Public Law 98-530
98th Congress

An Act

Oct. 19, 1984
[H.R. 6206]

Relating to the water rights of the Ak-Chin Indian Community.

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

SECTION 1. The Congress hereby finds and declares that—

(1) the Department of the Interior and the Ak-Chin Indian Community executed on September 23, 1983, an agreement entitled "Agreement in Principle for Revised Ak-Chin Water Settlement", wherein the parties agreed to revisions of the Act of July 28, 1978 (Public Law 95-328; 92 Stat. 409);

(2) the main purpose of the Agreement in Principle is to accomplish a prompt and economical fulfillment of the intent of that Act;

92 Stat. 411.

(3) section 3 of that Act requires that the Secretary of the Interior (hereinafter referred to as the "Secretary") as soon as possible but not later than twenty-five years after the date of the enactment of that Act, deliver to the Ak-Chin Indian Reservation a permanent supply of water to fulfill the Ak-Chin Indian Community's entitlement to eighty-five thousand acre-feet of water;

92 Stat. 409.

(4) section 2 of that Act requires that the Secretary deliver an interim supply of water until the permanent supply is acquired and delivered to the Reservation;

(5) the Secretary proposed to the Community, subject to the approval of Congress, to deliver the permanent supply not later than January 1, 1988, except that the Community, as a consideration, agree to certain modifications in the quantities of water to be delivered as the permanent supply and to release him from his obligation to deliver an interim supply;

(6) in order to establish January 1, 1988, as the date certain for the delivery of a permanent supply, the Community agreed to—

(A) the reduced deliveries of the permanent supply under certain conditions;

(B) the Secretary's proposals regarding the interim supply; and

(C) certain other proposals of the Secretary;

and executed the Agreement in Principle; and

(7) the provisions contained in this Act conform to the purposes of that Agreement and the consideration embodied in it.

Central Arizona Project.

SEC. 2. (a) As soon as possible but not later than January 1, 1988, the Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of not less than seventy-five thousand acre-feet of surface water suitable for agricultural use except as otherwise provided under subsections (b) and (c).

(b) In any year in which sufficient surface water is available, the Secretary shall deliver such additional quantity of water as is

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

requested by the Community not to exceed ten thousand acre-feet. The Secretary shall be required to carry out the obligation referred to in this subsection only if he determines that there is sufficient capacity available in the main project works of the Central Arizona Project to deliver such additional quantity.

(c) In time of shortage, if the aggregate supply of water referred to in subsection (f) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet. For the purposes of this Act, the term "time of shortage" means a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred nine thousand eight hundred and twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses. 43 USC 1501.

(d) The Secretary shall be deemed to have satisfied his obligation to deliver water under this section only if such water is delivered at flow rates which meet the seasonal requirements for agricultural use on the Reservation. Such rates shall not exceed three hundred cubic feet per second.

(e) To meet the obligations of the Secretary to deliver water under this Act, the Secretary shall design, construct, operate, maintain, and replace, at no cost to the Community, such facilities, including any aqueduct and appurtenant pumping facilities, powerplants and electric power transmission facilities, which may be necessary.

(f) The water supply referred to in subsections (a) and (c) shall consist of the aggregate of the following—

(1) First, a permanent supply of no more or less than fifty thousand acre-feet of surface water per annum to be diverted from the Colorado River of the three hundred thousand acre-feet of water heretofore authorized by the Act of July 30, 1947 (61 Stat. 628), for beneficial consumptive use on lands of the Yuma Mesa Division of the Gila Project. Water referred to in this paragraph and in subsection (g)(1) shall have equal priority. Furthermore, these provisions shall not affect the relative priorities among themselves of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project as fully set out in section 301(b) of Public Law 90-537. 43 USC 1501.

(2) Such Central Arizona Project water allocated to the Community and referred to in the "Notice of Final Water Allocations to Indians and non-Indian Water Users and Related Decisions" (48 Fed. Reg. 12446, March 24, 1983) as is necessary to fulfill the Secretary's water delivery obligations. Delivery of such Central Arizona Project water shall be as provided in the December 11, 1980, Central Arizona Project water delivery contract between the United States and the Ak-Chin Indian Community, except as otherwise provided by this Act and any contract executed pursuant to this Act.

Notwithstanding any other provision of this Act, nothing in paragraph (1) of this subsection shall enlarge or diminish the authority of the Secretary under existing law. Nothing in section 4 or any other provision of this Act shall reduce the Secretary's obligation to deliver to the Ak-Chin Reservation a permanent supply of fifty

thousand acre-feet of surface water per annum as well as the water referred to in paragraph (2) of this subsection.

Gila Project.

(g)(1) The limitation in the first section of the Act of July 30, 1947 (61 Stat. 628) on the annual beneficial consumptive use in the Yuma Mesa Division of the Gila Project of no more than three hundred thousand acre-feet of Colorado River water shall be deemed to be a limitation of no more than two hundred and fifty thousand acre-feet, effective as provided in section 4 of this Act.

(2) Such two hundred and fifty thousand acre-feet of water shall not be used to irrigate more than thirty-seven thousand one hundred and eighty-seven acres of land in the Yuma Mesa Division, specifically: six thousand five hundred and eighty-seven acres in the North Gila Valley Irrigation District; ten thousand six hundred acres in the Yuma Irrigation District; and twenty thousand acres in the Yuma Mesa Irrigation and Drainage District. Additional land in the Yuma Mesa Irrigation and Drainage District may be irrigated if there is a corresponding reduction in the irrigated acreage in the other districts so that at no time are more than thirty-seven thousand one hundred and eighty-seven acres being irrigated in the Yuma Mesa Division.

(3) Pursuant to appropriations, the Secretary shall pay—

(A) $5,400,000 to the Yuma Mesa Irrigation and Drainage District for the purpose of replacement, rehabilitation, and repair of the water delivery system within the Yuma Mesa Irrigation and Drainage District, including water pumping facilities; and

(B) $2,000,000 to the Yuma Mesa Irrigation and Drainage District, $1,000,000 to the Yuma Irrigation District, and $1,000,000 to the North Gila Valley Irrigation District, for the purpose of on-farm and district water conservation and drainage measures.

Such funds shall not be used as non-Federal contributions in connection with any other Federal programs requiring cost-sharing. None of the payments to be made by the Secretary to said districts under this subsection shall be treated as supplemental or additional benefits or reimbursable to the United States.

Contracts with U.S.

(4) The Secretary is authorized and directed to amend the repayment contracts, as amended, between the United States and said districts to conform to the provisions of this Act and to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged. The Secretary is authorized at the request of the districts or any one of them to issue a certificate acknowledging that the lands in the requesting district are free of the ownership and full cost pricing provisions of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of Yuma County, Arizona. Amendments to the districts' contracts relating to items other than those covered by this Act shall not be made without the consent of the irrigation districts.

(5) The Secretary shall be required to carry out his obligations in paragraphs (3) and (4) only if the Yuma Mesa Irrigation and Drainage District, the North Gila Valley Irrigation District, and the Yuma Irrigation District execute amendatory contracts necessary to carry out the provisions of this subsection, including specifically a waiver and release of any and all claims to the annual beneficial consumptive use of Colorado River water in excess of two hundred

fifty thousand acre-feet as provided in paragraph (1) of this subsection.

(h)(1) If the facilities required to deliver water to the Ak-Chin Reservation as provided in this section are not completed by January 1, 1988, the Secretary shall pay damages measured by the replacement cost of water not delivered in that calendar year up to a limit of thirty-five thousand acre-feet. In addition and to mitigate the effects occasioned by the failure to deliver said water, the Secretary shall pay all operation, maintenance and replacement costs of on-reservation wells to produce up to forty thousand acre-feet of water in that year for use by the Community.

(2) Commencing January 1, 1989, the Secretary shall pay damages measured by the replacement cost of water not delivered under subsection (a) or (c) as appropriate, up to a limit of seventy-five thousand or seventy-two thousand acre-feet of water, irrespective of whether the facilities to deliver water to the Ak-Chin Reservation have been completed.

(i) In any year in which the Ak-Chin Indian Community requests additional water under subsection (b) and such water and associated canal capacity are available, if the Secretary fails to deliver that quantity of additional water, in addition to any damages which he is required to pay under subsection (h), he shall pay damages in an amount measured by the agricultural water service operation, maintenance, and replacement costs for the Central Arizona Project in effect during that year, plus 20 per centum, of such additional quantity of water as is not delivered.

(j) The Ak-Chin Indian Community shall have the right to devote the permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal, industrial, commercial, mining or recreational use.

(k) The water referred to in subsection (f)(1) shall be for the exclusive use and benefit of the Ak-Chin Indian Community, except that whenever the aggregate water supply referred to in subsection (f) exceeds the quantity necessary to meet the obligations of the Secretary under this Act, the Secretary shall allocate on an interim basis to the Central Arizona Project any of the water referred to in subsection (f) which is not required for delivery to the Ak-Chin Indian Reservation under this Act.

SEC. 3. (a) The obligation of the Secretary to acquire and deliver to the Community an interim water supply from 1984 through 1987 under section 2 of the Act of July 28, 1978 (Public Law 95-328) shall be deemed to be fully discharged once— 92 Stat. 409.

(1) within sixty days of enactment of appropriations, the Secretary pays to the Community $1,400,000 in a lump sum grant for economic development in fiscal year 1986;

(2) the Secretary of the Treasury, within thirty days after the date of enactment of this Act, has paid to the Community $15,000,000 for general community purposes as provided in Public Law 98-396; *Ante*, p. 1369.

(3) within sixty days after the date of enactment of this Act the Secretary has provided to the Community grants for economic development purposes of $2,000,000 from funds provided in Public Law 98-396 for the permanent water supply; and

(4) the Secretary has amended those repayment contracts between the United States and the Community to provide that all repayment obligations owing to the United States are discharged.

The Secretary is hereby authorized and directed to take such actions needed to amend the contracts referred to in paragraph (4).

(b) To carry out the purposes of this section the Ak-Chin Indian Community shall have the complete discretion to use and expend the funds referred to in this section.

SEC. 4. The provisions of sections 2 (f)(1) and (g) of this Act shall not take effect until—

(1) the amendatory contracts authorized by section 2(g) of this Act have been duly ratified and approved by each of the districts and executed by the United States; and

(2) the funds authorized to be paid to the districts by section 2(g)(3) of this Act have been appropriated and transferred to the districts.

92 Stat. 411.

SEC. 5. (a) The obligations of the Secretary under section 3 of the Act of July 28, 1978 (92 Stat. 409; Public Law 95-328), shall terminate upon the enactment of this Act. If the Secretary fails to acquire the water supply referred to in section 2(f)(1) of this Act by January 1, 1988, the Secretary shall be obligated—

(1) to deliver annually to the southeast corner of the Ak-Chin Indian Reservation eighty-five thousand acre-feet of water suitable for irrigation beginning January 1, 1988; and

(2) to provide as soon as possible, but not later than January 1, 2003, for the permanent delivery of such water.

(b) Failure to deliver water as specified in this section shall render the United States liable for damages measured by the replacement cost of water not delivered.

Management plan.

SEC. 6. The Secretary shall establish a water management plan for the Ak-Chin Indian Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

Appropriation authorization.

SEC. 7. (a) There is hereby authorized to be appropriated the sum of $1,000,000 for payment to the fund referred to in subsection (b). Subject to appropriations, the Secretary shall pay a sum of $1,000,000 to such fund.

(b) No portion of the sum referred to in subsection (a) shall be paid unless—

(1) the Central Arizona Water Conservation District establishes a fund to be administered by the District for voluntary acquisition or conservation of water from sources within the State of Arizona for use in central Arizona in years when water supplies are reduced; and

(2) the Central Arizona Water Conservation District has contributed the sum of not less than $1,000,000 to such fund: *Provided,* That if the contribution of not less than $1,000,000 by the District to such fund has not been fully paid as provided in this section within two years of the date of enactment of this Act, the authorization for appropriation and payment of the sum referred to in subsection (a) shall terminate.

Severability.

(c) If the provisions of this section are for any reason not implemented as herein provided, the other sections of this Act shall remain unaffected thereby.

SEC. 8. Nothing in this Act shall be construed to enlarge or diminish the authority of the Secretary with regard to the Colorado River.

SEC. 9. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provi-

sion of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

SEC. 10. (a) Section 311 of the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1283) is amended to read as follows:

"SEC. 311. The provisions of section 2415 of title 28, United States Code, shall apply to any action relating to water rights of the Papago Indian Tribe or of any member of such Tribe which is brought—

"(1) by the United States for, or on behalf of, such Tribe or member of such Tribe, or

"(2) by such Tribe.".

(b) The amendment made by this section shall not apply with respect to any action filed prior to the date of enactment of this Act.

Approved October 19, 1984.

LEGISLATIVE HISTORY—H.R. 6206:

HOUSE REPORT No. 98-1026 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Sept. 17, considered and passed House.
Sept. 25, considered and passed Senate, amended.
Oct. 2, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):
Oct 19, Presidential statement.