

108TH CONGRESS
1ST SESSION

S. 437

To provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2003

Mr. KYL (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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
5 “Arizona Water Settlements Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

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. Findings and 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. Extinguishment 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. Miscellaneous provisions.
- Sec. 213. Authorization of appropriations.
- Sec. 214. 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

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—

1 (A) is located—

2 (i) within the State; but

3 (ii) outside the exterior boundaries of
4 the Reservation; and

5 (B) is taken into trust by the United
6 States for the benefit of the Community after
7 the enforceability date.

8 (3) AGRICULTURAL PRIORITY WATER.—The
9 term “agricultural priority water” means Central
10 Arizona Project non-Indian agricultural priority
11 water, as defined in the Gila River agreement.

12 (4) ALLOTTEE.—The term “allottee” means a
13 person that holds a beneficial real property interest
14 in an Indian allotment that is—

15 (A) located within the Reservation; and

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

17 (5) ARIZONA INDIAN TRIBE.—The term “Ari-
18 zona Indian tribe” means an Indian tribe (as de-
19 fined in section 4 of the Indian Self-Determination
20 and Education Assistance Act (25 U.S.C. 450b))
21 that is located in the State.

22 (6) ASARCO.—The term “Asarco” means
23 Asarco Incorporated, a New Jersey corporation of
24 that name, and its subsidiaries operating mining op-
25 erations in the State.

1 (7) CAP CONTRACTOR.—The term “CAP con-
2 tractor” means a person or entity that has entered
3 into a long-term contract (as that term is used in
4 the repayment stipulation) with the United States
5 for delivery of water through the CAP system.

6 (8) CAP OPERATING AGENCY.—The term
7 “CAP operating agency” means the entity or entities
8 authorized to assume responsibility for the care, op-
9 eration, maintenance, and replacement of the CAP
10 system.

11 (9) CAP REPAYMENT CONTRACT.—

12 (A) IN GENERAL.—The term “CAP repay-
13 ment contract” means the contract dated De-
14 cember 1, 1988 (Contract No. 14-06-W-245,
15 Amendment No. 1) between the United States
16 and the Central Arizona Water Conservation
17 District for the delivery of water and the repay-
18 ment of costs of the Central Arizona Project.

19 (B) INCLUSIONS.—The term “CAP repay-
20 ment contract” includes all amendments to and
21 revisions of that contract.

22 (10) CAP SUBCONTRACTOR.—The term “CAP
23 subcontractor” means a person or entity that has
24 entered into a long-term subcontract (as that term
25 is used in the repayment stipulation) with the

1 United States and the Central Arizona Water Con-
2 servation District for the delivery of water through
3 the CAP system.

4 (11) CAP SYSTEM.—The term “CAP system”
5 means—

6 (A) the Mark Wilmer Pumping Plant;

7 (B) the Hayden-Rhodes Aqueduct;

8 (C) the Fannin-McFarland Aqueduct;

9 (D) the Tucson Aqueduct;

10 (E) the pumping plants and appurtenant
11 works of the Central Arizona Project aqueduct
12 system that are associated with the features de-
13 scribed in subparagraphs (A) through (D); and

14 (F) any extensions of, additions to, or re-
15 placements for the features described in sub-
16 paragraphs (A) through (E).

17 (12) CENTRAL ARIZONA PROJECT.—The term
18 “Central Arizona Project” means the reclamation
19 project authorized and constructed by the United
20 States in accordance with title III of the Colorado
21 River Basin Project Act (43 U.S.C. 1521 et seq.).

22 (13) CENTRAL ARIZONA WATER CONSERVATION
23 DISTRICT.—The term “Central Arizona Water Con-
24 servation District” means the political subdivision of

1 the State that is the contractor under the CAP re-
2 payment contract.

3 (14) CITIES.—The term “Cities” means the cit-
4 ies of Chandler, Glendale, Goodyear, Mesa, Peoria,
5 Phoenix, and Scottsdale, Arizona.

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

11 (16) COMMUNITY CAP WATER.—The term
12 “Community CAP water” means water to which the
13 Community is entitled under the water delivery con-
14 tract.

15 (17) COMMUNITY REPAYMENT CONTRACT.—

16 (A) IN GENERAL.—The term “Community
17 repayment contract” means Contract No. 6-
18 07-03-W0345 between the United States and
19 the Community dated May 4, 1998, providing
20 for the construction of water delivery facilities
21 on the Reservation.

22 (B) INCLUSIONS.—The term “Community
23 repayment contract” includes any amendments
24 to the contract described in subparagraph (A).

1 (18) COMMUNITY WATER DELIVERY CON-
2 TRACT.—

3 (A) IN GENERAL.—The term “Community
4 water delivery contract” means Contract No. 3-
5 07-30-W0284 between the Community and the
6 United States dated October 22, 1992.

7 (B) INCLUSIONS.—The term “Community
8 water delivery contract” includes any amend-
9 ments to the contract described in subpara-
10 graph (A).

11 (19) CRR PROJECT WORKS.—

12 (A) IN GENERAL.—The term “CRR
13 Project works” means the portions of the San
14 Carlos Irrigation Project located on the Res-
15 ervation.

16 (B) INCLUSION.—The term “CRR Project
17 works” includes the portion of the San Carlos
18 Irrigation Project known as the “Southside
19 Canal”, from the point at which the Southside
20 Canal connects with the Pima Canal to the
21 boundary of the Reservation.

22 (20) DIRECTOR.—The term “Director”
23 means—

24 (A) the Director of the Arizona Depart-
25 ment of Water Resources; or

1 (B) with respect to an action to be carried
2 out under this title, a State official or agency
3 designated by the Governor or the State legisla-
4 ture.

5 (21) ENFORCEABILITY DATE.—The term “en-
6 forceability date” means the date on which the Sec-
7 retary publishes in the Federal Register the state-
8 ment of findings described in section 207(d).

9 (22) FEE LAND.—The term “fee land” means
10 land, other than off-Reservation trust land, owned
11 by the Community outside the exterior boundaries of
12 the Reservation as of December 31, 2002.

13 (23) FIXED OM&R CHARGE.—The term “fixed
14 OM&R charge” has the meaning given the term in
15 the repayment stipulation.

16 (24) GILA RIVER ADJUDICATION PRO-
17 CEEDINGS.—The term “Gila River adjudication pro-
18 ceedings” means the action pending in the Superior
19 Court of the State of Arizona in and for the County
20 of Maricopa styled “In Re the General Adjudication
21 of All Rights To Use Water In The Gila River Sys-
22 tem and Source” W-1 (Salt), W-2 (Verde), W-3
23 (Upper Gila), W-4 (San Pedro) (Consolidated).

24 (25) GILA RIVER AGREEMENT.—

1 (A) IN GENERAL.—The term “Gila River
2 agreement” means the agreement entitled the
3 “Gila River Indian Community Water Rights
4 Settlement Agreement”, dated July 1, 2002.

5 (B) INCLUSIONS.—The term “Gila River
6 agreement” includes—

7 (i) all exhibits to that agreement; and

8 (ii) any amendment to that agreement

9 or to an exhibit to that agreement made or
10 added pursuant to that agreement.

11 (26) GLOBE EQUITY DECREE.—

12 (A) IN GENERAL.—The term “Globe Eq-
13 uity Decree” means the decree dated June 29,
14 1935, entered in United States of America v.
15 Gila Valley Irrigation District, Globe Equity
16 No. 59, et al., by the United States District
17 Court for the District of Arizona.

18 (B) INCLUSIONS.—The term “Globe Eq-
19 uity Decree” includes all court orders and deci-
20 sions supplemental to that decree.

21 (27) HAGGARD DECREE.—

22 (A) IN GENERAL.—The term “Haggard
23 Decree” means the decree dated June 11, 1903,
24 entered in United States of America, as guard-
25 ian of Chief Charley Juan Saul and Cyrus Sam,

1 Maricopa Indians and 400 other Maricopa Indi-
2 ans similarly situated v. Haggard, et al., Cause
3 No. 19, in the District Court for the Third Ju-
4 dicial District of the Territory of Arizona, in
5 and for the County of Maricopa.

6 (B) INCLUSIONS.—The term “Haggard
7 Decree” includes all court orders and decisions
8 supplemental to that decree.

9 (28) INCLUDING.—The term “including” has
10 the same meaning as the term “including, but not
11 limited to”.

12 (29) INJURY TO WATER QUALITY.—The term
13 “injury to water quality” means any contamination,
14 diminution, or deprivation of water quality under
15 Federal, State, or other law.

16 (30) INJURY TO WATER RIGHTS.—

17 (A) IN GENERAL.—The term “injury to
18 water rights” means an interference with, dimi-
19 nution of, or deprivation of water rights under
20 Federal, State, or other law.

21 (B) INCLUSION.—The term “injury to
22 water rights” includes a change in the under-
23 ground water table and any effect of such a
24 change.

1 (C) EXCLUSION.— The term “injury to
2 water rights” does not include subsidence dam-
3 age or injury to water quality.

4 (31) LOWER COLORADO RIVER BASIN DEVELOP-
5 MENT FUND.—The term “Lower Colorado River
6 Basin Development Fund” means the fund estab-
7 lished by section 403 of the Colorado River Basin
8 Project Act (43 U.S.C. 1543).

9 (32) MASTER AGREEMENT.—The term “master
10 agreement” means the agreement entitled “Arizona
11 Water Settlement Agreement” entered into by the
12 Director, the Central Arizona Water Conservation
13 District, and the Secretary, dated July 1, 2002.

14 (33) OFF-RESERVATION TRUST LAND.—The
15 term “off-Reservation trust land” means land out-
16 side the exterior boundaries of the Reservation that
17 is held in trust by the United States for the benefit
18 of the Community and the Community members as
19 of the enforceability date.

20 (34) PHELPS DODGE.—The term “Phelps
21 Dodge” means the Phelps Dodge Corporation, a
22 New York corporation of that name, and its subsidi-
23 aries, successors, or assigns.

24 (35) REPAYMENT STIPULATION.—

1 (A) IN GENERAL.—The term “repayment
2 stipulation” means the Stipulation Regarding a
3 Stay of Litigation, Resolution of Issues During
4 the Stay, and for Ultimate Judgment Upon the
5 Satisfaction of Conditions, filed with the United
6 States District Court for the District of Arizona
7 on May 3, 2000, in Central Arizona Water Con-
8 servation District v. United States, et al., No.
9 CIV 95–625–TUC–WDB(EHC), No. CIV 95–
10 1720–PHX–EHC (Consolidated Action).

11 (B) INCLUSIONS.—The term “repayment
12 stipulation” includes any amendment to or revi-
13 sion of the stipulation described in subpara-
14 graph (A).

15 (36) RESERVATION.—

16 (A) IN GENERAL.—The term “Reserva-
17 tion” means the land located within the exterior
18 boundaries of the reservation created under sec-
19 tions 3 and 4 of the Act of February 28, 1859
20 (11 Stat. 401, chapter LXVI) and Executive
21 Orders of August 31, 1876, June 14, 1879,
22 May 5, 1882, November 15, 1883, July 31,
23 1911, June 2, 1913, August 27, 1914, and July
24 19, 1915.

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

5 (37) ROOSEVELT HABITAT CONSERVATION
6 PLAN.—The term “Roosevelt Habitat Conservation
7 Plan” means the habitat conservation plan approved
8 by the United States Fish and Wildlife Service
9 under section 10(a)(1)(B) of the Endangered Spe-
10 cies Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the
11 incidental taking of endangered, threatened, and
12 candidate species resulting from the continued oper-
13 ation by the Salt River Project of Roosevelt Dam
14 and Lake, near Phoenix, Arizona.

15 (38) ROOSEVELT WATER CONSERVATION DIS-
16 TRICT.—The term “Roosevelt Water Conservation
17 District” means the entity of that name that is a po-
18 litical subdivision of the State and an irrigation dis-
19 trict organized under the law of the State.

20 (39) SAFFORD.—The term “Safford” means
21 the city of Safford, Arizona.

22 (40) SALT RIVER PROJECT.—The term “Salt
23 River Project” means the Salt River Project Agricul-
24 tural Improvement and Power District, a political
25 subdivision of the State, and the Salt River Valley

1 Water Users' Association, an Arizona Territorial
2 corporation.

3 (41) SAN CARLOS APACHE TRIBE.—The term
4 “San Carlos Apache Tribe” means the San Carlos
5 Apache Tribe, a tribe of Apache Indians organized
6 under Section 16 of the Indian Reorganization Act
7 of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

8 (42) SAN CARLOS IRRIGATION AND DRAINAGE
9 DISTRICT.—The term “San Carlos Irrigation and
10 Drainage District” means the entity of that name
11 that is a political subdivision of the State and an ir-
12 rigation and drainage district organized under the
13 laws of the State.

14 (43) SAN CARLOS IRRIGATION PROJECT.—

15 (A) IN GENERAL.—The term “San Carlos
16 Irrigation Project” means the San Carlos irri-
17 gation project authorized under the Act of June
18 7, 1924 (43 Stat. 475).

19 (B) INCLUSIONS.—The term “San Carlos
20 Irrigation Project” includes any amendments
21 and supplements to the Act described in sub-
22 paragraph (A).

23 (44) SECRETARY.—The term “Secretary”
24 means the Secretary of the Interior.

1 (45) SPECIAL HOT LANDS.—The term “special
2 hot lands” has the meaning given the term in sub-
3 paragraph 2.34 of the UVD agreement.

4 (46) STATE.—The term “State” means the
5 State of Arizona.

6 (47) SUBCONTRACT.—

7 (A) IN GENERAL.—The term “sub-
8 contract” means a Central Arizona Project
9 water delivery subcontract.

10 (B) INCLUSION.—The term “subcontract”
11 includes an amendment to a subcontract.

12 (48) SUBSIDENCE DAMAGE.—The term “sub-
13 sidence damage” means injury to land, water, or
14 other real property resulting from the settling of
15 geologic strata or cracking in the surface of the
16 Earth of any length or depth, which settling or
17 cracking is caused by the pumping of underground
18 water.

19 (49) TBI ELIGIBLE ACRES.—The term “TBI
20 eligible acres” has the meaning given the term in
21 subparagraph 2.37 of the UVD agreement.

22 (50) UNCONTRACTED MUNICIPAL AND INDUS-
23 TRIAL WATER.—The term “uncontracted municipal
24 and industrial water” means Central Arizona
25 Project municipal and industrial priority water that

1 is not subject to subcontract on the date of enact-
2 ment of this Act.

3 (51) UV DECREED ACRES.—

4 (A) IN GENERAL.—The term “UV decreed
5 acres” means the land located upstream and to
6 the east of the Coolidge Dam for which water
7 may be diverted pursuant to the Globe Equity
8 Decree.

9 (B) EXCLUSION.—The term “UV decreed
10 acres” does not include the reservation of the
11 San Carlos Apache Tribe.

12 (52) UV DECREED WATER RIGHTS.—The term
13 “UV decreed water rights” means the right to divert
14 water for use on UV decreed acres in accordance
15 with the Globe Equity Decree.

16 (53) UV SUBJUGATED LAND.—The term “UV
17 subjugated land” has the meaning given the term in
18 subparagraph 2.50 of the UVD agreement.

19 (54) UVD AGREEMENT.—The term “UVD
20 agreement” means the agreement among the Com-
21 munity, the United States, the San Carlos Irrigation
22 and Drainage District, the Franklin Irrigation Dis-
23 trict, the Gila Valley Irrigation District, and other
24 parties located in the upper valley of the Gila River,
25 dated July 1, 2002.

1 (55) UVD SETTling PARTIES.—The term
 2 “UVD settling parties” means the parties to the
 3 UVD agreement other than the United States, the
 4 San Carlos Irrigation and Drainage District, and
 5 the Community.

6 (56) WATER OM&R FUND.—The term “Water
 7 OM&R Fund” means the Gila River Indian Commu-
 8 nity Water OM&R Trust Fund established by sec-
 9 tion 208.

10 (57) WATER RIGHT.—The term “water right”
 11 means any right in or to groundwater, surface
 12 water, or effluent under Federal, State, or other law.

13 (58) WATER RIGHTS APPURTENANT TO NM 381
 14 ACRES.—The term “water rights appurtenant to NM
 15 381 acres” means the water rights—

16 (A) appurtenant to the 380.81 acres de-
 17 scribed in the decree in *Arizona v. California*,
 18 376 U.S. 340, 349 (1964); and

19 (B) appurtenant to other land, or for other
 20 uses, for which the water rights described in
 21 subparagraph (A) may be modified or used in
 22 accordance with that decree.

23 (59) WATER RIGHTS FOR NM DOMESTIC PUR-
 24 POSES.—The term “water rights for NM domestic
 25 purposes” means the water rights for domestic pur-

1 poses of not more than 265 acre-feet of water for
2 consumptive use described in paragraph IV(D)(2) of
3 the decree in *Arizona v. California*, 376 U.S. 340,
4 350 (1964).

5 (60) 1994 BIOLOGICAL OPINION.—The term
6 “1994 biological opinion” means the biological opin-
7 ion, numbered 2–21–90–F–119, and dated April 15,
8 1994, relating to the transportation and delivery of
9 Central Arizona Project water to the Gila River
10 basin.

11 (61) 1996 BIOLOGICAL OPINION.—The term
12 “1996 biological opinion” means the biological opin-
13 ion, numbered 2–21–95–F–462 and dated July 23,
14 1996, relating to the impacts of modifying Roosevelt
15 Dam on the southwestern willow flycatcher.

16 (62) 1999 BIOLOGICAL OPINION.—The term
17 “1999 biological opinion” means the draft biological
18 opinion numbered 2–21–91–F–706, and dated May
19 1999, relating to the impacts of the Central Arizona
20 Project on Gila Topminnow in the Santa Cruz River
21 basin through the introduction and spread of non-
22 native aquatic species.

1 **TITLE I—CENTRAL ARIZONA**
2 **PROJECT SETTLEMENT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Central Arizona
5 Project Settlement Act of 2003”.

6 **SEC. 102. FINDINGS.**

7 Congress finds that—

8 (1) the water provided by the Central Arizona
9 Project to Maricopa, Pinal, and Pima Counties in
10 the State of Arizona, is vital to citizens of the State;
11 and

12 (2) an agreement on the allocation of Central
13 Arizona Project water among interested persons, in-
14 cluding Federal and State interests, would provide
15 important benefits to the Federal Government, the
16 State of Arizona, and the citizens of the State.

17 **SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL**
18 **ARIZONA PROJECT.**

19 In accordance with the CAP repayment contract, the
20 Central Arizona Project may be used to transport non-
21 project water for—

22 (1) domestic, municipal, fish and wildlife, and
23 industrial purposes; and

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

1 **SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT**

2 **WATER.**

3 (a) NON-INDIAN AGRICULTURAL PRIORITY
4 WATER.—

5 (1) REALLOCATION TO INDIAN TRIBES.—

6 (A) IN GENERAL.—The Secretary shall re-
7 allocate 197,500 acre-feet of agricultural pri-
8 ority water made available pursuant to the mas-
9 ter agreement for use by Arizona Indian tribes,
10 of which—

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

13 (ii) 28,200 acre-feet shall be reallo-
14 cated to the Tohono O'odham Nation; and

15 (iii) subject to the conditions specified
16 in subparagraph (B), 67,300 acre-feet
17 shall be reallocated to Arizona Indian
18 tribes.

19 (B) CONDITIONS.—The reallocation of ag-
20 ricultural priority water under subparagraph
21 (A)(iii) shall be subject to the conditions that—

22 (i) before the Secretary may reallocate
23 the water to an Arizona Indian tribe, Con-
24 gress enacts a law approving an Indian
25 water rights settlement for that Arizona

1 Indian tribe that provides for the realloca-
2 tion; and

3 (ii) the agricultural priority water
4 shall not, without specific authorization by
5 Act of Congress, be leased, exchanged,
6 forborne, or otherwise transferred by an
7 Arizona Indian tribe for any direct or indi-
8 rect use outside the reservation of the Ari-
9 zona Indian tribe.

10 (2) REALLOCATION TO THE ARIZONA DEPART-
11 MENT OF WATER RESOURCES.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), the Secretary shall reallocate 96,295
14 acre-feet of agricultural priority water made
15 available pursuant to the master agreement to
16 the Arizona Department of Water Resources, to
17 be held under contract in trust for further allo-
18 cation under subparagraph (C).

19 (B) REQUIRED DOCUMENTATION.—The re-
20 allocation of agricultural priority water under
21 subparagraph (A) is subject to the condition
22 that the Secretary execute any appropriate doc-
23 uments to memorialize the reallocation, includ-
24 ing—

25 (i) an allocation decision; and

1 (ii) a contract that prohibits the direct
2 use of the agricultural priority water by
3 the Arizona Department of Water Re-
4 sources.

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

8 (i) before that water may be further
9 allocated—

10 (I) the Director shall submit to
11 the Secretary, and the Secretary shall
12 receive, a recommendation for re-
13 allocation;

14 (II) as soon as practicable after
15 receiving the recommendation, the
16 Secretary shall carry out all necessary
17 reviews of the proposed reallocation,
18 in accordance with applicable Federal
19 law; and

20 (III) if the recommendation is re-
21 jected by the Secretary, the Secretary
22 shall—

23 (aa) request a revised rec-
24 ommendation from the Director;
25 and

1 (bb) proceed with any re-
 2 views required under subclause
 3 (II); and

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

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

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

20 (b) UNCONTRACTED CENTRAL ARIZONA PROJECT
 21 MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

22 (1) REALLOCATION.—The Secretary shall, on
 23 the recommendation of the Director, reallocate
 24 65,647 acre-feet of uncontracted municipal and in-
 25 dustrial water, of which—

1 (A) 285 acre-feet shall be reallocated to
2 the town of Superior, Arizona;

3 (B) 806 acre-feet shall be reallocated to
4 the Cave Creek Water Company;

5 (C) 1,931 acre-feet shall be reallocated to
6 the Chaparral Water Company;

7 (D) 508 acre-feet shall be reallocated to
8 the town of El Mirage, Arizona;

9 (E) 7,211 acre-feet shall be reallocated to
10 the city of Goodyear, Arizona;

11 (F) 147 acre-feet shall be reallocated to
12 the H2O Water Company;

13 (G) 7,115 acre-feet shall be reallocated to
14 the city of Mesa, Arizona;

15 (H) 5,527 acre-feet shall be reallocated to
16 the city of Peoria, Arizona;

17 (I) 2,981 acre-feet shall be reallocated to
18 the city of Scottsdale, Arizona;

19 (J) 808 acre-feet shall be reallocated to the
20 AVRA Cooperative;

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

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

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

3 (N) 1,521 acre-feet shall be reallocated to
4 the Community Water Company of Green Val-
5 ley, Arizona;

6 (O) 4,602 acre-feet shall be reallocated to
7 the Metropolitan Domestic Water Improvement
8 District;

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

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

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

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

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

19 (2) SUBCONTRACTS.—

20 (A) IN GENERAL.—As soon as practicable
21 after the date of enactment of this Act, in ac-
22 cordance with paragraphs (1) and (2) of sub-
23 section (d) and any applicable Federal laws, the
24 Secretary shall offer to enter into subcontracts
25 for the delivery of the uncontracted municipal

1 and industrial water reallocated under para-
 2 graph (1).

3 (B) REVISED RECOMMENDATION.—If the
 4 Secretary is precluded under applicable Federal
 5 law from entering into a subcontract with an
 6 entity identified in paragraph (1), the Secretary
 7 shall—

8 (i) request a revised recommendation
 9 from the Director; and

10 (ii) on receipt of a recommendation
 11 under clause (i), reallocate and enter into
 12 a subcontract for the delivery of the water
 13 in accordance with subparagraph (A).

14 (c) LIMITATIONS.—

15 (1) AMOUNT.—

16 (A) IN GENERAL.—The total amount of
 17 entitlements under long-term contracts (as de-
 18 fined in the repayment stipulation) for the de-
 19 livery of Central Arizona Project water in the
 20 State shall not exceed 1,415,000 acre-feet, of
 21 which—

22 (i) 667,724 acre-feet shall be—

23 (I) under contract to Arizona In-
 24 dian tribes; or

1 (II) available to the Secretary for
2 allocation to Arizona Indian tribes;
3 and

4 (ii) 747,276 acre-feet shall be under
5 contract or available for allocation to—

6 (I) non-Indian municipal and in-
7 dustrial entities;

8 (II) the Arizona Department of
9 Water Resources; and

10 (III) non-Indian agricultural en-
11 tities.

12 (B) EXCEPTION.—Subparagraph (A) shall
13 not apply to Central Arizona Project water de-
14 livered to water users in Arizona in exchange
15 for Gila River water delivered to the State of
16 New Mexico or to water users in New Mexico
17 as provided in section 304 of the Colorado
18 River Basin Project Act (43 U.S.C. 1524).

19 (2) TRANSFER.—

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

23 (i) a use authorized under paragraph
24 (1)(A)(i) to a use authorized under para-
25 graph (1)(A)(ii); or

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

4 (B) EXCEPTIONS.—

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

12 (ii) EXCHANGES.—An exchange of
13 Central Arizona Project water by an Ari-
14 zona Indian tribe to an entity described in
15 paragraph (1)(A)(ii) shall not be consid-
16 ered to be a transfer for purposes of sub-
17 paragraph (A).

18 (d) CENTRAL ARIZONA PROJECT CONTRACTS AND
19 SUBCONTRACTS.—

20 (1) IN GENERAL.—Notwithstanding section 6 of
21 the Act of August 4, 1939 (commonly known as the
22 “Reclamation Project Act of 1939”) (43 U.S.C.
23 485e), and paragraphs (2) and (3) of section 304(b)
24 of the Colorado River Basin Project Act (43 U.S.C.
25 1524(b)), as soon as practicable after the date of en-

1 actment of this Act, the Secretary shall offer to
2 enter into subcontracts or to amend all Central Ari-
3 zona Project contracts and subcontracts in effect as
4 of that date in accordance with paragraph (2).

5 (2) REQUIREMENTS.—All subcontracts and
6 amendments to Central Arizona Project contracts
7 and subcontracts under paragraph (1)—

8 (A) shall be for permanent service (within
9 the meaning of section 5 of the Boulder Canyon
10 Project Act of 1928 (43 U.S.C. 617d));

11 (B) shall have an initial delivery term that
12 is the greater of—

13 (i) 100 years; or

14 (ii) a term—

15 (I) authorized by Congress; or

16 (II) provided under the appro-
17 priate Central Arizona Project con-
18 tract or subcontract in existence on
19 the date of enactment of this Act;

20 (C) shall conform to the shortage sharing
21 criteria described in paragraph 8.16 of the Gila
22 River agreement and paragraph 5.3 of the
23 Tohono O’odham settlement agreement;

24 (D) shall include the prohibition and ex-
25 ception described in subsection (e); and

1 (E) shall not require—

2 (i) that any Central Arizona Project
3 water received in exchange for effluent be
4 deducted from the contractual entitlement
5 of the CAP contractor or CAP subcon-
6 tractor; or

7 (ii) that any additional modification of
8 the Central Arizona Project contracts or
9 subcontracts be made as a condition of ac-
10 ceptance of the subcontract or amend-
11 ments.

12 (3) APPLICABILITY.—This subsection does not
13 apply to—

14 (A) a subcontract for non-Indian agricul-
15 tural use; and

16 (B) a contract executed under paragraph
17 5(d) of the repayment stipulation.

18 (e) PROHIBITION ON TRANSFER.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), no Central Arizona Project water shall be
21 leased, exchanged, forborne, or otherwise transferred
22 in any way for use directly or indirectly outside the
23 State.

24 (2) EXCEPTIONS.—Central Arizona Project
25 water may be—

1 (A) leased, exchanged, forborne, or other-
2 wise transferred under an agreement with the
3 Arizona Water Banking Authority that is in ac-
4 cordance with section 414 of title 43, Code of
5 Federal Regulations; and

6 (B) delivered to users in Arizona in ex-
7 change for Gila River water delivered to the
8 State of New Mexico or to water users in New
9 Mexico as provided in section 304 of the Colo-
10 rado River Basin Project Act (43 U.S.C. 1524).

11 (3) EFFECT OF SUBSECTION.—Nothing in this
12 subsection prohibits any entity from entering into a
13 contract with the Arizona Water Banking Authority
14 or a successor of the Authority under State law.

15 **SEC. 105. FIRING OF CENTRAL ARIZONA PROJECT INDIAN**
16 **WATER.**

17 (a) FIRING PROGRAM.—The Secretary and the
18 State shall develop a firming program to ensure that
19 60,648 acre-feet of the agricultural priority water made
20 available pursuant to the master agreement and reallo-
21 cated to Arizona Indian tribes under subsection 104(a)(1),
22 shall, for a 100-year period, be delivered during water
23 shortages in the same manner as water with a municipal
24 and industrial delivery priority in the Central Arizona
25 Project system is delivered during water shortages.

1 (b) DUTIES.—

2 (1) SECRETARY.—The Secretary shall—

3 (A) firm 28,200 acre-feet of agricultural
4 priority water reallocated to the Tohono
5 O’odham Nation under section 104(a)(1)(A)(ii);
6 and

7 (B) firm 8,724 acre-feet of agricultural
8 priority water reallocated to Arizona Indian
9 tribes under section 104(a)(1)(A)(iii).

10 (2) STATE.—The State shall—

11 (A) firm 15,000 acre-feet of agricultural
12 priority water reallocated to the Gila River In-
13 dian Community under section 104(a)(1)(A)(i);

14 (B) firm 8,724 acre-feet of agricultural
15 priority water reallocated to Arizona Indian
16 tribes under section 104(a)(1)(A)(iii); and

17 (C) assist the Secretary in carrying out ob-
18 ligations of the Secretary under paragraph
19 (1)(A) in accordance with section 306 of the
20 Southern Arizona Water Rights Settlement
21 Amendments Act (as added by section 301).

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary such
24 sums as are necessary to carry out the duties of the Sec-
25 retary under subsection (b)(1).

1 **SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY**
2 **WATER.**

3 (a) APPROVAL OF AGREEMENT.—

4 (1) IN GENERAL.—The master agreement is au-
5 thorized, ratified, and confirmed.

6 (2) EXHIBITS.—The Secretary shall execute
7 any of the exhibits to the master agreement that
8 have not been executed as of the date of enactment
9 of this Act.

10 (b) NONREIMBURSABLE DEBT.—In accordance with
11 the master agreement, the portion of debt incurred under
12 section 9(d) of the Act of August 4, 1939 (commonly
13 known as the “Reclamation Project Act of 1939”) (43
14 U.S.C. 485h), and identified in the master agreement as
15 nonreimbursable to the United States, shall be non-
16 reimbursable and nonreturnable to the United States in
17 an amount not to exceed \$73,561,337.

18 (c) EXEMPTION.—The Reclamation Reform Act of
19 1982 (43 U.S.C. 390aa et seq.) and any other acreage
20 limitation or full cost pricing provisions of Federal law
21 shall not apply to—

22 (1) land within the exterior boundaries of the
23 Central Arizona Water Conservation District or
24 served by Central Arizona Project water;

25 (2) land within the exterior boundaries of the
26 Salt River Reservoir District;

1 (3) land held in trust by the United States for
2 an Arizona Indian tribe that is—

3 (A) within the exterior boundaries of the
4 Central Arizona Water Conservation District;
5 or

6 (B) served by Central Arizona Project
7 water; and

8 (4) any person, entity, or land, solely on the
9 basis of—

10 (A) receipt of any benefits under this Act;

11 (B) execution or performance of the Gila
12 River agreement; or

13 (C) the use, storage, delivery, lease, or ex-
14 change of Central Arizona Project water.

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

16 **FUND.**

17 (a) IN GENERAL.—Section 403 of the Colorado River
18 Basin Project Act (43 U.S.C. 1543) is amended by strik-
19 ing subsection (f) and inserting the following:

20 “(f) ADDITIONAL USES OF REVENUE FUNDS.—

21 “(1) CREDITING AGAINST CENTRAL ARIZONA
22 WATER CONSERVATION DISTRICT PAYMENTS.—

23 Funds credited to the development fund pursuant to
24 subsection (b) and paragraphs (1) and (3) of sub-
25 section (c), the portion of revenues derived from the

1 sale of power and energy for use in the State of Ari-
2 zona pursuant to subsection (c)(2) in excess of the
3 amount necessary to meet the requirements of para-
4 graphs (1) and (2) of subsection (d), and any annual
5 payment by the Central Arizona Water Conservation
6 District to effect repayment of reimbursable Central
7 Arizona Water Conservation District to effect repay-
8 ment of reimbursable Central Arizona Project con-
9 struction costs, shall be credited annually against
10 the annual payment owed by the Central Arizona
11 Water Conservation District to the United States for
12 the Central Arizona Project.

13 “(2) FURTHER USE OF REVENUE FUNDS CRED-
14 ITED AGAINST PAYMENTS OF CENTRAL ARIZONA
15 WATER CONSERVATION DISTRICT.—After being cred-
16 ited in accordance with paragraph (1), the funds
17 and portion of revenues described in that paragraph
18 shall be available annually, without further appro-
19 priation, in order of priority—

20 “(A) to pay fixed operation, maintenance,
21 and replacement charges associated with the de-
22 livery of Central Arizona Project water under
23 long-term contracts for use by Arizona Indian
24 tribes (as defined in section 2 of the Arizona
25 Water Settlements Act);

1 “(B) to make deposits, totaling
2 \$53,000,000 in the aggregate, in the Gila River
3 Indian Community Water OM&R Trust Fund
4 established by section 207 of the Gila River In-
5 dian Community Water Rights Settlement Act
6 of 2003;

7 “(C) to pay an amount equal to
8 \$147,000,000, adjusted to reflect changes since
9 January 1, 2000, in the Consumer Price Index
10 for all urban consumers published by the De-
11 partment of Labor, to the Gila River Indian
12 Community to rehabilitate the San Carlos Irri-
13 gation Project, of which not more than
14 \$25,000,000 shall be available annually, on re-
15 quest by the Gila River Indian Community in
16 accordance with attachment 6.5.1 of exhibit
17 20.1 of the Gila River Indian Community
18 Water Rights Settlement, dated July 1, 2002,
19 except that the total amount shall be increased
20 or decreased, as appropriate, based on ordinary
21 fluctuations in construction cost indices applica-
22 ble to the types of construction involved in the
23 rehabilitation;

1 “(D) in addition to amounts made avail-
2 able for the purpose through annual appropria-
3 tions, and without regard to priority—

4 “(i) to pay the costs associated with
5 the construction of distribution systems re-
6 quired to implement the provisions of—

7 “(I) the contract entered into be-
8 tween the United States and the Gila
9 River Indian Community, numbered
10 6-07-03-W0345, and dated May 4,
11 1998;

12 “(II) section 3707(a)(1) of the
13 San Carlos Apache Tribe Water
14 Rights Settlement Act of 1992 (106
15 Stat. 4747); and

16 “(III) subsections (a) and (b) of
17 section 304 of the Southern Arizona
18 Water Rights Settlement Amendments
19 Act of 2003;

20 “(ii) to pay any costs authorized by
21 Congress to be paid (including any costs to
22 construct distribution systems and exclud-
23 ing costs otherwise payable by non-Fed-
24 eral, non-Indian parties) under any Ari-

1 zona Indian water rights settlement Act
2 enacted after May 9, 2000; and

3 “(iii) to pay other costs authorized
4 under—

5 “(I) the Gila River Indian Com-
6 munity Water Rights Settlement Act
7 of 2003; or

8 “(II) the Southern Arizona
9 Water Rights Settlement Amendments
10 Act of 2003;

11 “(E) in addition to amounts made avail-
12 able for the purpose through annual appropria-
13 tions—

14 “(i) to pay the costs associated with
15 the construction of on-reservation Central
16 Arizona Project distribution systems for
17 the Yavapai Apache (Camp Verde),
18 Tohono O’odham Nation (Sif Oidak Dis-
19 trict), Pascua Yaqui, and Tonto Apache
20 tribes; and

21 “(ii) to make payments to those tribes
22 in accordance with paragraph 8(d)(i)(1)(iv)
23 of the Central Arizona Project repayment
24 stipulation (as defined in section 2 of the
25 Arizona Water Settlements Act), except

1 that if a water rights settlement Act of
2 Congress authorizes such construction, the
3 applicable tribes shall be treated, and pay-
4 ments shall be made, in accordance with
5 subparagraph (D)(ii); and

6 “(F) if any amounts remain in the develop-
7 ment fund at the end of a fiscal year, to be car-
8 ried over to the following fiscal year for use for
9 the purposes described in subparagraphs (A)
10 through (E).

11 “(3) REVENUE FUNDS IN EXCESS OF REVENUE
12 FUNDS CREDITED AGAINST CENTRAL ARIZONA
13 WATER CONSERVATION DISTRICT PAYMENTS.—The
14 funds and portion of revenues described in para-
15 graph (1) that are in excess of amounts credited
16 under paragraph (1) shall be available, on an annual
17 basis, without further appropriation, in order of pri-
18 ority—

19 “(A) to pay fixed operation, maintenance
20 and replacement charges associated with the de-
21 livery of Central Arizona Project water under
22 long-term contracts held by Arizona Indian
23 tribes (as defined in section 2 of the Arizona
24 Water Settlements Act);

1 “(B) to make the final outstanding annual
2 payment for the costs of each unit of the
3 projects authorized under title III that are to
4 be repaid by the Central Arizona Water Con-
5 servation District;

6 “(C) to reimburse the general fund of the
7 Treasury for fixed operation, maintenance, and
8 replacement charges previously paid under
9 paragraph (2)(A);

10 “(D) to reimburse the general fund of the
11 Treasury for costs associated with any Indian
12 water rights settlement previously paid under
13 subparagraphs (B) through (E) of paragraph
14 (2);

15 “(E) to pay to the general fund of the
16 Treasury the annual installment on any debt
17 relating to the Central Arizona Project under
18 section 9(d) of the Act of August 4, 1939 (com-
19 monly known as the “Reclamation Project Act
20 of 1939”) (43 U.S.C. 485h(d)) made non-
21 reimbursable under section 106(b) of the Cen-
22 tral Arizona Project Settlement Act of 2003;

23 “(F) to pay to the general fund of the
24 Treasury the difference between—

1 “(I) the costs of each unit of the
2 projects authorized under title III
3 that are repayable by the Central Ari-
4 zona Water Conservation District; and

5 “(II) any costs allocated to re-
6 payable functions under any Central
7 Arizona Project cost allocation under-
8 taken by the United States; and

9 “(G) for deposit in the general fund of the
10 Treasury.

11 “(4) INVESTMENT OF AMOUNTS.—

12 “(A) IN GENERAL.—The Secretary of the
13 Treasury shall invest such portion of the devel-
14 opment fund as is not, in the judgment of the
15 Secretary of the Interior, required to meet cur-
16 rent needs of the development fund. Invest-
17 ments may be made only in interest-bearing ob-
18 ligations of the United States.

19 “(B) ACQUISITION OF OBLIGATIONS.—For
20 the purpose of investments under subparagraph
21 (A), obligations may be acquired—

22 “(i) on original issue at the issue
23 price; or

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

1 “(C) SALE OF OBLIGATIONS.—Any obliga-
2 tion acquired by the development fund may be
3 sold by the Secretary of the Treasury at the
4 market price.

5 “(D) CREDITS TO FUND.—The interest on,
6 and the proceeds from the sale or redemption
7 of, any obligations held in the development fund
8 shall be credited to and form a part of the de-
9 velopment fund.”.

10 (b) LIMITATION.—Before the date on which the find-
11 ings of the Secretary under section 207(d) have been pub-
12 lished in the Federal Register, amounts made available
13 under the amendments in subsection (a)—

14 (1) shall be identified and retained in the
15 Lower Colorado River Basin Development Fund es-
16 tablished by section 403 of the Colorado River Basin
17 Project Act (43 U.S.C. 1543); and

18 (2) shall not be expended or withdrawn from
19 that fund until the date on which the findings de-
20 scribed in section 207(d) are published in the Fed-
21 eral Register.

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

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

1 (2) by striking “clause” each other place it ap-
2 pears and inserting “paragraph”; and

3 (3) by striking “clauses” each place it appears
4 and inserting “paragraphs”.

5 **SEC. 108. EFFECT.**

6 Except for provisions relating to the allocation of
7 Central Arizona Project water and the Reclamation Re-
8 form Act of 1982 (43 U.S.C. 390aa et seq.), nothing in
9 this title affects—

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

12 (2) any existing rights to use Colorado River
13 water.

14 **SEC. 109. REPEAL.**

15 Section 11(h) of the Salt River Pima-Maricopa In-
16 dian Community Water Rights Settlement Act of 1988
17 (102 Stat. 2559) is repealed.

18 **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

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

21 (1) the 1994 biological opinion, including any
22 funding transfers required by the opinion;

23 (2) the 1996 biological opinion, including any
24 funding transfers required by the opinion; and

1 (3) any final biological opinion resulting from
2 the 1999 biological opinion, including any funding
3 transfers required by the opinion.

4 (b) CONSTRUCTION COSTS.—Amounts made avail-
5 able under subsection (a) shall be treated as Central Ari-
6 zona Project construction costs.

7 (c) AGREEMENTS.—

8 (1) IN GENERAL.—Any amounts made available
9 under subsection (a) may be used to carry out agree-
10 ments to permanently fund long-term reasonable and
11 prudent alternatives in accepted biological opinions
12 relating to the Central Arizona Project.

13 (2) REQUIREMENTS.—To ensure that long-term
14 environmental compliance may be met without fur-
15 ther appropriations, an agreement under paragraph
16 (1) shall include a provision requiring that the con-
17 tractor manage the funds through interest-bearing
18 investments.

19 **SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE**
20 **UNDER TITLE II.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), if the Secretary does not publish a statement of find-
23 ings under section 207(d) by December 31, 2007—

24 (1) this title is repealed effective January 1,
25 2008, and any action taken by the Secretary and

1 any contract entered under any provision of this title
2 shall be void; and

3 (2) any amounts appropriated under section
4 110 that remain unexpended shall immediately re-
5 vert to the general fund of the Treasury.

6 (b) EXCEPTION.—No subcontract amendment exe-
7 cuted by the Secretary under the notice of June 4, 2002
8 (67 Fed. Reg. 38514) shall be considered to be a contract
9 entered into by the Secretary for purposes of subsection
10 (a)(1).

11 **TITLE II—GILA RIVER INDIAN**
12 **COMMUNITY WATER RIGHTS**
13 **SETTLEMENT**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Gila River Indian
16 Community Water Rights Settlement Act of 2003”.

17 **SEC. 202. FINDINGS AND PURPOSES.**

18 (a) FINDINGS.—Congress finds that—

19 (1) it is the policy of the United States, in
20 keeping with the trust responsibility of the United
21 States to Indian tribes—

22 (A) to promote Indian self-determination
23 and economic self-sufficiency; and

1 (B) to settle, whenever possible, Indian
2 water rights claims without lengthy and costly
3 litigation;

4 (2) meaningful Indian self-determination and
5 economic self-sufficiency largely depend on the devel-
6 opment of viable Indian reservation economies;

7 (3) the quantification of rights to water and de-
8 velopment of facilities needed to use tribal water
9 supplies in an effective manner is essential to the de-
10 velopment of viable Indian reservation economies,
11 particularly in arid western States;

12 (4) continued uncertainty concerning the extent
13 of the entitlement of the Gila River Indian Commu-
14 nity to water—

15 (A) has severely limited access by the
16 Community to water and financial resources
17 necessary to develop valuable agricultural land;
18 and

19 (B) has frustrated the efforts of the Com-
20 munity to achieve meaningful self-determination
21 and self-sufficiency;

22 (5) proceedings to determine and enforce the
23 full extent and nature of, and injury to, the water
24 rights of the Community are currently pending in
25 the United States District Court for the District of

1 Arizona, and water rights claims are pending in the
2 Superior Court of the State in and for Maricopa
3 County as part of the Gila River adjudication pro-
4 ceedings;

5 (6) because final resolution of pending litigation
6 would take many years and entail great expense,
7 continue economically and socially damaging limits
8 to access to water by the Community, prolong uncer-
9 tainty concerning the availability of water supplies,
10 and seriously impair long-term economic planning
11 and development, the Community and the neighbors
12 of the Community have sought to settle their dis-
13 putes concerning water and reduce the burdens of
14 litigation;

15 (7) after many years of negotiation, the United
16 States, the Community, and the neighbors of the
17 Community, many of whom are parties to the Gila
18 River adjudication proceedings, have entered into a
19 settlement agreement to—

20 (A) resolve permanently certain damage
21 claims and all water rights claims between the
22 United States and the Community and its
23 neighbors; and

1 (B) recognize the right of the allottees to
2 use water for irrigation purposes on the Res-
3 ervation; and

4 (8) to advance the goals of Federal Indian pol-
5 icy and to act consistently with the trust responsi-
6 bility of the United States to the Community and
7 the allottees, it is appropriate that the United States
8 participate in the implementation of the Gila River
9 agreement and contribute funds to enable the Com-
10 munity and the allottees to use the water entitle-
11 ments recognized or provided for in the Gila River
12 agreement or this title in developing a diverse and
13 efficient economy.

14 (b) PURPOSES.—The purposes of this title are—

15 (1) to authorize, ratify, and confirm the Gila
16 River agreement;

17 (2) to authorize and direct the Secretary to exe-
18 cute and perform all obligations of the Secretary
19 under the Gila River agreement; and

20 (3) to authorize the actions and appropriations
21 necessary for the United States to meet obligations
22 of the United States under the Gila River agreement
23 and this title.

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

4 (a) IN GENERAL.—Except to the extent that the Gila
5 River agreement conflicts with a provision of this title, the
6 Gila River agreement is authorized, ratified, and con-
7 firmed.

8 (b) EXECUTION OF AGREEMENT.—The Secretary
9 shall execute the Gila River agreement, including all exhib-
10 its to the Gila River agreement requiring the signature
11 of the Secretary and any amendments necessary to make
12 the Gila River agreement consistent with this title, after
13 the Community has executed the Gila River agreement
14 and any such amendments.

15 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

16 (1) NO MAJOR FEDERAL ACTION.—Execution of
17 the Gila River agreement by the Secretary under
18 this section shall not constitute a major Federal ac-
19 tion under the National Environmental Policy Act
20 (42 U.S.C. 4321 et seq.).

21 (2) ENVIRONMENTAL COMPLIANCE ACTIVI-
22 TIES.—The Secretary shall promptly carry out the
23 environmental compliance activities necessary to im-
24 plement the Gila River agreement, including activi-
25 ties under the National Environmental Policy Act

1 and the Endangered Species Act (16 U.S.C. 1531 et
2 seq.).

3 (3) LEAD AGENCY.—The Bureau of Reclama-
4 tion shall be designated as the lead agency with re-
5 spect to environmental compliance.

6 (d) REHABILITATION AND OPERATION, MAINTEN-
7 NANCE, AND REPLACEMENT OF CERTAIN WATER
8 WORKS.—

9 (1) IN GENERAL.—In accordance with this title
10 and exhibit 20.1 to the Gila River agreement, and
11 as provided in this subsection, the Secretary shall
12 provide for the rehabilitation and operation, mainte-
13 nance, and replacement of the San Carlos Irrigation
14 Project water diversion and delivery works.

15 (2) JOINT CONTROL BOARD AGREEMENT.—The
16 Secretary shall execute the joint control board agree-
17 ment described in exhibit 20.1 to the Gila River
18 agreement.

19 (3) REHABILITATION COSTS ALLOCABLE TO
20 THE COMMUNITY.—The rehabilitation costs allocable
21 to the Community under exhibit 20.1 to the Gila
22 River agreement shall be paid from the funds avail-
23 able under paragraph (2)(C) of section 403(f) of the
24 Colorado River Basin Project Act (43 U.S.C.
25 1543(f)) (as amended by section 107(a)).

1 (4) REHABILITATION COSTS NOT ALLOCABLE
2 TO THE COMMUNITY.—

3 (A) IN GENERAL.—The rehabilitation costs
4 not allocable to the Community under exhibit
5 20.1 to the Gila River agreement shall be pro-
6 vided from—

7 (i) funds available under paragraph
8 (2)(D)(iii)(I) of section 403(f) of the Colo-
9 rado River Basin Project Act (43 U.S.C.
10 1543(f)) (as amended by section 107(a));

11 or

12 (ii) funds made available under sec-
13 tion 213(a).

14 (B) SUPPLEMENTARY REPAYMENT CON-
15 TRACT.—The Secretary shall execute a supple-
16 mentary repayment contract with the San Car-
17 los Irrigation and Drainage District in the form
18 provided for in exhibit 20.1 to the Gila River
19 agreement which shall, among other things,
20 provide that—

21 (i) in accomplishing the work under
22 the supplemental repayment contract, the
23 San Carlos Irrigation and Drainage Dis-
24 trict may use the labor and contracting au-

1 thorities that are available under State
2 law; and

3 (ii) a portion of the San Carlos Irriga-
4 tion and Drainage District's share of the
5 rehabilitation costs specified in exhibit
6 20.1 to the Gila River agreement shall be
7 nonreimbursable.

8 (5) LEAD AGENCY.—The Bureau of Reclama-
9 tion shall be designated as the lead agency for over-
10 sight of the construction and rehabilitation of the
11 San Carlos Irrigation Project authorized by this sec-
12 tion.

13 (6) OPERATION AND MAINTENANCE RESPONSI-
14 BILITY.—

15 (A) IN GENERAL.—The Secretary shall re-
16 tain the operation and maintenance responsi-
17 bility for the CRR Project works until such
18 time as the Community assumes that responsi-
19 bility pursuant to applicable law.

20 (B) FINANCIAL RESPONSIBILITY.—The
21 Secretary shall retain sole financial responsi-
22 bility for the payment, on behalf of the Commu-
23 nity, of the portion of the operation and main-
24 tenance costs that are attributable to the Com-

1 munity for the operation and maintenance of
2 the San Carlos Irrigation Project.

3 **SEC. 204. WATER RIGHTS.**

4 (a) RIGHTS HELD IN TRUST.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 the water rights of the Community described in the
7 Gila River agreement shall be held in trust by the
8 United States on behalf of the Community.

9 (2) ALLOTTEES.—As specified in and provided
10 for under this Act, allottees shall be entitled to an
11 allocation of water for irrigation purposes from the
12 water resources described in subparagraph 4.1.1 of
13 the Gila River agreement.

14 (3) NO AUTHORIZATION.—Nothing in this Act
15 authorizes any action, claim, or lawsuit by an allot-
16 tee against any person, entity, corporation, or mu-
17 nicipal corporation, or a tribal government or the
18 United States, under Federal, State, or other law.

19 (b) REALLOCATION.—In accordance with this title
20 and the Gila River agreement, the Secretary shall reallo-
21 cate to the Community and contract for the delivery of—

22 (1) an annual entitlement to 18,600 acre-feet of
23 CAP agricultural priority water in accordance with
24 the agreement among the Secretary, the Community,

1 and Roosevelt Water Conservation District dated
2 August 7, 1992;

3 (2) an annual entitlement to 18,100 acre-feet of
4 CAP Indian priority water, which was permanently
5 relinquished by Harquahala Valley Irrigation Dis-
6 trict in accordance with Contract No. 3-07-W0290
7 among the Central Arizona Water Conservation Dis-
8 trict, the Harquahala Valley Irrigation District, and
9 the United States, and converted to CAP Indian pri-
10 ority water under the Fort McDowell Indian Com-
11 munity Water Rights Settlement Act of 1990 (104
12 Stat. 4480);

13 (3) on execution of an exchange and lease
14 agreement among the Community, the United
15 States, and Asarco, an annual entitlement to 17,000
16 acre-feet of CAP municipal and industrial priority
17 water under the subcontract among the United
18 States, the Central Arizona Water Conservation Dis-
19 trict, and Asarco, Subcontract No. 3-07-30-W0307,
20 dated November 7, 1993; and

21 (4) as provided in section 104(a)(1)(A)(i), an
22 annual entitlement to 102,000 acre-feet of CAP ag-
23 ricultural priority water acquired pursuant to the
24 master agreement.

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 pur-
 5 pose of determining the allocation and repayment of costs
 6 of any stages of the Central Arizona Project constructed
 7 after the date of enactment of this Act, the costs associ-
 8 ated with the delivery of Community CAP water, whether
 9 that water is delivered for use by the Community or in
 10 accordance with any assignment, exchange, lease, option
 11 to lease, or other agreement for the temporary disposition
 12 of water entered into by the Community—

13 (1) shall be nonreimbursable; and

14 (2) shall be excluded from the repayment obli-
 15 gation of the Central Arizona Water Conservation
 16 District.

17 (e) APPLICATION OF PROVISIONS.—

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

22 (2) WATER CODE.—Not later than 3 years after
 23 the enforceability date, the Community shall enact a
 24 water code, subject to any applicable provision of
 25 law, that—

1 (A) manages, regulates, and controls the
2 water resources on the Reservation;

3 (B) governs all of the water rights that are
4 held in trust by the United States for the ben-
5 efit of the Community; and

6 (C) includes, subject to approval of the
7 Secretary—

8 (i) a process by which any allottee, or
9 any successor in interest to an allottee,
10 may request and be provided with an allo-
11 cation of water for irrigation use on allot-
12 ted land of the allottee; and

13 (ii) a due process system for the con-
14 sideration and determination of any re-
15 quest by any allottee, or any successor in
16 interest to an allottee, for an allocation of
17 water, including a process for appeal and
18 adjudication of denied or disputed distribu-
19 tions of water and for resolution of con-
20 tested administrative decisions.

21 (3) ADMINISTRATION.—The Secretary shall ad-
22 minister all rights to water granted or confirmed to
23 the Community by the Gila River agreement until
24 such date as the water code described in paragraph
25 (2) has been enacted and approved by the Secretary.

1 **SEC. 205. COMMUNITY WATER DELIVERY CONTRACT**
2 **AMENDMENTS.**

3 (a) IN GENERAL.—The Secretary shall amend the
4 Community water delivery contract to provide, among
5 other things, in accordance with the Gila River agreement,
6 that—

7 (1) the contract shall be—

8 (A) for permanent service (within the
9 meaning of section 5 of the Boulder Canyon
10 Project Act (43 U.S.C. 617d)); and

11 (B) without limit as to term;

12 (2) the Community may, with the approval of
13 the Secretary—

14 (A) enter into contracts or options to lease
15 (for a term not to exceed 100 years) or con-
16 tracts or options to exchange, Community CAP
17 water within Maricopa, Pinal, Pima, La Paz,
18 Yavapai, Gila, Graham, Greenlee, Santa Cruz,
19 or Coconino Counties, Arizona, providing for
20 the temporary delivery to others of any portion
21 of the Community CAP water; and

22 (B) renegotiate any lease at any time dur-
23 ing the term of the lease, so long as the term
24 of the renegotiated lease does not exceed 100
25 years;

1 (3)(A) the Community, and not the United
2 States, shall be entitled to all consideration due to
3 the Community under any leases or options to lease
4 and exchanges or options to exchange Community
5 CAP water entered into by the Community; 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 Com-
9 munity under any such leases or options to lease and
10 exchanges or options to exchange;

11 (4)(A) all Community CAP water shall be deliv-
12 ered through the CAP system; and

13 (B) if the delivery capacity of the CAP system
14 is significantly reduced or is anticipated to be sig-
15 nificantly reduced for an extended period of time,
16 the Community shall have the same CAP delivery
17 rights as other CAP contractors and CAP sub-
18 contractors, if such CAP contractors or CAP sub-
19 contractors are allowed to take delivery of water
20 other than through the CAP system;

21 (5) the Community may use Community CAP
22 water on or off the Reservation for Community pur-
23 poses;

24 (6) as authorized by subparagraph (A) of sec-
25 tion 403(f)(2) of the Colorado River Basin Project

1 Act (43 U.S.C. 1543(f)(2)) (as amended by section
2 107(a)) and to the extent that funds are available in
3 the Lower Colorado River Basin Development Fund
4 established by section 403 of that Act (43 U.S.C.
5 1543), the United States shall pay to the CAP oper-
6 ating agency the fixed OM&R charges associated
7 with the delivery of Community CAP water, except
8 for Community CAP water leased by others;

9 (7) the costs associated with the construction of
10 the CAP system—

11 (A) shall be nonreimbursable; and

12 (B) shall be excluded from any repayment
13 obligation of the Community; and

14 (8) no CAP water service capital charges shall
15 be due or payable for Community CAP water,
16 whether CAP water is delivered for use by the Com-
17 munity or is delivered under any leases, options to
18 lease, exchanges or options to exchange Community
19 CAP water entered into by the Community.

20 (b) AMENDED AND RESTATED COMMUNITY WATER
21 DELIVERY CONTRACT.—Notwithstanding any other provi-
22 sion of law, the Amended and Restated Community CAP
23 water Delivery Contract set forth in exhibit 8.2 to the Gila
24 River agreement is authorized, ratified, and confirmed,
25 and the Secretary shall execute the contract.

1 (c) LEASES.—The leases of Community CAP water
2 by the Community to Phelps Dodge, and any of the Cities,
3 attached as exhibits to the Gila River agreement, are au-
4 thorized, ratified, and confirmed, and the Secretary shall
5 execute the leases.

6 (d) RECLAIMED WATER EXCHANGE AGREEMENT.—
7 The Reclaimed Water Exchange Agreement among the
8 cities of Chandler and Mesa, Arizona, the Community, and
9 the United States, attached as exhibit 18.1 to the Gila
10 River agreement, is authorized, ratified, and confirmed,
11 and the Secretary shall execute the agreement.

12 (e) PAYMENT OF CHARGES.—Neither the Community
13 nor any recipient of Community CAP water through lease
14 or exchange shall be obligated to pay water service capital
15 charges or any other charges, payments, or fees for the
16 CAP water, except as provided in the lease or exchange
17 agreement.

18 (f) PROHIBITIONS.—

19 (1) USE OUTSIDE THE STATE.—None of the
20 Community CAP water shall be leased, exchanged,
21 forborne, or otherwise transferred in any way by the
22 Community for use directly or indirectly outside the
23 State.

24 (2) USE OFF RESERVATION.—Except as author-
25 ized by this section and subparagraph 4.7 of the

1 Gila River agreement, no water made available to
2 the Community under the Gila River agreement, the
3 Globe Equity Decree, the Haggard Decree, or this
4 title may be sold, leased, transferred, or used off the
5 Reservation other than by exchange.

6 (3) AGREEMENTS WITH THE ARIZONA WATER
7 BANKING AUTHORITY.—Nothing in this Act or the
8 Gila River agreement limits the right of the Commu-
9 nity to enter into any agreement with the Arizona
10 Water Banking Authority, or any successor agency
11 or entity, in accordance with State law.

12 **SEC. 206. SATISFACTION OF CLAIMS.**

13 (a) IN GENERAL.—The benefits realized by the Com-
14 munity, Community members, and allottees under this
15 title shall be in complete replacement of and substitution
16 for, and full satisfaction of, all claims of the Community,
17 Community members, and allottees for water rights, in-
18 jury to water rights, injury to water quality and subsid-
19 ence damage, except as set forth in the Gila River agree-
20 ment, under Federal, State, or other law with respect to
21 the Reservation, off-Reservation trust land, and fee land.

22 (b) NO RECOGNITION OF WATER RIGHTS.—Notwith-
23 standing subsection (a) and except as provided in sub-
24 section 204(e), nothing in this title has the effect of recog-

1 nizing or establishing any right of a Community member
 2 or allottee to water on the Reservation.

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

4 (a) IN GENERAL.—

5 (1) CLAIMS AGAINST THE STATE AND OTHERS
 6 ACTING UNDER FEDERAL, STATE, OR OTHER LAW.—

7 (A) BY THE COMMUNITY.—Except as pro-
 8 vided in the Gila River agreement, the Commu-
 9 nity, on behalf of the Community and Commu-
 10 nity members (but not members in their capaci-
 11 ties as allottees), and the Secretary, on behalf
 12 of the Community and Community members
 13 (but not members in their capacities as
 14 allottees), as part of the performance of obliga-
 15 tions under the Gila River agreement, are au-
 16 thorized to execute a waiver and release of any
 17 claims against the State (or any agency or po-
 18 litical subdivision of the State) or any other
 19 person, entity, corporation, or municipal cor-
 20 poration under Federal, State, or other law
 21 for—

22 (i)(I) past, present, and future claims
 23 for water rights for land within the Res-
 24 ervation, off-Reservation trust land, and

1 fee land arising from time immemorial
2 and, thereafter, forever; and

3 (II) past, present, and future claims
4 for water rights based on aboriginal occu-
5 pancy of land by the Community and Com-
6 munity members, or their predecessors
7 arising from time immemorial and, there-
8 after, forever;

9 (ii)(I) past and present injury to
10 water rights for land within the Reserva-
11 tion, off-Reservation trust land, and fee
12 land arising from time immemorial
13 through the enforceability date;

14 (II) past, present, and future injury
15 to water rights based on aboriginal occu-
16 pancy of land by the Community and Com-
17 munity members, or their predecessors
18 arising from time immemorial and, there-
19 after, forever; and

20 (III) injury to water rights arising
21 after the enforceability date for land within
22 the Reservation, off-Reservation trust land,
23 and fee land resulting from the off-Res-
24 ervation diversion or use of water in a

1 manner not in violation of the Gila River
2 agreement or State law;

3 (iii)(I) past and present injury to
4 water quality (other than claims arising
5 out of the actions that resulted in the re-
6 mediations described in exhibit 25.2.1.6 to
7 the Gila River agreement), including
8 claims for trespass, nuisance, and real
9 property damage and claims under all cur-
10 rent and future Federal, State, and other
11 environmental laws and regulations (in-
12 cluding claims under the Comprehensive
13 Environmental Response, Compensation,
14 and Liability Act of 1980 (42 U.S.C. 9601
15 et seq.) and Ariz. Rev. Stat. 49–282), for
16 land within the exterior boundaries of the
17 Reservation, off-Reservation trust land,
18 and fee land arising from time immemorial
19 through December 31, 2002;

20 (II) past, present, and future injury
21 to water quality (other than claims arising
22 out of actions that resulted in the remedi-
23 ations described in exhibit 25.2.1.6 to the
24 Gila River agreement), including claims for
25 trespass, nuisance, and real property dam-

1 age and claims under all current and fu-
2 ture Federal, State, and other environ-
3 mental laws and regulations (including
4 claims under the Comprehensive Environ-
5 mental Response, Compensation, and Li-
6 ability Act of 1980 (42 U.S.C. 9601 et
7 seq.) and Ariz. Rev. Stat. 49-282), that
8 are based on aboriginal occupancy of land
9 by the Community and Community mem-
10 bers, or their predecessors, arising from
11 time immemorial and, thereafter, forever;

12 (III) injury to water quality (other
13 than claims arising out of actions that re-
14 sulted in the remediations described in ex-
15 hibit 25.2.1.6 to the Gila River agreement)
16 arising after December 31, 2002, including
17 claims for trespass, nuisance, and real
18 property damage and claims under all cur-
19 rent and future Federal, State, and other
20 environmental laws and regulations (in-
21 cluding claims under the Comprehensive
22 Environmental Response, Compensation,
23 and Liability Act of 1980 (42 U.S.C. 9601
24 et seq.) and Ariz. Rev. Stat. 49-282), that
25 result from—

1 (aa) the delivery of water to the
2 Community under the Gila River
3 agreement;

4 (bb) the off-Reservation diversion
5 (other than pumping), or ownership
6 or operation of structures for the off-
7 Reservation diversion (other than
8 pumping), of water;

9 (cc) the off-Reservation pumping,
10 or ownership or operation of struc-
11 tures for the off-Reservation pumping,
12 of water in a manner not in violation
13 of the Gila River agreement or of any
14 applicable pumping limitations under
15 State law;

16 (dd) the recharge, or ownership
17 or operation of structures for the re-
18 charge, of water under a State permit;
19 and

20 (ee) the off-Reservation applica-
21 tion of water to land for irrigation;

22 except that the waiver provided in this sub-
23 clause shall extend only to the State (or
24 any agency or political subdivision of the
25 State) or any other person, entity, or mu-

1 municipal or other corporation to the extent
2 that the person, entity, or corporation is
3 engaged in an activity specified in this sub-
4 clause;

5 (iv) past, present, and future claims
6 arising out of or relating in any manner to
7 the negotiation or execution of the Gila
8 River agreement or the negotiation or en-
9 actment of titles I and II; and

10 (v)(I) past and present claims for sub-
11 sidence damage occurring to land within
12 the Reservation, off-Reservation trust land,
13 or fee land arising from time immemorial
14 through the enforceability date; and

15 (II) subsidence damage arising after
16 the enforceability date occurring to land
17 within the Reservation, off-Reservation
18 trust land, or fee land resulting from the
19 diversion of underground water in a man-
20 ner not in violation of the Gila River
21 agreement or State law.

22 (B) BY THE UNITED STATES.—Except as
23 provided in the Gila River agreement, the
24 United States, as trustee for the allottees, as
25 part of the performance of obligations under

1 the Gila River agreement, are authorized to
2 execute a waiver and release of any claims
3 against the State (or any agency or political
4 subdivision of the State) or any other person,
5 entity, corporation, or municipal corporation
6 under Federal, State, or other law, for—

7 (i)(I) past, present, and future claims
8 for water rights for land within the Res-
9 ervation arising from time immemorial
10 and, thereafter, forever; and

11 (II) past, present, and future claims
12 for water rights based on aboriginal occu-
13 pancy of land by allottees, or their prede-
14 cessors arising from time immemorial and,
15 thereafter, forever;

16 (ii)(I) past and present injury to
17 water rights for land within the Reserva-
18 tion arising from time immemorial through
19 the enforceability date;

20 (II) past, present, and future injury
21 to water rights that are based on aborigi-
22 nal occupancy of land by allottees or their
23 predecessors arising from time immemorial
24 and, thereafter, forever; and

1 (III) injury to water rights arising
2 after the enforceability date for land within
3 the Reservation, off-Reservation trust land,
4 and fee land resulting from the off-Res-
5 ervation diversion or use of water in a
6 manner not in violation of the Gila River
7 agreement or State law;

8 (iii)(I) past and present injury to
9 water quality (other than claims arising
10 out of actions that resulted in the remedi-
11 ations described in exhibit 25.2.1.6 to the
12 Gila River agreement), including claims for
13 trespass, nuisance, and real property dam-
14 age and claims under all current and fu-
15 ture Federal, State, and other environ-
16 mental laws and regulations (including
17 claims under the Comprehensive Environ-
18 mental Response, Compensation, and Li-
19 ability Act of 1980 (42 U.S.C. 9601 et
20 seq.) and Ariz. Rev. Stat. 49–282), with
21 respect to land within the Reservation,
22 arising from time immemorial through De-
23 cember 31, 2002;

24 (II) past, present, and future injury
25 to water quality (other than claims arising

1 out of actions that resulted in the remedi-
2 ations described in exhibit 25.2.1.6 to the
3 Gila River agreement), including claims for
4 trespass, nuisance, and real property dam-
5 age and claims under all current and fu-
6 ture Federal, State, and other environ-
7 mental laws and regulations (including
8 claims under the Comprehensive Environ-
9 mental Response, Compensation, and Li-
10 ability Act of 1980 (42 U.S.C. 9601 et
11 seq.) and Ariz. Rev. Stat. 49-282), that
12 are based on aboriginal occupancy of land
13 by allottees or their predecessors, from
14 time immemorial and, thereafter, forever;

15 (III) injury to water quality (other
16 than claims arising out of actions that re-
17 sulted in the remediations described in ex-
18 hibit 25.2.1.6 to the Gila River agreement)
19 arising after December 31, 2002, including
20 claims for trespass, nuisance, and real
21 property damage and claims under all cur-
22 rent and future Federal, State, and other
23 environmental laws and regulations (in-
24 cluding claims under the Comprehensive
25 Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. 9601
2 et seq.) and Ariz. Rev. Stat. 49–282), that
3 result from—

4 (aa) the delivery of water to the
5 Community or the Allottees under the
6 Gila River agreement;

7 (bb) the off-Reservation diversion
8 (other than pumping), or ownership
9 or operation of structures for the off-
10 Reservation diversion (other than
11 pumping), of water;

12 (cc) the off-Reservation pumping,
13 or ownership or operation of struc-
14 tures for the off-Reservation pumping,
15 of water in a manner not in violation
16 of the Gila River agreement or any
17 applicable pumping limitations under
18 State law;

19 (dd) the recharge, or ownership
20 or operation of structures for the re-
21 charge, of water under a State permit;
22 and

23 (ee) the off-Reservation applica-
24 tion of water to land for irrigation;

1 except that the waiver provided in this sub-
2 clause shall extend only to the State (or
3 any agency or political subdivision of the
4 State) or any other person, entity, or mu-
5 nicipal or other corporation to the extent
6 that the person, entity, or corporation is
7 engaged in an activity specified in this sub-
8 clause;

9 (iv) 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 en-
13 actment of titles I and II; and

14 (v) past and present subsidence dam-
15 age occurring to land within the Reserva-
16 tion from time immemorial through the en-
17 forceability date.

18 (2) CLAIMS FOR SUBSIDENCE.—In accordance
19 with the subsidence remediation program under sec-
20 tion 209, the Community, a Community member, or
21 an allottee, and the United States, on behalf of the
22 Community, a Community member, or an allottee,
23 as part of the performance of obligations under the
24 Gila River agreement, are authorized to execute a
25 waiver and release of all claims against the State (or

1 any agency or political subdivision of the State) or
2 any other person, entity, corporation or municipal
3 corporation under Federal, State, or other law for
4 the damage claimed.

5 (3) CLAIMS AGAINST THE SALT RIVER
6 PROJECT.—Except as provided in the Gila River
7 agreement, the Community, on behalf of the Com-
8 munity and Community members (but not members
9 in their capacities as allottees), and the United
10 States, as trustee for the Community, Community
11 members, and allottees, as part of the performance
12 of obligations under the Gila River agreement, are
13 authorized to execute a waiver and release of any
14 claim against the Salt River Project (or its succes-
15 sors or assigns or its officers, governors, directors,
16 employees, agents, or shareholders) arising from the
17 discharge, transportation, seepage, or other move-
18 ment of water in, through, or from drains, canals,
19 or other facilities or land in the Salt River Reservoir
20 District to land in the Reservation for—

21 (A) past and present injury to water
22 rights, injury to water quality, or injury to real
23 property arising from time immemorial through
24 December 31, 2002; and

1 (B) injury to water rights, injury to water
2 quality, or injury to real property arising after
3 December 31, 2002, and through the enforce-
4 ability date, if the Salt River Project (or its
5 successors or assigns) acts in accordance with
6 the annual reservoir operations plan of the Salt
7 River Project through the enforceability date.

8 (4) CLAIMS AGAINST THE UNITED STATES.—

9 Except as provided in the Gila River agreement, the
10 Community, on behalf of the Community and Com-
11 munity members (but not members in their capaci-
12 ties as allottees), as part of the performance of obli-
13 gations under the Gila River agreement, is author-
14 ized to execute a waiver and release of any claim
15 against the United States (or agencies, officials, or
16 employees of the United States) under Federal,
17 State, or other law for—

18 (A)(i) past, present, and future claims for
19 water rights for land within the Reservation,
20 off-Reservation trust land, and fee land arising
21 from time immemorial and, thereafter, forever;
22 and

23 (ii) past, present, and future claims for
24 water rights based on aboriginal occupancy of
25 land by the Community and Community mem-

1 bers, or their predecessors arising from time
2 immemorial and, thereafter, forever;

3 (B)(i) past and present injury to water
4 rights for land within the Reservation, off-Res-
5 ervation trust land, and fee land arising from
6 time immemorial through the enforceability
7 date;

8 (ii) past, present, and future injury to
9 water rights based on aboriginal occupancy of
10 land by the Community and Community mem-
11 bers, or their predecessors arising from time
12 immemorial and, thereafter, forever; and

13 (iii) injury to water rights arising after the
14 enforceability date for land within the Reserva-
15 tion, off-Reservation trust land, or fee land re-
16 sulting from the off-Reservation diversion or
17 use of water in a manner not in violation of the
18 Gila River agreement or applicable law;

19 (C) past, present, and future claims aris-
20 ing out of or relating in any manner to the ne-
21 gotiation or execution of the Gila River agree-
22 ment or the negotiation or enactment of titles
23 I and II;

24 (D)(i) past and present subsidence damage
25 occurring to land within the Reservation, off-

1 Reservation trust land, or fee land arising from
2 time immemorial through the enforceability
3 date; and

4 (ii) subsidence damage arising after the
5 enforceability date occurring to land within the
6 Reservation, off-Reservation trust land or fee
7 land resulting from the diversion of under-
8 ground water in a manner not in violation of
9 the Gila River agreement or applicable law; and

10 (E) past and present claims for failure to
11 protect, acquire, or develop water rights for or
12 on behalf of the Community and Community
13 members arising before December 31, 2002.

14 (5) CLAIMS AGAINST THE COMMUNITY.—Except
15 as provided in the Gila River agreement, the United
16 States, in all its capacities (except as trustee for an
17 Indian tribe other than the Community), as part of
18 the performance of obligations under the Gila River
19 agreement, is authorized to execute a waiver and re-
20 lease of any and all claims against the Community,
21 or any agency, official, or employee of the Commu-
22 nity, under Federal, State, or any other law for—

23 (A)(i) past, present, and future claims for
24 water rights; and

1 (ii) past and present injury to water rights
2 arising from time immemorial through the en-
3 forceability date;

4 (B) injury to water rights arising after the
5 enforceability date resulting from the diversion
6 or use of water in a manner not in violation of
7 the Gila River agreement or applicable law;

8 (C) past, present, and future claims aris-
9 ing out of or relating in any manner to the ne-
10 gotiation or execution of the Gila River agree-
11 ment, or the negotiation or enactment of titles
12 I and II;

13 (D) past and present injury to water qual-
14 ity, including claims described in paragraph
15 (1)(A)(iii)(I), arising from time immemorial
16 through December 31, 2002; and

17 (E) past and present subsidence damage
18 arising from time immemorial through the en-
19 forceability date.

20 (6) CLAIMS AGAINST CERTAIN PERSONS AND
21 ENTITIES IN THE UPPER GILA VALLEY.—

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

1 members in their capacities as allottees), and
2 the United States on behalf of the Community
3 and Community members (but not members in
4 their capacities as allottees) and, to the extent
5 of the interest of the United States as owner of
6 water rights for land described in articles V and
7 VI of the Globe Equity Decree (excluding land
8 described in article VI(2)), are authorized, as
9 part of the performance of obligations under
10 the UVD agreement, to execute a waiver and
11 release of any claims against the UVD settling
12 parties and all other persons or entities divert-
13 ing or using water in a manner that is not in
14 violation of or contrary to the terms, conditions,
15 requirements, limitations, or other provisions of
16 the UVD agreement, for—

17 (i)(I) past, present, and future claims
18 for water rights within the Reservation and
19 the San Carlos Irrigation Project and, to
20 the extent of the interest of the United
21 States, land described in articles V and VI
22 of the Globe Equity Decree (excluding land
23 described in article VI(2)), arising from
24 time immemorial and, thereafter, forever;
25 and

1 (II) past, present, and future claims
2 for water rights based on aboriginal occu-
3 paney of land by the Community, Commu-
4 nity members, or predecessors of Commu-
5 nity members, arising from time immemo-
6 rial and, thereafter, forever;

7 (ii)(I) past and present injury to
8 water rights for land within the Reserva-
9 tion and the San Carlos Irrigation Project,
10 and, to the extent of the interest of the
11 United States, land described in articles V
12 and VI of the Globe Equity Decree (ex-
13 cluding land described in article VI(2)),
14 arising from time immemorial and, there-
15 after, forever;

16 (II) past, present, and future injury
17 to water rights based on aboriginal occu-
18 paney of land by the Community, Commu-
19 nity members, or predecessors of Commu-
20 nity members, arising from time immemo-
21 rial and, thereafter, forever; and

22 (III) injury to water rights for land
23 within the Reservation and the San Carlos
24 Irrigation Project, and, to the extent of the
25 interest of the United States, land de-

1 scribed in articles V and VI of the Globe
2 Equity Decree (excluding land described in
3 article VI(2)), resulting from the diversion,
4 pumping, or use of water in a manner not
5 in violation of or contrary to the terms,
6 conditions, limitations, requirements, or
7 provisions of the UVD agreement;

8 (iii)(I) past, present, and future
9 claims arising out of or relating to the use
10 of water rights appurtenant to NM 381
11 acres, on the conditions that such water
12 rights remain subject to the oversight and
13 reporting requirements set forth in the de-
14 cree in *Arizona v. California*, 376 U.S. 340
15 (1964), and that the State of New Mexico
16 shall make available on request a copy of
17 any records prepared pursuant to that de-
18 cree; and

19 (II) past, present, and future claims
20 arising out of and relating to the use of
21 water rights for NM domestic purposes, on
22 the conditions that such water rights re-
23 main subject to the oversight and reporting
24 requirements set forth in the decree in *Ari-
25 zona v. California*, 376 U.S. 340 (1964),

1 and that the State of New Mexico shall
2 make available on request a copy of any
3 records prepared pursuant to that decree;
4 and

5 (iv) past, present, and future claims
6 arising out of or relating to the negotiation
7 or execution of the UVD agreement, or the
8 negotiation or enactment of this Act.

9 (B) BY THE UNITED STATES ON BEHALF
10 OF ALLOTTEES.—Except as provided in the
11 UVD agreement, the United States as trustee
12 for the allottees, as part of the performance
13 under the UVD agreement, is authorized to
14 execute a waiver and release against the UV
15 settling parties and all other persons or entities
16 diverting or using water in a manner that is not
17 in violation of or contrary to the terms, condi-
18 tions, requirements, limitations, or other provi-
19 sions of the UVD agreement, for—

20 (i)(I) past, present, and future claims
21 for water rights lands within the Reserva-
22 tion arising from time immemorial, and
23 thereafter, forever; and

24 (II) past, present, and future claims
25 for water rights based on aboriginal occu-

1 pancy of lands by allottees or their prede-
2 cessors arising from time immemorial, and
3 thereafter, forever;

4 (ii)(I) past and present injury to
5 water rights for lands within the Reserva-
6 tion arising from time immemorial, and
7 thereafter, forever;

8 (II) past, present, and future injury
9 to water rights based on aboriginal occu-
10 pancy of lands by allottees or their prede-
11 cessors arising from time immemorial, and
12 thereafter, forever; and

13 (III) injury to water rights for land
14 within the Reservation resulting from the
15 diversion, pumping, or use of water in a
16 manner not in violation of or contrary to
17 the terms, conditions, limitations, require-
18 ments, or provisions of the UVD agree-
19 ment;

20 (iii)(I) past, present, and future
21 claims arising out of or relating to the use
22 of water rights appurtenant to NM 381
23 acres, on the conditions that such water
24 rights remain subject to the oversight and
25 reporting requirements set forth in the de-

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

6 (II) past, present, and future claims
7 arising out of or relating to the use of
8 water rights for NM domestic purposes, on
9 the conditions that such water rights re-
10 main subject to the oversight and reporting
11 requirements set forth in the decree in *Ari-
12 zona v. California*, 376 U.S. 340 (1964),
13 and that the State of New Mexico shall
14 make available on request a copy of any
15 records prepared pursuant to that decree;
16 and

17 (iv) past, present, and future claims
18 arising out of or relating to the negotiation
19 or execution of the UVD agreement, or the
20 negotiation or enactment of titles I and II.

21 (b) EFFECTIVENESS OF WAIVER AND RELEASES.—

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

1 (2) CLAIMS FOR SUBSIDENCE.—The waiver
2 under subsection (a)(2) shall become effective on
3 execution of the waiver by—

4 (A) the Community, a Community mem-
5 ber, or an allottee; and

6 (B) the United States, on behalf of the
7 Community, a Community member, or an allot-
8 tee.

9 (c) LIMITATION ON CLAIMS BY THE UNITED
10 STATES.—The United States shall not assert any claim
11 against the State (or any agency or political subdivision
12 of the State) or any other person, entity, or municipal or
13 other corporation under Federal, State, or other law in
14 the own right of the United States or on behalf of the
15 Community, Community members, and allottees for any
16 of the claims described in subsection (a).

17 (d) ENFORCEABILITY DATE.—

18 (1) IN GENERAL.—This section takes effect on
19 the date on which the Secretary publishes in the
20 Federal Register a statement of findings that—

21 (A) to the extent the Gila River agreement
22 conflicts with this title, the Gila River agree-
23 ment has been revised through an amendment
24 to eliminate the conflict and the Gila River

1 agreement, so revised, has been executed by the
2 Secretary and the Governor of the State;

3 (B) the Secretary has fulfilled the require-
4 ments of—

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

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

9 (C) the master agreement authorized, rati-
10 fied, and confirmed by section 106(a) has been
11 executed by the parties to the master agree-
12 ment, and all conditions to the enforceability of
13 the master agreement have been satisfied;

14 (D) \$53,000,000 has been identified and
15 retained in the Lower Colorado River Basin De-
16 velopment Fund for the benefit of the Commu-
17 nity in accordance with section 107(b);

18 (E) the State has appropriated and paid to
19 the Community any amount to be paid under
20 paragraph 27.4 of the Gila River agreement;

21 (F) the Salt River Project has paid to the
22 Community \$500,000 under subparagraph 16.9
23 of the Gila River agreement;

24 (G) the judgments and decrees attached to
25 the Gila River agreement as exhibits 25.11A

1 (Gila River adjudication proceedings) and
2 25.11B (Globe Equity Decree proceedings) have
3 been approved by the respective courts;

4 (H) the dismissals attached to the Gila
5 River agreement as exhibits 25.17.1A–C,
6 25.17.2A–B, and 25.17.3A–B have been filed
7 with the respective courts and any necessary
8 dismissal orders entered;

9 (I) legislation has been enacted by the
10 State to—

11 (i) implement the Southside Replen-
12 ishment Program in accordance with sub-
13 paragraph 5.3 of the Gila River agreement;

14 (ii) authorize the firming program re-
15 quired by section 105; and

16 (iii) establish the Upper Gila River
17 Watershed Maintenance Program in ac-
18 cordance with subparagraph 26.8.1 of the
19 Gila River agreement;

20 (J) the State has entered into an agree-
21 ment with the Secretary to carry out the obliga-
22 tion of the State under section 105(b)(2)(A);
23 and

24 (K) a final judgment has been entered in
25 Central Arizona Water Conservation District v.

1 United States (No. CIV 95-625-TUC-
2 WDB(EHC), No. CIV 95-1720-PHX-EHC)
3 (Consolidated Action) in accordance with the
4 repayment stipulation.

5 (2) FAILURE OF ENFORCEABILITY DATE TO
6 OCCUR.—If, because of the failure of the enforce-
7 ability date to occur by December 31, 2007, this sec-
8 tion does not become effective, the Community,
9 Community members, and allottees, and the United
10 States on behalf of the San Carlos Irrigation and
11 Drainage District, the Community, Community
12 members, and allottees, shall retain the right to as-
13 sert past, present, and future water rights claims,
14 claims for injury to water rights, claims for injury
15 to water quality, and claims for subsidence damage
16 as to all land within the exterior boundaries of the
17 Reservation, off-Reservation trust land, and fee
18 land.

19 **SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R**
20 **TRUST FUND.**

21 (a) ESTABLISHMENT.—There is established in the
22 Treasury of the United States a trust fund to be known
23 as the “Gila River Indian Community Water OM&R Trust
24 Fund”.

1 (b) DEPOSITS.—Of the amounts made available
2 under paragraph (2)(B) of section 403(f) of the Colorado
3 River Basin Project Act (43 U.S.C. 1543(f)), the Sec-
4 retary shall deposit \$53,000,000 into the Water OM&R
5 Fund.

6 (c) MANAGEMENT.—Except as provided in subsection
7 (f)(2)(A), the principal of the Water OM&R Fund, and
8 any interest or income accruing on the principal, shall be
9 managed in accordance with the American Indian Trust
10 Fund Management Reform Act of 1994 (25 U.S.C. 4001
11 et seq.).

12 (d) USE.—The principal of the Water OM&R Fund,
13 and any interest or income accruing on the principal, shall
14 be used by the Community as provided in the Gila River
15 agreement to assist in paying the costs of operation, main-
16 tenance, and replacement costs associated with the deliv-
17 ery of CAP water for Community purposes.

18 (e) WITHDRAWALS.—As provided in the American
19 Indian Trust Fund Management Reform Act of 1994 (25
20 U.S.C. 4001 et seq.), the Community may—

21 (1) withdraw amounts from the Water OM&R
22 Fund; and

23 (2) deposit the amounts in a private financial
24 institution selected by agreement of the Community
25 and the Secretary.

1 (f) LIMITATIONS.—

2 (1) NO DISTRIBUTION TO MEMBERS.—No part
3 of the principal of the Water OM&R Fund, or the
4 interest or income accruing on the principal, shall be
5 distributed to any Community member on a per cap-
6 ita basis.

7 (2) FUNDS NOT AVAILABLE UNTIL ENFORCE-
8 ABILITY DATE.—

9 (A) IN GENERAL.—Amounts in the Water
10 OM&R Fund shall not be available for expendi-
11 ture or withdrawal by the Community until the
12 enforceability date.

13 (B) ASSETS.—On and after the enforce-
14 ability date, the assets of the Water OM&R
15 Fund shall be the property of the Community.

16 **SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.**

17 (a) IN GENERAL.—The Secretary shall establish a
18 program under which the Bureau of Reclamation shall re-
19 pair and remediate subsidence damage and related dam-
20 age that occurs after the enforceability date.

21 (b) DAMAGE.—Under the program, the Community,
22 a Community member, or an allottee may submit to the
23 Secretary a request for the repair or remediation of—

24 (1) subsidence damage; and

1 (2) damage to personal property caused by the
2 settling of geologic strata or cracking in the earth's
3 surface of any length or depth, which settling or
4 cracking is caused by pumping of underground
5 water.

6 (c) REPAIR OR REMEDIATION.—The Secretary shall
7 perform the requested repair or remediation if—

8 (1) the Secretary determines that the Commu-
9 nity has not exceeded its right to withdraw under-
10 ground water under the Gila River agreement; and

11 (2) the Community, Community member, or al-
12 lottee, and the Secretary as trustee for the Commu-
13 nity, Community member, or allottee, execute a
14 waiver and release of claim in the form specified in
15 exhibit 25.5.1, 25.5.2, or 25.5.3 to the Gila River
16 agreement, as applicable, to become effective on sat-
17 isfactory completion of the requested repair or reme-
18 diation, as determined under the Gila River agree-
19 ment.

20 (d) SPECIFIC SUBSIDENCE DAMAGE.—Notwith-
21 standing any other provision of this section, the Secretary,
22 acting through the Commissioner of Reclamation, shall re-
23 pair, remediate, and rehabilitate the subsidence damage
24 that has occurred to land within the Reservation, as speci-
25 fied in exhibit 29.21 to the Gila River agreement.

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

2 (a) REQUIREMENT OF ACT OF CONGRESS.—The
3 Community may seek to have legal title to additional land
4 in the State located outside the exterior boundaries of the
5 Reservation taken into trust by the United States for the
6 benefit of the Community pursuant only to an Act of Con-
7 gress enacted after the date of enactment of this Act spe-
8 cifically authorizing the transfer for the benefit of the
9 Community.

10 (b) WATER RIGHTS.—After-acquired trust land shall
11 not include federally reserved rights to surface water or
12 groundwater.

13 (c) SENSE OF CONGRESS.—It is the sense of Con-
14 gress that future Acts of Congress authorizing land to be
15 taken into trust under subsection (a) should provide that
16 such land will have only such water rights and water use
17 privileges as would be consistent with State water law and
18 State water management policy.

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

20 (a) REDUCTION OF TBI ELIGIBLE ACRES.—

21 (1) IN GENERAL.—In accordance with this title
22 and as provided in the UVD agreement, the Sec-
23 retary shall assist in reducing the total water de-
24 mand for irrigation use in the upper valley of the
25 Gila River by—

1 (A) acquiring UV decreed water rights and
2 extinguishing or severing and transferring those
3 rights to the San Carlos Irrigation Project for
4 the benefit of the Community and the San Car-
5 los Irrigation and Drainage District in accord-
6 ance with applicable law; and

7 (B) entering into agreements regarding re-
8 duction of water demand through fallowing pro-
9 grams.

10 (2) ACQUISITIONS.—

11 (A) REQUIRED PHASE I ACQUISITION.—

12 Not later than December 31 of the second cal-
13 endar year that begins after the enforceability
14 date, the Secretary shall acquire the UV de-
15 creed water rights associated with 1,000 acres
16 of land (other than special hot lands) that
17 would have been included in the initial calcula-
18 tion of TBI eligible acres under the UVD
19 agreement if the initial calculation of TBI eligi-
20 ble acres had been undertaken at the time of
21 acquisition.

22 (B) REQUIRED PHASE II ACQUISITION.—

23 (i) IN GENERAL.—Not later than De-
24 cember 31 of the sixth calendar year that
25 begins after the enforceability date, the

1 Secretary shall acquire the UV decreed
2 water rights associated with 1,000 acres of
3 land (other than special hot lands) that
4 would have been included in the initial cal-
5 culation of TBI eligible acres under the
6 UVD agreement if the initial calculation of
7 TBI eligible acres had been undertaken at
8 the time of the acquisition.

9 (ii) REDUCTION.—The reduction of
10 TBI eligible acres under clause (i) shall be
11 in addition to that accomplished under
12 subparagraph (A).

13 (C) ADDITIONAL ACQUISITION IN CASE OF
14 SETTLEMENT.—If the San Carlos Apache Tribe
15 reaches a comprehensive settlement with the
16 UVD settling parties and other necessary par-
17 ties that is approved by Congress and finally
18 approved by all courts the approval of which is
19 required, not later than December 31 of the
20 second calendar year that begins after the effec-
21 tive date of that settlement, the Secretary shall
22 acquire the UV decreed water rights associated
23 with not less than 500 nor more than 3,000
24 TBI eligible acres of land (other than special
25 hot lands).

1 (D) AMOUNT OF PAYMENT.—In deter-
2 mining the amount to be paid for water rights
3 acquired pursuant to this paragraph, the Sec-
4 retary shall take into account the fact that land
5 associated with those rights shall be subject to
6 the phreatophyte control requirements as pro-
7 vided in the UVD agreement.

8 (3) REDUCTION OF ACREAGE.—Simultaneously
9 with the acquisition of UV decreed water rights
10 under paragraph (2), the number of TBI eligible
11 acres, but not the number of acres of UV subjugated
12 land, shall be reduced by the number of acres associ-
13 ated with those UV decreed water rights.

14 (4) ALTERNATIVES TO ACQUISITION.—

15 (A) SPECIAL HOT LANDS.—The Secretary
16 may fulfill the requirements of subparagraphs
17 (A) and (B) of paragraph (2), in full or in part,
18 by entering into an agreement with an owner of
19 special hot lands to prohibit permanently future
20 irrigation of the special hot lands if the UVD
21 settling parties simultaneously—

22 (i) acquire UV decreed water rights
23 associated with a like number of UV de-
24 creed acres that are not TBI eligible acres;
25 and

1 (ii) sever and transfer those rights to
 2 the San Carlos Irrigation Project for the
 3 benefit of the Community and the San
 4 Carlos Irrigation and Drainage District.

5 (B) FALLOWING AGREEMENT.—The Sec-
 6 retary may carry out all or any portion of the
 7 responsibilities of the Secretary under subpara-
 8 graphs (A) and (B) of paragraph (2) by enter-
 9 ing into an agreement with 1 or more owners
 10 of UV decreed acres and the UV irrigation dis-
 11 trict in which the acres are located, if any,
 12 under which—

13 (i) the number of TBI eligible acres is
 14 reduced; but

15 (ii) the owner of the UV decreed acres
 16 subject to the reduction is permitted to pe-
 17 riodically irrigate the UV decreed acres
 18 under a fallowing agreement authorized
 19 under the UVD agreement.

20 (5) DISPOSITION OF ACQUIRED WATER
 21 RIGHTS.—

22 (A) IN GENERAL.—Of the UV decreed
 23 water rights acquired by the Secretary pursuant
 24 to subparagraphs (A) and (B) of paragraph (2),

1 the Secretary shall, in accordance with all appli-
2 cable law and the UVD agreement—

3 (i) sever, and transfer to the San Car-
4 los Irrigation Project for the benefit of the
5 Community and the San Carlos Irrigation
6 and Drainage District, the UV decreed
7 water rights associated with up to 900 UV
8 decreed acres; and

9 (ii) extinguish the balance of the UV
10 decreed water rights so acquired (except
11 and only to the extent that those rights are
12 associated with a fallowing agreement au-
13 thorized under paragraph (4)(B)).

14 (B) SAN CARLOS APACHE SETTLEMENT.—

15 With respect to water rights acquired by the
16 Secretary pursuant to paragraph (2)(C), the
17 Secretary shall, in accordance with applicable
18 law—

19 (i) sever and transfer to the San Car-
20 los Irrigation Project, for the benefit of the
21 Community and the San Carlos Irrigation
22 and Drainage District, the UV decreed
23 water rights associated with 200 UV de-
24 creed acres;

1 (ii) extinguish the UV decreed water
2 rights associated with 300 UV decreed
3 acres; and

4 (iii) transfer the balance of those ac-
5 quired water rights to the San Carlos
6 Apache Tribe pursuant to the terms of the
7 settlement described in paragraph (2)(C).

8 (b) ADDITIONAL REDUCTIONS.—

9 (1) COOPERATIVE PROGRAM.—In addition to
10 the reduction of TBI eligible acres to be accom-
11 plished under subsection (a), not later than 1 year
12 after the enforceability date, the Secretary and the
13 UVD settling parties shall cooperatively establish a
14 program to purchase and extinguish UV decreed
15 water rights associated with UV decreed acres that
16 have not been recently irrigated.

17 (2) FOCUS.—The primary focus of the program
18 under paragraph (1) shall be to prevent any land
19 that contains riparian habitat from being reclaimed
20 for irrigation.

21 (3) FUNDS AND RESOURCES.—The program
22 under this subsection shall not require any expendi-
23 ture of funds, or commitment of resources, by the
24 UVD settling parties other than such incidental ex-
25 penditures of funds and commitments of resources

1 as are required to cooperatively participate in the
2 program.

3 **SEC. 212. MISCELLANEOUS PROVISIONS.**

4 (a) WAIVER OF SOVEREIGN IMMUNITY.—If any party
5 to the Gila River agreement brings an action in any court
6 of the United States or any State court relating only and
7 directly to the interpretation or enforcement of this title
8 or the Gila River agreement (including enforcement of any
9 indemnity provisions contained in the Gila River agree-
10 ment and enforcement of an arbitration award rendered
11 pursuant to subparagraph 12.1.9 of the UVD agreement
12 or a petition for and collection of attorney’s fees and costs
13 pursuant to subparagraph 12.3 of the UVD agreement),
14 and names the United States or the Community as a
15 party—

16 (1) the United States, the Community, or both,
17 may be joined in any such action; and

18 (2) any claim by the United States or the Com-
19 munity to sovereign immunity from the action is
20 waived, but only for the limited and sole purpose of
21 such interpretation or enforcement (including any
22 indemnity provisions contained in the Gila River
23 agreement and enforcement of an arbitration award
24 rendered pursuant to subparagraph 12.1.9 of the
25 UVD agreement or a petition for and collection of

1 attorney's fees and costs pursuant to subparagraph
2 12.3 of the UVD agreement).

3 (b) EFFECT OF ACT.—Nothing in this title quantifies
4 or otherwise affects the water rights, or claims or entitle-
5 ments to water, of any Indian tribe, band, or community,
6 other than the Community.

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

13 (d) NO EFFECT ON FUTURE ALLOCATIONS.—Water
14 received under a lease or exchange of Community CAP
15 water under this title shall not affect any future allocation
16 or reallocation of CAP water by the Secretary.

17 (e) COMMUNITY REPAYMENT CONTRACT.—The Sec-
18 retary shall execute Amendment No. 1 to the Community
19 repayment contract, attached as exhibit 8.1 to the Gila
20 River agreement, to provide, among other things, that the
21 costs incurred under that contract shall be nonreimburs-
22 able by the Community.

23 (f) SALT RIVER PROJECT RIGHTS AND CON-
24 TRACTS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the agreement between the United States and the
3 Salt River Valley Water Users' Association dated
4 September 6, 1917, and the rights of the Salt River
5 Project to store water from the Salt River and Verde
6 River at Roosevelt Dam, Horse Mesa Dam, Mormon
7 Flat Dam, Stewart Mountain Dam, Horseshoe Dam,
8 and Bartlett Dam and to deliver the stored water to
9 shareholders of the Salt River Project and others for
10 all beneficial uses and purposes recognized under
11 State law and to the Community under the Gila
12 River agreement, are authorized, ratified, and con-
13 firmed.

14 (2) PRIORITY DATE; QUANTIFICATION.—The
15 priority date and quantification of rights under the
16 agreement described in paragraph (1) shall be deter-
17 mined in an appropriate proceeding in State court.

18 (3) CARE, OPERATION, AND MAINTENANCE.—
19 The Salt River Project shall retain sole authority
20 and responsibility for all decisions relating to the
21 care, operation, and maintenance of the Salt River
22 Project water delivery system, including the Salt
23 River Project reservoirs on the Salt River and Verde
24 River, vested in Salt River Project under the agree-
25 ment described in paragraph (1).

1 (g) NEW MEXICO EXCHANGE.—Nothing in this Act
2 affects or impairs the right of the State of New Mexico,
3 or any water user in the State of New Mexico, to use Gila
4 River water as provided by section 304 of the Colorado
5 River Basin Project Act (43 U.S.C. 1524).

6 (h) LIMITATION ON LIABILITY OF UNITED
7 STATES.—

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

10 (A) to monitor, administer, or account for,
11 in any manner, any of the funds paid to the
12 Community by any party to the Gila River
13 agreement; or

14 (B) to review or approve the expenditure of
15 those funds.

16 (2) INDEMNIFICATION.—The Community shall
17 indemnify the United States, and hold the United
18 States harmless, with respect to any and all claims
19 (including claims for takings or breach of trust)
20 arising out of the receipt or expenditure of funds de-
21 scribed in paragraph (1)(A).

22 **SEC. 213. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) AUTHORIZATION OF APPROPRIATIONS.—

24 (1) REHABILITATION OF IRRIGATION WORKS.—

1 (A) IN GENERAL.—There is authorized to
2 be appropriated \$52,396,000, adjusted to re-
3 flect changes since January 1, 2000, under sub-
4 paragraph (B) for the rehabilitation of irriga-
5 tion works under section 203(d)(4).

6 (B) ADJUSTMENT.—The amount under
7 subparagraph (A) shall be adjusted by such
8 amounts, if any, as may be required by reason
9 of changes in construction costs as indicated by
10 engineering cost indices applicable to the types
11 of construction required by the rehabilitation.

12 (2) BUREAU OF RECLAMATION CONSTRUCTION
13 OVERSIGHT.—There are authorized to be appro-
14 priated such sums as are necessary for the Bureau
15 of Reclamation to undertake the oversight of the
16 construction projects authorized under section 203.

17 (3) SUBSIDENCE REMEDIATION PROGRAM.—
18 There are authorized to be appropriated such sums
19 as are necessary to carry out the subsidence remedi-
20 ation program under section 209 (including such
21 sums as are necessary, not to exceed \$4,000,000, to
22 carry out the subsidence remediation and repair re-
23 quired under section 209(d)).

24 (4) WATER RIGHTS REDUCTION.—There are
25 authorized to be appropriated such sums as are nec-

1 necessary to carry out the water rights reduction pro-
2 gram under section 211.

3 (5) SAFFORD FACILITY.—There are authorized
4 to be appropriated such sums as are necessary to—

5 (A) retire \$13,900,000 of the debt in-
6 curred by Safford to pay costs associated with
7 the construction of the Safford facility as iden-
8 tified in exhibit 26.1 to the Gila River agree-
9 ment; and

10 (B) pay the interest accrued on that
11 amount.

12 (6) ENVIRONMENTAL COMPLIANCE.—There are
13 authorized to be appropriated—

14 (A) such sums as are necessary to carry
15 out—

16 (i) all necessary environmental compli-
17 ance activities and related preconstruction
18 technical analyses associated with the Gila
19 River agreement and this title; and

20 (ii) any mitigation measures adopted
21 by the Secretary; and

22 (B) to carry out the mitigation measures
23 in the Roosevelt Habitat Conservation Plan, not
24 more than \$10,000,000.

25 (b) AUTHORIZED COSTS.—

1 (1) IN GENERAL.—Amounts made available
2 under subsection (a) shall be considered to be au-
3 thorized costs for purposes of paragraph (2)(D)(iii)
4 of section 403(f) of the Colorado River Basin
5 Project Act (43 U.S.C. 1543(f)) (as amended by sec-
6 tion 107(a)).

7 (2) EXCEPTION.—Amounts made available
8 under subsection (a)(4) to carry out section 211(b)
9 shall not be considered to be authorized costs for
10 purposes of section 403(f)(2)(D)(iii) of the Colorado
11 River Basin Project Act (43 U.S.C.
12 1543(f)(2)(D)(iii)) (as amended by section 107(a)).

13 **SEC. 214. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

14 If the Secretary does not publish a statement of find-
15 ings under section 207(d) by December 31, 2007—

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

20 (2) any amounts appropriated under para-
21 graphs (1) through (5) of section 213(a), together
22 with any interest on those amounts, shall imme-
23 diately revert to the general fund of the Treasury;

1 (3) any amounts made available under section
2 213(b) that remain unexpended shall immediately
3 revert to the general fund of the Treasury; and

4 (4) any amounts paid by the Salt River Project
5 in accordance with the Gila River agreement shall
6 immediately be returned to the Salt River Project.

7 **TITLE III—SOUTHERN ARIZONA**
8 **WATER RIGHTS SETTLEMENT**

9 **SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLE-**
10 **MENT.**

11 The Southern Arizona Water Rights Settlement Act
12 of 1982 (96 Stat. 1274) is amended to read as follows:

13 **“TITLE III—SOUTHERN ARIZONA**
14 **WATER RIGHTS SETTLEMENT**

15 **“SEC. 301. SHORT TITLE.**

16 “‘This title may be cited as the ‘Southern Arizona
17 Water Rights Settlement Amendments Act of 2003’.

18 **“SEC. 302. FINDINGS.**

19 “Congress finds that—

20 “(1) water rights claims within the San Xavier
21 Reservation and the eastern Schuk Toak District of
22 the Tohono O’odham Nation, including water rights
23 claims of the Nation and allottees, are the subject of
24 lawsuits pending against the United States and nu-
25 merous parties in southern Arizona (including min-

1 ing companies, agricultural interests, and the city of
2 Tucson);

3 “(2) the lawsuits referred to in paragraph (1)—

4 “(A) are expensive and time-consuming for
5 all participants; and

6 “(B) threaten to cause profound adverse
7 impacts on the health and development of the
8 Indian and non-Indian economies of southern
9 Arizona;

10 “(3) the parties to the lawsuits referred to in
11 paragraph (1) and other persons interested in the
12 settlement of the water rights claims within the Tuc-
13 son management area have diligently attempted to
14 settle those lawsuits;

15 “(4) the requirements of paragraph (1) of sec-
16 tion 307(a) of the 1982 Act were met within 1 year
17 of the date of enactment of that paragraph in that—

18 “(A) on October 11, 1983, the city of Tuc-
19 son, Arizona, and the United States entered
20 into an agreement—

21 “(i) to make available to the Sec-
22 retary, for disposal in such manner as the
23 Secretary determines appropriate, 28,200
24 acre-feet of reclaimed water; and

1 “(ii) to permit the Secretary to pro-
2 vide terms and conditions under which the
3 Secretary may relinquish to the city of
4 Tucson, Arizona, such quantities of water
5 as are not needed to carry out the duties
6 of the Secretary under the 1982 Act;

7 “(B)(i) on October 11, 1983, the city of
8 Tucson, Arizona, the State, and other parties
9 entered into an agreement with the United
10 States to establish a cooperative fund; and

11 “(ii) contributions to that fund that were
12 required to be made in accordance with section
13 313 of the 1982 Act were subsequently made;

14 “(C) on October 11, 1983, the Nation en-
15 tered into an agreement with the United States
16 in compliance with section 307(a)(1)(C) of the
17 1982 Act;

18 “(D) in the agreement of October 11,
19 1983, between the Nation and the United
20 States, the Nation executed a waiver and re-
21 lease in compliance with section 307(a)(1)(D)
22 of the 1982 Act;

23 “(5) by providing the assistance specified in
24 this title, the United States will enable the imple-

1 mentation of a settlement of the lawsuits referred to
2 in paragraph (1);

3 “(6) it is in the long term interest of the
4 United States, the State, the Nation, the San Xavier
5 District and Schuk Toak District of the Nation, and
6 the non-Indian community of southern Arizona, that
7 the United States assist in the implementation of a
8 fair and equitable settlement of the water rights
9 claims of the Nation and allottees; and

10 “(7) the settlement provided for under this title
11 will—

12 “(A) provide flexibility in the management
13 of water resources;

14 “(B) encourage the allocation of water re-
15 sources in accordance with the best uses of the
16 resources;

17 “(C) promote the conservation and man-
18 agement of water resources; and

19 “(D) carry out the trust responsibility of
20 the United States with respect to—

21 “(i) the Nation; and

22 “(ii) the allottees.

23 **“SEC. 303. DEFINITIONS.**

24 “In this title:

1 “(1) ACRE-FOOT.—The term ‘acre-foot’ means
2 the quantity of water necessary to cover 1 acre of
3 land to a depth of 1 foot.

4 “(2) ADAMS CASE.—The term ‘Adams case’
5 means Adams v. United States (Civ. No. 93–240
6 TUC FRZ (D. Ariz., filed January 25, 1993)).

7 “(3) AFTER-ACQUIRED TRUST LAND.—The
8 term ‘after-acquired trust land’ means land that—

9 “(A) is located—

10 “(i) within the State; but

11 “(ii) outside the exterior boundaries of
12 the Nation’s Reservation; and

13 “(B) is taken into trust by the United
14 States for the benefit of the Nation after the
15 enforceability date.

16 “(4) AGREEMENT OF DECEMBER 11, 1980.—The
17 term ‘agreement of December 11, 1980’ means the
18 contract for delivery of Central Arizona Project
19 water entered into by the United States and the Na-
20 tion on December 11, 1980.

21 “(5) AGREEMENT OF OCTOBER 11, 1983.—The
22 term ‘agreement of October 11, 1983’ means the
23 contract for the provision of water and the settle-
24 ment of claims to water under the 1982 Act entered

1 into by the United States and the Nation on October
2 11, 1983.

3 “(6) ALLOTTEE.—The term ‘allottee’ means a
4 person that holds a beneficial real property interest
5 in an Indian allotment that is—

6 “(A) located within the Reservation; and

7 “(B) held in trust by the United States.

8 “(7) ALLOTTEE CLASS.—The term ‘allottee
9 class’ means an applicable plaintiff class certified by
10 the court of jurisdiction in—

11 “(A) the Alvarez case; or

12 “(B) the Tucson case.

13 “(8) ALVAREZ CASE.—The term ‘Alvarez case’
14 means the first through fourth causes of action of
15 the third amended complaint in Alvarez v. City of
16 Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz., filed
17 April 21, 1993)).

18 “(9) APPLICABLE LAW.—The term ‘applicable
19 law’ means any applicable Federal, State, tribal, or
20 local law.

21 “(10) ASARCO.—The term ‘Asarco’ means
22 Asarco Incorporated, a New Jersey corporation of
23 that name, and its subsidiaries operating mining op-
24 erations in the State.

1 “(11) ASARCO AGREEMENT.—The term ‘Asarco
2 agreement’ means the agreement by that name at-
3 tached to the Tohono O’odham settlement agreement
4 as exhibit 13.1.

5 “(12) CAP REPAYMENT CONTRACT.—

6 “(A) IN GENERAL.—The term ‘CAP repay-
7 ment contract’ means the contract dated De-
8 cember 1, 1988 (Contract No. 14-06-W-245,
9 Amendment No. 1) between the United States
10 and the Central Arizona Water Conservation
11 District for the delivery of water and the repay-
12 ment of costs of the Central Arizona Project.

13 “(B) INCLUSIONS.—The term ‘CAP repay-
14 ment contract’ includes all amendments to and
15 revisions of that contract.

16 “(13) CENTRAL ARIZONA PROJECT.—The term
17 ‘Central Arizona Project’ means the reclamation
18 project authorized and constructed by the United
19 States in accordance with title III of the Colorado
20 River Basin Project Act (43 U.S.C. 1521 et seq.).

21 “(14) CENTRAL ARIZONA PROJECT LINK PIPE-
22 LINE.—The term ‘Central Arizona Project link pipe-
23 line’ means the pipeline extending from the Tucson
24 Aqueduct of the Central Arizona Project to a point
25 within the cooperative farm.

1 “(15) CENTRAL ARIZONA PROJECT SERVICE
2 AREA.—The term ‘Central Arizona Project service
3 area’ means—

4 “(A) the geographical area comprised of
5 Maricopa, Pinal, and Pima Counties, Arizona,
6 in which the Central Arizona Water Conserva-
7 tion District delivers Central Arizona Project
8 water; and

9 “(B) any expansion of that area under ap-
10 plicable law.

11 “(16) CENTRAL ARIZONA WATER CONSERVA-
12 TION DISTRICT.—The term ‘Central Arizona Water
13 Conservation District’ means the political subdivi-
14 sion of the State that is the contractor under the
15 CAP repayment contract.

16 “(17) COOPERATIVE FARM.—The term ‘cooper-
17 ative farm’ means the farm on land served by an ir-
18 rigation system and the extension of the irrigation
19 system provided for under paragraphs (1) and (2) of
20 section 304(c).

21 “(18) COOPERATIVE FUND.—The term ‘cooper-
22 ative fund’ means the cooperative fund established
23 by section 313 of the 1982 Act and reauthorized by
24 section 310.

25 “(19) DELIVERY AND DISTRIBUTION SYSTEM.—

1 “(A) IN GENERAL.—The term ‘delivery
2 and distribution system’ means—

3 “(i) the Central Arizona Project aque-
4 duct;

5 “(ii) the Central Arizona Project link
6 pipeline; and

7 “(iii) the pipelines, canals, aqueducts,
8 conduits, and other necessary facilities for
9 the delivery of water under the Central Ar-
10 izona Project.

11 “(B) INCLUSIONS.—The term ‘delivery and
12 distribution system’ includes pumping facilities,
13 power plants, and electric power transmission
14 facilities external to the boundaries of any farm
15 to which the water is distributed.

16 “(20) EASTERN SCHUK TOAK DISTRICT.—The
17 term ‘eastern Schuk Toak District’ means the por-
18 tion of the Schuk Toak District (1 of 11 political
19 subdivisions of the Nation established under the con-
20 stitution of the Nation) that is located within the
21 Tucson management area.

22 “(21) ENFORCEABILITY DATE.—The term ‘en-
23 forceability date’ means the date on which title III
24 of the Arizona Water Settlements Act takes effect

1 (as described in section 302(b) of the Arizona Water
2 Settlements Act).

3 “(22) EXEMPT WELL.—The term ‘exempt well’
4 means a water well—

5 “(A) the maximum pumping capacity of
6 which is not more than 35 gallons per minute;
7 and

8 “(B) the water from which is used for—

9 “(i) the supply, service, or activities of
10 households or private residences;

11 “(ii) landscaping;

12 “(iii) livestock watering; or

13 “(iv) the irrigation of not more than
14 2 acres of land for the production of 1 or
15 more agricultural or other commodities
16 for—

17 “(I) sale;

18 “(II) human consumption; or

19 “(III) use as feed for livestock or
20 poultry.

21 “(23) FEE OWNER OF ALLOTTED LAND.—The
22 term ‘fee owner of allotted land’ means a person
23 that holds fee simple title in real property on the
24 Reservation that, at any time before the date on
25 which the person acquired fee simple title, was held

1 in trust by the United States as an Indian allot-
2 ment.

3 “(24) INDIAN TRIBE.—The term ‘Indian tribe’
4 has the meaning given the term in section 4 of the
5 Indian Self-Determination and Education Assistance
6 Act (25 U.S.C. 450b).

7 “(25) INJURY TO WATER QUALITY.—The term
8 ‘injury to water quality’ means any contamination,
9 diminution, or deprivation of water quality under ap-
10 plicable law.

11 “(26) INJURY TO WATER RIGHTS.—

12 “(A) IN GENERAL.—The term ‘injury to
13 water rights’ means an interference with, dimi-
14 nution of, or deprivation of water rights under
15 applicable law.

16 “(B) INCLUSION.—The term ‘injury to
17 water rights’ includes a change in the under-
18 ground water table and any effect of such a
19 change.

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

23 “(27) IRRIGATION SYSTEM.—

24 “(A) IN GENERAL.—The term ‘irrigation
25 system’ means canals, laterals, ditches, sprin-

1 klers, bubblers, and other irrigation works used
2 to distribute water within the boundaries of a
3 farm.

4 “(B) INCLUSIONS.—The term ‘irrigation
5 system’, with respect to the cooperative farm,
6 includes activities, procedures, works, and de-
7 vices for—

8 “(i) rehabilitation of fields;

9 “(ii) remediation of sinkholes, sinks,
10 depressions, and fissures; and

11 “(iii) stabilization of the banks of the
12 Santa Cruz River.

13 “(28) LOWER COLORADO RIVER BASIN DEVEL-
14 OPMENT FUND.—The term ‘Lower Colorado River
15 Basin Development Fund’ means the fund estab-
16 lished by section 403 of the Colorado River Basin
17 Project Act (43 U.S.C. 1543).

18 “(29) M&I PRIORITY WATER.—The term ‘M&I
19 priority water’ means Central Arizona Project water
20 that has municipal and industrial priority.

21 “(30) NATION.—The term ‘Nation’ means the
22 Tohono O’odham Nation (formerly known as the
23 Papago Tribe) organized under a constitution ap-
24 proved in accordance with section 16 of the Act of
25 June 18, 1934 (25 U.S.C. 476).

1 “(31) NATION’S RESERVATION.—The term ‘Na-
2 tion’s Reservation’ means all land within the exterior
3 boundaries of—

4 “(A) the Sells Tohono O’odham Reserva-
5 tion established by the Executive order of Feb-
6 ruary 1, 1917, and the Act of February 21,
7 1931 (46 Stat. 1202, chapter 267);

8 “(B) the San Xavier Reservation estab-
9 lished by the Executive order of July 1, 1874;

10 “(C) the Gila Bend Indian Reservation es-
11 tablished by the Executive order of December
12 12, 1882, and modified by Executive order of
13 June 17, 1909;

14 “(D) the Florence Village established by
15 Public Law 95–361 (92 Stat. 595);

16 “(E) all land acquired in accordance with
17 the Gila Bend Indian Reservation Lands Re-
18 placement Act (100 Stat. 1798), if title to the
19 land is held in trust by the Secretary for the
20 benefit of the Nation; and

21 “(F) all other land to which the United
22 States holds legal title in trust for the benefit
23 of the Nation and that is added to the Nation’s
24 Reservation or granted reservation status in ac-

1 cordance with applicable Federal law before the
2 enforceability date.

3 “(32) NET IRRIGABLE ACRES.—The term ‘net
4 irrigable acres’ means, with respect to a farm, the
5 acreage of the farm that is suitable for agriculture,
6 as determined by the Nation.

7 “(33) NIA PRIORITY WATER.—The term ‘NIA
8 priority water’ means Central Arizona Project water
9 that has non-Indian agricultural priority.

10 “(34) SAN XAVIER ALLOTTEES ASSOCIATION.—
11 The term ‘San Xavier Allottees Association’ means
12 the nonprofit corporation established under State
13 law for the purpose of representing and advocating
14 the interests of allottees.

15 “(35) SAN XAVIER COOPERATIVE ASSOCIA-
16 TION.—The term ‘San Xavier Cooperative Associa-
17 tion’ means the entity chartered under the laws of
18 the Nation (or a successor of that entity) that is a
19 lessee of land within the cooperative farm.

20 “(36) SAN XAVIER DISTRICT.—The term ‘San
21 Xavier District’ means the district of that name, 1
22 of 11 political subdivisions of the Nation established
23 under the constitution of the Nation.

24 “(37) SAN XAVIER DISTRICT COUNCIL.—The
25 term ‘San Xavier District Council’ means the gov-

1 erning body of the San Xavier District, as estab-
2 lished under the constitution of the Nation.

3 “(38) SAN XAVIER RESERVATION.—The term
4 ‘San Xavier Reservation’ means the San Xavier In-
5 dian Reservation established by the Executive order
6 of July 1, 1874.

7 “(39) SCHUK TOAK FARM.—The term ‘Schuk
8 Toak Farm’ means a farm constructed in the east-
9 ern Schuk Toak District served by the irrigation sys-
10 tem provided for under section 304(c)(4).

11 “(40) SECRETARY.—The term ‘Secretary’
12 means the Secretary of the Interior.

13 “(41) STATE.—The term ‘State’ means the
14 State of Arizona.

15 “(42) SUBJUGATE.—The term ‘subjagate’
16 means to prepare land for agricultural use through
17 irrigation.

18 “(43) SUBSIDENCE DAMAGE.—The term ‘sub-
19 sidence damage’ means injury to land, water, or
20 other real property resulting from the settling of
21 geologic strata or grading in the surface of the earth
22 of any length or depth, which settling or cracking is
23 caused by the pumping of water.

1 “(44) SURFACE WATER.—The term ‘surface
2 water’ means all water that is appropriable under
3 State law.

4 “(45) TOHONO O’ODHAM SETTLEMENT AGREE-
5 MENT.—The term ‘Tohono O’odham settlement
6 agreement’ means the agreement (including all ex-
7 hibits of and attachments to the agreement) that
8 settles, and provides for the dismissal with prejudice
9 of, the claims asserted in the Adams case, the Alva-
10 rez case, and the Tucson case, as executed by the
11 parties to those cases and filed with the court of ju-
12 risdiction.

13 “(46) TUCSON CASE.—The term ‘Tucson case’
14 means United States et al. v. City of Tucson, et al.
15 (Civ. No. 75–39 TUC consol. with Civ. No. 75–51
16 TUC FRZ (D. Ariz., filed February 20, 1975)).

17 “(47) TUCSON INTERIM WATER LEASE.—The
18 term ‘Tucson interim water lease’ means the lease,
19 and any amendments and extensions of the lease,
20 between the city of Tucson, Arizona, and the Nation,
21 dated October 24, 1992.

22 “(48) TUCSON MANAGEMENT AREA.—The term
23 ‘Tucson management area’ means the area in the
24 State comprised of—

25 “(A) the area—

1 “(i) designated as the Tucson Active
2 Management Area under the Arizona
3 Groundwater Management Act of 1980
4 (1980 Ariz. Sess. Laws 1); and

5 “(ii) subsequently divided into the
6 Tucson Active Management Area and the
7 Santa Cruz Active Management Area
8 (1994 Ariz. Sess. Laws 296); and

9 “(B) the portion of the Upper Santa Cruz
10 Basin that is not located within the area de-
11 scribed in subparagraph (A)(i).

12 “(49) TURNOUT.—The term ‘turnout’ means a
13 point of water delivery on the Central Arizona
14 Project aqueduct.

15 “(50) UNDERGROUND STORAGE.—The term
16 ‘underground storage’ means storage of water ac-
17 complished under a project authorized under section
18 308(e).

19 “(51) UNITED STATES AS TRUSTEE.—The term
20 ‘United States as Trustee’ means the United States,
21 acting on behalf of the Nation and allottees, but in
22 no other capacity.

23 “(52) VALUE.—The term ‘value’ means the
24 value attributed to water based on the greater of—

1 “(A) the anticipated or actual use of the
2 water; or

3 “(B) the fair market value of the water.

4 “(53) WATER RIGHT.—The term ‘water right’
5 means any right in or to groundwater, surface
6 water, or effluent under applicable law.

7 “(54) 1982 ACT.—The term “1982 Act” means
8 the Southern Arizona Water Rights Settlement Act
9 of 1982 (96 Stat. 1274; 106 Stat. 3256), as in ef-
10 fect on the day before the enforceability date.

11 **“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGA-**
12 **TIONS.**

13 “(a) WATER DELIVERY.—The Secretary shall deliver
14 from the main project works of the Central Arizona
15 Project, a total of 37,800 acre-feet of water suitable for
16 agricultural use, of which—

17 “(1) 27,000 acre-feet shall—

18 “(A) be deliverable for use to the San Xa-
19 vier Reservation; or

20 “(B) otherwise be used in accordance with
21 section 309; and

22 “(2) 10,800 acre-feet shall—

23 “(A) be deliverable for use to the eastern
24 Schuk Toak District; or

1 “(B) otherwise be used in accordance with
2 section 309.

3 “(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The
4 Secretary shall (without cost to the Nation, any allottee,
5 the San Xavier Cooperative Association, or the San Xavier
6 Allottees Association), as part of the main project works
7 of the Central Arizona Project, design, construct, operate,
8 maintain, and replace the delivery and distribution sys-
9 tems necessary to deliver the water described in subsection
10 (a).

11 “(c) DUTIES OF THE SECRETARY.—

12 “(1) COMPLETION OF DELIVERY AND DIS-
13 TRIBUTION SYSTEM AND IMPROVEMENT TO EXIST-
14 ING IRRIGATION SYSTEM.—Except as provided in
15 subsection (d), not later than 8 years after the en-
16 forceability date, the Secretary shall complete the
17 design and construction of improvements to the irri-
18 gation system that serves the cooperative farm.

19 “(2) EXTENSION OF EXISTING IRRIGATION SYS-
20 TEM WITHIN THE SAN XAVIER RESERVATION.—

21 “(A) IN GENERAL.—Except as provided in
22 subsection (d), not later than 8 years after the
23 enforceability date, in addition to the improve-
24 ments described in paragraph (1), the Secretary
25 shall complete the design and construction of

1 the extension of the irrigation system for the
2 cooperative farm.

3 “(B) CAPACITY.—On completion of the ex-
4 tension, the extended cooperative farm irriga-
5 tion system shall serve 2,300 net irrigable acres
6 on the San Xavier Reservation, unless the Sec-
7 retary and the San Xavier Cooperative Associa-
8 tion agree on fewer net irrigable acres.

9 “(3) CONSTRUCTION OF NEW FARM.—

10 “(A) IN GENERAL.—Except as provided in
11 subsection (d), not later than 8 years after the
12 enforceability date, the Secretary shall—

13 “(i) design and construct within the
14 San Xavier Reservation such additional ca-
15 nals, laterals, farm ditches, and irrigation
16 works as are necessary for the efficient dis-
17 tribution for agricultural purposes that
18 portion of the 27,000 acre-feet annually of
19 water described in subsection (a)(1) that is
20 not required for the irrigation systems de-
21 scribed in paragraphs (1) and (2) of sub-
22 section (c); or

23 “(ii) in lieu of the actions described in
24 clause (i), pay to the San Xavier District
25 \$18,300,000 in full satisfaction of the obli-

1 gations of the United States described in
2 clause (i).

3 “(B) ELECTION.—

4 “(i) IN GENERAL.—The San Xavier
5 District Council may make a nonrevocable
6 election whether to receive the benefits de-
7 scribed under subparagraph (A) by noti-
8 fying the Secretary by not later than 180
9 days after the enforceability date, by writ-
10 ten and certified resolution of the San Xa-
11 vier District Council.

12 “(ii) NO RESOLUTION.—If the Sec-
13 retary does not receive such a resolution by
14 the deadline specified in clause (i), the Sec-
15 retary shall pay \$18,300,000 to the San
16 Xavier District in lieu of carrying out the
17 obligations of the United States under sub-
18 paragraph (A)(i).

19 “(C) SOURCE OF FUNDS AND TIME OF
20 PAYMENT.—

21 “(i) IN GENERAL.—Payment of
22 \$18,300,000 under this paragraph shall be
23 made by the Secretary from the Lower
24 Colorado River Basin Development
25 Fund—

1 “(I) not later than 60 days after
2 an election described in subparagraph
3 (B) is made (if such an election is
4 made); or

5 “(II) not later than 240 days
6 after the enforceability date, if no
7 timely election is made.

8 “(ii) PAYMENT FOR ADDITIONAL
9 STRUCTURES.—Payment of amounts nec-
10 essary to design and construct such addi-
11 tional canals, laterals, farm ditches, and ir-
12 rigation works as are described in subpara-
13 graph (A)(i) shall be made by the Sec-
14 retary from the Lower Colorado River
15 Basin Development Fund, if an election is
16 made to receive the benefits under sub-
17 paragraph (A)(i).

18 “(4) IRRIGATION AND DELIVERY AND DIS-
19 TRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK
20 DISTRICT.—Except as provided in subsection (d),
21 not later than 1 year after the enforceability date,
22 the Secretary shall complete the design and con-
23 struction of an irrigation system and delivery and
24 distribution system to serve the farm that is con-
25 structed in the eastern Schuk Toak District.

1 “(d) EXTENSION OF DEADLINES.—

2 “(1) IN GENERAL.—The Secretary may extend
3 a deadline under subsection (c) if the Secretary de-
4 termines that compliance with the deadline is im-
5 practicable by reason of—

6 “(A) a material breach by a contractor of
7 a contract that is relevant to carrying out a
8 project or activity described in subsection (c);

9 “(B) the inability of such a contractor,
10 under such a contract, to carry out the contract
11 by reason of force majeure, as defined by the
12 Secretary in the contract;

13 “(C) unavoidable delay in compliance with
14 applicable Federal and tribal laws, as deter-
15 mined by the Secretary, including—

16 “(i) the Endangered Species Act of
17 1973 (16 U.S.C. 1531 et seq.); and

18 “(ii) the National Environmental Pol-
19 icy Act of 1969 (42 U.S.C. 4321 et seq.);

20 or

21 “(D) stoppage in work resulting from the
22 assessment of a tax or fee that is alleged in any
23 court of jurisdiction to be confiscatory or dis-
24 criminatory.

1 “(2) NOTICE OF FINDING.—If the Secretary ex-
2 tends a deadline under paragraph (1), the Secretary
3 shall—

4 “(A) publish a notice of the extension in
5 the Federal Register; and

6 “(B)(i) include in the notice an estimate of
7 such additional period of time as is necessary to
8 complete the project or activity that is the sub-
9 ject of the extension; and

10 “(ii) specify a deadline that provides for a
11 period for completion of the project before the
12 end of the period described in clause (i).

13 “(e) AUTHORITY OF SECRETARY.—

14 “(1) IN GENERAL.—In carrying out this title,
15 after providing reasonable notice to the Nation, the
16 Secretary, in compliance with all applicable law, may
17 enter, construct works on, and take such other ac-
18 tions as are related to the entry or construction on
19 land within the San Xavier District and the Schuk
20 Toak District.

21 “(2) EFFECT ON FEDERAL ACTIVITY.—Nothing
22 in this subsection affects the authority of the United
23 States, or any Federal officer, agent, employee, or
24 contractor, to conduct official Federal business or
25 carry out any Federal duty (including any Federal

1 business or duty under this title) on land within the
2 eastern Schuk Toak District or the San Xavier Dis-
3 trict.

4 “(f) USE OF FUNDS.—

5 “(1) IN GENERAL.—With respect to any funds
6 received under subsection (c)(3)(A), the San Xavier
7 District—

8 “(A) shall hold the funds in trust, and in-
9 vest the funds in interest-bearing deposits and
10 securities, until expended;

11 “(B) may expend the principal of the
12 funds, and any interest and dividends that ac-
13 crue on the principal, only in accordance with
14 a budget that is—

15 “(i) authorized by the San Xavier
16 District Council; and

17 “(ii) approved by resolution of the
18 Legislative Council of the Nation; and

19 “(C) shall expend the funds—

20 “(i) for any subjugation of land, de-
21 velopment of water resources, or construc-
22 tion, operation, maintenance, or replace-
23 ment of facilities within the San Xavier
24 Reservation that is not required to be car-

1 ried out by the United States under this
2 title or any other provision of law;

3 “(ii) to provide governmental services,
4 including—

5 “(I) programs for senior citizens;

6 “(II) health care services;

7 “(III) education;

8 “(IV) economic development
9 loans and assistance; and

10 “(V) legal assistance programs;

11 “(iii) to provide benefits to allottees;

12 “(iv) to pay the costs of activities of
13 the San Xavier Allottees Association; or

14 “(v) to pay any administrative costs
15 incurred by the Nation or the San Xavier
16 District in conjunction with any of the ac-
17 tivities described in clauses (i) through
18 (iv).

19 “(2) NO LIABILITY OF SECRETARY; LIMITA-
20 TION.—

21 “(A) IN GENERAL.—The Secretary shall
22 not—

23 “(i) be responsible for any review, ap-
24 proval, or audit of the use and expenditure
25 of the funds described in paragraph (1); or

1 “(ii) be subject to liability for any
2 claim or cause of action arising from the
3 use or expenditure, by the Nation or the
4 San Xavier District, of those funds.

5 “(B) LIMITATION.—No portion of any
6 funds described in paragraph (1) shall be used
7 for per capita payments to any individual mem-
8 ber of the Nation or any allottee.

9 **“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; AL-**
10 **TERNATIVE WATER SUPPLIES.**

11 “(a) DELIVERY OF WATER.—

12 “(1) IN GENERAL.—The Secretary shall deliver
13 water from the main project works of the Central
14 Arizona Project, in such quantities, and in accord-
15 ance with such terms and conditions, as are con-
16 tained in the agreement of December 11, 1980, the
17 1982 Act, and the agreement of October 11, 1983,
18 to 1 or more of—

19 “(A) the cooperative farm;

20 “(B) the eastern Schuk Toak District;

21 “(C) turnouts existing on the enforceability
22 date; and

23 “(D) any other point of delivery on the
24 Central Arizona Project main aqueduct that is
25 agreed to by—

1 “(i) the Secretary;

2 “(ii) the operator of the Central Ari-
3 zona Project; and

4 “(iii) the Nation.

5 “(2) DELIVERY.—The Secretary shall deliver
6 the water covered by sections 304(a) and 306(a), or
7 an equivalent quantity of water from a source identi-
8 fied under subsection (b)(1), notwithstanding—

9 “(A) any declaration by the Secretary of a
10 water shortage on the Colorado River; or

11 “(B) any other occurrence affecting water
12 delivery caused by an act or omission of—

13 “(i) the Secretary;

14 “(ii) the United States; or

15 “(iii) any officer, employee, con-
16 tractor, or agent of the Secretary or
17 United States.

18 “(b) ACQUISITION OF LAND AND WATER.—

19 “(1) DELIVERY.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), if the Secretary, under the
22 terms and conditions of the agreements referred
23 to in subsection (a)(1), is unable, during any
24 year, to deliver from the main project works of
25 the Central Arizona Project any portion of the

1 quantity of water covered by sections 304(a)
2 and 306(a), the Secretary shall identify, acquire
3 and deliver an equivalent quantity of water
4 from, any appropriate source.

5 “(B) EXCEPTION.—The Secretary shall
6 not acquire any water under subparagraph (A)
7 through any transaction that would cause de-
8 pletion of groundwater supplies or aquifers in
9 the San Xavier District or the eastern Schuk
10 Toak District.

11 “(2) PRIVATE LAND AND INTERESTS.—

12 “(A) ACQUISITION.—

13 “(i) IN GENERAL.—Subject to sub-
14 paragraph (B), the Secretary may acquire
15 such private land, or interests in private
16 land, that include rights in surface or
17 groundwater recognized under State law,
18 as are necessary for the acquisition and de-
19 livery of water under this subsection.

20 “(ii) COMPLIANCE.—In acquiring
21 rights in surface water under clause (i),
22 the Secretary shall comply with all applica-
23 ble severance and transfer requirements
24 under State law.

1 “(B) PROHIBITION ON TAKING.—The Sec-
2 retary shall not acquire any land, water, water
3 rights, or contract rights under subparagraph
4 (A) without the consent of the owner of the
5 land, water, water rights, or contract rights.

6 “(C) PRIORITY.—In acquiring any private
7 land or interest in private land under this para-
8 graph, the Secretary shall give priority to the
9 acquisition of land on which water has been put
10 to beneficial use during any 1-year period dur-
11 ing the 5-year period preceding the date of ac-
12 quisition of the land by the Secretary.

13 “(3) DELIVERIES FROM ACQUIRED LAND.—De-
14 liveries of water from land acquired under paragraph
15 (2) shall be made only to the extent that the water
16 may be transported within the Tucson management
17 area under applicable law.

18 “(4) DELIVERY OF EFFLUENT.—

19 “(A) IN GENERAL.—Except on receipt of
20 prior written consent of the Nation, the Sec-
21 retary shall not deliver effluent directly to the
22 Nation under this subsection.

23 “(B) NO SEPARATE DELIVERY SYSTEM.—
24 The Secretary shall not construct a separate de-
25 livery system to deliver effluent to the San Xa-

1 vier Reservation or the eastern Schuk Toak
2 District.

3 “(C) NO IMPOSITION OF OBLIGATION.—
4 Nothing in this paragraph imposes any obliga-
5 tion on the United States to deliver effluent to
6 the Nation.

7 “(c) AGREEMENTS AND CONTRACTS.—To facilitate
8 the delivery of water to the San Xavier Reservation and
9 the eastern Schuk Toak District under this title, the Sec-
10 retary may enter into a contract or agreement with the
11 State, an irrigation district or project, or entity—

12 “(1) for—

13 “(A) the exchange of water; or

14 “(B) the use of aqueducts, canals, con-
15 duits, and other facilities (including pumping
16 plants) for water delivery; or

17 “(2) to use facilities constructed, in whole or in
18 part, with Federal funds.

19 “(d) COMPENSATION AND DISBURSEMENTS.—

20 “(1) COMPENSATION.—If the Secretary is un-
21 able to acquire and deliver sufficient quantities of
22 water under section 304(a), this section, or section
23 306(a), the Secretary shall provide compensation in
24 accordance with paragraph (2) in amounts equal
25 to—

1 “(A)(i) the value of such quantities of
2 water as are not acquired and delivered, if the
3 delivery and distribution system for, and the
4 improvements to, the irrigation system for the
5 cooperative farm have not been completed by
6 the deadline required under section 304(c)(1);
7 or

8 “(ii) the value of such quantities of water
9 as—

10 “(I) are ordered by the Nation for use
11 by the Cooperative Association in the irri-
12 gation system; but

13 “(II) are not delivered in any calendar
14 year;

15 “(B)(i) the value of such quantities of
16 water as are not acquired and delivered, if the
17 extension of the irrigation system is not com-
18 pleted by the deadline required under section
19 304(c)(2); or

20 “(ii) the value of such quantities of water
21 as—

22 “(I) are ordered by the Nation for use
23 by the Cooperative Association in the ex-
24 tension to the irrigation system; but

1 “(II) are not delivered in any calendar
2 year; and

3 “(C)(i) the value of such quantities of
4 water as are not acquired and delivered, if the
5 irrigation system is not completed by the dead-
6 line required under section 304(c)(4); or

7 “(ii) except as provided in clause (i), the
8 value of such quantities of water as—

9 “(I) are ordered by the Nation for use
10 in the irrigation system, or for use by any
11 person or entity (other than the Coopera-
12 tive Association); but

13 “(II) are not delivered in any calendar
14 year.

15 “(2) DISBURSEMENT.—Any compensation pay-
16 able under paragraph (1) shall be disbursed—

17 “(A) with respect to compensation payable
18 under subparagraphs (A) and (B) of paragraph
19 (1), to the Cooperative Association; and

20 “(B) with respect to compensation payable
21 under paragraph (1)(C), to the Nation for re-
22 tention by the Nation or disbursement to water
23 users, under the provisions of the water code or
24 other applicable laws of the Nation.

1 “(e) NO EFFECT ON WATER RIGHTS.—Nothing in
2 this section authorizes the Secretary to acquire or other-
3 wise affect the water rights of any Indian tribe.

4 **“SEC. 306. ADDITIONAL WATER DELIVERY.**

5 “(a) IN GENERAL.—In addition to the delivery of
6 water described in section 304(a), the Secretary shall de-
7 liver from the main project works of the Central Arizona
8 Project, a total of 28,200 acre-feet of NIA priority water
9 suitable for agricultural use, of which—

10 “(1) 23,000 acre-feet shall—

11 “(A) be delivered to, and used by, the San
12 Xavier Reservation; or

13 “(B) otherwise be used by the Nation in
14 accordance with section 309; and

15 “(2) 5,200 acre-feet shall—

16 “(A) be delivered to, and used by, the east-
17 ern Schuk Toak District; or

18 “(B) otherwise be used by the Nation in
19 accordance with section 309.

20 “(b) STATE CONTRIBUTION.—To assist the Secretary
21 in firming water under section 105(b)(1)(A) of the Ari-
22 zona Water Settlements Act, the State shall contribute
23 \$3,000,000—

24 “(1) in accordance with a schedule that is ac-
25 ceptable to the Secretary and the State; and

1 “(2) in the form of cash or in-kind goods and
2 services.

3 **“SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIV-**
4 **ERY, REVENUE SHARING.**

5 “(a) CONDITIONS ON ACTIONS OF SECRETARY.—The
6 Secretary shall carry out section 304(c), subsections (a),
7 (b), and (d) of section 305, and section 306, only if—

8 “(1) the Nation agrees—

9 “(A) except as provided in section
10 308(f)(1), to limit the quantity of groundwater
11 withdrawn by nonexempt wells from beneath
12 the San Xavier Reservation to not more than
13 10,000 acre-feet;

14 “(B) except as provided in section
15 308(f)(2), to limit the quantity of groundwater
16 withdrawn by nonexempt wells from beneath
17 the eastern Schuk Toak District to not more
18 than 3,200 acre-feet;

19 “(C) to comply with water management
20 plans established by the Secretary under section
21 308(d);

22 “(D) to consent to the San Xavier District
23 being deemed a tribal organization (as defined
24 in section 900.6 of title 25, Code of Federal
25 Regulations (or any successor regulations)) for

1 purposes identified in subparagraph (E)(iii)(I),
2 as permitted with respect to tribal organizations
3 under title I of the Indian Self-Determination
4 and Education Assistance Act (25 U.S.C. 450
5 et seq.);

6 “(E) subject to compliance by the Nation
7 with other applicable provisions of part 900 of
8 title 25, Code of Federal Regulations (or any
9 successor regulations), to consent to contracting
10 by the San Xavier District under section
11 311(b), on the conditions that—

12 “(i)(I) the plaintiffs in the Adams
13 case, Alvarez case, and Tucson case have
14 stipulated to the dismissal, with prejudice,
15 of claims in those cases; and

16 “(II) those cases have been dismissed
17 with prejudice;

18 “(ii) the San Xavier Cooperative Asso-
19 ciation has agreed to assume responsibility,
20 after completion of each of the irrigation
21 systems described in paragraphs (1), (2),
22 and (3) of section 304(c) and on the deliv-
23 ery of water to those systems, for the oper-
24 ation, maintenance, and replacement of
25 those systems in accordance with the first

1 section of the Act of August 1, 1914 (25
2 U.S.C. 385); and

3 “(iii) with respect to the consent of
4 the Nation to contracting—

5 “(I) the consent is limited solely
6 to contracts for—

7 “(aa) the design and con-
8 struction of the delivery and dis-
9 tribution system and the rehabili-
10 tation of the irrigation system for
11 the cooperative farm;

12 “(bb) the extension of the ir-
13 rigation system for the coopera-
14 tive farm;

15 “(cc) the subjugation of land
16 to be served by the extension of
17 the irrigation system;

18 “(dd) the design and con-
19 struction of storage facilities sole-
20 ly for water deliverable for use
21 within the San Xavier Reserva-
22 tion; and

23 “(ee) the completion by the
24 Secretary of a water resources
25 study of the San Xavier Reserva-

1 tion and subsequent preparation
2 of a water management plan
3 under section 308(d);

4 “(II) the Nation shall reserve the
5 right to seek retrocession or re-
6 assumption of contracts described in
7 subclause (I), and recontracting under
8 subpart P and other applicable provi-
9 sions of part 900 of title 25, Code of
10 Federal Regulations (or any successor
11 regulations);

12 “(III) the Nation, on granting
13 consent to such contracting, shall be
14 released from any responsibility, li-
15 ability, claim, or cost from and after
16 the date on which consent is given,
17 with respect to past action or inaction
18 by the Nation, and subsequent action
19 or inaction by the San Xavier Dis-
20 trict, relating to the design and con-
21 struction of irrigation systems for the
22 cooperative farm or the Central Ari-
23 zona Project link pipeline; and

24 “(IV) the Secretary shall, on the
25 request of the Nation, execute a waiv-

1 er and release to carry out subclause
2 (III);

3 “(F) to subjugate, at no cost to the United
4 States, the land for which the irrigation sys-
5 tems under paragraphs (2) and (3) of section
6 304(c) will be planned, designed, and con-
7 structed by the Secretary, on the condition
8 that—

9 “(i) the obligation of the Nation to
10 subjugate the land in the cooperative farm
11 that is to be served by the extension of the
12 irrigation system under section 304(c)(2)
13 shall be determined by the Secretary, in
14 consultation with the Nation and the San
15 Xavier Cooperative Association; and

16 “(ii) subject to approval by the Sec-
17 retary of a contract with the San Xavier
18 District executed under section 311, to
19 perform that subjugation, a determination
20 by the Secretary of the subjugation costs
21 under clause (i), and the provision of no-
22 tice by the San Xavier District to the Na-
23 tion at least 180 days before the date on
24 which the District Council certifies by reso-
25 lution that the subjugation is scheduled to

1 commence, the Nation pays to the San Xa-
2 vier District, not later than 90 days before
3 the date on which the subjugation is sched-
4 uled to commence, from the trust fund
5 under section 315, or from other sources
6 of funds held by the Nation, the amount
7 determined by the Secretary under clause
8 (i); and

9 “(G) subject to valid existing rights, sec-
10 tion 7 of the Act of February 8, 1887 (25
11 U.S.C. 381), this title, other applicable Federal
12 law, a water management plan developed under
13 section 308(d), and the water code and other
14 applicable laws of the Nation, that the Na-
15 tion—

16 “(i) shall allocate as a first right of
17 beneficial use by allottees, the San Xavier
18 District, and other persons within the San
19 Xavier Reservation—

20 “(I) 35,000 acre-feet of the
21 50,000 acre-feet of water deliverable
22 under sections 304(a)(1) and
23 306(a)(1), including the use of the al-
24 location—

1 “(aa) to fulfill the obliga-
2 tions prescribed in the Asarco
3 agreement; and

4 “(bb) for groundwater stor-
5 age, maintenance of instream
6 flows, and maintenance of ripar-
7 ian vegetation and habitat;

8 “(II) the 10,000 acre-feet of
9 groundwater identified in subsection
10 (a)(1)(A);

11 “(III) the groundwater with-
12 drawn from exempt wells;

13 “(IV) the deferred pumping stor-
14 age credits authorized by section
15 308(f)(1)(B); and

16 “(V) the storage credits resulting
17 from a project authorized in section
18 308(e) that cannot be lawfully trans-
19 ferred or otherwise disposed of to per-
20 sons for recovery outside the Nation’s
21 Reservation; and

22 “(ii) subject to section 309(b)(2), has
23 the right—

24 “(I) to use, or authorize other
25 persons or entities to use, any portion

1 of the allocation of 35,000 acre-feet of
2 water deliverable under sections
3 304(a)(1) and 306(a)(1) outside the
4 San Xavier Reservation for any period
5 during which there is no identified ac-
6 tual use of the water within the San
7 Xavier Reservation;

8 “(II) as a first right of use, to
9 use the remaining acre-feet of water
10 deliverable under sections 304(a)(1)
11 and 306(a)(1) for any purpose and
12 duration authorized by this title with-
13 in or outside the Nation’s Reserva-
14 tion; and

15 “(III) subject to section 308(e),
16 as an exclusive right, to transfer or
17 otherwise dispose of the storage cred-
18 its that may be lawfully transferred or
19 otherwise disposed of to persons for
20 recovery outside the Nation’s Reserva-
21 tion;

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
3 permit for Central Arizona Project water
4 referred to in clause (i), submit the order
5 to—

6 “(I) the Secretary; or

7 “(II) the operating agency for
8 the Central Arizona Project;

9 “(v) shall issue permits for water de-
10 liverable under sections 304(a)(2) and
11 306(a)(2), including quantities of water
12 reasonably necessary for the irrigation sys-
13 tem referred to in section 304(c)(3);

14 “(vi) shall issue permits for ground-
15 water that may be withdrawn from non-
16 exempt wells in the eastern Schuk Toak
17 District; and

18 “(vii) shall, on timely receipt of an
19 order for water by a permittee under a
20 permit for water referred to in clause (v),
21 submit the order to—

22 “(I) the Secretary; or

23 “(II) the operating agency for
24 the Central Arizona Project; and

1 “(2) the Adams case, Alvarez case, and Tucson
2 case have been dismissed with prejudice.

3 “(b) RESPONSIBILITIES ON COMPLETION.—On com-
4 pletion of an irrigation system or extension of an irrigation
5 system described in paragraph (1) or (2) of section 304(c),
6 or in the case of the irrigation system described in section
7 304(c)(3), if such irrigation system is constructed on indi-
8 vidual Indian trust allotments, neither the United States
9 nor the Nation shall be responsible for the operation,
10 maintenance, or replacement of the system.

11 “(c) PAYMENT OF CHARGES.—The Nation shall not
12 be responsible for payment of any water service capital
13 charge for Central Arizona Project water delivered under
14 section 304, subsection (a) or (b) of section 305, or section
15 306.

16 **“SEC. 308. WATER CODE; WATER MANAGEMENT PLAN;
17 STORAGE PROJECTS; STORAGE ACCOUNTS;
18 GROUNDWATER.**

19 “(a) WATER RESOURCES.—Water resources de-
20 scribed in clauses (i) and (ii) of section 307(a)(1)(G)—

21 “(1) shall be subject to section 7 of the Act of
22 February 8, 1887 (25 U.S.C. 381); and

23 “(2) shall be apportioned pursuant to clauses
24 (i) and (ii) of section 307(a)(1)(G).

1 “(b) WATER CODE.—Subject to this title and any
2 other applicable law, the Nation shall—

3 “(1) manage, regulate, and control the water
4 resources of the Nation and the water resources
5 granted or confirmed under this title;

6 “(2) establish conditions, limitations, and per-
7 mit requirements, and promulgate regulations, relat-
8 ing to the storage, recovery, and use of surface
9 water and groundwater within the Nation’s Reserva-
10 tion; and

11 “(3) enact and maintain—

12 “(A) as soon as practicable after the en-
13 forceability date, an interim allottee water
14 rights code that—

15 “(i) is consistent with subsection (a);

16 “(ii) prescribes the rights of allottees
17 identified in paragraph (4); and

18 “(iii) provides that the interim allottee
19 water rights code shall be incorporated in
20 the comprehensive water code referred to
21 in subparagraph (B); and

22 “(B) not later than 3 years after the en-
23 forceability date, a comprehensive water code
24 applicable to the water resources granted or
25 confirmed under this title;

1 “(4) include in each of the water codes enacted
2 under subparagraphs (A) and (B) of paragraph
3 (3)—

4 “(A) an acknowledgement of the rights de-
5 scribed in subsection (a);

6 “(B) a process by which a just and equi-
7 table distribution of the water resources re-
8 ferred to in subsection (a), and any compensa-
9 tion provided under section 305(d), shall be
10 provided to allottees;

11 “(C) a process by which an allottee may
12 request and receive a permit for the use of any
13 water resources referred to in subsection (a),
14 except the water resources referred to in section
15 307(a)(1)(G)(ii)(III) and subject to the Na-
16 tion’s first right of use under section
17 307(a)(1)(G)(ii)(II);

18 “(D) provisions for the protection of due
19 process with respect to members of the Nation
20 and allottees, including—

21 “(i) a fair procedure for consideration
22 and determination of any request by—

23 “(I) a member of the Nation, for
24 a permit for use of available water re-

1 sources granted or confirmed by this
2 title; and

3 “(II) an allottee, for a permit for
4 use of—

5 “(aa) the water resources
6 identified in section
7 307(a)(1)(G)(i) that are subject
8 to a first right of beneficial use;
9 or

10 “(bb) subject to the first
11 right of use of the Nation, avail-
12 able water resources identified in
13 section 307(a)(1)(G)(i)(II);

14 “(ii) provisions for—

15 “(I) appeals and adjudications of
16 denied or disputed permits; and

17 “(II) resolution of contested ad-
18 ministrative decisions; and

19 “(iii) a waiver by the Nation of the
20 sovereign immunity of the Nation only
21 with respect to proceedings described in
22 clause (ii) for claims of declaratory and in-
23 junctive relief; and

24 “(E) a process for satisfying any entitle-
25 ment to the water resources referred to in sec-

1 tion 307(a)(1)(G)(i) for which fee owners of al-
2 lotted land have received final determinations
3 under applicable law; and

4 “(5) submit to the Secretary the comprehensive
5 water code, for approval by the Secretary only of the
6 provisions of the water code (and any amendments
7 to the water code), that implement, with respect to
8 the allottees, the standards described in paragraph
9 (4).

10 “(c) WATER CODE APPROVAL.—

11 “(1) IN GENERAL.—On receipt of a comprehen-
12 sive water code under subsection (b)(5), the Sec-
13 retary shall—

14 “(A) issue a written approval of the water
15 code; or

16 “(B) provide a written notification to the
17 Nation that—

18 “(i) identifies such provisions of the
19 water code that do not conform to sub-
20 section (b); and

21 “(ii) recommends specific corrective
22 language for each nonconforming provi-
23 sion.

24 “(2) REVISION BY NATION.—If the Secretary
25 identifies nonconforming provisions in the water

1 code under paragraph (1)(B)(i), the Nation shall re-
2 vise the water code in accordance with the rec-
3 ommendations of the Secretary under paragraph
4 (1)(B)(ii).

5 “(3) INTERIM AUTHORITY.—Until such time as
6 the Nation revises the water code of the Nation in
7 accordance with paragraph (2) and the Secretary
8 subsequently approves the water code, the Secretary
9 may exercise any lawful authority of the Secretary
10 under section 7 of the Act of February 8, 1887 (25
11 U.S.C. 381).

12 “(4) LIMITATION.—Except as provided in this
13 subsection, nothing in this title requires the approval
14 of the Secretary of the water code of the Nation (or
15 any amendment to that water code).

16 “(d) WATER MANAGEMENT PLANS.—

17 “(1) IN GENERAL.—The Secretary shall estab-
18 lish, for the San Xavier Reservation and the eastern
19 Schuk Toak District, water management plans that
20 meet the requirements described in paragraph (2).

21 “(2) REQUIREMENTS.—Water management
22 plans established under paragraph (1)—

23 “(A) shall be developed under contracts ex-
24 ecuted under section 311 between the Secretary
25 and the San Xavier District for the San Xavier

1 Reservation, and between the Secretary and the
2 Nation for the eastern Schuk Toak District, as
3 applicable, that permit expenditures, exclusive
4 of administrative expenses of the Secretary, of
5 not more than—

6 “(i) with respect to a contract be-
7 tween the Secretary and the San Xavier
8 District, \$891,200; and

9 “(ii) with respect to a contract be-
10 tween the Secretary and the Nation,
11 \$237,200;

12 “(B) shall, at a minimum—

13 “(i) provide for the measurement of
14 all groundwater withdrawals, including
15 withdrawals from each well that is not an
16 exempt well;

17 “(ii) provide for—

18 “(I) reasonable recordkeeping of
19 water use, including the quantities of
20 water stored underground and recov-
21 ered each calendar year; and

22 “(II) a system for the reporting
23 of withdrawals from each well that is
24 not an exempt well;

1 “(iii) provide for the direct storage
2 and deferred storage of water, including
3 the implementation of underground storage
4 and recovery projects, in accordance with
5 this section;

6 “(iv) provide for the annual exchange
7 of information collected under clauses (i)
8 through (iii)—

9 “(I) between the Nation and the
10 Arizona Department of Water Re-
11 sources; and

12 “(II) between the Nation and the
13 city of Tucson, Arizona;

14 “(v) provide for—

15 “(I) the efficient use of water;
16 and

17 “(II) the prevention of waste;

18 “(vi) except on approval of the district
19 council for a district in which a direct stor-
20 age project is established under subsection
21 (e), provide that no direct storage credits
22 earned as a result of the project shall be
23 recovered at any location at which the re-
24 covery would adversely affect surface or
25 groundwater supplies, or lower the water

1 table at any location, within the district;

2 and

3 “(vii) provide for amendments to the

4 water plan in accordance with this title;

5 “(C) shall authorize the establishment and

6 maintenance of 1 or more underground storage

7 and recovery projects in accordance with sub-

8 section (e), as applicable, within—

9 “(i) the San Xavier Reservation; or

10 “(ii) the eastern Schuk Toak District;

11 and

12 “(D) shall be implemented and maintained

13 by the Nation, with no obligation by the Sec-

14 retary.

15 “(e) UNDERGROUND STORAGE AND RECOVERY

16 PROJECTS.—The Nation is authorized to establish direct

17 storage and recovery projects in accordance with the

18 Tohono O’odham settlement agreement.

19 “(f) GROUNDWATER.—

20 “(1) SAN XAVIER RESERVATION.—

21 “(A) IN GENERAL.—In accordance with

22 section 307(a)(1)(A), 10,000 acre-feet of

23 groundwater may be pumped annually within

24 the San Xavier Reservation.

25 “(B) DEFERRED PUMPING.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), all or any portion of the 10,000 acre-
3 feet of water not pumped under subpara-
4 graph (A) in a year—

5 “(I) may be withdrawn in a sub-
6 sequent year; and

7 “(II) if any of that water is with-
8 drawn, shall be accounted for in ac-
9 cordance with the Tohono O’odham
10 settlement agreement as a debit to the
11 deferred pumping storage account.

12 “(ii) LIMITATION.—The quantity of
13 water authorized to be recovered as de-
14 ferred pumping storage credits under this
15 subparagraph shall not exceed—

16 “(I) 50,000 acre-feet for any 10-
17 year period; or

18 “(II) 10,000 acre-feet in any
19 year.

20 “(C) RECOVERY OF ADDITIONAL WATER.—

21 In addition to the quantity of groundwater au-
22 thorized to be pumped under subparagraphs
23 (A) and (B), the Nation may annually recover
24 within the San Xavier Reservation all or a por-

1 tion of the credits for water stored under a
2 project described in subsection (e).

3 “(2) EASTERN SCHUK TOAK DISTRICT.—

4 “(A) IN GENERAL.—In accordance with
5 section 307(a)(1)(B), 3,200 acre-feet of ground-
6 water may be pumped annually within the east-
7 ern Schuk Toak District.

8 “(B) DEFERRED PUMPING.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), all or any portion of the 3,200 acre-
11 feet of water not pumped under subpara-
12 graph (A) in a year—

13 “(I) may be withdrawn in a sub-
14 sequent year; and

15 “(II) if any of that water is with-
16 drawn, shall be accounted for in ac-
17 cordance with the Tohono O’odham
18 settlement agreement as a debit to the
19 deferred pumping storage account.

20 “(ii) LIMITATION.—The quantity of
21 water authorized to be recovered as de-
22 ferred pumping storage credits under this
23 subparagraph shall not exceed—

24 “(I) 16,000 acre-feet for any 10-
25 year period; or

1 “(II) 3,200 acre-feet in any year.

2 “(C) RECOVERY OF ADDITIONAL WATER.—

3 In addition to the quantity of groundwater au-
4 thorized to be pumped under subparagraphs
5 (A) and (B), the Nation may annually recover
6 within the eastern Schuk Toak District all or a
7 portion of the credits for water stored under a
8 project described in subsection (e).

9 “(3) INABILITY TO RECOVER GROUNDWATER.—

10 “(A) IN GENERAL.—The authorizations to
11 pump groundwater in paragraphs (1) and (2)
12 neither warrant nor guarantee that the ground-
13 water—

14 “(i) physically exists; or

15 “(ii) is recoverable.

16 “(B) CLAIMS.—With respect to ground-
17 water described in subparagraph (A)—

18 “(i) subject to paragraph 8.8 of the
19 Tohono O’odham settlement agreement,
20 the inability of any person to pump or re-
21 cover that groundwater shall not be the
22 basis for any claim by the United States or
23 the Nation against any person or entity
24 withdrawing or using the water from any
25 common supply; and

1 “(ii) the United States and the Nation
2 shall be barred from asserting any and all
3 claims for reserved water rights with re-
4 spect to that groundwater.

5 “(g) EXEMPT WELLS.—Any groundwater pumped
6 from an exempt well located within the San Xavier Res-
7 ervation or the eastern Schuk Toak District shall be ex-
8 empt from all pumping limitations under this title.

9 “(h) INABILITY OF SECRETARY TO DELIVER
10 WATER.—The Nation is authorized to pump additional
11 groundwater in any year in which the Secretary is unable
12 to deliver water required to carry out sections 304(a) and
13 306(a) in accordance with the Tohono O’odham settlement
14 agreement.

15 “(i) PAYMENT OF COMPENSATION.—Nothing in this
16 section affects any obligation of the Secretary to pay com-
17 pensation in accordance with section 305(d).

18 **“SEC. 309. USES OF WATER.**

19 “(a) PERMISSIBLE USES.—Subject to other provi-
20 sions of this section and other applicable law, the Nation
21 may devote all water supplies granted or confirmed under
22 this title, whether delivered by the Secretary or pumped
23 by the Nation, to any use (including any agricultural, mu-
24 nicipal, domestic, industrial, commercial, mining, under-

1 ground storage, instream flow, riparian habitat mainte-
2 nance, or recreational use).

3 “(b) USE AREA.—

4 “(1) USE WITHIN NATION’S RESERVATION.—
5 Subject to subsection (d), the Nation may use at any
6 location within the Nation’s Reservation—

7 “(A) the water supplies acquired under
8 sections 304(a) and 306(a);

9 “(B) groundwater supplies; and

10 “(C) storage credits acquired as a result of
11 projects authorized under section 308(e), or de-
12 ferred storage credits described in section
13 308(f), except to the extent that use of those
14 storage credits causes the withdrawal of
15 groundwater in violation of applicable Federal
16 law.

17 “(2) USE OUTSIDE THE NATION’S RESERVA-
18 TION.—

19 “(A) IN GENERAL.—Water resources
20 granted or confirmed under this title may be
21 sold, leased, transferred, or used by the Nation
22 outside of the Nation’s Reservation only in ac-
23 cordance with this title.

24 “(B) USE WITHIN CERTAIN AREA.—Sub-
25 ject to subsection (c), the Nation may use the

1 Central Arizona Project water supplies acquired
2 under sections 304(a) and 306(a) within the
3 Central Arizona Project service area.

4 “(C) STATE LAW.—With the exception of
5 Central Arizona Project water and groundwater
6 withdrawals under the Asarco agreement, the
7 Nation may sell, lease, transfer, or use any
8 water supplies and storage credits acquired as
9 a result of a project authorized under section
10 308(e) at any location outside of the Nation’s
11 Reservation, but within the State, only in ac-
12 cordance with State law.

13 “(D) LIMITATION.—Deferred pumping
14 storage credits provided for in section 308(f)
15 shall not be sold, leased, transferred, or used
16 outside the Nation’s Reservation.

17 “(E) PROHIBITION ON USE OUTSIDE THE
18 STATE.—No water acquired under section
19 304(a) or 306(a) shall be leased, exchanged,
20 forborne, or otherwise transferred by the Na-
21 tion for any direct or indirect use outside the
22 State.

23 “(c) EXCHANGES AND LEASES; CONDITIONS ON EX-
24 CHANGES AND LEASES; RIGHT OF FIRST REFUSAL.—

1 “(1) IN GENERAL.—With respect to users out-
2 side the Nation’s Reservation, the Nation may, for
3 a term of not to exceed 100 years, assign, exchange,
4 lease, provide an option to lease, or otherwise tempo-
5 rarily dispose of to the users, Central Arizona
6 Project water to which the Nation is entitled under
7 sections 304(a) and 306(a) or storage credits ac-
8 quired under section 308(e), if the assignment, ex-
9 change, lease, option, or temporary disposal is car-
10 ried out in accordance with—

11 “(A) this subsection; and

12 “(B) subsection (b)(2).

13 “(2) LIMITATION ON ALIENATION.—The Nation
14 shall not permanently alienate any water right under
15 paragraph (1).

16 “(3) AUTHORIZED USES.—The water described
17 in paragraph (1) shall be delivered within the Cen-
18 tral Arizona Project service area for any use author-
19 ized under applicable law.

20 “(4) CONTRACT.—An assignment, exchange,
21 lease, option, or temporary disposal described in
22 paragraph (1) shall be executed only in accordance
23 with a contract that—

24 “(A) is accepted by the Nation;

1 “(B) is ratified under a resolution of the
2 Legislative Council of the Nation;

3 “(C) is approved by the United States as
4 Trustee; and

5 “(D) with respect to any contract to which
6 the United States or the Secretary is a party,
7 provides that an action may be maintained by
8 the contracting party against the United States
9 and the Secretary for a breach of the contract
10 by the United States or Secretary, as appro-
11 priate.

12 “(5) TERMS EXCEEDING 25 YEARS.—The terms
13 and conditions established in paragraph 11 of the
14 Tohono O’odham settlement agreement shall apply
15 to any contract under paragraph (4) that has a term
16 of greater than 25 years.

17 “(d) LIMITATIONS ON USE, EXCHANGES, AND
18 LEASES.—The rights of the Nation to use water supplies
19 under subsection (a), and to assign, exchange, lease, pro-
20 vide options to lease, or temporarily dispose of the water
21 supplies under subsection (c), shall be exercised on condi-
22 tions that ensure, to the maximum extent practicable, the
23 availability of water supplies to satisfy the first right of
24 beneficial use under section 307(a)(1)(G)(i).

1 “(e) WATER SERVICE CAPITAL CHARGES.—In any
2 transaction entered into by the Nation and another person
3 under subsection (c) with respect to Central Arizona
4 Project water of the Nation, the person shall not be obli-
5 gated to pay to the United States or the Central Arizona
6 Water Conservation District any water service capital
7 charge.

8 “(f) WATER RIGHTS UNAFFECTED BY USE OR NON-
9 USE.—The failure of the Nation to make use of water pro-
10 vided under this title, or the use of, or failure to make
11 use of, that water by any other person that enters into
12 a contract with the Nation under subsection (c) for the
13 assignment, exchange, lease, option for lease, or tem-
14 porary disposal of water, shall not diminish, reduce, or im-
15 pair—

16 “(1) any water right of the Nation, as estab-
17 lished under this title or any other applicable law; or

18 “(2) any water use right recognized under this
19 title, including—

20 “(A) the first right of beneficial use re-
21 ferred to in section 307(a)(1)(G)(i); or

22 “(B) the allottee use rights referred to in
23 section 308(a).

1 “(g) AMENDMENT TO AGREEMENT OF DECEMBER
2 11, 1980.—The Secretary shall amend the agreement of
3 December 11, 1980 to provide that—

4 “(1) the contract shall be—

5 “(A) for permanent service (within the
6 meaning of section 5 of the Boulder Canyon
7 Project Act of 1928 (43 U.S.C. 617d)); and

8 “(B) without limit as to term;

9 “(2) the Nation may, with the approval of the
10 Secretary—

11 “(A) in accordance with subsection (c), as-
12 sign, exchange, lease, enter into an option to
13 lease, or otherwise temporarily dispose of water
14 to which the Nation is entitled under sections
15 304(a) and 306(a); and

16 “(B) renegotiate any lease at any time
17 during the term of the lease if the term of the
18 renegotiated lease does not exceed 100 years;

19 “(3)(A) the Nation shall be entitled to all con-
20 sideration due to the Nation under any leases and
21 any options to lease or exchanges or options to ex-
22 change the Nation’s Central Arizona Project water
23 entered into by the Nation; and

24 “(B) the United States shall have no trust obli-
25 gation or other obligation to monitor, administer, or

1 account for any consideration received by the Nation
2 under those leases or options to lease and exchanges
3 or options to exchange;

4 “(4)(A) all of the Nation’s Central Arizona
5 Project water shall be delivered through the Central
6 Arizona Project aqueduct; and

7 “(B) if the delivery capacity of the Central Ari-
8 zona Project aqueduct is significantly reduced or is
9 anticipated to be significantly reduced for an ex-
10 tended period of time, the Nation shall have the
11 same Central Arizona Project delivery rights as
12 other Central Arizona Project contractors and Cen-
13 tral Arizona Project subcontractors, if the Central
14 Arizona Project contractors or Central Arizona
15 Project subcontractors are allowed to take delivery
16 of water other than through the Central Arizona
17 Project aqueduct;

18 “(5) the Nation may use the Nation’s Central
19 Arizona Project water on or off of the Nation’s Res-
20 ervation for the purposes of the Nation consistent
21 with this title;

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

1 the Lower Colorado River Basin Development Fund
2 established by section 403 of that Act (43 U.S.C.
3 1543), the United States shall pay to the Central
4 Arizona Project operating agency the fixed oper-
5 ation, maintenance, and replacement charges associ-
6 ated with the delivery of the Nation's Central Ari-
7 zona Project water, except for the Nation's Central
8 Arizona Project water leased by others;

9 “(7) the costs associated with the construction
10 of the delivery and distribution system—

11 “(A) shall be nonreimbursable; and

12 “(B) shall be excluded from any repayment
13 obligation of the Nation;

14 “(8) no water service capital charges shall be
15 due or payable for the Nation's Central Arizona
16 Project water, regardless of whether the Central Ari-
17 zona Project water is delivered for use by the Nation
18 or is delivered pursuant to any leases or options to
19 lease or exchanges or options to exchange the Na-
20 tion's Central Arizona Project water entered into by
21 the Nation;

22 “(9) the agreement of December 11, 1980, con-
23 forms with section 104(d) and section 306(a) of the
24 Arizona Water Settlements Act; and

1 “(10) the amendments required by this sub-
2 section shall not apply to the 8,000 acre feet of Cen-
3 tral Arizona Project water contracted by the Nation
4 in the agreement of December 11, 1980 for the Sif
5 Oidak District.

6 “(h) RATIFICATION OF AGREEMENTS.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of law, each of the agreements described in
9 paragraph (2)—

10 “(A) is authorized, ratified, and confirmed;

11 and

12 “(B) shall be executed by the Secretary.

13 “(2) AGREEMENTS.—The agreements described
14 in this paragraph are—

15 “(A) the Tohono O’odham settlement
16 agreement, to the extent that—

17 “(i) the Tohono O’odham settlement
18 agreement is consistent with this title; and

19 “(ii) parties to the Tohono O’odham
20 settlement agreement other than the Sec-
21 retary have executed that agreement;

22 “(B) the Tucson agreement (attached to
23 the Tohono O’odham settlement agreement as
24 exhibit 12.1); and

1 “(C)(i) the Asarco agreement (attached to
2 the Tohono O’odham settlement agreement as
3 exhibit 13.1 to the Tohono O’odham settlement
4 agreement);

5 “(ii) lease No. H54–16–72, dated April 26,
6 1972, and approved by the United States on
7 November 14, 1972; and

8 “(iii) any new well site lease as provided
9 for in the Asarco agreement; and

10 “(D) the FICO agreement (attached to the
11 Tohono O’odham settlement agreement as Ex-
12 hibit 14.1).

13 “(3) RELATION TO OTHER LAW.—

14 “(A) IN GENERAL.—Execution of an
15 agreement described in paragraph (2) shall not
16 constitute major Federal action under the Na-
17 tional Environmental Policy Act (42 U.S.C.
18 4321 et seq.).

19 “(B) ENVIRONMENTAL COMPLIANCE AC-
20 TIVITIES.—The Secretary shall carry out all
21 necessary environmental compliance activities
22 during the implementation of the agreements
23 described in paragraph (2), including activities
24 under—

1 “(i) the National Environmental Pol-
2 icy Act (42 U.S.C. 4321 et seq.); and

3 “(ii) the Endangered Species Act of
4 1973 (16 U.S.C. 1531 et seq.).

5 “(C) LEAD AGENCY.—The Bureau of Rec-
6 lamation shall be the lead agency with respect
7 to environmental compliance under the agree-
8 ments described in paragraph (2).

9 “(i) DISBURSEMENTS FROM TUCSON INTERIM
10 WATER LEASE.—The Secretary shall disburse to the Na-
11 tion, without condition, all proceeds from the Tucson in-
12 terim water lease.

13 “(j) USE OF GROSS PROCEEDS.—

14 “(1) DEFINITION OF GROSS PROCEEDS.—In
15 this subsection, the term ‘gross proceeds’ means all
16 proceeds, without reduction, received by the Nation
17 from—

18 “(A) the Tucson interim water lease;

19 “(B) the Asarco agreement; and

20 “(C) any agreement similar to the Asarco
21 agreement to store Central Arizona Project
22 water of the Nation, instead of pumping
23 groundwater, for the purpose of protecting
24 water of the Nation.

1 “(2) ENTITLEMENT.—The Nation shall be enti-
2 tled to receive all gross proceeds.

3 “(k) STATUTORY CONSTRUCTION.—Nothing in this
4 title establishes whether reserved water may be put to use,
5 or sold for use, off any reservation to which reserved water
6 rights attach.

7 **“SEC. 310. COOPERATIVE FUND.**

8 “(a) REAUTHORIZATION.—

9 “(1) IN GENERAL.—Congress reauthorizes, for
10 use in carrying out this title, the cooperative fund
11 established in the Treasury of the United States by
12 section 313 of the 1982 Act.

13 “(2) AMOUNTS IN COOPERATIVE FUND.—The
14 cooperative fund shall consist of—

15 “(A)(i) \$5,250,000, as appropriated to the
16 cooperative fund under section 313(b)(3)(A) of
17 the 1982 Act; and

18 “(ii) such amount, not to exceed
19 \$32,000,000, as the Secretary determines, after
20 providing notice to Congress, is necessary to
21 carry out this title;

22 “(B) any additional Federal funds depos-
23 ited to the cooperative fund under Federal law;

1 “(C) \$5,250,000, as deposited in the coop-
2 erative fund under section 313(b)(1)(B) of the
3 1982 Act, of which—

4 “(i) \$2,750,000 was contributed by
5 the State;

6 “(ii) \$1,500,000 was contributed by
7 the city of Tucson; and

8 “(iii) \$1,000,000 was contributed
9 by—

10 “(I) the Anamax Mining Com-
11 pany;

12 “(II) the Cyprus-Pima Mining
13 Company;

14 “(III) the American Smelting
15 and Refining Company;

16 “(IV) the Duval Corporation; and

17 “(V) the Farmers Investment
18 Company;

19 “(D) all interest accrued on all amounts in
20 the cooperative fund beginning on October 12,
21 1982, less any interest expended under sub-
22 section (b)(2); and

23 “(E) all revenues received from—

24 “(i) the sale or lease of effluent re-
25 ceived by the Secretary under the contract

1 between the United States and the city of
2 Tucson to provide for delivery of reclaimed
3 water to the Secretary, dated October 11,
4 1983; and

5 “(ii) the sale or lease of storage cred-
6 its derived from the storage of that efflu-
7 ent.

8 “(b) EXPENDITURES FROM FUND.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 upon request by the Secretary, the Secretary of the
11 Treasury shall transfer from the cooperative fund to
12 the Secretary such amounts as the Secretary deter-
13 mines are necessary to carry out obligations of the
14 Secretary under this title, including to pay—

15 “(A) the variable costs relating to the de-
16 livery of water under sections 304 through 306;

17 “(B) fixed operation maintenance and re-
18 placement costs relating to the delivery of water
19 under sections 304 through 306, to the extent
20 that funds are not available from the Lower
21 Colorado River Basin Development Fund to pay
22 those costs;

23 “(C) the costs of acquisition and delivery
24 of water from alternative sources under section
25 305; and

1 “(D) any compensation provided by the
2 Secretary under section 305(e).

3 “(2) EXPENDITURE OF INTEREST.—With re-
4 spect to interest income accruing from amounts in
5 the cooperative fund—

6 “(A) except as provided in paragraph (3),
7 the Secretary of the Interior may expend only
8 interest income accruing after the effective
9 date; and

10 “(B) that interest income may be expended
11 by the Secretary of the Interior, without further
12 appropriation.

13 “(3) EXPENDITURE OF REVENUES.—Revenues
14 described in subparagraph (a)(2)(E) shall be available
15 for expenditure under paragraph (1).

16 “(c) INVESTMENT OF AMOUNTS.—

17 “(1) IN GENERAL.—The Secretary of the
18 Treasury shall invest such portion of the cooperative
19 fund as is not, in the judgment of the Secretary of
20 the Treasury, required to meet current withdrawals
21 determined by the Secretary. Investments may be
22 made only in interest-bearing obligations of the
23 United States.

24 “(2) CREDITS TO COOPERATIVE FUND.—The
25 interest on, and the proceeds from the sale or re-

1 demption of, any obligations held in the cooperative
2 fund shall be credited to and form a part of the co-
3 operative fund.

4 “(d) TRANSFERS OF AMOUNTS.—

5 “(1) IN GENERAL.—The amounts required to
6 be transferred to the cooperative fund under this
7 section shall be transferred at least monthly from
8 the general fund of the Treasury to the cooperative
9 fund on the basis of estimates made by the Sec-
10 retary of the Treasury.

11 “(2) ADJUSTMENTS.—Proper adjustment shall
12 be made in amounts subsequently transferred to the
13 extent prior estimates were in excess of or less than
14 the amounts required to be transferred.

15 **“SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY;
16 STUDIES; ARID LAND ASSISTANCE.**

17 “(a) FUNCTIONS OF SECRETARY.—Except as pro-
18 vided in subsection (f), the functions of the Secretary (or
19 the Commissioner of Reclamation, acting on behalf of the
20 Secretary) under this title shall be subject to the Indian
21 Self-Determination and Education Assistance Act (25
22 U.S.C. 450 et seq.) to the same extent as if those func-
23 tions were carried out by the Assistant Secretary for In-
24 dian Affairs.

25 “(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

1 “(1) IN GENERAL.—Subject to the consent of
2 the Nation and other requirements under section
3 307(a)(1)(E), the San Xavier District shall be con-
4 sidered to be an eligible contractor for purposes of
5 this title.

6 “(2) TECHNICAL ASSISTANCE.—The Secretary
7 shall provide to the San Xavier District technical as-
8 sistance in carrying out the contracting require-
9 ments under the Indian Self-Determination and
10 Education Assistance Act (25 U.S.C. 450 et seq.).

11 “(c) GROUNDWATER MONITORING PROGRAMS.—

12 “(1) SAN XAVIER INDIAN RESERVATION PRO-
13 GRAM.—

14 “(A) IN GENERAL.—Not later than 180
15 days after the enforceability date, the Secretary
16 shall design and carry out a comprehensive
17 groundwater monitoring program (including the
18 drilling of wells and other appropriate actions)
19 to test, assess, and provide for the long-term
20 monitoring of the quality of groundwater with-
21 drawn from exempt wells and other wells within
22 the San Xavier Reservation.

23 “(B) LIMITATION ON EXPENDITURES.—In
24 carrying out this paragraph, the Secretary shall
25 expend not more than \$215,000.

1 “(2) EASTERN SCHUK TOAK DISTRICT PRO-
2 GRAM.—

3 “(A) IN GENERAL.—Not later than 180
4 days after the enforceability date, the Secretary
5 shall design and carry out a comprehensive
6 groundwater monitoring program (including the
7 drilling of wells and other appropriate actions)
8 to test, assess, and provide for the long-term
9 monitoring of the quality of groundwater with-
10 drawn from exempt wells and other wells within
11 the eastern Schuk Toak District.

12 “(B) LIMITATION ON EXPENDITURES.—In
13 carrying out this paragraph, the Secretary shall
14 expend not more than \$175,000.

15 “(3) DUTIES OF SECRETARY.—

16 “(A) CONSULTATION.—In carrying out
17 paragraphs (1) and (2), the Secretary shall con-
18 sult with representatives of—

19 “(i) the Nation;

20 “(ii) the San Xavier District and
21 Schuk Toak District, respectively; and

22 “(iii) appropriate State and local enti-
23 ties.

24 “(B) LIMITATION ON OBLIGATIONS OF
25 SECRETARY.—With respect to the groundwater

1 monitoring programs described in paragraphs
2 (1) and (2), the Secretary shall have no con-
3 tinuing obligation relating to those programs
4 beyond the obligations described in those para-
5 graphs.

6 “(d) WATER RESOURCES STUDY.—To assist the Na-
7 tion in developing sources of water, the Secretary shall
8 conduct a study to determine the availability and suit-
9 ability of water resources that are located—

10 “(1) within the Nation’s Reservation; but

11 “(2) outside the Tucson management area.

12 “(e) ARID LAND RENEWABLE RESOURCES.—If a
13 Federal entity is established to provide financial assistance
14 to carry out arid land renewable resources projects and
15 to encourage and ensure investment in the development
16 of domestic sources of arid land renewable resources, the
17 entity shall—

18 “(1) give first priority to the needs of the Na-
19 tion in providing that assistance; and

20 “(2) make available to the Nation, San Xavier
21 District, Schuk Toak District, and San Xavier Coop-
22 erative Association price guarantees, loans, loan
23 guarantees, purchase agreements, and joint venture
24 projects at a level that the entity determines will—

1 “(A) facilitate the cultivation of such min-
2 imum number of acres as is determined by the
3 entity to be necessary to ensure economically
4 successful cultivation of arid land crops; and

5 “(B) contribute significantly to the econ-
6 omy of the Nation.

7 “(f) ASARCO LAND EXCHANGE STUDY.—

8 “(1) IN GENERAL.—Not later than 2 years
9 after the enforceability date, the Secretary, in con-
10 sultation with the Nation, the San Xavier District,
11 the San Xavier Allottees’ Association, and Asarco,
12 shall conduct and submit to Congress a study on the
13 feasibility of a land exchange or land exchanges with
14 Asarco to provide land for future use by—

15 “(A) beneficial landowners of the Mission
16 Complex Mining Leases of September 18, 1959;
17 and

18 “(B) beneficial landowners of the Mission
19 Complex Business Leases of May 12, 1959.

20 “(2) COMPONENTS.—The study under para-
21 graph (1) shall include—

22 “(A) an analysis of the manner in which
23 land exchanges could be accomplished to main-
24 tain a contiguous land base for the San Xavier
25 Reservation; and

1 “(B) a description of the legal status ex-
2 changed land should have to maintain the polit-
3 ical integrity of the San Xavier Reservation.

4 “(3) LIMITATION ON EXPENDITURES.—In car-
5 rying out this paragraph, the Secretary shall expend
6 not more than \$250,000.

7 **“SEC. 312. WAIVER AND RELEASE OF CLAIMS.**

8 “(a) WAIVER OF CLAIMS BY THE NATION.—Except
9 as provided in subsection (d), the Tohono O’odham settle-
10 ment agreement shall provide that the Nation waives and
11 releases—

12 “(1) any and all past, present, and future
13 claims for water rights (including claims based on
14 aboriginal occupancy) arising from time immemorial
15 and, thereafter, forever, and claims for injuries to
16 water rights arising from time immemorial through
17 the enforceability date, for land within the Tucson
18 management area, against—

19 “(A) the State (or any agency or political
20 subdivision of the State);

21 “(B) any municipal corporation; and

22 “(C) any other person or entity;

23 “(2) any and all claims for water rights arising
24 from time immemorial and, thereafter, forever,
25 claims for injuries to water rights arising from time

1 immemorial through the enforceability date, and
2 claims for failure to protect, acquire, or develop
3 water rights for land within the San Xavier Reserva-
4 tion and the eastern Schuk Toak District from time
5 immemorial through the enforceability date, against
6 the United States (including any agency, officer, and
7 employee of the United States);

8 “(3) 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 agree-
14 ment or State law against—

15 “(A) the United States;

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 “(4) any and all past, present, and future
21 claims arising out of or relating to the negotiation
22 or execution of the Tohono O’odham settlement
23 agreement or the negotiation or enactment of this
24 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.

5 “(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASS-
6 ES.—The Tohono O’odham settlement agreement shall
7 provide that each allottee class waives and releases—

8 “(1) any and all past, present, and future
9 claims for water rights (including claims based on
10 aboriginal occupancy) arising from time immemorial
11 and, thereafter, forever, claims for injuries to water
12 rights arising from time immemorial through the en-
13 forceability date for land within the San Xavier Res-
14 ervation, against—

15 “(A) the State (or any agency or political
16 subdivision of the State);

17 “(B) any municipal corporation; and

18 “(C) any other person or entity (other
19 than the Nation);

20 “(2) any and all claims for water rights arising
21 from time immemorial and, thereafter, forever,
22 claims for injuries to water rights arising from time
23 immemorial through the enforceability date, and
24 claims for failure to protect, acquire, or develop
25 water rights for land within the San Xavier Reserva-

1 tion from time immemorial through the enforce-
2 ability date, against the United States (including
3 any agency, officer, and employee of the United
4 States);

5 “(3) any and all claims for injury to water
6 rights arising after the enforceability date for land
7 within the San Xavier Reservation resulting from
8 the off-Reservation diversion or use of water in a
9 manner not in violation of the Tohono O’odham set-
10 tlement agreement or State law against—

11 “(A) the United States;

12 “(B) the State (or any agency or political
13 subdivision of the State);

14 “(C) any municipal corporation; and

15 “(D) any other person or entity; and

16 “(4) any and all past, present, and future
17 claims arising out of or relating to the negotiation
18 or execution of the Tohono O’odham settlement
19 agreement or the negotiation or enactment of this
20 title, against—

21 “(A) the United States;

22 “(B) the State (or any agency or political
23 subdivision of the State);

24 “(C) any municipal corporation; and

25 “(D) any other person or entity; and

1 “(5) any and all past, present, and future
2 claims for water rights arising from time immemo-
3 rial and, thereafter, forever, and claims for injuries
4 to water rights arising from time immemorial
5 through the enforceability date, against the Nation
6 (except that under section 307(a)(1)(G) and sub-
7 sections (a) and (b) of section 308, the allottees and
8 fee owners of allotted land shall retain rights to
9 share in the water resources granted or confirmed
10 under this title and the Tohono O’odham settlement
11 agreement with respect to uses within the San Xa-
12 vier Reservation).

13 “(c) WAIVER OF CLAIMS BY THE UNITED STATES.—
14 Except as provided in subsection (d), the Tohono O’odham
15 settlement agreement shall provide that the United States
16 as Trustee waives and releases—

17 “(1) any and all past, present, and future
18 claims for water rights (including claims based on
19 aboriginal occupancy) arising from time immemorial
20 and, thereafter, forever, and claims for injuries to
21 water rights arising from time immemorial through
22 the enforceability date, for land within the Tucson
23 management area or State law against—

24 “(A) the Nation;

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;

5 “(2) any and all claims for injury to water
6 rights arising after the enforceability date for land
7 within the San Xavier Reservation and the eastern
8 Schuk Toak District resulting from the off-Reserva-
9 tion diversion or use of water in a manner not in
10 violation of the Tohono O’odham settlement agree-
11 ment or State law against—

12 “(A) the Nation;

13 “(B) the State (or any agency or political
14 subdivision of the State);

15 “(C) any municipal corporation; and

16 “(D) any other person or entity;

17 “(3) on and after the enforceability date, any
18 and all claims on behalf of the allottees for injuries
19 to water rights against the Nation (except that
20 under section 307(a)(1)(G) and subsections (a) and
21 (b) of section 308, the allottees shall retain rights to
22 share in the water resources granted or confirmed
23 under this title and the Tohono O’odham settlement
24 agreement with respect to uses within the San Xa-
25 vier Reservation); and

1 “(4) contingent on the effectiveness of a waiver
2 of such claims as are provided for in the Asarco
3 agreement, claims against Asarco on behalf of the
4 allottee class for the fourth cause of action in the Al-
5 varez case, as defined in the Tohono O’odham settle-
6 ment agreement.

7 “(d) CLAIMS RELATING TO GROUNDWATER PROTEC-
8 TION PROGRAM.—The Nation and the United States as
9 Trustee—

10 “(1) shall have the right to assert any claims
11 granted by a State law implementing the ground-
12 water protection program described in paragraph 8.8
13 of the Tohono O’odham settlement agreement; and

14 “(2) if, after the enforceability date, the State
15 law is amended so as to have a material adverse ef-
16 fect on the Nation, shall have a right to relief in the
17 State court having jurisdiction over Gila River adju-
18 dication proceedings and decrees, against an owner
19 of any nonexempt well drilled after the effective date
20 of the amendment (if the well actually and substan-
21 tially interferes with groundwater pumping occurring
22 on the San Xavier Reservation), from the incre-
23 mental effect of the groundwater pumping that ex-
24 ceeds that which would have been allowable had the
25 State law not been amended.

1 “(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any
2 party to the Tohono O’odham settlement agreement may
3 waive and release, prohibit the assertion of, or agree not
4 to assert, any claims (including claims for subsidence dam-
5 age or injury to water quality) in addition to claims for
6 water rights and injuries to water rights on such terms
7 and conditions as may be agreed to by the parties.

8 “(f) RIGHTS OF ALLOTTEES; PROHIBITION OF
9 CLAIMS.—

10 “(1) IN GENERAL.—As of the enforceability
11 date—

12 “(A) the water rights and other benefits
13 granted or confirmed by this title and the
14 Tohono O’odham settlement agreement shall be
15 in full satisfaction of—

16 “(i) all claims for water rights and
17 claims for injuries to water rights of the
18 Nation; and

19 “(ii) all claims for water rights and
20 injuries to water rights of the allottees;

21 “(B) any entitlement to water within the
22 Tucson management area of the Nation, or of
23 any allottee, shall be satisfied out of the water
24 resources granted or confirmed under this title

1 and the Tohono O’odham settlement agreement;
2 and

3 “(C) any rights of the allottees to ground-
4 water, surface water, or effluent shall be limited
5 to the water rights granted or confirmed under
6 this title and the Tohono O’odham settlement
7 agreement.

8 “(2) LIMITATION OF CERTAIN CLAIMS BY
9 ALLOTTEES.—No allottee within the San Xavier
10 Reservation may—

11 “(A) assert any past, present, or future
12 claim for water rights arising from time imme-
13 morial and, thereafter, forever, or any claim for
14 injury to water rights (including future injury
15 to water rights) arising from time immemorial
16 and thereafter, forever, against—

17 “(i) the United States;

18 “(ii) the State (or any agency or polit-
19 ical subdivision of the State);

20 “(iii) any municipal corporation; or

21 “(iv) any other person or entity; or

22 “(B) continue to assert a claim described
23 in subparagraph (A), if the claim was first as-
24 serted before the enforceability date.

1 “(3) CLAIMS BY FEE OWNERS OF ALLOTTED
2 LAND.—

3 “(A) IN GENERAL.—No fee owner of allot-
4 ted land within the San Xavier Reservation may
5 assert 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 sserting 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 suc-
14 cessful claim shall be offset by benefits received
15 by that fee owner of allotted land under this
16 title.

17 “(4) LIMITATION OF CLAIMS AGAINST THE NA-
18 TION.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), no allottee may assert
21 against the Nation any claims for water rights
22 arising from time immemorial and, thereafter,
23 forever, claims for injury to water rights arising
24 from time immemorial and thereafter forever.

1 “(B) EXCEPTION.—Under section
2 307(a)(1)(G) and subsections (a) and (b) of
3 section 308, the allottees shall retain rights to
4 share in the water resources granted or con-
5 firmed under this title and the Tohono
6 O’odham settlement agreement.

7 “(g) CONSENT.—

8 “(1) GRANT OF CONSENT.—Congress grants to
9 the Nation and the San Xavier Cooperative Associa-
10 tion under section 305(d) consent to maintain civil
11 actions against the United States in the courts of
12 the United States under section 1346, 1491, or
13 1505 of title 28, United States Code, respectively, to
14 recover damages, if any, for the breach of any obli-
15 gation of the Secretary under those sections.

16 “(2) NO SUFFICIENT FUNDS DEFENSE.—The
17 lack of sufficient funds in the cooperative fund to
18 carry out the obligations of the Secretary may not
19 be raised by the United States as a defense to any
20 claim asserted under paragraph (1).

21 “(3) REMEDY.—

22 “(A) IN GENERAL.—Subject to subpara-
23 graph (B), the exclusive remedy for a civil ac-
24 tion maintained under this subsection shall be
25 monetary damages.

1 “(B) OFFSET.—An award for damages for
2 a claim under this subsection shall be offset
3 against the amount of funds—

4 “(i) made available by any Act of
5 Congress; and

6 “(ii) paid to the claimant by the Sec-
7 retary in partial or complete satisfaction of
8 the claim.

9 “(4) NO CLAIMS ESTABLISHED.—Except as
10 provided in paragraph (1), nothing in the subsection
11 establishes any claim against the United States.

12 “(h) JURISDICTION; WAIVER OF IMMUNITY; PAR-
13 TIES.—

14 “(1) JURISDICTION.—

15 “(A) IN GENERAL.—Except as provided in
16 subsection (i), the State court having jurisdic-
17 tion over Gila River adjudication proceedings
18 and decrees, shall have jurisdiction over—

19 “(i) civil actions relating to the inter-
20 pretation and enforcement of—

21 “(I) this title;

22 “(II) the Tohono O’odham settle-
23 ment agreement; and

24 “(III) agreements referred to in
25 section 309(h)(2); and

1 “(ii) civil actions brought by or
2 against the allottees or fee owners of allot-
3 ted land for the interpretation of, or legal
4 or equitable remedies with respect to,
5 claims of the allottees or fee owners of al-
6 lotted land that are not claims for water
7 rights, injuries to water rights or other
8 claims that are barred or waived and re-
9 leased under this title or the Tohono
10 O’odham settlement agreement.

11 “(B) LIMITATION.—Except as provided in
12 subparagraph (A), no State court or court of
13 the Nation shall have jurisdiction over any civil
14 action described in subparagraph (A).

15 “(2) WAIVER.—

16 “(A) IN GENERAL.—The United States
17 and the Nation waive sovereign immunity solely
18 for claims for—

19 “(i) declaratory judgment or injunc-
20 tive relief in any civil action arising under
21 this title; and

22 “(ii) such claims and remedies as may
23 be prescribed in any agreement authorized
24 under this title.

1 “(B) LIMITATION ON STANDING.—If a
2 governmental entity not described in subpara-
3 graph (A) asserts immunity in any civil action
4 that arises under this title (unless the entity
5 waives immunity for declaratory judgment or
6 injunctive relief) or any agreement authorized
7 under this title (unless the entity waives immu-
8 nity for the claims and remedies prescribed in
9 the agreement)—

10 “(i) the governmental entity shall not
11 have standing to initiate or assert any
12 claim, or seek any remedy against the
13 United States or the Nation, in the civil
14 action; and

15 “(ii) the waivers of sovereign immu-
16 nity under subparagraph (A) shall have no
17 effect in the civil action.

18 “(C) MONETARY RELIEF.—A waiver of im-
19 munity under this paragraph shall not extend
20 to any claim for damages, costs, attorneys’ fees,
21 or other monetary relief.

22 “(3) NATION AS A PARTY.—

23 “(A) IN GENERAL.—Not later than 60
24 days before the date on which a civil action
25 under paragraph (1)(A)(ii) is filed by an allot-

1 tee or fee owner of allotted land, the allottee or
2 fee owner, as the case may be, shall provide to
3 the Nation a notice of intent to file the civil ac-
4 tion, accompanied by a request for consultation.

5 “(B) JOINDER.—If the Nation is not a
6 party to a civil action as originally commenced
7 under paragraph (1)(A)(ii), the Nation shall be
8 joined as a party.

9 “(i) REGULATION AND JURISDICTION OVER DISPUTE
10 RESOLUTION.—

11 “(1) REGULATION.—The Nation shall have ju-
12 risdiction to manage, control, permit, administer,
13 and otherwise regulate the water resources granted
14 or confirmed under this title and the Tohono
15 O’odham settlement agreement—

16 “(A) with respect to the use of those re-
17 sources by—

18 “(i) the Nation;

19 “(ii) individual members of the Na-
20 tion;

21 “(iii) districts of the Nation; and

22 “(iv) allottees; and

23 “(B) with respect to any entitlement to
24 those resources for which a fee owner of allot-

1 ted land has received a final determination
2 under applicable law.

3 “(2) JURISDICTION.—Subject to a requirement
4 of exhaustion of any administrative or other rem-
5 edies prescribed under the laws of the Nation, juris-
6 diction over any disputes relating to the matters de-
7 scribed in paragraph (1) shall be vested in the
8 courts of the Nation.

9 “(3) APPLICABLE LAW.—The regulatory and
10 remedial procedures referred to in paragraphs (1)
11 and (2) shall be subject to all applicable law.

12 “(j) FEDERAL JURISDICTION.—The Federal Courts
13 shall have concurrent jurisdiction over actions described
14 in subsection 312(h) to the extent otherwise provided in
15 Federal law.

16 **“SEC. 313. AFTER-ACQUIRED TRUST LAND.**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (b)—

19 “(1) the Nation may seek to have taken into
20 trust by the United States, for the benefit of the
21 Nation, legal title to additional land within the State
22 and outside the exterior boundaries of the Nation’s
23 Reservation only in accordance with an Act of Con-
24 gress specifically authorizing the transfer for the
25 benefit of the Nation;

1 “(2) it is the intent of Congress in enacting this
2 title that future Acts of Congress described in para-
3 graph (1) should provide that land taken into trust
4 under that paragraph will include only such water
5 rights and water use privileges as are consistent
6 with State water law and State water management
7 policy; and

8 “(3) after-acquired trust land shall not include
9 Federal reserved rights to surface water or ground-
10 water.

11 “(b) EXCEPTION.—Subsection (a) shall not apply to
12 land acquired by the Nation under the Gila Bend Indian
13 Reservation Lands Replacement Act (100 Stat. 1798).

14 **“SEC. 314. NONREIMBURSABLE COSTS.**

15 “(a) CENTRAL ARIZONA WATER CONSERVATION DIS-
16 TRICT.—For the purpose of determining the allocation
17 and repayment of costs of any stage of the Central Ari-
18 zona Project constructed after the effective date, the costs
19 associated with the delivery of Central Arizona Project
20 water acquired under sections 304(a) and 306(a), whether
21 that water is delivered for use by the Nation or in accord-
22 ance with any assignment, exchange, lease, option to lease,
23 or other agreement for the temporary disposition of water
24 entered into by the Nation—

25 “(1) shall be nonreimbursable; and

1 “(2) shall be excluded from the repayment obli-
2 gation of the Central Arizona Water Conservation
3 District.

4 “(b) CLAIMS BY UNITED STATES.—The United
5 States shall—

6 “(1) make no claim against the Nation or any
7 allottee for reimbursement or repayment of any cost
8 associated with—

9 “(A) the construction of facilities under
10 the Colorado River Basin Project Act (43
11 U.S.C. 1501 et seq.);

12 “(B) the delivery of Central Arizona
13 Project water for any use authorized under this
14 title; or

15 “(C) the implementation of this title;

16 “(2) make no claim against the Nation for re-
17 imbursement or repayment of the costs associated
18 with the construction of facilities described in para-
19 graph (1)(A) for the benefit of and use on land
20 that—

21 “(A) is known as the ‘San Lucy Farm’;
22 and

23 “(B) was acquired by the Nation under the
24 Gila Bend Indian Reservation Lands Replace-
25 ment Act (100 Stat. 1798); and

1 “(3) impose no assessment with respect to the
2 costs referred to in paragraphs (1) and (2)
3 against—

4 “(A) trust or allotted land within the Na-
5 tion’s Reservation; or

6 “(B) the land described in paragraph (2).

7 **“SEC. 315. TRUST FUND.**

8 “(a) REAUTHORIZATION.—Congress reauthorizes the
9 trust fund established by section 309 of the 1982 Act, con-
10 taining an initial deposit of \$15,000,000 made under that
11 section, for use in carrying out this title.

12 “(b) EXPENDITURE AND INVESTMENT.—Subject to
13 the limitations of subsection (d), the principal and all ac-
14 crued interest and dividends in the trust fund established
15 under section 309 of the 1982 Act may be—

16 “(1) expended by the Nation for any govern-
17 mental purpose; and

18 “(2) invested by the Nation in accordance with
19 such polices as the Nation may adopt.

20 “(c) RESPONSIBILITY OF SECRETARY.—The Sec-
21 retary shall not—

22 “(A) be responsible for the review, ap-
23 proval, or audit of the use and expenditure of
24 any funds from the trust fund reauthorized by
25 subsection (a); or

1 “(B) be subject to liability for any claim or
2 cause of action arising from the use or expendi-
3 ture by the Nation of those funds.

4 “(d) CONDITIONS OF TRUST.—

5 “(1) RESERVE FOR THE COST OF SUBJUGA-
6 TION.—The Nation shall reserve in the trust fund
7 reauthorized by subsection (a)—

8 “(A) the principal amount of at least
9 \$3,000,000; and

10 “(B) interest on that amount that accrues
11 during the period beginning on the enforce-
12 ability date and ending on the earlier of—

13 “(i) the date on which full payment of
14 such costs has been made; or

15 “(ii) the date that is 10 years after
16 the enforceability date.

17 “(2) PAYMENT.—The costs described in para-
18 graph (1) shall be paid in the amount, on the terms,
19 and for the purposes prescribed in section
20 307(a)(1)(F).

21 “(3) LIMITATION ON RESTRICTIONS.—On the
22 occurrence of an event described in clause (i) or (ii)
23 of paragraph (1)(B)—

1 “(A) the restrictions imposed on funds
2 from the trust fund described in paragraph (1)
3 shall terminate; and

4 “(B) any of those funds remaining that
5 were reserved under paragraph (1) may be used
6 by the Nation under subsection (b)(1).

7 **“SEC. 316. MISCELLANEOUS PROVISIONS.**

8 “(a) IN GENERAL.—Nothing in this title—

9 “(1) establishes the applicability or inapplica-
10 bility to groundwater of any doctrine of Federal re-
11 served rights;

12 “(2) limits the ability of the Nation to enter
13 into any agreement with the Arizona Water Banking
14 Authority (or a successor agency) in accordance with
15 State law;

16 “(3) prohibits the Nation, any individual mem-
17 ber of the Nation, an allottee, or a fee owner of al-
18 lotted land in the San Xavier Reservation from law-
19 fully acquiring water rights for use in the Tucson
20 management area in addition to the water rights
21 granted or confirmed under this title and the
22 Tohono O’odham settlement agreement;

23 “(4) abrogates any rights or remedies existing
24 under section 1346 or 1491 of title 28, United
25 States Code;

1 “(5) affects the obligations of the parties under
2 the Agreement of December 11, 1980 with respect
3 to the 8,000 acre feet of Central Arizona Project
4 water contracted by the Nation for the Sif Oidak
5 District;

6 “(6)(A) applies to any exempt well;

7 “(B) prohibits or limits the drilling of any ex-
8 empt well within—

9 “(i) the San Xavier Reservation; or

10 “(ii) the eastern Schuk Toak District; or

11 “(C) subjects water from any exempt well to
12 any pumping limitation under this title; or

13 “(7) diminishes or abrogates rights to use water
14 under—

15 “(A) contracts of the Nation in existence
16 before the enforceability date; or

17 “(B) the well site agreement referred to in
18 the Asarco agreement and any well site agree-
19 ment entered into under the Asarco agreement.

20 “(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water
21 received under a lease or exchange of Central Arizona
22 Project water under this title does not affect any future
23 allocation or reallocation of Central Arizona Project water
24 by the Secretary.

1 **“SEC. 317. AUTHORIZED COSTS.**

2 “(a) IN GENERAL.—There are authorized to be ap-
3 propriated to the Secretary from the Lower Colorado
4 River Basin Development Fund—

5 “(1) to construct features of irrigation systems
6 described in paragraphs (1) through (4) of section
7 304(c) that are not authorized to be constructed
8 under any other provision of law, an amount equal
9 to the sum of—

10 “(A) \$3,500,000; and

11 “(B) such additional amount as the Sec-
12 retary determines to be necessary to adjust the
13 amount under subparagraph (A) to account for
14 ordinary fluctuations in the costs of construc-
15 tion of irrigation features for the period begin-
16 ning on October 12, 1982, and ending on the
17 date on which the construction of the features
18 described in this subparagraph is initiated, as
19 indicated by engineering cost indices applicable
20 to the type of construction involved;

21 “(2) \$18,300,000 in lieu of construction to im-
22 plement section 304(c)(3)(B);

23 “(3) \$891,200 to implement a water manage-
24 ment plan for the San Xavier Reservation under sec-
25 tion 308(d);

1 “(4) \$237,200 to implement a water manage-
2 ment plan for the eastern Schuk Toak District
3 under section 308(d);

4 “(5) \$4,000,000 to complete the water re-
5 sources study under section 311(d);

6 “(6) \$215,000 to develop and implement a
7 groundwater monitoring program for the San Xavier
8 Reservation under section 311(c)(1);

9 “(7) \$175,000 to develop and implement a
10 groundwater monitoring program for the eastern
11 Schuk Toak District under section 311(c)(2);

12 “(8) \$250,000 to complete the Asarco land ex-
13 change study under section 311(f); and

14 “(9) such additional sums as are necessary to
15 carry out the provisions of this title other than the
16 provisions referred to in paragraphs (1) through (8).

17 “(b) TREATMENT OF APPROPRIATED AMOUNTS.—
18 Amounts made available under subsection (a) shall be con-
19 sidered to be authorized costs for purposes of section
20 403(f)(2)(D)(iii) of the Colorado River Basin Project Act
21 (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section
22 107(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 2003 (as contained in the amendment made
6 by section 301) shall apply to this title.

7 (b) EFFECTIVE DATE.—This title and the amend-
8 ments made by this title take effect as of the date on
9 which the Secretary publishes in the Federal Register a
10 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
18 the Secretary;

19 (2) the Secretary and other parties to the
20 agreements described in section 309(h)(2) of the
21 Southern Arizona Water Rights Settlement Amend-
22 ments Act of 2003 (as contained in the amendment
23 made by section 301) have executed those agree-
24 ments;

25 (3) the Secretary has approved the interim al-
26 lottee water rights code described in section

1 308(b)(3)(A) of the Southern Arizona Water Rights
2 Settlement Amendments Act of 2003 (as contained
3 in the amendment made by section 301);

4 (4) final dismissal with prejudice has been en-
5 tered in each of the Adams case, the Alvarez case,
6 and the Tucson case on the sole condition that the
7 Secretary publishes the findings specified in this sec-
8 tion;

9 (5) the judgment and decree attached to the
10 Tohono O’odham settlement agreement as exhibit
11 17.1 has been approved by the State court having
12 jurisdiction over the Gila River adjudication pro-
13 ceedings, and that judgment and decree have become
14 final and nonappealable;

15 (6) implementation costs have been identified
16 and retained in the Lower Colorado River Basin De-
17 velopment Fund, specifically—

18 (A) \$18,300,000 in lieu of construction to
19 implement section 304(c)(3)(A)(ii);

20 (B) \$891,200 to implement a water man-
21 agement plan for the San Xavier Reservation
22 under section 308(d) of the Southern Arizona
23 Water Rights Settlement Amendments Act of
24 2003 (as contained in the amendment made by
25 section 301);

1 (C) \$237,200 to implement a water man-
2 agement plan for the eastern Schuk Toak Dis-
3 trict under section 308(d) of the Southern Ari-
4 zona Water Rights Settlement Amendments Act
5 of 2003 (as contained in the amendment made
6 by section 301);

7 (D) \$4,000,000 to complete the water re-
8 sources study under section 311(d) of the
9 Southern Arizona Water Rights Settlement
10 Amendments Act of 2003 (as contained in the
11 amendment made by section 301);

12 (E) \$215,000 to develop and implement a
13 groundwater monitoring program for the San
14 Xavier Reservation under section 311(c)(1) of
15 the Southern Arizona Water Rights Settlement
16 Amendments Act of 2003 (as contained in the
17 amendment made by section 301);

18 (F) \$175,000 to develop and implement a
19 groundwater monitoring program for the east-
20 ern Schuk Toak District under section
21 311(c)(2) of the Southern Arizona Water
22 Rights Settlement Amendments Act of 2003 (as
23 contained in the amendment made by section
24 301); and

1 (G) \$250,000 to complete the Asarco land
2 exchange study under section 311(f) of the
3 Southern Arizona Water Rights Settlement
4 Amendments Act of 2003 (as contained in the
5 amendment made by section 301);

6 (7) the State has enacted legislation that—

7 (A) qualifies the Nation to earn long-term
8 storage credits under the Asarco agreement;

9 (B) implements the San Xavier ground-
10 water protection program in accordance with
11 paragraph 8.8 of the Tohono O’odham settle-
12 ment agreement;

13 (C) enables the State to carry out section
14 306(b); and

15 (D) confirms the jurisdiction of the State
16 court having jurisdiction over Gila River adju-
17 dication proceedings and decrees to carry out
18 the provisions of sections 312(d) and 312(h) of
19 the Southern Arizona Water Rights Settlement
20 Amendments Act of 2003 (as contained in the
21 amendment made by section 301);

22 (8) the Secretary and the State have agreed to
23 an acceptable firming schedule referred to in section
24 105(b)(2)(C); and

1 (9) a final judgment has been entered in Cen-
2 tral Arizona Water Conservation District v. United
3 States (No. CIV 95–625–TUC–WDB(EHC), No.
4 CIV 95–1720–PHX–EHC) (Consolidated Action) in
5 accordance with the repayment stipulation as pro-
6 vided in section 207.

7 (c) FAILURE TO PUBLISH STATEMENT OF FIND-
8 INGS.—If the Secretary does not publish a statement of
9 findings under subsection (a) by December 31, 2007—

10 (1) the 1982 Act shall remain in full force and
11 effect;

12 (2) this title shall not take effect; and

13 (3) any funds made available by the State
14 under this title that are not expended, together with
15 any interest on those funds, shall immediately revert
16 to the State.

17 **TITLE IV—SAN CARLOS APACHE**
18 **TRIBE WATER RIGHTS SET-**
19 **TLEMENT**