           cute and perform all obligations of the Secretary  
5           under those agreements; and

6           “(3) to authorize the actions and appropriations  
7           necessary for the United States to meet obligations of  
8           the United States under those agreements and this  
9           title.

10 **“SEC. 303. DEFINITIONS.**

11           *“In this title:*

12           “(1) *ACRE-FOOT.*—*The term ‘acre-foot’ means*  
13           *the quantity of water necessary to cover 1 acre of land*  
14           *to a depth of 1 foot.*

15           “(2) *AFTER-ACQUIRED TRUST LAND.*—*The term*  
16           *‘after-acquired trust land’ means land that—*

17                   “(A) *is located—*

18                           “(i) *within the State; but*

19                           “(ii) *outside the exterior boundaries of*  
20                   *the Nation’s Reservation; and*

21                   “(B) *is taken into trust by the United*  
22                   *States for the benefit of the Nation after the en-*  
23                   *forceability date.*

24           “(3) *AGREEMENT OF DECEMBER 11, 1980.*—*The*  
25           *term ‘agreement of December 11, 1980’ means the*

1 *contract entered into by the United States and the*  
2 *Nation on December 11, 1980.*

3 “(4) *AGREEMENT OF OCTOBER 11, 1983.*—*The*  
4 *term ‘agreement of October 11, 1983’ means the con-*  
5 *tract entered into by the United States and the Na-*  
6 *tion on October 11, 1983.*

7 “(5) *ALLOTTEE.*—*The term ‘allottee’ means a*  
8 *person that holds a beneficial real property interest in*  
9 *an Indian allotment that is—*

10 “(A) *located within the Reservation; and*

11 “(B) *held in trust by the United States.*

12 “(6) *ALLOTTEE CLASS.*—*The term ‘allottee class’*  
13 *means an applicable plaintiff class certified by the*  
14 *court of jurisdiction in—*

15 “(A) *the Alvarez case; or*

16 “(B) *the Tucson case.*

17 “(7) *ALVAREZ CASE.*—*The term ‘Alvarez case’*  
18 *means the first through third causes of action of the*  
19 *third amended complaint in Alvarez v. City of Tuc-*  
20 *son (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed*  
21 *April 21, 1993)).*

22 “(8) *APPLICABLE LAW.*—*The term ‘applicable*  
23 *law’ means any applicable Federal, State, tribal, or*  
24 *local law.*

1           “(9) ASARCO.—*The term ‘Asarco’ means Asarco*  
2           *Incorporated, a New Jersey corporation of that name,*  
3           *and its subsidiaries operating mining operations in*  
4           *the State.*

5           “(10) ASARCO AGREEMENT.—*The term ‘Asarco*  
6           *agreement’ means the agreement by that name at-*  
7           *tached to the Tohono O’odham settlement agreement*  
8           *as exhibit 13.1.*

9           “(11) CAP REPAYMENT CONTRACT.—

10           “(A) IN GENERAL.—*The term ‘CAP repay-*  
11           *ment contract’ means the contract dated Decem-*  
12           *ber 1, 1988 (Contract No. 14–0906–09W–09245,*  
13           *Amendment No. 1) between the United States*  
14           *and the Central Arizona Water Conservation*  
15           *District for the delivery of water and the repay-*  
16           *ment of costs of the Central Arizona Project.*

17           “(B) INCLUSIONS.—*The term ‘CAP repay-*  
18           *ment contract’ includes all amendments to and*  
19           *revisions of that contract.*

20           “(12) CENTRAL ARIZONA PROJECT.—*The term*  
21           *‘Central Arizona Project’ means the reclamation*  
22           *project authorized and constructed by the United*  
23           *States in accordance with title III of the Colorado*  
24           *River Basin Project Act (43 U.S.C. 1521 et seq.).*

1           “(13) *CENTRAL ARIZONA PROJECT LINK PIPE-*  
2           *LINE.—The term ‘Central Arizona Project link pipe-*  
3           *line’ means the pipeline extending from the Tucson*  
4           *Aqueduct of the Central Arizona Project to Station*  
5           *293+36.*

6           “(14) *CENTRAL ARIZONA PROJECT SERVICE*  
7           *AREA.—The term ‘Central Arizona Project service*  
8           *area’ means—*

9                   “(A) *the geographical area comprised of*  
10                  *Maricopa, Pinal, and Pima Counties, Arizona,*  
11                  *in which the Central Arizona Water Conserva-*  
12                  *tion District delivers Central Arizona Project*  
13                  *water; and*

14                   “(B) *any expansion of that area under ap-*  
15                  *plicable law.*

16           “(15) *CENTRAL ARIZONA WATER CONSERVATION*  
17           *DISTRICT.—The term ‘Central Arizona Water Con-*  
18           *servaion District’ means the political subdivision of*  
19           *the State that is the contractor under the CAP repay-*  
20           *ment contract.*

21           “(16) *COOPERATIVE FARM.—The term ‘coopera-*  
22           *tive farm’ means the farm on land served by an irri-*  
23           *gation system and the extension of the irrigation sys-*  
24           *tem provided for under paragraphs (1) and (2) of sec-*  
25           *tion 304(c).*



1           “(17) *COOPERATIVE FUND.*—*The term ‘coopera-*  
2           *tive fund’ means the cooperative fund established by*  
3           *section 313 of the 1982 Act and reauthorized by sec-*  
4           *tion 310.*

5           “(18) *DELIVERY AND DISTRIBUTION SYSTEM.*—

6           “(A) *IN GENERAL.*—*The term ‘delivery and*  
7           *distribution system’ means—*

8                   “(i) *the Central Arizona Project aque-*  
9                   *duct;*

10                   “(ii) *the Central Arizona Project link*  
11                   *pipeline; and*

12                   “(iii) *the pipelines, canals, aqueducts,*  
13                   *conduits, and other necessary facilities for*  
14                   *the delivery of water under the Central Ari-*  
15                   *zona Project.*

16           “(B) *INCLUSIONS.*—*The term ‘delivery and*  
17           *distribution system’ includes pumping facilities,*  
18           *power plants, and electric power transmission*  
19           *facilities external to the boundaries of any farm*  
20           *to which the water is distributed.*

21           “(19) *EASTERN SCHUK TOAK DISTRICT.*—*The*  
22           *term ‘eastern Schuk Toak District’ means the portion*  
23           *of the Schuk Toak District (1 of 11 political subdivi-*  
24           *sions of the Nation established under the constitution*

1       *of the Nation) that is located within the Tucson man-*  
2       *agement area.*

3               “(20) *ENFORCEABILITY DATE.*—*The term ‘en-*  
4       *forceability date’ means the date on which title III of*  
5       *the Arizona Water Settlements Act takes effect (as de-*  
6       *scribed in section 302(b) of the Arizona Water Settle-*  
7       *ments Act).*

8               “(21) *EXEMPT WELL.*—*The term ‘exempt well’*  
9       *means a water well—*

10               “(A) *the maximum pumping capacity of*  
11       *which is not more than 35 gallons per minute;*  
12       *and*

13               “(B) *the water from which is used for—*

14               “(i) *the supply, service, or activities of*  
15       *households or private residences;*

16               “(ii) *landscaping;*

17               “(iii) *livestock watering; or*

18               “(iv) *the irrigation of not more than 2*  
19       *acres of land for the production of 1 or*  
20       *more agricultural or other commodities*  
21       *for—*

22               “(I) *sale;*

23               “(II) *human consumption; or*

24               “(III) *use as feed for livestock or*  
25       *poultry.*

1           “(22) *FEE OWNER OF ALLOTTED LAND.*—*The*  
2           *term ‘fee owner of allotted land’ means a person that*  
3           *holds fee simple title in real property on the Reserva-*  
4           *tion that, at any time before the date on which the*  
5           *person acquired fee simple title, was held in trust by*  
6           *the United States as an Indian allotment.*

7           “(23) *FICO.*—*The term ‘FICO’ means collec-*  
8           *tively the Farmers Investment Co., an Arizona cor-*  
9           *poration of that name, and the Farmers Water Co.,*  
10          *an Arizona corporation of that name.*

11          “(24) *INDIAN TRIBE.*—*The term ‘Indian tribe’*  
12          *has the meaning given the term in section 4 of the In-*  
13          *dian Self-Determination and Education Assistance*  
14          *Act (25 U.S.C. 450b).*

15          “(25) *INJURY TO WATER QUALITY.*—*The term*  
16          *‘injury to water quality’ means any contamination,*  
17          *diminution, or deprivation of water quality under*  
18          *applicable law.*

19          “(26) *INJURY TO WATER RIGHTS.*—

20                 “(A) *IN GENERAL.*—*The term ‘injury to*  
21                 *water rights’ means an interference with, dimi-*  
22                 *nutation of, or deprivation of water rights under*  
23                 *applicable law.*

24                 “(B) *INCLUSION.*—*The term ‘injury to*  
25                 *water rights’ includes a change in the under-*

1           *ground water table and any effect of such a*  
2           *change.*

3           “(C) *EXCLUSION.*—*The term ‘injury to*  
4           *water rights’ does not include subsidence damage*  
5           *or injury to water quality.*

6           “(27) *IRRIGATION SYSTEM.*—

7           “(A) *IN GENERAL.*—*The term ‘irrigation*  
8           *system’ means canals, laterals, ditches, sprin-*  
9           *klers, bubblers, and other irrigation works used*  
10           *to distribute water within the boundaries of a*  
11           *farm.*

12           “(B) *INCLUSIONS.*—*The term ‘irrigation*  
13           *system’, with respect to the cooperative farm, in-*  
14           *cludes activities, procedures, works, and devices*  
15           *for—*

16                   “(i) *rehabilitation of fields;*

17                   “(ii) *remediation of sinkholes, sinks,*  
18                   *depressions, and fissures; and*

19                   “(iii) *stabilization of the banks of the*  
20                   *Santa Cruz River.*

21           “(28) *LOWER COLORADO RIVER BASIN DEVELOP-*  
22           *MENT FUND.*—*The term ‘Lower Colorado River Basin*  
23           *Development Fund’ means the fund established by sec-*  
24           *tion 403 of the Colorado River Basin Project Act (43*  
25           *U.S.C. 1543).*

1           “(29) *M&I PRIORITY WATER.*—*The term ‘M&I*  
2           *priority water’ means Central Arizona Project water*  
3           *that has municipal and industrial priority.*

4           “(30) *NATION.*—*The term ‘Nation’ means the*  
5           *Tohono O’odham Nation (formerly known as the*  
6           *Papago Tribe) organized under a constitution ap-*  
7           *proved in accordance with section 16 of the Act of*  
8           *June 18, 1934 (25 U.S.C. 476).*

9           “(31) *NATION’S RESERVATION.*—*The term ‘Na-*  
10           *tion’s Reservation’ means all land within the exterior*  
11           *boundaries of—*

12                   “(A) *the Sells Tohono O’odham Reservation*  
13                   *established by the Executive order of February 1,*  
14                   *1917, and the Act of February 21, 1931 (46 Stat.*  
15                   *1202, chapter 267);*

16                   “(B) *the San Xavier Reservation established*  
17                   *by the Executive order of July 1, 1874;*

18                   “(C) *the Gila Bend Indian Reservation es-*  
19                   *tablished by the Executive order of December 12,*  
20                   *1882, and modified by the Executive order of*  
21                   *June 17, 1909;*

22                   “(D) *the Florence Village established by*  
23                   *Public Law 95μ09361 (92 Stat. 595);*

24                   “(E) *all land acquired in accordance with*  
25                   *the Gila Bend Indian Reservation Lands Re-*

1           *placement Act (100 Stat. 1798), if title to the*  
2           *land is held in trust by the Secretary for the ben-*  
3           *efit of the Nation; and*

4           “(F) *all other land to which the United*  
5           *States holds legal title in trust for the benefit of*  
6           *the Nation and that is added to the Nation’s*  
7           *Reservation or granted reservation status in ac-*  
8           *cordance with applicable Federal law before the*  
9           *enforceability date.*

10          “(32) *NET IRRIGABLE ACRES.*—*The term ‘net ir-*  
11          *rigable acres’ means, with respect to a farm, the acre-*  
12          *age of the farm that is suitable for agriculture, as de-*  
13          *termined by the Nation and the Secretary.*

14          “(33) *NIA PRIORITY WATER.*—*The term ‘NIA*  
15          *priority water’ means Central Arizona Project water*  
16          *that has non-Indian agricultural priority.*

17          “(34) *SAN XAVIER ALLOTTEES ASSOCIATION.*—  
18          *The term ‘San Xavier Allottees Association’ means the*  
19          *nonprofit corporation established under State law for*  
20          *the purpose of representing and advocating the inter-*  
21          *ests of allottees.*

22          “(35) *SAN XAVIER COOPERATIVE ASSOCIATION.*—  
23          *The term ‘San Xavier Cooperative Association’ means*  
24          *the entity chartered under the laws of the Nation (or*

1       *a successor of that entity) that is a lessee of land*  
2       *within the cooperative farm.*

3               “(36) *SAN XAVIER DISTRICT.*—*The term ‘San*  
4       *Xavier District’ means the district of that name, 1 of*  
5       *11 political subdivisions of the Nation established*  
6       *under the constitution of the Nation.*

7               “(37) *SAN XAVIER DISTRICT COUNCIL.*—*The term*  
8       *‘San Xavier District Council’ means the governing*  
9       *body of the San Xavier District, as established under*  
10       *the constitution of the Nation.*

11               “(38) *SAN XAVIER RESERVATION.*—*The term*  
12       *‘San Xavier Reservation’ means the San Xavier In-*  
13       *dian Reservation established by the Executive order of*  
14       *July 1, 1874.*

15               “(39) *SCHUK TOAK FARM.*—*The term ‘Schuk*  
16       *Toak Farm’ means a farm constructed in the eastern*  
17       *Schuk Toak District served by the irrigation system*  
18       *provided for under section 304(c)(4).*

19               “(40) *SECRETARY.*—*The term ‘Secretary’ means*  
20       *the Secretary of the Interior.*

21               “(41) *STATE.*—*The term ‘State’ means the State*  
22       *of Arizona.*

23               “(42) *SUBJUGATE.*—*The term ‘subjugate’ means*  
24       *to prepare land for agricultural use through irriga-*  
25       *tion.*

1           “(43) *SUBSIDENCE DAMAGE*.—The term ‘*subsidence damage*’ means injury to land, water, or other  
2           real property resulting from the settling of geologic  
3           strata or cracking in the surface of the earth of any  
4           length or depth, which settling or cracking is caused  
5           by the pumping of water.  
6

7           “(44) *SURFACE WATER*.—The term ‘*surface water*’ means all water that is appropriable under  
8           State law.  
9

10           “(45) *TOHONO O’ODHAM SETTLEMENT AGREEMENT*.—The term ‘*Tohono O’odham settlement agree-*  
11           *ment*’ means the agreement dated April 30, 2003 (in-  
12           cluding all exhibits of and attachments to the agree-  
13           ment).  
14

15           “(46) *TUCSON CASE*.—The term ‘*Tucson case*’  
16           means *United States et al. v. City of Tucson, et al.*  
17           *(Civ. No. 75–0939 TUC consol. with Civ. No. 75–*  
18           *0951 TUC FRZ (D. Ariz., filed February 20, 1975)).*

19           “(47) *TUCSON INTERIM WATER LEASE*.—The  
20           term ‘*Tucson interim water lease*’ means the lease,  
21           and any pre-2004 amendments and extensions of the  
22           lease, approved by the Secretary, between the city of  
23           Tucson, Arizona, and the Nation, dated October 24,  
24           1992.



1           “(48) *TUCSON MANAGEMENT AREA*.—*The term*  
2           *‘Tucson management area’ means the area in the*  
3           *State comprised of—*

4                   “(A) *the area—*

5                           “(i) *designated as the Tucson Active*  
6                           *Management Area under the Arizona*  
7                           *Groundwater Management Act of 1980*  
8                           *(1980 Ariz. Sess. Laws 1); and*

9                           “(ii) *subsequently divided into the*  
10                           *Tucson Active Management Area and the*  
11                           *Santa Cruz Active Management Area (1994*  
12                           *Ariz. Sess. Laws 296); and*

13                   “(B) *the portion of the Upper Santa Cruz*  
14                   *Basin that is not located within the area de-*  
15                   *scribed in subparagraph (A)(i).*

16           “(49) *TURNOUT*.—*The term ‘turnout’ means a*  
17           *point of water delivery on the Central Arizona Project*  
18           *aqueduct.*

19           “(50) *UNDERGROUND STORAGE*.—*The term ‘un-*  
20           *derground storage’ means storage of water accom-*  
21           *plished under a project authorized under section*  
22           *308(e).*

23           “(51) *UNITED STATES AS TRUSTEE*.—*The term*  
24           *‘United States as Trustee’ means the United States,*

1       *acting on behalf of the Nation and allottees, but in no*  
 2       *other capacity.*

3               “(52) *VALUE.*—*The term ‘value’ means the value*  
 4       *attributed to water based on the greater of—*

5                       “(A) *the anticipated or actual use of the*  
 6       *water; or*

7                       “(B) *the fair market value of the water.*

8               “(53) *WATER RIGHT.*—*The term ‘water right’*  
 9       *means any right in or to groundwater, surface water,*  
 10       *or effluent under applicable law.*

11               “(54) *1982 ACT.*—*The term ‘1982 Act’ means the*  
 12       *Southern Arizona Water Rights Settlement Act of*  
 13       *1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on*  
 14       *the day before the enforceability date.*

15       **“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGA-**  
 16                       **TIONS.**

17               “(a) *WATER DELIVERY.*—*The Secretary shall deliver*  
 18       *annually from the main project works of the Central Ari-*  
 19       *zona Project, a total of 37,800 acre-feet of water suitable*  
 20       *for agricultural use, of which—*

21                       “(1) *27,000 acre-feet shall—*

22                               “(A) *be deliverable for use to the San Xa-*  
 23       *vier Reservation; or*

24                               “(B) *otherwise be used in accordance with*  
 25       *section 309; and*

1           “(2) 10,800 acre-feet shall—

2                   “(A) be deliverable for use to the eastern  
3           *Schuk Toak District; or*

4                   “(B) otherwise be used in accordance with  
5           *section 309.*

6           “(b) *DELIVERY AND DISTRIBUTION SYSTEMS.—The*  
7           *Secretary shall (without cost to the Nation, any allottee,*  
8           *the San Xavier Cooperative Association, or the San Xavier*  
9           *Allottees Association), as part of the main project works of*  
10           *the Central Arizona Project, design, construct, operate,*  
11           *maintain, and replace the delivery and distribution systems*  
12           *necessary to deliver the water described in subsection (a).*

13           “(c) *DUTIES OF THE SECRETARY.—*

14                   “(1) *COMPLETION OF DELIVERY AND DISTRIBUTION*  
15           *SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION*  
16           *SYSTEM.—Except as provided in subsection*  
17           *(d), not later than 8 years after the enforceability*  
18           *date, the Secretary shall complete the design and con-*  
19           *struction of improvements to the irrigation system*  
20           *that serves the cooperative farm.*

21                   “(2) *EXTENSION OF EXISTING IRRIGATION SYS-*  
22           *TEM WITHIN THE SAN XAVIER RESERVATION.—*

23                   “(A) *IN GENERAL.—Except as provided in*  
24           *subsection (d), not later than 8 years after the*  
25           *enforceability date, in addition to the improve-*

1           *ments described in paragraph (1), the Secretary*  
2           *shall complete the design and construction of the*  
3           *extension of the irrigation system for the cooper-*  
4           *ative farm.*

5           “(B) *CAPACITY.*—*On completion of the ex-*  
6           *tension, the extended cooperative farm irrigation*  
7           *system shall serve 2,300 net irrigable acres on*  
8           *the San Xavier Reservation, unless the Secretary*  
9           *and the San Xavier Cooperative Association*  
10          *agree on fewer net irrigable acres.*

11          “(3) *CONSTRUCTION OF NEW FARM.*—

12           “(A) *IN GENERAL.*—*Except as provided in*  
13           *subsection (d), not later than 8 years after the*  
14           *enforceability date, the Secretary shall—*

15                   “(i) *design and construct within the*  
16                   *San Xavier Reservation such additional ca-*  
17                   *nals, laterals, farm ditches, and irrigation*  
18                   *works as are necessary for the efficient dis-*  
19                   *tribution for agricultural purposes of that*  
20                   *portion of the 27,000 acre-feet annually of*  
21                   *water described in subsection (a)(1) that is*  
22                   *not required for the irrigation systems de-*  
23                   *scribed in paragraphs (1) and (2) of sub-*  
24                   *section (c); or*

1           “(ii) in lieu of the actions described in  
2           clause (i), pay to the San Xavier District  
3           \$18,300,000 (adjusted as provided in section  
4           317(a)(2)) in full satisfaction of the obliga-  
5           tions of the United States described in  
6           clause (i).

7           “(B) ELECTION.—

8           “(i) IN GENERAL.—The San Xavier  
9           District Council may make a nonrevocable  
10          election whether to receive the benefits de-  
11          scribed under clause (i) or (ii) of subpara-  
12          graph (A) by notifying the Secretary by not  
13          later than 180 days after the enforceability  
14          date or January 1, 2010, whichever is later,  
15          by written and certified resolution of the  
16          San Xavier District Council.

17          “(ii) NO RESOLUTION.—If the Sec-  
18          retary does not receive such a resolution by  
19          the deadline specified in clause (i), the Sec-  
20          retary shall pay \$18,300,000 (adjusted as  
21          provided in section 317(a)(2)) to the San  
22          Xavier District in lieu of carrying out the  
23          obligations of the United States under sub-  
24          paragraph (A)(i).

1                   “(C) *SOURCE OF FUNDS AND TIME OF PAY-*  
2                   *MENT.—*

3                   “(i) *IN GENERAL.—Payment of*  
4                   *\$18,300,000 (adjusted as provided in section*  
5                   *317(a)(2)) under this paragraph shall be*  
6                   *made by the Secretary from the Lower Colo-*  
7                   *rado River Basin Development Fund—*

8                   “(I) *not later than 60 days after*  
9                   *an election described in subparagraph*  
10                  *(B) is made (if such an election is*  
11                  *made), but in no event earlier than the*  
12                  *enforceability date or January 1, 2010,*  
13                  *whichever is later; or*

14                  “(II) *not later than 240 days*  
15                  *after the enforceability date or Janu-*  
16                  *ary 1, 2010, whichever is later, if no*  
17                  *timely election is made.*

18                  “(ii) *PAYMENT FOR ADDITIONAL*  
19                  *STRUCTURES.—Payment of amounts nec-*  
20                  *essary to design and construct such addi-*  
21                  *tional canals, laterals, farm ditches, and ir-*  
22                  *rigation works as are described in subpara-*  
23                  *graph (A)(i) shall be made by the Secretary*  
24                  *from the Lower Colorado River Basin De-*  
25                  *velopment Fund, if an election is made to*

1           receive the benefits under subparagraph  
2           (A)(i).

3           “(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.*

11          “(d) *EXTENSION OF DEADLINES.*—

12           “(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—*

16           “(A) *a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);*

19           “(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;*

23           “(C) *unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—*

1                   “(i) the Endangered Species Act of  
2                   1973 (16 U.S.C. 1531 et seq.); and

3                   “(ii) the National Environmental Pol-  
4                   icy Act of 1969 (42 U.S.C. 4321 et seq.); or

5                   “(D) stoppage in work resulting from the  
6                   assessment of a tax or fee that is alleged in any  
7                   court of jurisdiction to be confiscatory or dis-  
8                   criminatory.

9                   “(2) NOTICE OF FINDING.—If the Secretary ex-  
10                  tends a deadline under paragraph (1), the Secretary  
11                  shall—

12                   “(A) publish a notice of the extension in the  
13                   Federal Register; and

14                   “(B)(i) include in the notice an estimate of  
15                   such additional period of time as is necessary to  
16                   complete the project or activity that is the subject  
17                   of the extension; and

18                   “(ii) specify a deadline that provides for a  
19                   period for completion of the project before the end  
20                   of the period described in clause (i).

21                  “(e) AUTHORITY OF SECRETARY.—

22                   “(1) IN GENERAL.—In carrying out this title,  
23                   after providing reasonable notice to the Nation, the  
24                   Secretary, in compliance with all applicable law,  
25                   may enter, construct works on, and take such other



1       actions as are related to the entry or construction on  
2       land within the San Xavier District and the eastern  
3       Schuk Toak District.

4               “(2) *EFFECT ON FEDERAL ACTIVITY.*—Nothing  
5       in this subsection affects the authority of the United  
6       States, or any Federal officer, agent, employee, or  
7       contractor, to conduct official Federal business or  
8       carry out any Federal duty (including any Federal  
9       business or duty under this title) on land within the  
10      eastern Schuk Toak District or the San Xavier Dis-  
11      trict.

12      “(f) *USE OF FUNDS.*—

13              “(1) *IN GENERAL.*—With respect to any funds  
14      received under subsection (c)(3)(A), the San Xavier  
15      District—

16                      “(A) shall hold the funds in trust, and in-  
17                      vest the funds in interest-bearing deposits and  
18                      securities, until expended;

19                      “(B) may expend the principal of the funds,  
20                      and any interest and dividends that accrue on  
21                      the principal, only in accordance with a budget  
22                      that is—

23                              “(i) authorized by the San Xavier Dis-  
24                              trict Council; and

1           “(ii) approved by resolution of the Leg-  
2           islative Council of the Nation; and

3           “(C) shall expend the funds—

4                   “(i) for any subjugation of land, devel-  
5                   opment of water resources, or construction,  
6                   operation, maintenance, or replacement of  
7                   facilities within the San Xavier Reservation  
8                   that is not required to be carried out by the  
9                   United States under this title or any other  
10                  provision of law;

11                  “(ii) to provide governmental services,  
12                  including—

13                           “(I) programs for senior citizens;

14                           “(II) health care services;

15                           “(III) education;

16                           “(IV) economic development loans  
17                           and assistance; and

18                           “(V) legal assistance programs;

19                  “(iii) to provide benefits to allottees;

20                           “(iv) to pay the costs of activities of  
21                           the San Xavier Allottees Association; or

22                           “(v) to pay any administrative costs  
23                           incurred by the Nation or the San Xavier  
24                           District in conjunction with any of the ac-  
25                           tivities described in clauses (i) through (iv).

1           “(2) *NO LIABILITY OF SECRETARY; LIMITA-*  
2           *TION.—*

3           “(A) *IN GENERAL.—The Secretary shall*  
4           *not—*

5                     “(i) *be responsible for any review, ap-*  
6                     *proval, or audit of the use and expenditure*  
7                     *of the funds described in paragraph (1); or*

8                     “(ii) *be subject to liability for any*  
9                     *claim or cause of action arising from the*  
10                    *use or expenditure, by the Nation or the*  
11                    *San Xavier District, of those funds.*

12           “(B) *LIMITATION.—No portion of any funds*  
13           *described in paragraph (1) shall be used for per*  
14           *capita payments to any individual member of*  
15           *the Nation or any allottee.*

16   **“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; AL-**  
17           **TERNATIVE WATER SUPPLIES.**

18           “(a) *DELIVERY OF WATER.—*

19                     “(1) *IN GENERAL.—The Secretary shall deliver*  
20                     *water from the main project works of the Central Ari-*  
21                     *zona Project, in such quantities, and in accordance*  
22                     *with such terms and conditions, as are contained in*  
23                     *the agreement of December 11, 1980, the 1982 Act, the*  
24                     *agreement of October 11, 1983, and the Tohono*  
25                     *O’odham settlement agreement (to the extent that the*

1 *settlement agreement does not conflict with this Act),*  
2 *to 1 or more of—*

3 *“(A) the cooperative farm;*

4 *“(B) the eastern Schuk Toak District;*

5 *“(C) turnouts existing on the enforceability*  
6 *date; and*

7 *“(D) any other point of delivery on the Cen-*  
8 *tral Arizona Project main aqueduct that is*  
9 *agreed to by—*

10 *“(i) the Secretary;*

11 *“(ii) the operator of the Central Ari-*  
12 *zona Project; and*

13 *“(iii) the Nation.*

14 *“(2) DELIVERY.—The Secretary shall deliver the*  
15 *water covered by sections 304(a) and 306(a), or an*  
16 *equivalent quantity of water from a source identified*  
17 *under subsection (b)(1), notwithstanding—*

18 *“(A) any declaration by the Secretary of a*  
19 *water shortage on the Colorado River; or*

20 *“(B) any other occurrence affecting water*  
21 *delivery caused by an act or omission of—*

22 *“(i) the Secretary;*

23 *“(ii) the United States; or*

24 *“(iii) any officer, employee, contractor,*  
25 *or agent of the Secretary or United States.*

1       “(b) *ACQUISITION OF LAND AND WATER.*—

2               “(1) *DELIVERY.*—

3                       “(A) *IN GENERAL.*—*Except as provided in*  
4                       *subparagraph (B), if the Secretary, under the*  
5                       *terms and conditions of the agreements referred*  
6                       *to in subsection (a)(1), is unable, during any*  
7                       *year, to deliver annually from the main project*  
8                       *works of the Central Arizona Project any portion*  
9                       *of the quantity of water covered by sections*  
10                      *304(a) and 306(a), the Secretary shall identify,*  
11                      *acquire and deliver an equivalent quantity of*  
12                      *water from, any appropriate source.*

13                      “(B) *EXCEPTION.*—*The Secretary shall not*  
14                      *acquire any water under subparagraph (A)*  
15                      *through any transaction that would cause deple-*  
16                      *tion of groundwater supplies or aquifers in the*  
17                      *San Xavier District or the eastern Schuk Toak*  
18                      *District.*

19               “(2) *PRIVATE LAND AND INTERESTS.*—

20                      “(A) *ACQUISITION.*—

21                               “(i) *IN GENERAL.*—*Subject to subpara-*  
22                               *graph (B), the Secretary may acquire, for*  
23                               *not more than market value, such private*  
24                               *land, or interests in private land, that in-*  
25                               *clude rights in surface or groundwater rec-*

1            *ognized under State law, as are necessary*  
2            *for the acquisition and delivery of water*  
3            *under this subsection.*

4            “(i) *COMPLIANCE.—In acquiring*  
5            *rights in surface water under clause (i), the*  
6            *Secretary shall comply with all applicable*  
7            *severance and transfer requirements under*  
8            *State law.*

9            “(B) *PROHIBITION ON TAKING.—The Sec-*  
10           *retary shall not acquire any land, water, water*  
11           *rights, or contract rights under subparagraph*  
12           *(A) without the consent of the owner of the land,*  
13           *water, water rights, or contract rights.*

14           “(C) *PRIORITY.—In acquiring any private*  
15           *land or interest in private land under this para-*  
16           *graph, the Secretary shall give priority to the ac-*  
17           *quisition of land on which water has been put to*  
18           *beneficial use during any 1-year period during*  
19           *the 5-year period preceding the date of acquisi-*  
20           *tion of the land by the Secretary.*

21           “(3) *DELIVERIES FROM ACQUIRED LAND.—Deliv-*  
22           *eries of water from land acquired under paragraph*  
23           *(2) shall be made only to the extent that the water*  
24           *may be transported within the Tucson management*  
25           *area under applicable law.*

1           “(4) *DELIVERY OF EFFLUENT.*—

2                   “(A) *IN GENERAL.*—*Except on receipt of*  
3           *prior written consent of the Nation, the Sec-*  
4           *retary shall not deliver effluent directly to the*  
5           *Nation under this subsection.*

6                   “(B) *NO SEPARATE DELIVERY SYSTEM.*—  
7           *The Secretary shall not construct a separate de-*  
8           *livery system to deliver effluent to the San Xa-*  
9           *xavier Reservation or the eastern Schuk Toak Dis-*  
10          *trict.*

11                  “(C) *NO IMPOSITION OF OBLIGATION.*—  
12          *Nothing in this paragraph imposes any obliga-*  
13          *tion on the United States to deliver effluent to*  
14          *the Nation.*

15          “(c) *AGREEMENTS AND CONTRACTS.*—*To facilitate the*  
16          *delivery of water to the San Xavier Reservation and the*  
17          *eastern Schuk Toak District under this title, the Secretary*  
18          *may enter into a contract or agreement with the State, an*  
19          *irrigation district or project, or entity—*

20                  “(1) *for—*

21                          “(A) *the exchange of water; or*

22                          “(B) *the use of aqueducts, canals, conduits,*  
23                          *and other facilities (including pumping plants)*  
24                          *for water delivery; or*

1           “(2) to use facilities constructed, in whole or in  
2 part, with Federal funds.

3           “(d) COMPENSATION AND DISBURSEMENTS.—

4           “(1) COMPENSATION.—If the Secretary is unable  
5 to acquire and deliver sufficient quantities of water  
6 under section 304(a), this section, or section 306(a),  
7 the Secretary shall provide compensation in accord-  
8 ance with paragraph (2) in amounts equal to—

9           “(A)(i) the value of such quantities of water  
10 as are not acquired and delivered, if the delivery  
11 and distribution system for, and the improve-  
12 ments to, the irrigation system for the coopera-  
13 tive farm have not been completed by the dead-  
14 line required under section 304(c)(1); or

15           “(ii) the value of such quantities of water  
16 as—

17           “(I) are ordered by the Nation for use  
18 by the San Xavier Cooperative Association  
19 in the irrigation system; but

20           “(II) are not delivered in any calendar  
21 year;

22           “(B)(i) the value of such quantities of water  
23 as are not acquired and delivered, if the exten-  
24 sion of the irrigation system is not completed by  
25 the deadline required under section 304(c)(2); or



1           “(i) the value of such quantities of water  
2 as—

3           “(I) are ordered by the Nation for use  
4 by the San Xavier Cooperative Association  
5 in the extension to the irrigation system;  
6 but

7           “(II) are not delivered in any calendar  
8 year; and

9           “(C)(i) the value of such quantities of water  
10 as are not acquired and delivered, if the irriga-  
11 tion system is not completed by the deadline re-  
12 quired under section 304(c)(4); or

13           “(ii) except as provided in clause (i), the  
14 value of such quantities of water as—

15           “(I) are ordered by the Nation for use  
16 in the irrigation system, or for use by any  
17 person or entity (other than the San Xavier  
18 Cooperative Association); but

19           “(II) are not delivered in any calendar  
20 year.

21           “(2) DISBURSEMENT.—Any compensation pay-  
22 able under paragraph (1) shall be disbursed—

23           “(A) with respect to compensation payable  
24 under subparagraphs (A) and (B) of paragraph

1           (1), to the San Xavier Cooperative Association;  
2           and

3                   “(B) with respect to compensation payable  
4           under paragraph (1)(C), to the Nation for reten-  
5           tion by the Nation or disbursement to water  
6           users, under the provisions of the water code or  
7           other applicable laws of the Nation.

8           “(e) *NO EFFECT ON WATER RIGHTS.*—Nothing in this  
9           section authorizes the Secretary to acquire or otherwise af-  
10          fect the water rights of any Indian tribe.

11          “**SEC. 306. ADDITIONAL WATER DELIVERY.**

12           “(a) *IN GENERAL.*—In addition to the delivery of  
13          water described in section 304(a), the Secretary shall de-  
14          liver annually from the main project works of the Central  
15          Arizona Project, a total of 28,200 acre-feet of NIA priority  
16          water suitable for agricultural use, of which—

17                   “(1) 23,000 acre-feet shall—

18                           “(A) be delivered to, and used by, the San  
19                   Xavier Reservation; or

20                           “(B) otherwise be used by the Nation in ac-  
21                   cordance with section 309; and

22                   “(2) 5,200 acre-feet shall—

23                           “(A) be delivered to, and used by, the east-  
24                   ern Schuk Toak District; or

1                   “(B) otherwise be used by the Nation in ac-  
2                   cordance with section 309.

3           “(b) *STATE CONTRIBUTION.*—To assist the Secretary  
4 *in firming water under section 105(b)(1)(A) of the Arizona*  
5 *Water Settlements Act, the State shall contribute*  
6 *\$3,000,000—*

7                   “(1) *in accordance with a schedule that is ac-*  
8                   *ceptable to the Secretary and the State; and*

9                   “(2) *in the form of cash or in-kind goods and*  
10                  *services.*

11   **“SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIV-**  
12                   **ERY, REVENUE SHARING.**

13           “(a) *CONDITIONS ON ACTIONS OF SECRETARY.*—The  
14 *Secretary shall carry out section 304(c), subsections (a), (b),*  
15 *and (d) of section 305, and section 306, only if—*

16                   “(1) *the Nation agrees—*

17                           “(A) *except as provided in section 308(f)(1),*  
18                   *to limit the quantity of groundwater withdrawn*  
19                   *by nonexempt wells from beneath the San Xavier*  
20                   *Reservation to not more than 10,000 acre-feet;*

21                           “(B) *except as provided in section 308(f)(2),*  
22                   *to limit the quantity of groundwater withdrawn*  
23                   *by nonexempt wells from beneath the eastern*  
24                   *Schuk Toak District to not more than 3,200*  
25                   *acre-feet;*

1           “(C) to comply with water management  
2 plans established by the Secretary under section  
3 308(d);

4           “(D) to consent to the San Xavier District  
5 being deemed a tribal organization (as defined  
6 in section 900.6 of title 25, Code of Federal Reg-  
7 ulations (or any successor regulations)) for pur-  
8 poses identified in subparagraph (E)(iii)(I), as  
9 permitted with respect to tribal organizations  
10 under title I of the Indian Self-Determination  
11 and Education Assistance Act (25 U.S.C. 450 et  
12 seq.);

13           “(E) subject to compliance by the Nation  
14 with other applicable provisions of part 900 of  
15 title 25, Code of Federal Regulations (or any  
16 successor regulations), to consent to contracting  
17 by the San Xavier District under section 311(b),  
18 on the conditions that—

19                   “(i)(I) the plaintiffs in the Alvarez  
20 case and Tucson case have stipulated to the  
21 dismissal, with prejudice, of claims in those  
22 cases; and

23                   “(II) those cases have been dismissed  
24 with prejudice;

1           “(ii) *the San Xavier Cooperative Asso-*  
2           *ciation has agreed to assume responsibility,*  
3           *after completion of each of the irrigation*  
4           *systems described in paragraphs (1), (2),*  
5           *and (3) of section 304(c) and on the deliv-*  
6           *ery of water to those systems, for the oper-*  
7           *ation, maintenance, and replacement of*  
8           *those systems in accordance with the first*  
9           *section of the Act of August 1, 1914 (25*  
10           *U.S.C. 385); and*

11           “(iii) *with respect to the consent of the*  
12           *Nation to contracting—*

13                   “(I) *the consent is limited solely*  
14                   *to contracts for—*

15                           “(aa) *the design and con-*  
16                           *struction of the delivery and dis-*  
17                           *tribution system and the rehabili-*  
18                           *tation of the irrigation system for*  
19                           *the cooperative farm;*

20                           “(bb) *the extension of the ir-*  
21                           *rigation system for the cooperative*  
22                           *farm;*

23                           “(cc) *the subjugation of land*  
24                           *to be served by the extension of the*  
25                           *irrigation system;*

1           “(dd) the design and con-  
2           struction of storage facilities sole-  
3           ly for water deliverable for use  
4           within the San Xavier Reserva-  
5           tion; and

6           “(ee) the completion by the  
7           Secretary of a water resources  
8           study of the San Xavier Reserva-  
9           tion and subsequent preparation  
10          of a water management plan  
11          under section 308(d);

12          “(II) the Nation shall reserve the  
13          right to seek retrocession or reassump-  
14          tion of contracts described in subclause  
15          (I), and recontracting under subpart P  
16          and other applicable provisions of part  
17          900 of title 25, Code of Federal Regula-  
18          tions (or any successor regulations);

19          “(III) the Nation, on granting  
20          consent to such contracting, shall be re-  
21          leased from any responsibility, liabil-  
22          ity, claim, or cost from and after the  
23          date on which consent is given, with  
24          respect to past action or inaction by  
25          the Nation, and subsequent action or

1            *inaction by the San Xavier District,*  
2            *relating to the design and construction*  
3            *of irrigation systems for the coopera-*  
4            *tive farm or the Central Arizona*  
5            *Project link pipeline; and*

6            *“(IV) the Secretary shall, on the*  
7            *request of the Nation, execute a waiver*  
8            *and release to carry out subclause*  
9            *(III);*

10           *“(F) to subjugate, at no cost to the United*  
11           *States, the land for which the irrigation systems*  
12           *under paragraphs (2) and (3) of section 304(c)*  
13           *will be planned, designed, and constructed by the*  
14           *Secretary, on the condition that—*

15           *“(i) the obligation of the Nation to sub-*  
16           *jugate the land in the cooperative farm that*  
17           *is to be served by the extension of the irriga-*  
18           *tion system under section 304(c)(2) shall be*  
19           *determined by the Secretary, in consulta-*  
20           *tion with the Nation and the San Xavier*  
21           *Cooperative Association; and*

22           *“(ii) subject to approval by the Sec-*  
23           *retary of a contract with the San Xavier*  
24           *District executed under section 311, to per-*  
25           *form that subjugation, a determination by*

1           *the Secretary of the subjugation costs under*  
2           *clause (i), and the provision of notice by the*  
3           *San Xavier District to the Nation at least*  
4           *180 days before the date on which the San*  
5           *Xavier District Council certifies by resolu-*  
6           *tion that the subjugation is scheduled to*  
7           *commence, the Nation pays to the San Xa-*  
8           *xavier District, not later than 90 days before*  
9           *the date on which the subjugation is sched-*  
10          *uled to commence, from the trust fund*  
11          *under section 315, or from other sources of*  
12          *funds held by the Nation, the amount deter-*  
13          *mined by the Secretary under clause (i);*  
14          *and*

15                 *“(G) subject to business lease No. H54-16-*  
16                 *72 dated April 26, 1972, of San Xavier Reserva-*  
17                 *tion land to Asarco and approved by the United*  
18                 *States on November 14, 1972, that the Nation—*

19                         *“(i) shall allocate as a first right of*  
20                         *beneficial use by allottees, the San Xavier*  
21                         *District, and other persons within the San*  
22                         *Xavier Reservation—*

23                                 *“(I) 35,000 acre-feet of the 50,000*  
24                                 *acre-feet of water deliverable under sec-*



1            *tions 304(a)(1) and 306(a)(1), includ-*  
2            *ing the use of the allocation—*

3                    *“(aa) to fulfill the obligations*  
4                    *prescribed in the Asarco agree-*  
5                    *ment; and*

6                    *“(bb) for groundwater stor-*  
7                    *age, maintenance of instream*  
8                    *flows, and maintenance of ripar-*  
9                    *ian vegetation and habitat;*

10                   *“(II) the 10,000 acre-feet of*  
11                   *groundwater identified in subsection*  
12                   *(a)(1)(A);*

13                   *“(III) the groundwater withdrawn*  
14                   *from exempt wells;*

15                   *“(IV) the deferred pumping stor-*  
16                   *age credits authorized by section*  
17                   *308(f)(1)(B); and*

18                   *“(V) the storage credits resulting*  
19                   *from a project authorized in section*  
20                   *308(e) that cannot be lawfully trans-*  
21                   *ferred or otherwise disposed of to per-*  
22                   *sons for recovery outside the Nation’s*  
23                   *Reservation;*

24                   *“(ii) subject to section 309(b)(2), has*  
25                   *the right—*

1           “(I) to use, or authorize other per-  
2           sons or entities to use, any portion of  
3           the allocation of 35,000 acre-feet of  
4           water deliverable under sections  
5           304(a)(1) and 306(a)(1) outside the  
6           San Xavier Reservation for any period  
7           during which there is no identified ac-  
8           tual use of the water within the San  
9           Xavier Reservation;

10           “(II) as a first right of use, to use  
11           the remaining acre-feet of water deliv-  
12           erable under sections 304(a)(1) and  
13           306(a)(1) for any purpose and dura-  
14           tion authorized by this title within or  
15           outside the Nation’s Reservation; and

16           “(III) subject to section 308(e), as  
17           an exclusive right, to transfer or other-  
18           wise dispose of the storage credits that  
19           may be lawfully transferred or other-  
20           wise disposed of to persons for recovery  
21           outside the Nation’s Reservation;

22           “(iii) shall issue permits to persons or  
23           entities for use of the water resources re-  
24           ferred to in clause (i);

1           “(iv) shall, on timely receipt of an  
2           order for water by a permittee under a per-  
3           mit for Central Arizona Project water re-  
4           ferred to in clause (i), submit the order to—

5                       “(I) the Secretary; or

6                       “(II) the operating agency for the  
7           Central Arizona Project;

8           “(v) shall issue permits for water deliv-  
9           erable under sections 304(a)(2) and  
10           306(a)(2), including quantities of water  
11           reasonably necessary for the irrigation sys-  
12           tem referred to in section 304(c)(3);

13           “(vi) shall issue permits for ground-  
14           water that may be withdrawn from non-  
15           exempt wells in the eastern Schuk Toak Dis-  
16           trict; and

17           “(vii) shall, on timely receipt of an  
18           order for water by a permittee under a per-  
19           mit for water referred to in clause (v), sub-  
20           mit the order to—

21                       “(I) the Secretary; or

22                       “(II) the operating agency for the  
23           Central Arizona Project; and

24           “(2) the Alvarez case and Tucson case have been  
25           dismissed with prejudice.

1       “(b) *RESPONSIBILITIES ON COMPLETION.*—On com-  
 2       pletion of an irrigation system or extension of an irrigation  
 3       system described in paragraph (1) or (2) of section 304(c),  
 4       or in the case of the irrigation system described in section  
 5       304(c)(3), if such irrigation system is constructed on indi-  
 6       vidual Indian trust allotments, neither the United States  
 7       nor the Nation shall be responsible for the operation, main-  
 8       tenance, or replacement of the system.

9       “(c) *PAYMENT OF CHARGES.*—The Nation shall not be  
 10      responsible for payment of any water service capital charge  
 11      for Central Arizona Project water delivered under section  
 12      304, subsection (a) or (b) of section 305, or section 306.

13      **“SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STOR-**  
 14                              **AGE PROJECTS; STORAGE ACCOUNTS;**  
 15                              **GROUNDWATER.**

16      “(a) *WATER RESOURCES.*—Water resources described  
 17      in clauses (i) and (ii) of section 307(a)(1)(G)—

18                      “(1) shall be subject to section 7 of the Act of  
 19                      February 8, 1887 (25 U.S.C. 381); and

20                      “(2) shall be apportioned pursuant to clauses (i)  
 21                      and (ii) of section 307(a)(1)(G).

22      “(b) *WATER CODE.*—Subject to this title and any other  
 23      applicable law, the Nation shall—

1           “(1) manage, regulate, and control the water re-  
2 sources of the Nation and the water resources granted  
3 or confirmed under this title;

4           “(2) establish conditions, limitations, and permit  
5 requirements, and promulgate regulations, relating to  
6 the storage, recovery, and use of surface water and  
7 groundwater within the Nation’s Reservation;

8           “(3) enact and maintain—

9           “(A) an interim allottee water rights code  
10 that—

11           “(i) is consistent with subsection (a);

12           “(ii) prescribes the rights of allottees  
13 identified in paragraph (4); and

14           “(iii) provides that the interim allottee  
15 water rights code shall be incorporated in  
16 the comprehensive water code referred to in  
17 subparagraph (B); and

18           “(B) not later than 3 years after the en-  
19 forceability date, a comprehensive water code ap-  
20 plicable to the water resources granted or con-  
21 firmed under this title;

22           “(4) include in each of the water codes enacted  
23 under subparagraphs (A) and (B) of paragraph (3)—

24           “(A) an acknowledgement of the rights de-  
25 scribed in subsection (a);

1           “(B) a process by which a just and equi-  
2           table distribution of the water resources referred  
3           to in subsection (a), and any compensation pro-  
4           vided under section 305(d), shall be provided to  
5           allottees;

6           “(C) a process by which an allottee may re-  
7           quest and receive a permit for the use of any  
8           water resources referred to in subsection (a), ex-  
9           cept the water resources referred to in section  
10          307(a)(1)(G)(ii)(III) and subject to the Nation’s  
11          first right of use under section  
12          307(a)(1)(G)(ii)(II);

13          “(D) provisions for the protection of due  
14          process, including—

15                 “(i) a fair procedure for consideration  
16                 and determination of any request by—

17                         “(I) a member of the Nation, for  
18                         a permit for use of available water re-  
19                         sources granted or confirmed by this  
20                         title; and

21                         “(II) an allottee, for a permit for  
22                         use of—

23                                 “(aa) the water resources  
24                                 identified in section

1                   307(a)(1)(G)(i) that are subject to  
2                   a first right of beneficial use; or

3                   “*(bb)* subject to the first right  
4                   of use of the Nation, available  
5                   water resources identified in sec-  
6                   tion 307(a)(1)(G)(i)(II);

7                   “(i) provisions for—

8                   “*(I)* appeals and adjudications of  
9                   denied or disputed permits; and

10                  “*(II)* resolution of contested ad-  
11                  ministrative decisions; and

12                  “*(iii)* a waiver by the Nation of the  
13                  sovereign immunity of the Nation only with  
14                  respect to proceedings described in clause  
15                  *(ii)* for claims of declaratory and injunctive  
16                  relief; and

17                  “*(E)* a process for satisfying any entitle-  
18                  ment to the water resources referred to in section  
19                  307(a)(1)(G)(i) for which fee owners of allotted  
20                  land have received final determinations under  
21                  applicable law; and

22                  “(5) submit to the Secretary the comprehensive  
23                  water code, for approval by the Secretary only of the  
24                  provisions of the water code (and any amendments to

1 *the water code), that implement, with respect to the*  
2 *allottees, the standards described in paragraph (4).*

3 *“(c) WATER CODE APPROVAL.—*

4 *“(1) IN GENERAL.—On receipt of a comprehen-*  
5 *sive water code under subsection (b)(5), the Secretary*  
6 *shall—*

7 *“(A) issue a written approval of the water*  
8 *code; or*

9 *“(B) provide a written notification to the*  
10 *Nation that—*

11 *“(i) identifies such provisions of the*  
12 *water code that do not conform to sub-*  
13 *section (b) or other applicable Federal law;*  
14 *and*

15 *“(ii) recommends specific corrective*  
16 *language for each nonconforming provision.*

17 *“(2) REVISION BY NATION.—If the Secretary*  
18 *identifies nonconforming provisions in the water code*  
19 *under paragraph (1)(B)(i), the Nation shall revise the*  
20 *water code in accordance with the recommendations*  
21 *of the Secretary under paragraph (1)(B)(ii).*

22 *“(3) INTERIM AUTHORITY.—Until such time as*  
23 *the Nation revises the water code of the Nation in ac-*  
24 *cordance with paragraph (2) and the Secretary subse-*  
25 *quently approves the water code, the Secretary may*



1 *exercise any lawful authority of the Secretary under*  
2 *section 7 of the Act of February 8, 1887 (25 U.S.C.*  
3 *381).*

4 “(4) *LIMITATION.*—*Except as provided in this*  
5 *subsection, nothing in this title requires the approval*  
6 *of the Secretary of the water code of the Nation (or*  
7 *any amendment to that water code).*

8 “(d) *WATER MANAGEMENT PLANS.*—

9 “(1) *IN GENERAL.*—*The Secretary shall establish,*  
10 *for the San Xavier Reservation and the eastern Schuk*  
11 *Toak District, water management plans that meet the*  
12 *requirements described in paragraph (2).*

13 “(2) *REQUIREMENTS.*—*Water management plans*  
14 *established under paragraph (1)—*

15 “(A) *shall be developed under contracts exe-*  
16 *cuted under section 311 between the Secretary*  
17 *and the San Xavier District for the San*  
18 *Xavier Reservation, and between the Secretary*  
19 *and the Nation for the eastern Schuk Toak Dis-*  
20 *trict, as applicable, that permit expenditures, ex-*  
21 *clusive of administrative expenses of the Sec-*  
22 *retary, of not more than—*

23 “(i) *with respect to a contract between*  
24 *the Secretary and the San Xavier District,*  
25 *\$891,200; and*

1           “(i) with respect to a contract between  
2           the Secretary and the Nation, \$237,200;

3           “(B) shall, at a minimum—

4           “(i) provide for the measurement of all  
5           groundwater withdrawals, including with-  
6           drawals from each well that is not an ex-  
7           empt well;

8           “(ii) provide for—

9           “(I) reasonable recordkeeping of  
10           water use, including the quantities of  
11           water stored underground and recov-  
12           ered each calendar year; and

13           “(II) a system for the reporting of  
14           withdrawals from each well that is not  
15           an exempt well;

16           “(iii) provide for the direct storage and  
17           deferred storage of water, including the im-  
18           plementation of underground storage and  
19           recovery projects, in accordance with this  
20           section;

21           “(iv) provide for the annual exchange  
22           of information collected under clauses (i)  
23           through (iii)—

1                   “(I) *between the Nation and the*  
2                   *Arizona Department of Water Re-*  
3                   *sources; and*

4                   “(II) *between the Nation and the*  
5                   *city of Tucson, Arizona;*

6                   “(v) *provide for—*

7                   “(I) *the efficient use of water; and*

8                   “(II) *the prevention of waste;*

9                   “(vi) *except on approval of the district*  
10                  *council for a district in which a direct stor-*  
11                  *age project is established under subsection*  
12                  *(e), provide that no direct storage credits*  
13                  *earned as a result of the project shall be re-*  
14                  *covered at any location at which the recov-*  
15                  *ery would adversely affect surface or*  
16                  *groundwater supplies, or lower the water*  
17                  *table at any location, within the district;*  
18                  *and*

19                  “(vii) *provide for amendments to the*  
20                  *water plan in accordance with this title;*

21                  “(C) *shall authorize the establishment and*  
22                  *maintenance of 1 or more underground storage*  
23                  *and recovery projects in accordance with sub-*  
24                  *section (e), as applicable, within—*

25                  “(i) *the San Xavier Reservation; or*

1                   “(ii) the eastern Schuk Toak District;

2                   and

3                   “(D) shall be implemented and maintained  
4                   by the Nation, with no obligation by the Sec-  
5                   retary.

6           “(e) UNDERGROUND STORAGE AND RECOVERY  
7 PROJECTS.—The Nation is authorized to establish direct  
8 storage and recovery projects in accordance with the Tohono  
9 O’odham settlement agreement. The Secretary shall have no  
10 responsibility to fund or otherwise administer such projects.

11           “(f) GROUNDWATER.—

12                   “(1) SAN XAVIER RESERVATION.—

13                           “(A) IN GENERAL.—In accordance with sec-  
14                           tion 307(a)(1)(A), 10,000 acre-feet of ground-  
15                           water may be pumped annually within the San  
16                           Xavier Reservation.

17                           “(B) DEFERRED PUMPING.—

18                                   “(i) IN GENERAL.—Subject to clause  
19                                   (ii), all or any portion of the 10,000 acre-  
20                                   feet of water not pumped under subpara-  
21                                   graph (A) in a year—

22   “(I) may be withdrawn in a sub-  
23   sequent year; and

24   “(II) if any of that water is with-  
25   drawn, shall be accounted for in ac-

1                   *cordance with the Tohono O’odham set-*  
2                   *tlement agreement as a debit to the de-*  
3                   *ferred pumping storage account.*

4                   “(i) *LIMITATION.*—*The quantity of*  
5                   *water authorized to be recovered as deferred*  
6                   *pumping storage credits under this sub-*  
7                   *paragraph shall not exceed—*

8                                 “(I) *50,000 acre-feet for any 10-*  
9                                 *year period; or*

10                                “(II) *10,000 acre-feet in any year.*

11                   “(C) *RECOVERY OF ADDITIONAL WATER.*—  
12                   *In addition to the quantity of groundwater au-*  
13                   *thorized to be pumped under subparagraphs (A)*  
14                   *and (B), the Nation may annually recover with-*  
15                   *in the San Xavier Reservation all or a portion*  
16                   *of the credits for water stored under a project de-*  
17                   *scribed in subsection (e).*

18                   “(2) *EASTERN SCHUK TOAK DISTRICT.*—

19                                “(A) *IN GENERAL.*—*In accordance with sec-*  
20                                *tion 307(a)(1)(B), 3,200 acre-feet of groundwater*  
21                                *may be pumped annually within the eastern*  
22                                *Schuk Toak District.*

23                                “(B) *DEFERRED PUMPING.*—

24                                   “(i) *IN GENERAL.*—*Subject to clause*  
25                                   *(ii), all or any portion of the 3,200 acre-feet*

1                   of water not pumped under subparagraph  
2                   (A) in a year—

3                   “(I) may be withdrawn in a sub-  
4                   sequent year; and

5                   “(II) if any of that water is with-  
6                   drawn, shall be accounted for in ac-  
7                   cordance with the Tohono O’odham set-  
8                   tlement agreement as a debit to the de-  
9                   ferred pumping storage account.

10                  “(ii) *LIMITATION.*—The quantity of  
11                  water authorized to be recovered as deferred  
12                  pumping storage credits under this sub-  
13                  paragraph shall not exceed—

14                  “(I) 16,000 acre-feet for any 10-  
15                  year period; or

16                  “(II) 3,200 acre-feet in any year.

17                  “(C) *RECOVERY OF ADDITIONAL WATER.*—  
18                  In addition to the quantity of groundwater au-  
19                  thorized to be pumped under subparagraphs (A)  
20                  and (B), the Nation may annually recover with-  
21                  in the eastern Schuk Toak District all or a por-  
22                  tion of the credits for water stored under a  
23                  project described in subsection (e).

24                  “(3) *INABILITY TO RECOVER GROUNDWATER.*—

1           “(A) *IN GENERAL.*—*The authorizations to*  
2           *pump groundwater in paragraphs (1) and (2)*  
3           *neither warrant nor guarantee that the ground-*  
4           *water—*

5                     “(i) *physically exists; or*

6                     “(ii) *is recoverable.*

7           “(B) *CLAIMS.*—*With respect to groundwater*  
8           *described in subparagraph (A)—*

9                     “(i) *subject to paragraph 8.8 of the*  
10            *Tohono O’odham settlement agreement, the*  
11            *inability of any person to pump or recover*  
12            *that groundwater shall not be the basis for*  
13            *any claim by the United States or the Na-*  
14            *tion against any person or entity with-*  
15            *drawing or using the water from any com-*  
16            *mon supply; and*

17                     “(ii) *the United States and the Nation*  
18            *shall be barred from asserting any and all*  
19            *claims for reserved water rights with respect*  
20            *to that groundwater.*

21           “(g) *EXEMPT WELLS.*—*Any groundwater pumped*  
22            *from an exempt well located within the San Xavier Res-*  
23            *ervation or the eastern Schuk Toak District shall be exempt*  
24            *from all pumping limitations under this title.*

1       “(h) *INABILITY OF SECRETARY TO DELIVER*  
2 *WATER.*—*The Nation is authorized to pump additional*  
3 *groundwater in any year in which the Secretary is unable*  
4 *to deliver water required to carry out sections 304(a) and*  
5 *306(a) in accordance with the Tohono O’odham settlement*  
6 *agreement.*

7       “(i) *PAYMENT OF COMPENSATION.*—*Nothing in this*  
8 *section affects any obligation of the Secretary to pay com-*  
9 *pensation in accordance with section 305(d).*

10   **“SEC. 309. USES OF WATER.**

11       “(a) *PERMISSIBLE USES.*—*Subject to other provisions*  
12 *of this section and other applicable law, the Nation may*  
13 *devote all water supplies granted or confirmed under this*  
14 *title, whether delivered by the Secretary or pumped by the*  
15 *Nation, to any use (including any agricultural, municipal,*  
16 *domestic, industrial, commercial, mining, underground*  
17 *storage, instream flow, riparian habitat maintenance, or*  
18 *recreational use).*

19       “(b) *USE AREA.*—

20               “(1) *USE WITHIN NATION’S RESERVATION.*—*Sub-*  
21 *ject to subsection (d), the Nation may use at any loca-*  
22 *tion within the Nation’s Reservation—*

23                       “(A) *the water supplies acquired under sec-*  
24                       *tions 304(a) and 306(a);*

25                       “(B) *groundwater supplies; and*



1           “(C) *storage credits acquired as a result of*  
2           *projects authorized under section 308(e), or de-*  
3           *ferred storage credits described in section 308(f),*  
4           *except to the extent that use of those storage cred-*  
5           *its causes the withdrawal of groundwater in vio-*  
6           *lation of applicable Federal law.*

7           “(2) *USE OUTSIDE THE NATION’S RESERVA-*  
8           *TION.—*

9           “(A) *IN GENERAL.—Water resources grant-*  
10           *ed or confirmed under this title may be sold,*  
11           *leased, transferred, or used by the Nation outside*  
12           *of the Nation’s Reservation only in accordance*  
13           *with this title.*

14           “(B) *USE WITHIN CERTAIN AREA.—Subject*  
15           *to subsection (c), the Nation may use the Central*  
16           *Arizona Project water supplies acquired under*  
17           *sections 304(a) and 306(a) within the Central*  
18           *Arizona Project service area.*

19           “(C) *STATE LAW.—With the exception of*  
20           *Central Arizona Project water and groundwater*  
21           *withdrawals under the Asarco agreement, the*  
22           *Nation may sell, lease, transfer, or use any water*  
23           *supplies and storage credits acquired as a result*  
24           *of a project authorized under section 308(e) at*  
25           *any location outside of the Nation’s Reservation,*

1           *but within the State, only in accordance with*  
2           *State law.*

3           “(D) *LIMITATION.*—*Deferred pumping stor-*  
4           *age credits provided for in section 308(f) shall*  
5           *not be sold, leased, transferred, or used outside*  
6           *the Nation’s Reservation.*

7           “(E) *PROHIBITION ON USE OUTSIDE THE*  
8           *STATE.*—*No water acquired under section 304(a)*  
9           *or 306(a) shall be leased, exchanged, forborne, or*  
10          *otherwise transferred by the Nation for any di-*  
11          *rect or indirect use outside the State.*

12          “(c) *EXCHANGES AND LEASES; CONDITIONS ON EX-*  
13          *CHANGES AND LEASES.*—

14                 “(1) *IN GENERAL.*—*With respect to users outside*  
15                 *the Nation’s Reservation, the Nation may, for a term*  
16                 *of not to exceed 100 years, assign, exchange, lease,*  
17                 *provide an option to lease, or otherwise temporarily*  
18                 *dispose of to the users, Central Arizona Project water*  
19                 *to which the Nation is entitled under sections 304(a)*  
20                 *and 306(a) or storage credits acquired under section*  
21                 *308(e), if the assignment, exchange, lease, option, or*  
22                 *temporary disposal is carried out in accordance*  
23                 *with—*

24                         “(A) *this subsection; and*

25                         “(B) *subsection (b)(2).*

1           “(2) *LIMITATION ON ALIENATION.*—*The Nation*  
2           *shall not permanently alienate any water right under*  
3           *paragraph (1).*

4           “(3) *AUTHORIZED USES.*—*The water described*  
5           *in paragraph (1) shall be delivered within the Central*  
6           *Arizona Project service area for any use authorized*  
7           *under applicable law.*

8           “(4) *CONTRACT.*—*An assignment, exchange,*  
9           *lease, option, or temporary disposal described in*  
10           *paragraph (1) shall be executed only in accordance*  
11           *with a contract that—*

12                   “(A) *is accepted by the Nation;*

13                   “(B) *is ratified under a resolution of the*  
14                   *Legislative Council of the Nation;*

15                   “(C) *is approved by the United States as*  
16                   *Trustee; and*

17                   “(D) *with respect to any contract to which*  
18                   *the United States or the Secretary is a party,*  
19                   *provides that an action may be maintained by*  
20                   *the contracting party against the United States*  
21                   *and the Secretary for a breach of the contract by*  
22                   *the United States or Secretary, as appropriate.*

23           “(5) *TERMS EXCEEDING 25 YEARS.*—*The terms*  
24           *and conditions established in paragraph 11 of the*  
25           *Tohono O’odham settlement agreement shall apply to*

1        *any contract under paragraph (4) that has a term of*  
2        *greater than 25 years.*

3        “(d) *LIMITATIONS ON USE, EXCHANGES, AND*  
4        *LEASES.—The rights of the Nation to use water supplies*  
5        *under subsection (a), and to assign, exchange, lease, provide*  
6        *options to lease, or temporarily dispose of the water supplies*  
7        *under subsection (c), shall be exercised on conditions that*  
8        *ensure the availability of water supplies to satisfy the first*  
9        *right of beneficial use under section 307(a)(1)(G)(i).*

10       “(e) *WATER SERVICE CAPITAL CHARGES.—In any*  
11       *transaction entered into by the Nation and another person*  
12       *under subsection (c) with respect to Central Arizona Project*  
13       *water of the Nation, the person shall not be obligated to*  
14       *pay to the United States or the Central Arizona Water Con-*  
15       *servation District any water service capital charge.*

16       “(f) *WATER RIGHTS UNAFFECTED BY USE OR NON-*  
17       *USE.—The failure of the Nation to make use of water pro-*  
18       *vided under this title, or the use of, or failure to make use*  
19       *of, that water by any other person that enters into a con-*  
20       *tract with the Nation under subsection (c) for the assign-*  
21       *ment, exchange, lease, option for lease, or temporary dis-*  
22       *posal of water, shall not diminish, reduce, or impair—*

23                “(1) *any water right of the Nation, as estab-*  
24        *lished under this title or any other applicable law; or*

1           “(2) any water use right recognized under this  
2 title, including—

3                   “(A) the first right of beneficial use referred  
4 to in section 307(a)(1)(G)(i); or

5                   “(B) the allottee use rights referred to in  
6 section 308(a).

7           “(g) AMENDMENT TO AGREEMENT OF DECEMBER 11,  
8 1980.—The Secretary shall amend the agreement of Decem-  
9 ber 11, 1980, to provide that—

10                   “(1) the contract shall be—

11                           “(A) for permanent service (within the  
12 meaning of section 5 of the Boulder Canyon  
13 Project Act of 1928 (43 U.S.C. 617d)); and

14                           “(B) without limit as to term;

15                   “(2) the Nation may, with the approval of the  
16 Secretary—

17                           “(A) in accordance with subsection (c), as-  
18 sign, exchange, lease, enter into an option to  
19 lease, or otherwise temporarily dispose of water  
20 to which the Nation is entitled under sections  
21 304(a) and 306(a); and

22                           “(B) renegotiate any lease at any time dur-  
23 ing the term of the lease if the term of the renego-  
24 tiated lease does not exceed 100 years;

1           “(3)(A) *the Nation shall be entitled to all consid-*  
2           *eration due to the Nation under any leases and any*  
3           *options to lease or exchanges or options to exchange*  
4           *the Nation’s Central Arizona Project water entered*  
5           *into by the Nation; and*

6           “(B) *the United States shall have no trust obli-*  
7           *gation or other obligation to monitor, administer, or*  
8           *account for any consideration received by the Nation*  
9           *under those leases or options to lease and exchanges*  
10          *or options to exchange;*

11          “(4)(A) *all of the Nation’s Central Arizona*  
12          *Project water shall be delivered through the Central*  
13          *Arizona Project aqueduct; and*

14          “(B) *if the delivery capacity of the Central Ari-*  
15          *zona Project aqueduct is significantly reduced or is*  
16          *anticipated to be significantly reduced for an ex-*  
17          *tended period of time, the Nation shall have the same*  
18          *Central Arizona Project delivery rights as other Cen-*  
19          *tral Arizona Project contractors and Central Arizona*  
20          *Project subcontractors, if the Central Arizona Project*  
21          *contractors or Central Arizona Project subcontractors*  
22          *are allowed to take delivery of water other than*  
23          *through the Central Arizona Project aqueduct;*

24          “(5) *the Nation may use the Nation’s Central*  
25          *Arizona Project water on or off of the Nation’s Res-*

1 *ervation for the purposes of the Nation consistent*  
2 *with this title;*

3 *“(6) as authorized by subparagraph (A) of sec-*  
4 *tion 403(f)(2) of the Colorado River Basin Project Act*  
5 *(43 U.S.C. 1543(f)(2)) (as amended by section*  
6 *107(a)) and to the extent that funds are available in*  
7 *the Lower Colorado River Basin Development Fund*  
8 *established by section 403 of that Act (43 U.S.C.*  
9 *1543), the United States shall pay to the Central Ari-*  
10 *zona Project operating agency the fixed operation,*  
11 *maintenance, and replacement charges associated*  
12 *with the delivery of the Nation’s Central Arizona*  
13 *Project water, except for the Nation’s Central Arizona*  
14 *Project water leased by others;*

15 *“(7) the allocated costs associated with the con-*  
16 *struction of the delivery and distribution system—*

17 *“(A) shall be nonreimbursable; and*

18 *“(B) shall be excluded from any repayment*  
19 *obligation of the Nation;*

20 *“(8) no water service capital charges shall be due*  
21 *or payable for the Nation’s Central Arizona Project*  
22 *water, regardless of whether the Central Arizona*  
23 *Project water is delivered for use by the Nation or is*  
24 *delivered pursuant to any leases or options to lease or*

1 *exchanges or options to exchange the Nation's Central*  
2 *Arizona Project water entered into by the Nation;*

3 *“(9) the agreement of December 11, 1980, con-*  
4 *forms with section 104(d) and section 306(a) of the*  
5 *Arizona Water Settlements Act; and*

6 *“(10) the amendments required by this sub-*  
7 *section shall not apply to the 8,000 acre feet of Cen-*  
8 *tral Arizona Project water contracted by the Nation*  
9 *in the agreement of December 11, 1980, for the Sif*  
10 *Oidak District.*

11 *“(h) RATIFICATION OF AGREEMENTS.—*

12 *“(1) IN GENERAL.—Notwithstanding any other*  
13 *provision of law, each agreement described in para-*  
14 *graph (2), to the extent that the agreement is not in*  
15 *conflict with this Act—*

16 *“(A) is authorized, ratified, and confirmed;*

17 *and*

18 *“(B) shall be executed by the Secretary.*

19 *“(2) AGREEMENTS.—The agreements described*  
20 *in this paragraph are—*

21 *“(A) the Tohono O’odham settlement agree-*  
22 *ment, to the extent that—*

23 *“(i) the Tohono O’odham settlement*  
24 *agreement is consistent with this title; and*



1                   “(ii) parties to the Tohono O’odham  
2                   settlement agreement other than the Sec-  
3                   retary have executed that agreement;

4                   “(B) the Tucson agreement (attached to the  
5                   Tohono O’odham settlement agreement as exhibit  
6                   12.1); and

7                   “(C)(i) the Asarco agreement (attached to  
8                   the Tohono O’odham settlement agreement as ex-  
9                   hibit 13.1 to the Tohono O’odham settlement  
10                  agreement);

11                  “(ii) lease No. H54–0916–0972, dated April  
12                  26, 1972, and approved by the United States on  
13                  November 14, 1972; and

14                  “(iii) any new well site lease as provided  
15                  for in the Asarco agreement; and

16                  “(D) the FICO agreement (attached to the  
17                  Tohono O’odham settlement agreement as Ex-  
18                  hibit 14.1).

19                  “(3) RELATION TO OTHER LAW.—

20                  “(A) ENVIRONMENTAL COMPLIANCE.—In  
21                  implementing an agreement described in para-  
22                  graph (2), the Secretary shall promptly comply  
23                  with all aspects of the National Environmental  
24                  Policy Act of 1969 (42 U.S.C. 4321 et seq.), the  
25                  Endangered Species Act of 1973 (16 U.S.C. 1531

1 *et seq.*), and all other applicable environmental  
2 *Acts and regulations.*

3 “(B) *EXECUTION OF AGREEMENT.*—*Execu-*  
4 *tion of an agreement described in paragraph (2)*  
5 *by the Secretary under this section shall not con-*  
6 *stitute a major Federal action under the Na-*  
7 *tional Environmental Policy Act (42 U.S.C.*  
8 *4321 et seq.). The Secretary is directed to carry*  
9 *out all necessary environmental compliance re-*  
10 *quired by Federal law in implementing an*  
11 *agreement described in paragraph (2).*

12 “(C) *LEAD AGENCY.*—*The Bureau of Rec-*  
13 *lamation shall be the lead agency with respect to*  
14 *environmental compliance under the agreements*  
15 *described in paragraph (2).*

16 “(i) *DISBURSEMENTS FROM TUCSON INTERIM WATER*  
17 *LEASE.*—*The Secretary shall disburse to the Nation, with-*  
18 *out condition, all proceeds from the Tucson interim water*  
19 *lease.*

20 “(j) *USE OF GROSS PROCEEDS.*—

21 “(1) *DEFINITION OF GROSS PROCEEDS.*—*In this*  
22 *subsection, the term ‘gross proceeds’ means all pro-*  
23 *ceeds, without reduction, received by the Nation*  
24 *from—*

25 “(A) *the Tucson interim water lease;*

1           “(B) *the Asarco agreement; and*

2           “(C) *any agreement similar to the Asarco*  
3           *agreement to store Central Arizona Project water*  
4           *of the Nation, instead of pumping groundwater,*  
5           *for the purpose of protecting water of the Nation;*  
6           *provided, however, that gross proceeds shall not*  
7           *include proceeds from the transfer of Central Ar-*  
8           *izona Project water in excess of 20,000 acre feet*  
9           *annually pursuant to any agreement under this*  
10          *subparagraph or under the Asarco agreement ref-*  
11          *erenced in subparagraph (B).*

12          “(2) *ENTITLEMENT.—The Nation shall be enti-*  
13          *tled to receive all gross proceeds.*

14          “(k) *STATUTORY CONSTRUCTION.—Nothing in this*  
15          *title establishes whether reserved water may be put to use,*  
16          *or sold for use, off any reservation to which reserved water*  
17          *rights attach.*

18          “**SEC. 310. COOPERATIVE FUND.**

19          “(a) *REAUTHORIZATION.—*

20                 “(1) *IN GENERAL.—Congress reauthorizes, for*  
21                 *use in carrying out this title, the cooperative fund es-*  
22                 *tablished in the Treasury of the United States by sec-*  
23                 *tion 313 of the 1982 Act.*

24                 “(2) *AMOUNTS IN COOPERATIVE FUND.—The co-*  
25                 *operative fund shall consist of—*

1           “(A)(i) \$5,250,000, as appropriated to the  
2 cooperative fund under section 313(b)(3)(A) of  
3 the 1982 Act; and

4           “(ii) such amount, not to exceed  
5 \$32,000,000, as the Secretary determines, after  
6 providing notice to Congress, is necessary to  
7 carry out this title;

8           “(B) any additional Federal funds depos-  
9 ited to the cooperative fund under Federal law;

10          “(C) \$5,250,000, as deposited in the cooper-  
11 ative fund under section 313(b)(1)(B) of the  
12 1982 Act, of which—

13           “(i) \$2,750,000 was contributed by the  
14 State;

15           “(ii) \$1,500,000 was contributed by the  
16 city of Tucson; and

17           “(iii) \$1,000,000 was contributed by—

18           “(I) the Anamax Mining Com-  
19 pany;

20           “(II) the Cyprus-Pima Mining  
21 Company;

22           “(III) the American Smelting and  
23 Refining Company;

24           “(IV) the Duval Corporation; and

1                   “(V) *the Farmers Investment*  
2                   *Company;*

3                   “(D) *all interest accrued on all amounts in*  
4                   *the cooperative fund beginning on October 12,*  
5                   *1982, less any interest expended under subsection*  
6                   *(b)(2); and*

7                   “(E) *all revenues received from—*

8                   “(i) *the sale or lease of effluent received*  
9                   *by the Secretary under the contract between*  
10                  *the United States and the city of Tucson to*  
11                  *provide for delivery of reclaimed water to*  
12                  *the Secretary, dated October 11, 1983; and*

13                  “(ii) *the sale or lease of storage credits*  
14                  *derived from the storage of that effluent.*

15                  “(b) *EXPENDITURES FROM FUND.—*

16                  “(1) *IN GENERAL.—Subject to paragraph (2),*  
17                  *upon request by the Secretary, the Secretary of the*  
18                  *Treasury shall transfer from the cooperative fund to*  
19                  *the Secretary such amounts as the Secretary deter-*  
20                  *mines are necessary to carry out obligations of the*  
21                  *Secretary under this title, including to pay—*

22                  “(A) *the variable costs relating to the deliv-*  
23                  *ery of water under sections 304 through 306;*

24                  “(B) *fixed operation maintenance and re-*  
25                  *placement costs relating to the delivery of water*

1           *under sections 304 through 306, to the extent*  
2           *that funds are not available from the Lower Col-*  
3           *orado River Basin Development Fund to pay*  
4           *those costs;*

5           *“(C) the costs of acquisition and delivery of*  
6           *water from alternative sources under section 305;*  
7           *and*

8           *“(D) any compensation provided by the*  
9           *Secretary under section 305(d).*

10           *“(2) EXPENDITURE OF INTEREST.—Except as*  
11           *provided in paragraph (3), the Secretary may expend*  
12           *only interest income accruing to the cooperative fund,*  
13           *and that interest income may be expended by the Sec-*  
14           *retary, without further appropriation.*

15           *“(3) EXPENDITURE OF REVENUES.—Revenues*  
16           *described in subsection (a)(2)(E) shall be available for*  
17           *expenditure under paragraph (1).*

18           *“(c) INVESTMENT OF AMOUNTS.—*

19           *“(1) IN GENERAL.—The Secretary of the Treas-*  
20           *ury shall invest such portion of the cooperative fund*  
21           *as is not, in the judgment of the Secretary of the*  
22           *Treasury, required to meet current withdrawals deter-*  
23           *mined by the Secretary. Investments may be made*  
24           *only in interest-bearing obligations of the United*  
25           *States.*

1           “(2) *CREDITS TO COOPERATIVE FUND.*—*The in-*  
2           *terest on, and the proceeds from the sale or redemp-*  
3           *tion of, any obligations held in the cooperative fund*  
4           *shall be credited to and form a part of the cooperative*  
5           *fund.*

6           “(d) *TRANSFERS OF AMOUNTS.*—

7           “(1) *IN GENERAL.*—*The amounts required to be*  
8           *transferred to the cooperative fund under this section*  
9           *shall be transferred at least monthly from the general*  
10           *fund of the Treasury to the cooperative fund on the*  
11           *basis of estimates made by the Secretary of the Treas-*  
12           *ury.*

13           “(2) *ADJUSTMENTS.*—*Proper adjustment shall be*  
14           *made in amounts subsequently transferred to the ex-*  
15           *tent prior estimates were in excess of or less than the*  
16           *amounts required to be transferred.*

17           “(e) *DAMAGES.*—*Damages arising under this title or*  
18           *any contract for the delivery of water recognized by this*  
19           *title shall not exceed, in any given year, the amounts avail-*  
20           *able for expenditure in that year from the cooperative fund.*

21           **“SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY;**  
22    **STUDIES; ARID LAND ASSISTANCE.**

23           “(a) *FUNCTIONS OF SECRETARY.*—*Except as provided*  
24           *in subsection (f), the functions of the Secretary (or the Com-*  
25           *missioner of Reclamation, acting on behalf of the Secretary)*

1 *under this title shall be subject to the Indian Self-Deter-*  
2 *mination and Education Assistance Act (25 U.S.C. 450 et*  
3 *seq.) to the same extent as if those functions were carried*  
4 *out by the Assistant Secretary for Indian Affairs.*

5 “(b) *SAN XAVIER DISTRICT AS CONTRACTOR.*—

6 “(1) *IN GENERAL.*—*Subject to the consent of the*  
7 *Nation and other requirements under section*  
8 *307(a)(1)(E), the San Xavier District shall be consid-*  
9 *ered to be an eligible contractor for purposes of this*  
10 *title.*

11 “(2) *TECHNICAL ASSISTANCE.*—*The Secretary*  
12 *shall provide to the San Xavier District technical as-*  
13 *sistance in carrying out the contracting requirements*  
14 *under the Indian Self-Determination and Education*  
15 *Assistance Act (25 U.S.C. 450 et seq.).*

16 “(c) *GROUNDWATER MONITORING PROGRAMS.*—

17 “(1) *SAN XAVIER INDIAN RESERVATION PRO-*  
18 *GRAM.*—

19 “(A) *IN GENERAL.*—*Not later than 180*  
20 *days after the enforceability date, the Secretary*  
21 *shall develop and initiate a comprehensive*  
22 *groundwater monitoring program (including the*  
23 *drilling of wells and other appropriate actions)*  
24 *to test, assess, and provide for the long-term*  
25 *monitoring of the quality of groundwater with-*



1           *drawn from exempt wells and other wells within*  
2           *the San Xavier Reservation.*

3           “(B) *LIMITATION ON EXPENDITURES.—In*  
4           *carrying out this paragraph, the Secretary shall*  
5           *expend not more than \$215,000.*

6           “(2) *EASTERN SCHUK TOAK DISTRICT PRO-*  
7           *GRAM.—*

8           “(A) *IN GENERAL.—Not later than 180*  
9           *days after the enforceability date, the Secretary*  
10           *shall develop and initiate a comprehensive*  
11           *groundwater monitoring program (including the*  
12           *drilling of wells and other appropriate actions)*  
13           *to test, assess, and provide for the long-term*  
14           *monitoring of the quality of groundwater with-*  
15           *drawn from exempt wells and other wells within*  
16           *the eastern Schuk Toak District.*

17           “(B) *LIMITATION ON EXPENDITURES.—In*  
18           *carrying out this paragraph, the Secretary shall*  
19           *expend not more than \$175,000.*

20           “(3) *DUTIES OF SECRETARY.—*

21           “(A) *CONSULTATION.—In carrying out*  
22           *paragraphs (1) and (2), the Secretary shall con-*  
23           *sult with representatives of—*

24                   “(i) *the Nation;*

1                   “(ii) *the San Xavier District and*  
2                   *Schuk Toak District, respectively; and*

3                   “(iii) *appropriate State and local enti-*  
4                   *ties.*

5                   “(B) *LIMITATION ON OBLIGATIONS OF SEC-*  
6                   *RETARY.—With respect to the groundwater moni-*  
7                   *toring programs described in paragraphs (1) and*  
8                   *(2), the Secretary shall have no continuing obli-*  
9                   *gation relating to those programs beyond the ob-*  
10                  *ligations described in those paragraphs.*

11                  “(d) *WATER RESOURCES STUDY.—To assist the Na-*  
12                  *tion in developing sources of water, the Secretary shall con-*  
13                  *duct a study to determine the availability and suitability*  
14                  *of water resources that are located—*

15                         “(1) *within the Nation’s Reservation; but*

16                         “(2) *outside the Tucson management area.*

17                  “(e) *ARID LAND RENEWABLE RESOURCES.—If a Fed-*  
18                  *eral entity is established to provide financial assistance to*  
19                  *carry out arid land renewable resources projects and to en-*  
20                  *courage and ensure investment in the development of domes-*  
21                  *tic sources of arid land renewable resources, the entity*  
22                  *shall—*

23                         “(1) *give first priority to the needs of the Nation*  
24                         *in providing that assistance; and*

1           “(2) make available to the Nation, San Xavier  
2           District, Schuk Toak District, and San Xavier Coop-  
3           erative Association price guarantees, loans, loan guar-  
4           antees, purchase agreements, and joint venture  
5           projects at a level that the entity determines will—

6                   “(A) facilitate the cultivation of such min-  
7                   imum number of acres as is determined by the  
8                   entity to be necessary to ensure economically suc-  
9                   cessful cultivation of arid land crops; and

10                   “(B) contribute significantly to the economy  
11                   of the Nation.

12           “(f) ASARCO LAND EXCHANGE STUDY.—

13                   “(1) IN GENERAL.—Not later than 2 years after  
14                   the enforceability date, the Secretary, in consultation  
15                   with the Nation, the San Xavier District, the San Xa-  
16                   vier Allottees’ Association, and Asarco, shall conduct  
17                   and submit to Congress a study on the feasibility of  
18                   a land exchange or land exchanges with Asarco to  
19                   provide land for future use by—

20                   “(A) beneficial landowners of the Mission  
21                   Complex Mining Leases of September 18, 1959;  
22                   and

23                   “(B) beneficial landowners of the Mission  
24                   Complex Business Leases of May 12, 1959.

1           “(2) *COMPONENTS.*—*The study under paragraph*  
2           *(1) shall include—*

3                   “(A) *an analysis of the manner in which*  
4                   *land exchanges could be accomplished to main-*  
5                   *tain a contiguous land base for the San Xavier*  
6                   *Reservation; and*

7                   “(B) *a description of the legal status ex-*  
8                   *changed land should have to maintain the polit-*  
9                   *ical integrity of the San Xavier Reservation.*

10           “(3) *LIMITATION ON EXPENDITURES.*—*In car-*  
11           *rying out this subsection, the Secretary shall expend*  
12           *not more than \$250,000.*

13           **“SEC. 312. WAIVER AND RELEASE OF CLAIMS.**

14           “(a) *WAIVER OF CLAIMS BY THE NATION.*—*Except as*  
15           *provided in subsection (d), the Tohono O’odham settlement*  
16           *agreement shall provide that the Nation waives and re-*  
17           *leases—*

18                   “(1) *any and all past, present, and future claims*  
19                   *for water rights (including claims based on aboriginal*  
20                   *occupancy) arising from time immemorial and, there-*  
21                   *after, forever, and claims for injuries to water rights*  
22                   *arising from time immemorial through the enforce-*  
23                   *ability date, for land within the Tucson management*  
24                   *area, against—*

1           “(A) *the State (or any agency or political*  
2           *subdivision of the State);*

3           “(B) *any municipal corporation; and*

4           “(C) *any other person or entity;*

5           “(2) *any and all claims for water rights arising*  
6           *from time immemorial and, thereafter, forever, claims*  
7           *for injuries to water rights arising from time imme-*  
8           *morial through the enforceability date, and claims for*  
9           *failure to protect, acquire, or develop water rights for*  
10          *land within the San Xavier Reservation and the east-*  
11          *ern Schuk Toak District from time immemorial*  
12          *through the enforceability date, against the United*  
13          *States (including any agency, officer, and employee of*  
14          *the United States);*

15          “(3) *any and all claims for injury to water*  
16          *rights arising after the enforceability date for land*  
17          *within the San Xavier Reservation and the eastern*  
18          *Schuk Toak District resulting from the off-Reserva-*  
19          *tion diversion or use of water in a manner not in*  
20          *violation of the Tohono O’odham settlement agreement*  
21          *or State law against—*

22                 “(A) *the United States;*

23                 “(B) *the State (or any agency or political*  
24                 *subdivision of the State);*

25                 “(C) *any municipal corporation; and*

1                   “(D) any other person or entity; and

2                   “(4) any and all past, present, and future claims  
3                   arising out of or relating to the negotiation or execu-  
4                   tion of the Tohono O’odham settlement agreement or  
5                   the negotiation or enactment of this title, against—

6                   “(A) the United States;

7                   “(B) the State (or any agency or political  
8                   subdivision of the State);

9                   “(C) any municipal corporation; and

10                  “(D) any other person or entity.

11                  “(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASS-  
12                  ES.—The Tohono O’odham settlement agreement shall pro-  
13                  vide that each allottee class waives and releases—

14                  “(1) any and all past, present, and future claims  
15                  for water rights (including claims based on aboriginal  
16                  occupancy) arising from time immemorial and, there-  
17                  after, forever, claims for injuries to water rights aris-  
18                  ing from time immemorial through the enforceability  
19                  date for land within the San Xavier Reservation,  
20                  against—

21                  “(A) the State (or any agency or political  
22                  subdivision of the State);

23                  “(B) any municipal corporation; and

24                  “(C) any other person or entity (other than  
25                  the Nation);

1           “(2) any and all claims for water rights arising  
2           from time immemorial and, thereafter, forever, claims  
3           for injuries to water rights arising from time imme-  
4           morial through the enforceability date, and claims for  
5           failure to protect, acquire, or develop water rights for  
6           land within the San Xavier Reservation from time  
7           immemorial through the enforceability date, against  
8           the United States (including any agency, officer, and  
9           employee of the United States);

10           “(3) any and all claims for injury to water  
11           rights arising after the enforceability date for land  
12           within the San Xavier Reservation resulting from the  
13           off-Reservation diversion or use of water in a manner  
14           not in violation of the Tohono O’odham settlement  
15           agreement or State law against—

16                   “(A) the United States;

17                   “(B) the State (or any agency or political  
18                   subdivision of the State);

19                   “(C) any municipal corporation; and

20                   “(D) any other person or entity;

21           “(4) any and all past, present, and future claims  
22           arising out of or relating to the negotiation or execu-  
23           tion of the Tohono O’odham settlement agreement or  
24           the negotiation or enactment of this title, against—

25                   “(A) the United States;

1                   “(B) the State (or any agency or political  
2                   subdivision of the State);

3                   “(C) any municipal corporation; and

4                   “(D) any other person or entity; and

5                   “(5) any and all past, present, and future claims  
6                   for water rights arising from time immemorial and,  
7                   thereafter, forever, and claims for injuries to water  
8                   rights arising from time immemorial through the en-  
9                   forceability date, against the Nation (except that  
10                  under section 307(a)(1)(G) and subsections (a) and  
11                  (b) of section 308, the allottees and fee owners of allot-  
12                  ted land shall retain rights to share in the water re-  
13                  sources granted or confirmed under this title and the  
14                  Tohono O’odham settlement agreement with respect to  
15                  uses within the San Xavier Reservation).

16                  “(c) WAIVER OF CLAIMS BY THE UNITED STATES.—  
17                  Except as provided in subsection (d), the Tohono O’odham  
18                  settlement agreement shall provide that the United States  
19                  as Trustee waives and releases—

20                         “(1) any and all past, present, and future claims  
21                         for water rights (including claims based on aboriginal  
22                         occupancy) arising from time immemorial and, there-  
23                         after, forever, and claims for injuries to water rights  
24                         arising from time immemorial through the enforce-



1       *ability date, for land within the Tucson management*  
2       *area against—*

3               “(A) *the Nation;*

4               “(B) *the State (or any agency or political*  
5               *subdivision of the State);*

6               “(C) *any municipal corporation; and*

7               “(D) *any other person or entity;*

8               “(2) *any and all claims for injury to water*  
9               *rights arising after the enforceability date for land*  
10              *within the San Xavier Reservation and the eastern*  
11              *Schuk Toak District resulting from the off-Reserva-*  
12              *tion diversion or use of water in a manner not in*  
13              *violation of the Tohono O’odham settlement agreement*  
14              *or State law against—*

15              “(A) *the Nation;*

16              “(B) *the State (or any agency or political*  
17              *subdivision of the State);*

18              “(C) *any municipal corporation; and*

19              “(D) *any other person or entity;*

20              “(3) *on and after the enforceability date, any*  
21              *and all claims on behalf of the allottees for injuries*  
22              *to water rights against the Nation (except that under*  
23              *section 307(a)(1)(G) and subsections (a) and (b) of*  
24              *section 308, the allottees shall retain rights to share*  
25              *in the water resources granted or confirmed under*

1       *this title and the Tohono O’odham settlement agree-*  
2       *ment with respect to uses within the San Xavier Res-*  
3       *ervation); and*

4               “(4) *claims against Asarco on behalf of the allot-*  
5       *tee class for the fourth cause of action in Alvarez v.*  
6       *City of Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz.,*  
7       *filed April 21, 1993)), in accordance with the terms*  
8       *and conditions of the Asarco agreement.*

9       “(d) *CLAIMS RELATING TO GROUNDWATER PROTEC-*  
10       *TION PROGRAM.—The Nation and the United States as*  
11       *Trustee—*

12               “(1) *shall have the right to assert any claims*  
13       *granted by a State law implementing the ground-*  
14       *water protection program described in paragraph 8.8*  
15       *of the Tohono O’odham settlement agreement; and*

16               “(2) *if, after the enforceability date, the State*  
17       *law is amended so as to have a material adverse effect*  
18       *on the Nation, shall have a right to relief in the State*  
19       *court having jurisdiction over Gila River adjudica-*  
20       *tion proceedings and decrees, against an owner of any*  
21       *nonexempt well drilled after the effective date of the*  
22       *amendment (if the well actually and substantially*  
23       *interferes with groundwater pumping occurring on*  
24       *the San Xavier Reservation), from the incremental ef-*  
25       *fect of the groundwater pumping that exceeds that*

1       *which would have been allowable had the State law*  
2       *not been amended.*

3       “(e) *SUPPLEMENTAL WAIVERS OF CLAIMS.—Any*  
4       *party to the Tohono O’odham settlement agreement may*  
5       *wave and release, prohibit the assertion of, or agree not*  
6       *to assert, any claims (including claims for subsidence dam-*  
7       *age or injury to water quality) in addition to claims for*  
8       *water rights and injuries to water rights on such terms and*  
9       *conditions as may be agreed to by the parties.*

10       “(f) *RIGHTS OF ALLOTTEES; PROHIBITION OF*  
11       *CLAIMS.—*

12               “(1) *IN GENERAL.—As of the enforceability*  
13       *date—*

14                       “(A) *the water rights and other benefits*  
15                       *granted or confirmed by this title and the*  
16                       *Tohono O’odham settlement agreement shall be*  
17                       *in full satisfaction of—*

18                               “(i) *all claims for water rights and*  
19                               *claims for injuries to water rights of the*  
20                               *Nation; and*

21                               “(ii) *all claims for water rights and*  
22                               *injuries to water rights of the allottees;*

23                               “(B) *any entitlement to water within the*  
24                       *Tucson management area of the Nation, or of*  
25                       *any allottee, shall be satisfied out of the water*

1           *resources granted or confirmed under this title*  
2           *and the Tohono O’odham settlement agreement;*  
3           *and*

4           “(C) *any rights of the allottees to ground-*  
5           *water, surface water, or effluent shall be limited*  
6           *to the water rights granted or confirmed under*  
7           *this title and the Tohono O’odham settlement*  
8           *agreement.*

9           “(2) *LIMITATION OF CERTAIN CLAIMS BY*  
10          *ALLOTTEES.—No allottee within the San Xavier Res-*  
11          *ervation may—*

12           “(A) *assert any past, present, or future*  
13           *claim for water rights arising from time imme-*  
14           *morial and, thereafter, forever, or any claim for*  
15           *injury to water rights (including future injury*  
16           *to water rights) arising from time immemorial*  
17           *and thereafter, forever, against—*

18                   “(i) *the United States;*

19                   “(ii) *the State (or any agency or polit-*  
20                   *ical subdivision of the State);*

21                   “(iii) *any municipal corporation; or*

22                   “(iv) *any other person or entity; or*

23           “(B) *continue to assert a claim described in*  
24           *subparagraph (A), if the claim was first asserted*  
25           *before the enforceability date.*

1           “(3) *CLAIMS BY FEE OWNERS OF ALLOTTED*  
2     *LAND.—*

3           “(A) *IN GENERAL.—No fee owner of allotted*  
4     *land within the San Xavier Reservation may as-*  
5     *sert any claim to the extent that—*

6           “(i) *the claim has been waived and re-*  
7     *leased in the Tohono O’odham settlement*  
8     *agreement; and*

9           “(ii) *the fee owner of allotted land as-*  
10    *serting the claim is a member of the appli-*  
11    *cable allottee class.*

12          “(B) *OFFSET.—Any benefits awarded to a*  
13    *fee owner of allotted land as a result of a success-*  
14    *ful claim shall be offset by benefits received by*  
15    *that fee owner of allotted land under this title.*

16          “(4) *LIMITATION OF CLAIMS AGAINST THE NA-*  
17    *TION.—*

18          “(A) *IN GENERAL.—Except as provided in*  
19    *subparagraph (B), no allottee may assert against*  
20    *the Nation any claims for water rights arising*  
21    *from time immemorial and, thereafter, forever,*  
22    *claims for injury to water rights arising from*  
23    *time immemorial and thereafter forever.*

24          “(B)     *EXCEPTION.—Under        section*  
25    *307(a)(1)(G) and subsections (a) and (b) of sec-*

1            *tion 308, the allottees shall retain rights to share*  
2            *in the water resources granted or confirmed*  
3            *under this title and the Tohono O’odham settle-*  
4            *ment agreement.*

5            “(g) *CONSENT.*—

6            “(1) *GRANT OF CONSENT.*—Congress grants to  
7            *the Nation and the San Xavier Cooperative Associa-*  
8            *tion under section 305(d) consent to maintain civil*  
9            *actions against the United States in the courts of the*  
10           *United States under section 1346, 1491, or 1505 of*  
11           *title 28, United States Code, respectively, to recover*  
12           *damages, if any, for the breach of any obligation of*  
13           *the Secretary under those sections.*

14           “(2) *REMEDY.*—

15           “(A) *IN GENERAL.*—Subject to subpara-  
16           *graph (B), the exclusive remedy for a civil action*  
17           *maintained under this subsection shall be mone-*  
18           *tary damages.*

19           “(B) *OFFSET.*—An award for damages for  
20           *a claim under this subsection shall be offset*  
21           *against the amount of funds—*

22                      *“(i) made available by any Act of Con-*  
23                      *gress; and*

1                   “(ii) paid to the claimant by the Sec-  
2                   retary in partial or complete satisfaction of  
3                   the claim.

4                   “(3) NO CLAIMS ESTABLISHED.—Except as pro-  
5                   vided in paragraph (1), nothing in the subsection es-  
6                   tablishes any claim against the United States.

7                   “(h) JURISDICTION; WAIVER OF IMMUNITY; PAR-  
8                   TIES.—

9                   “(1) JURISDICTION.—

10                   “(A) IN GENERAL.—Except as provided in  
11                   subsection (i), the State court having jurisdiction  
12                   over Gila River adjudication proceedings and de-  
13                   crees, shall have jurisdiction over—

14                   “(i) civil actions relating to the inter-  
15                   pretation and enforcement of—

16                   “(I) this title;

17                   “(II) the Tohono O’odham settle-  
18                   ment agreement; and

19                   “(III) agreements referred to in  
20                   section 309(h)(2); and

21                   “(ii) civil actions brought by or  
22                   against the allottees or fee owners of allotted  
23                   land for the interpretation of, or legal or eq-  
24                   uitable remedies with respect to, claims of  
25                   the allottees or fee owners of allotted land

1           *that are not claims for water rights, inju-*  
2           *ries to water rights or other claims that are*  
3           *barred or waived and released under this*  
4           *title or the Tohono O’odham settlement*  
5           *agreement.*

6           “(B) *LIMITATION.*—*Except as provided in*  
7           *subparagraph (A), no State court or court of the*  
8           *Nation shall have jurisdiction over any civil ac-*  
9           *tion described in subparagraph (A).*

10          “(2) *WAIVER.*—

11           “(A) *IN GENERAL.*—*The United States and*  
12           *the Nation waive sovereign immunity solely for*  
13           *claims for—*

14                   “(i) *declaratory judgment or injunctive*  
15                   *relief in any civil action arising under this*  
16                   *title; and*

17                   “(ii) *such claims and remedies as may*  
18                   *be prescribed in any agreement authorized*  
19                   *under this title.*

20           “(B) *LIMITATION ON STANDING.*—*If a gov-*  
21           *ernmental entity not described in subparagraph*  
22           *(A) asserts immunity in any civil action that*  
23           *arises under this title (unless the entity waives*  
24           *immunity for declaratory judgment or injunctive*  
25           *relief) or any agreement authorized under this*



1           *title (unless the entity waives immunity for the*  
2           *claims and remedies prescribed in the agree-*  
3           *ment)—*

4                     *“(i) the governmental entity shall not*  
5                     *have standing to initiate or assert any*  
6                     *claim, or seek any remedy against the*  
7                     *United States or the Nation, in the civil ac-*  
8                     *tion; and*

9                     *“(ii) the waivers of sovereign immu-*  
10                    *nity under subparagraph (A) shall have no*  
11                    *effect in the civil action.*

12                    *“(C) MONETARY RELIEF.—A waiver of im-*  
13                    *munity under this paragraph shall not extend to*  
14                    *any claim for damages, costs, attorneys’ fees, or*  
15                    *other monetary relief.*

16                    *“(3) NATION AS A PARTY.—*

17                    *“(A) IN GENERAL.—Not later than 60 days*  
18                    *before the date on which a civil action under*  
19                    *paragraph (1)(A)(ii) is filed by an allottee or fee*  
20                    *owner of allotted land, the allottee or fee owner,*  
21                    *as the case may be, shall provide to the Nation*  
22                    *a notice of intent to file the civil action, accom-*  
23                    *panied by a request for consultation.*

24                    *“(B) JOINDER.—If the Nation is not a*  
25                    *party to a civil action as originally commenced*

1           *under paragraph (1)(A)(ii), the Nation shall be*  
2           *joined as a party.*

3           “(i) *REGULATION AND JURISDICTION OVER DISPUTE*  
4 *RESOLUTION.—*

5           “(1) *REGULATION.—The Nation shall have juris-*  
6 *isdiction to manage, control, permit, administer, and*  
7 *otherwise regulate the water resources granted or con-*  
8 *firmed under this title and the Tohono O’odham set-*  
9 *tlement agreement—*

10           “(A) *with respect to the use of those re-*  
11 *sources by—*

12                   “(i) *the Nation;*

13                   “(ii) *individual members of the Na-*  
14 *tion;*

15                   “(iii) *districts of the Nation; and*

16                   “(iv) *allottees; and*

17           “(B) *with respect to any entitlement to*  
18 *those resources for which a fee owner of allotted*  
19 *land has received a final determination under*  
20 *applicable law.*

21           “(2) *JURISDICTION.—Subject to a requirement of*  
22 *exhaustion of any administrative or other remedies*  
23 *prescribed under the laws of the Nation, jurisdiction*  
24 *over any disputes relating to the matters described in*

1 paragraph (1) shall be vested in the courts of the Na-  
2 tion.

3 “(3) *APPLICABLE LAW.*—The regulatory and re-  
4 medial procedures referred to in paragraphs (1) and  
5 (2) shall be subject to all applicable law.

6 “(j) *FEDERAL JURISDICTION.*—The Federal Courts  
7 shall have concurrent jurisdiction over actions described in  
8 subsection 312(h) to the extent otherwise provided in Fed-  
9 eral law.

10 **“SEC. 313. AFTER-ACQUIRED TRUST LAND.**

11 “(a) *IN GENERAL.*—Except as provided in subsection  
12 (b)—

13 “(1) the Nation may seek to have taken into  
14 trust by the United States, for the benefit of the Na-  
15 tion, legal title to additional land within the State  
16 and outside the exterior boundaries of the Nation’s  
17 Reservation only in accordance with an Act of Con-  
18 gress specifically authorizing the transfer for the ben-  
19 efit of the Nation;

20 “(2) lands taken into trust under paragraph (1)  
21 shall include only such water rights and water use  
22 privileges as are consistent with State water law and  
23 State water management policy; and

1           “(3) *after-acquired trust land shall not include*  
2           *Federal reserved rights to surface water or ground-*  
3           *water.*

4           “(b) *EXCEPTION.—Subsection (a) shall not apply to*  
5           *land acquired by the Nation under the Gila Bend Indian*  
6           *Reservation Lands Replacement Act (100 Stat. 1798).*

7           “**SEC. 314. NONREIMBURSABLE COSTS.**

8           “(a) *CENTRAL ARIZONA WATER CONSERVATION DIS-*  
9           *TRICT.—For the purpose of determining the allocation and*  
10           *repayment of costs of any stage of the Central Arizona*  
11           *Project, the costs associated with the delivery of Central Ari-*  
12           *zona Project water acquired under sections 304(a) and*  
13           *306(a), whether that water is delivered for use by the Nation*  
14           *or in accordance with any assignment, exchange, lease, op-*  
15           *tion to lease, or other agreement for the temporary disposi-*  
16           *tion of water entered into by the Nation—*

17                   “(1) *shall be nonreimbursable; and*

18                   “(2) *shall be excluded from the repayment obli-*  
19           *gation of the Central Arizona Water Conservation*  
20           *District.*

21           “(b) *CLAIMS BY UNITED STATES.—The United States*  
22           *shall—*

23                   “(1) *make no claim against the Nation or any*  
24           *allottee for reimbursement or repayment of any cost*  
25           *associated with—*

1           “(A) the construction of facilities under the  
2           *Colorado River Basin Project Act (43 U.S.C.*  
3           *1501 et seq.)*;

4           “(B) the delivery of *Central Arizona Project*  
5           *water for any use authorized under this title; or*

6           “(C) the implementation of this title;

7           “(2) make no claim against the Nation for reim-  
8           *bursement or repayment of the costs associated with*  
9           *the construction of facilities described in paragraph*  
10          *(1)(A) for the benefit of and use on land that—*

11           “(A) is known as the ‘*San Lucy Farm*’; and

12           “(B) was acquired by the Nation under the  
13           *Gila Bend Indian Reservation Lands Replace-*  
14           *ment Act (100 Stat. 1798); and*

15           “(3) impose no assessment with respect to the  
16           *costs referred to in paragraphs (1) and (2) against—*

17           “(A) trust or allotted land within the Na-  
18           *tion’s Reservation; or*

19           “(B) the land described in paragraph (2).

20   **“SEC. 315. TRUST FUND.**

21           “(a) *REAUTHORIZATION.*—Congress reauthorizes the  
22           *trust fund established by section 309 of the 1982 Act, con-*  
23           *taining an initial deposit of \$15,000,000 made under that*  
24           *section, for use in carrying out this title.*

1       “(b) *EXPENDITURE AND INVESTMENT.*—Subject to the  
2 *limitations of subsection (d), the principal and all accrued*  
3 *interest and dividends in the trust fund established under*  
4 *section 309 of the 1982 Act may be—*

5               “(1) *expended by the Nation for any govern-*  
6 *mental purpose; and*

7               “(2) *invested by the Nation in accordance with*  
8 *such policies as the Nation may adopt.*

9       “(c) *RESPONSIBILITY OF SECRETARY.*—The Secretary  
10 *shall not—*

11               “(1) *be responsible for the review, approval, or*  
12 *audit of the use and expenditure of any funds from*  
13 *the trust fund reauthorized by subsection (a); or*

14               “(2) *be subject to liability for any claim or cause*  
15 *of action arising from the use or expenditure by the*  
16 *Nation of those funds.*

17       “(d) *CONDITIONS OF TRUST.*—

18               “(1) *RESERVE FOR THE COST OF SUBJUGA-*  
19 *TION.*—The Nation shall reserve in the trust fund re-  
20 *authorized by subsection (a)—*

21                       “(A) *the principal amount of at least*  
22 *\$3,000,000; and*

23                       “(B) *interest on that amount that accrues*  
24 *during the period beginning on the enforceability*  
25 *date and ending on the earlier of—*

1                   “(i) the date on which full payment of  
2                   such costs has been made; or

3                   “(ii) the date that is 10 years after the  
4                   enforceability date.

5                   “(2) *PAYMENT.*—The costs described in para-  
6                   graph (1) shall be paid in the amount, on the terms,  
7                   and for the purposes prescribed in section  
8                   307(a)(1)(F).

9                   “(3) *LIMITATION ON RESTRICTIONS.*—On the oc-  
10                  currence of an event described in clause (i) or (ii) of  
11                  paragraph (1)(B)—

12                   “(A) the restrictions imposed on funds from  
13                   the trust fund described in paragraph (1) shall  
14                   terminate; and

15                   “(B) any of those funds remaining that  
16                   were reserved under paragraph (1) may be used  
17                   by the Nation under subsection (b)(1).

18                  **“SEC. 316. MISCELLANEOUS PROVISIONS.**

19                   “(a) *IN GENERAL.*—Nothing in this title—

20                   “(1) establishes the applicability or inapplica-  
21                   bility to groundwater of any doctrine of Federal re-  
22                   served rights;

23                   “(2) limits the ability of the Nation to enter into  
24                   any agreement with the Arizona Water Banking Au-

1        *thority (or a successor agency) in accordance with*  
2        *State law;*

3            *“(3) prohibits the Nation, any individual mem-*  
4        *ber of the Nation, an allottee, or a fee owner of allot-*  
5        *ted land in the San Xavier Reservation from lawfully*  
6        *acquiring water rights for use in the Tucson manage-*  
7        *ment area in addition to the water rights granted or*  
8        *confirmed under this title and the Tohono O’odham*  
9        *settlement agreement;*

10           *“(4) abrogates any rights or remedies existing*  
11        *under section 1346 or 1491 of title 28, United States*  
12        *Code;*

13           *“(5) affects the obligations of the parties under*  
14        *the Agreement of December 11, 1980, with respect to*  
15        *the 8,000 acre feet of Central Arizona Project water*  
16        *contracted by the Nation for the Sif Oidak District;*

17           *“(6)(A) applies to any exempt well;*

18           *“(B) prohibits or limits the drilling of any ex-*  
19        *empt well within—*

20           *“(i) the San Xavier Reservation; or*

21           *“(ii) the eastern Schuk Toak District; or*

22           *“(C) subjects water from any exempt well to any*  
23        *pumping limitation under this title; or*

24           *“(7) diminishes or abrogates rights to use water*  
25        *under—*



1           “(A) contracts of the Nation in existence be-  
2           fore the enforceability date; or

3           “(B) the well site agreement referred to in  
4           the Asarco agreement and any well site agree-  
5           ment entered into under the Asarco agreement.

6           “(b) *NO EFFECT ON FUTURE ALLOCATIONS.*—Water  
7           received under a lease or exchange of Central Arizona  
8           Project water under this title does not affect any future allo-  
9           cation or reallocation of Central Arizona Project water by  
10          the Secretary.

11          “(c) *LIMITATION ON LIABILITY OF UNITED STATES.*—

12           “(1) *IN GENERAL.*—The United States shall have  
13          no trust or other obligation—

14           “(A) to monitor, administer, or account for,  
15           in any manner, any of the funds paid to the Na-  
16           tion or the San Xavier District under this Act;  
17           or

18           “(B) to review or approve the expenditure  
19           of those funds.

20           “(2) *INDEMNIFICATION.*—The Nation shall in-  
21          demnify the United States, and hold the United  
22          States harmless, with respect to any and all claims  
23          (including claims for takings or breach of trust) aris-  
24          ing out of the receipt or expenditure of funds de-  
25          scribed in paragraph (1)(A).

1 **“SEC. 317. AUTHORIZED COSTS.**

2 “(a) *IN GENERAL.*—*There are authorized to be appro-*  
3 *priated—*

4 “(1) *to construct features of irrigation systems*  
5 *described in paragraphs (1) through (4) of section*  
6 *304(c) that are not authorized to be constructed under*  
7 *any other provision of law, an amount equal to the*  
8 *sum of—*

9 “(A) *\$3,500,000; and*

10 “(B) *such additional amount as the Sec-*  
11 *retary determines to be necessary to adjust the*  
12 *amount under subparagraph (A) to account for*  
13 *ordinary fluctuations in the costs of construction*  
14 *of irrigation features for the period beginning on*  
15 *October 12, 1982, and ending on the date on*  
16 *which the construction of the features described*  
17 *in this subparagraph is initiated, as indicated*  
18 *by engineering cost indices applicable to the type*  
19 *of construction involved;*

20 “(2) *\$18,300,000 in lieu of construction to im-*  
21 *plement section 304(c)(3)(B), including an adjust-*  
22 *ment representing interest that would have been*  
23 *earned if this amount had been deposited in the coop-*  
24 *erative fund during the period beginning on January*  
25 *1, 2008, and ending on the date the amount is actu-*  
26 *ally paid to the San Xavier District;*

1           “(3) \$891,200 to develop and initiate a water  
2           management plan for the San Xavier Reservation  
3           under section 308(d);

4           “(4) \$237,200 to develop and initiate a water  
5           management plan for the eastern Schuk Toak District  
6           under section 308(d);

7           “(5) \$4,000,000 to complete the water resources  
8           study under section 311(d);

9           “(6) \$215,000 to develop and initiate a ground-  
10          water monitoring program for the San Xavier Res-  
11          ervation under section 311(c)(1);

12          “(7) \$175,000 to develop and implement a  
13          groundwater monitoring program for the eastern  
14          Schuk Toak District under section 311(c)(2);

15          “(8) \$250,000 to complete the Asarco land ex-  
16          change study under section 311(f); and

17          “(9) such additional sums as are necessary to  
18          carry out the provisions of this title other than the  
19          provisions referred to in paragraphs (1) through (8).

20          “(b) *TREATMENT OF APPROPRIATED AMOUNTS.—*  
21          *Amounts made available under subsection (a) shall be con-*  
22          *sidered to be authorized costs for purposes of section*  
23          *403(f)(2)(D)(iii) of the Colorado River Basin Project Act*  
24          *(43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section*  
25          *107(a) of the Arizona Water Settlements Act).”.*

1 **SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLE-**  
2 **MENT EFFECTIVE DATE.**

3 (a) *DEFINITIONS.*—*The definitions under section 301*  
4 *of the Southern Arizona Water Rights Settlement Amend-*  
5 *ments Act of 2004 (as contained in the amendment made*  
6 *by section 301) shall apply to this title.*

7 (b) *EFFECTIVE DATE.*—*This title and the amendments*  
8 *made by this title take effect as of the enforceability date,*  
9 *which is the date the Secretary publishes in the Federal*  
10 *Register a statement of findings that—*

11 (1)(A) *to the extent that the Tohono O’odham*  
12 *settlement agreement conflicts with this title or an*  
13 *amendment made by this title, the Tohono O’odham*  
14 *settlement agreement has been revised through an*  
15 *amendment to eliminate those conflicts; and*

16 (B) *the Tohono O’odham settlement agreement,*  
17 *as so revised, has been executed by the parties and the*  
18 *Secretary;*

19 (2) *the Secretary and other parties to the agree-*  
20 *ments described in section 309(h)(2) of the Southern*  
21 *Arizona Water Rights Settlement Amendments Act of*  
22 *2004 (as contained in the amendment made by sec-*  
23 *tion 301) have executed those agreements;*

24 (3) *the Secretary has approved the interim allot-*  
25 *tee water rights code described in section 308(b)(3)(A)*  
26 *of the Southern Arizona Water Rights Settlement*

1 *Amendments Act of 2004 (as contained in the amend-*  
2 *ment made by section 301);*

3 *(4) final dismissal with prejudice has been en-*  
4 *tered in each of the Alvarez case and the Tucson case*  
5 *on the sole condition that the Secretary publishes the*  
6 *findings specified in this section;*

7 *(5) the judgment and decree attached to the*  
8 *Tohono O’odham settlement agreement as exhibit 17.1*  
9 *has been approved by the State court having jurisdic-*  
10 *tion over the Gila River adjudication proceedings,*  
11 *and that judgment and decree have become final and*  
12 *nonappealable;*

13 *(6) implementation costs have been identified*  
14 *and retained in the Lower Colorado River Basin De-*  
15 *velopment Fund, specifically—*

16 *(A) \$18,300,000 to implement section*  
17 *304(c)(3);*

18 *(B) \$891,200 to implement a water man-*  
19 *agement plan for the San Xavier Reservation*  
20 *under section 308(d) of the Southern Arizona*  
21 *Water Rights Settlement Amendments Act of*  
22 *2004 (as contained in the amendment made by*  
23 *section 301);*

24 *(C) \$237,200 to implement a water man-*  
25 *agement plan for the eastern Schuk Toak Dis-*

1            *trict under section 308(d) of the Southern Ari-*  
2            *zona Water Rights Settlement Amendments Act*  
3            *of 2004 (as contained in the amendment made*  
4            *by section 301);*

5            *(D) \$4,000,000 to complete the water re-*  
6            *sources study under section 311(d) of the South-*  
7            *ern Arizona Water Rights Settlement Amend-*  
8            *ments Act of 2004 (as contained in the amend-*  
9            *ment made by section 301);*

10           *(E) \$215,000 to develop and implement a*  
11           *groundwater monitoring program for the San*  
12           *Xavier Reservation under section 311(c)(1) of the*  
13           *Southern Arizona Water Rights Settlement*  
14           *Amendments Act of 2004 (as contained in the*  
15           *amendment made by section 301);*

16           *(F) \$175,000 to develop and implement a*  
17           *groundwater monitoring program for the eastern*  
18           *Schuk Toak District under section 311(c)(2) of*  
19           *the Southern Arizona Water Rights Settlement*  
20           *Amendments Act of 2004 (as contained in the*  
21           *amendment made by section 301); and*

22           *(G) \$250,000 to complete the Asarco land*  
23           *exchange study under section 311(f) of the South-*  
24           *ern Arizona Water Rights Settlement Amend-*

1            *ments Act of 2004 (as contained in the amend-*  
2            *ment made by section 301);*

3            *(7) the State has enacted legislation that—*

4                    *(A) qualifies the Nation to earn long-term*  
5                    *storage credits under the Asarco agreement;*

6                    *(B) implements the San Xavier ground-*  
7                    *water protection program in accordance with*  
8                    *paragraph 8.8 of the Tohono O’odham settlement*  
9                    *agreement;*

10                   *(C) enables the State to carry out section*  
11                   *306(b); and*

12                   *(D) confirms the jurisdiction of the State*  
13                   *court having jurisdiction over Gila River adju-*  
14                   *dication proceedings and decrees to carry out the*  
15                   *provisions of sections 312(d) and 312(h) of the*  
16                   *Southern Arizona Water Rights Settlement*  
17                   *Amendments Act of 2004 (as contained in the*  
18                   *amendment made by section 301);*

19                   *(8) the Secretary and the State have agreed to*  
20                   *an acceptable firming schedule referred to in section*  
21                   *105(b)(2)(C); and*

22                   *(9) a final judgment has been entered in Central*  
23                   *Arizona Water Conservation District v. United States*  
24                   *(No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–*  
25                   *1720–PHX–EHC) (Consolidated Action) in accord-*

1        *ance with the repayment stipulation as provided in*  
2        *section 207.*

3        *(c) FAILURE TO PUBLISH STATEMENT OF FIND-*  
4        *INGS.—If the Secretary does not publish a statement of*  
5        *findings under subsection (a) by December 31, 2007—*

6                *(1) the 1982 Act shall remain in full force and*  
7        *effect;*

8                *(2) this title shall not take effect; and*

9                *(3) any funds made available by the State under*  
10        *this title that are not expended, together with any in-*  
11        *terest on those funds, shall immediately revert to the*  
12        *State.*

13        ***TITLE IV—SAN CARLOS APACHE***  
14        ***TRIBE WATER RIGHTS SET-***  
15        ***TLEMENT***

16        ***SEC. 401. EFFECT OF TITLES I, II, AND III.***

17        *None of the provisions of title I, II, or III or the agree-*  
18        *ments, attachments, exhibits, or stipulations referenced in*  
19        *those titles shall be construed to—*

20                *(1) amend, alter, or limit the authority of—*

21                        *(A) the United States to assert any claim*  
22        *against any party, including any claim for*  
23        *water rights, injury to water rights, or injury to*  
24        *water quality in its capacity as trustee for the*  
25        *San Carlos Apache Tribe, its members and*



1            *allottees, or in any other capacity on behalf of*  
2            *the San Carlos Apache Tribe, its members, and*  
3            *allottees, in any judicial, administrative, or leg-*  
4            *islative proceeding; or*

5                    *(B) the San Carlos Apache Tribe to assert*  
6            *any claim against any party, including any*  
7            *claim for water rights, injury to water rights, or*  
8            *injury to water quality in its own behalf or on*  
9            *behalf of its members and allottees in any judi-*  
10           *cial, administrative, or legislative proceeding*  
11           *consistent with title XXXVII of Public Law 102–*  
12           *575 (106 Stat. 4600, 4740); or*

13                    *(2) amend or alter the CAP Contract for the San*  
14           *Carlos Apache Tribe dated December 11, 1980, as*  
15           *amended April 29, 1999.*

16    **SEC. 402. ANNUAL REPORT.**

17            *(a) IN GENERAL.—Not later than 1 year after the date*  
18            *of enactment of this Act and annually thereafter, the Sec-*  
19            *retary shall submit to the Committee on Energy and Nat-*  
20            *ural Resources of the Senate and the Committee on Re-*  
21            *sources of the House of Representatives a report that de-*  
22            *scribes the status of efforts to reach a negotiated agreement*  
23            *covering the Gila River water rights claims of the San Car-*  
24            *los Apache Tribe.*

1       (b) *TERMINATION.*—*This section shall be of no effect*  
2 *after the later of—*

3           (1) *the date that is 3 years after the date of en-*  
4 *actment of this Act; or*

5           (2) *the date on which the Secretary submits a*  
6 *third annual report under this section.*

7 ***SEC. 403. AUTHORIZATION OF APPROPRIATIONS.***

8       (a) *SAN CARLOS APACHE TRIBE.*—*There is authorized*  
9 *to be appropriated to assist the San Carlos Apache Tribe*  
10 *in completing comprehensive water resources negotiations*  
11 *leading to a comprehensive Gila River water settlement for*  
12 *the Tribe, including soil and water technical analyses, legal,*  
13 *paralegal, and other related efforts, \$150,000 for fiscal year*  
14 *2006.*

15       (b) *WHITE MOUNTAIN APACHE TRIBE.*—*There is au-*  
16 *thorized to be appropriated to assist the White Mountain*  
17 *Apache Tribe in completing comprehensive water resources*  
18 *negotiations leading to a comprehensive water settlement*  
19 *for the Tribe, including soil and water technical analyses,*  
20 *legal, paralegal, and other related efforts, \$150,000 for fiscal*  
21 *year 2006.*

22       (c) *OTHER ARIZONA INDIAN TRIBES.*—*There is au-*  
23 *thorized to be appropriated to the Secretary to assist Ari-*  
24 *zona Indian tribes (other than those specified in subsections*  
25 *(a) and (b)) in completing comprehensive water resources*

1 *negotiations leading to a comprehensive water settlement*  
2 *for the Arizona Indian tribes, including soil and water tech-*  
3 *nical analyses, legal, paralegal, and other related efforts,*  
4 *\$300,000 for fiscal year 2006.*

5 *(d) NO LIMITATION ON OTHER FUNDING.—Amounts*  
6 *made available under subsections (a), (b), and (c) shall not*  
7 *limit, and shall be in addition to, other amounts available*  
8 *for Arizona tribal water rights negotiations leading to com-*  
9 *prehensive water settlements.*

**Union Calendar No. 483**

108TH CONGRESS  
2D SESSION

**H. R. 885**

**[Report No. 108-793]**

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**A BILL**

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.

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NOVEMBER 20, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed