

106TH CONGRESS
1ST SESSION

H. R. 1944

To approve a mutual settlement of the Water Rights of the Gila River Indian Community and the United States, on behalf of the Community and the Allottees, and Phelps Dodge Corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1999

Mr. SHADEGG introduced the following bill; which was referred to the Committee on Resources

A BILL

To approve a mutual settlement of the Water Rights of the Gila River Indian Community and the United States, on behalf of the Community and the Allottees, and Phelps Dodge Corporation, 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.**

4 This title may be cited as the “Gila River Indian
5 Community—Phelps Dodge Corporation Water Rights
6 Settlement Act of 1999” and is herein referred to as “this
7 Act”.

1 **SEC. 2. CONSTITUTIONAL AUTHORITY.**

2 The Constitutional authority upon which this Act
3 rests is the power of Congress to regulate commerce with
4 foreign nations and among the Several States and with
5 the Indian tribes, as set forth in section 8 of Article I
6 of the United States Constitution.

7 **SEC. 3. PURPOSE.**

8 It is the purpose of this Act—

9 (1) to ratify, approve and confirm the Settle-
10 ment Agreement among the Gila River Indian Com-
11 munity, Phelps Dodge Corporation, and the United
12 States of America;

13 (2) to authorize and direct the Secretary of the
14 interior to execute and perform his duties under the
15 Settlement Agreement and this Act; and

16 (3) to authorize and direct the Secretary to per-
17 form certain actions which will assist in achieving a
18 settlement of the water rights claims of certain In-
19 dian tribes in the Little Colorado River Basin in Ari-
20 zona.

21 **SEC. 4. DEFINITIONS.**

22 As used in this Act, the following terms have the fol-
23 lowing meaning:

24 (1) “Allottees” shall mean the owners of bene-
25 ficial interests in allotted land within the Gila River
26 Indian Reservation.

1 (2) “Blue Ridge Reservoir” means that Res-
2 ervoir in Navajo County, Arizona, owned by Phelps
3 Dodge, as more fully described in the Settlement
4 Agreement.

5 (3) “CAP” shall mean the Central Arizona
6 Project, a reclamation project constructed by the
7 United States pursuant to the Colorado River Basin
8 Project Act of September 30, 1968, 82 Stat. 885, as
9 amended.

10 (4) “CAWCD” shall mean the Central Arizona
11 Water Conservation District, a political subdivision
12 of the State of Arizona, which has executed a con-
13 tract to repay to the United States the reimbursable
14 costs of the CAP.

15 (5) “Community” shall mean the Gila River In-
16 dian Community, an Indian community organized
17 under section 16 of the Indian Reorganization Act
18 of June 18, 1934, 48 Stat. 987, duly recognized by
19 the Secretary, and its members.

20 (6) “Community’s CAP Contract” shall mean
21 that contract between the Gila River Indian Commu-
22 nity and the United States, dated October 22, 1992,
23 providing for the delivery to the Gila River Indian
24 Community of up to 173,100 acre-feet per annum of
25 CAP water.

1 (7) “Globe Equity No. 59” shall mean the de-
2 cree entered June 29, 1935, in that action styled as
3 The United States of America v. Gila Valley Irriga-
4 tion District, et al., Globe Equity No. 59 in the Dis-
5 trict Court of the United States in and for the Dis-
6 trict of Arizona, as amended and supplemented.

7 (8) “Hopi tribe” shall mean the federally recog-
8 nized Indian tribe of that name.

9 (9) “Navajo Nation” shall mean the federally
10 recognized Indian tribe of that name.

11 (10) “Phelps Dodge” shall mean Phelps Dodge
12 Corporation, a New York corporation, its subsidi-
13 aries, affiliates, predecessors, successors and assigns.

14 (11) “Pueblo of Zuni” shall mean the federally
15 recognized Indian tribe of that name.

16 (12) “Reservation” shall mean the Gila River
17 Indian Reservation, as it existed on the Initial Effec-
18 tive Date of the Settlement Agreement, as shown on
19 the map attached to the Settlement Agreement as
20 exhibit “B” thereto.

21 (13) “San Juan Southern Paiute Tribe” shall
22 mean the federally recognized Indian tribe of that
23 name.

24 (14) “Secretary” shall mean the Secretary of
25 the Interior or his lawful designee.

1 (15) “Settlement Agreement” shall mean that
2 agreement dated as of May 4, 1998, among Phelps
3 Dodge, the Community and the United States.

4 (16) “SRP” shall mean the Salt River Project
5 Agricultural Improvement and Power District, a po-
6 litical subdivision of the State of Arizona, and the
7 Salt River Valley Water Users’ Association, an Ari-
8 zona corporation.

9 (17) “United States” shall mean the United
10 States of America, in its capacity as trustee for the
11 Community and of the Reservation; as trustee for
12 the Allottees and of allotted lands on the Reserva-
13 tion; and, with respect to section 5.2 of the Settle-
14 ment Agreement, in all other capacities required in
15 order to execute the agreements and other instru-
16 ments and to take the actions referred to in section
17 5.2 of the Settlement Agreement, including acting
18 for the part of Defense Plant Corporation.

19 **SEC. 5. APPROVAL OF SETTLEMENT AGREEMENT.**

20 The Settlement Agreement is ratified, approved and
21 confirmed. The Secretary shall execute the Settlement
22 Agreement within sixty days of the enactment of this Act
23 and shall perform all of the Secretary’s duties thereunder
24 as provided herein and in the Settlement Agreement.

1 **SEC. 6. TRANSFER OF RESERVOIRS.**

2 The Secretary shall take all actions specified in sec-
3 tion 5.0 of the Settlement Agreement necessary on the
4 Secretary's part to obtain title to Blue Ridge Reservoir
5 from Phelps Dodge. The title to Blue Ridge Reservoir,
6 once acquired by the Secretary, shall be held by the Sec-
7 retary in trust for the benefit of the Navajo Nation. In
8 connection with the Secretary's performance of his obliga-
9 tions under section 5.0 of the Settlement Agreement, the
10 Navajo Nation, the Hopi Tribe, the San Juan Southern
11 Paiute Tribe, the Pueblo of Zuni, and the United States,
12 on behalf of each of them, are authorized to execute waiv-
13 ers of claims against Phelps Dodge and agreements not
14 to object to certain uses of water by Phelps Dodge in sub-
15 stantially the form of exhibits "E" and "J" to the Settle-
16 ment Agreement, which waivers and agreements are here-
17 by ratified, approved and confirmed. The Navajo Nation,
18 and the United States on behalf of the Navajo Nation,
19 is further authorized to enter into an agreement with the
20 Arizona Game & Fish Department confirming a minimum
21 pool of water in Blue Ridge Reservoir and for other pur-
22 poses in substantially the form of exhibits "G" and "I"
23 to the Settlement Agreement, which agreements are here-
24 by ratified, approved and confirmed.

1 **SEC. 7. REALLOCATION OF CAP WATER.**

2 Simultaneously with the transfer of Blue Ridge Res-
3 ervoir to the United States as provided for in section 6
4 of this Act, the Secretary shall: (i) reallocate to the Com-
5 munity 12,000 acre-feet of the CAP water available to the
6 Secretary pursuant to section 406(b) of title IV of Public
7 Law 101-628, 104 Stat. 4483; (ii) amend the Commu-
8 nity's CAP Contract to include the CAP water reallocated
9 to the Community pursuant to this section; and, (iii)
10 amend the Community's CAP Contract to extend the term
11 thereof to 100 years, plus such additional term as may
12 result from the exercise of the option provided for in, or
13 other extension of, the Lease referred to in section 8 of
14 this Act.

15 (1) All water service capital charges and other
16 capital charges of any nature associated with the
17 CAP water reallocated to the Community pursuant
18 to this Act shall be non-reimbursable to the United
19 States by the Community.

20 (2) All water service capital charges and other
21 capital charges of any nature associated with 10,000
22 acre-feet of that CAP water currently available to
23 the Community under the Community's CAP Con-
24 tract which shares a priority with 510,000 acre-feet
25 of non-Indian municipal and industrial CAP water

1 shall be non-reimbursable to the United States by
2 the Community.

3 (3) For purposes of determining the allocation
4 and repayment of costs of the CAP as provided in
5 article 9.3 of Contract Number 14–0906–09W–
6 09245, amendment No. 1, between the United
7 States and CAWCD dated December 1, 1988, and
8 any amendment or revision thereof, all of the water
9 service capital charges and other capital charges of
10 any nature associated with the water described in
11 subsections 7(a) and 7(b) of this Act shall be non-
12 reimbursable and shall be excluded from CAWCD’s
13 repayment obligation.

14 (4) The United States shall either—

15 (A) not charge operation, maintenance,
16 and replacement (OM&R) charges to the Com-
17 munity on the first 8,000 acre-feet of CAP
18 water made available to the Community pursu-
19 ant to this Act, and shall itself pay any such
20 charges as are associated with such 8,000 acre-
21 feet of CAP water; or

22 (B) charge the Community only that por-
23 tion of the OM&R charges associated with elec-
24 trical energy pumping for the entire 12,000
25 acre-feet of CAP water made available to the

1 Community pursuant to this Act, and shall
2 itself pay other OM&R charges associated with
3 such 12,000 acre-feet of CAP water.

4 (5) In the event the CAP water made available
5 to the Community pursuant to this Act is leased to
6 Phelps Dodge as provided for in section 8 of this
7 Act, the charges by the United States to Phelps
8 Dodge for such water when delivered under the
9 Lease shall be as provided in subsections (d)(1) or
10 (d)(2) of this section 6.

11 (6) In the event the exchange provided for in
12 section 8 of this Act is not approved, the Secretary
13 shall reallocate to Phelps Dodge 8,000 acre-feet of
14 the CAP water referred to in subsection 6(b) hereof,
15 shall amend the Community's CAP contract to re-
16 flect such reallocation, and shall enter into a con-
17 tract with Phelps Dodge for permanent service for
18 the delivery of such water to Phelps Dodge through
19 the works of the CAP. The CAP water shall be free
20 of all capital charges as provided in subsections 7(b)
21 and 7(c) of this Act. The United States shall charge
22 Phelps Dodge OM&R charges for such water only as
23 provided in either subsections 7(d)(1) or 7(d)(2)
24 hereof and shall itself pay such portions of the
25 OM&R charges as are not paid by Phelps Dodge.

1 (7) The provisions of section 226 of Public Law
2 97–293 (96 Stat. 1273, 43 U.S.C. 485h(f)) shall not
3 apply to actions taken by the Secretary pursuant to
4 sections 7, 8, or 9 of this Act.

5 **SEC. 8. CAP WATER LEASE.**

6 The Lease referred to in section 7.0 of the Settlement
7 Agreement and attached thereto as exhibit “M” is hereby
8 ratified, approved and confirmed. Notwithstanding the
9 preceding sentence, the Lease shall not be effective as to
10 the United States, and the Secretary shall not execute the
11 Lease, until all environmental compliance associated with
12 the Secretary’s execution of the Lease has been completed
13 and the exchange referred to in section 9 of this Act has
14 been approved as provided in that section. In the event
15 the Lease becomes effective, the Secretary and the Com-
16 munity may renew or extend the Lease at the end of the
17 initial term, or any extended term of the Lease provided
18 for in the initial Lease, upon such terms as the Commu-
19 nity, the Secretary and Phelps Dodge may agree, provided
20 that any such renewal or extension shall not exceed 100
21 years in term. Subject to the completion of environmental
22 compliance, CAP water made available pursuant to the
23 Lease may be used in the manner and at the locations
24 provided for therein, including exchange for use in any
25 county in Arizona outside the CAWCD service area.

1 **SEC. 9. EXCHANGE AGREEMENT.**

2 The Secretary and the Community are authorized to
3 enter into an exchange agreement with Phelps Dodge pur-
4 suant to which the CAP water leased to Phelps Dodge by
5 the Community under the Lease authorized under section
6 8 of this Act is delivered by Phelps Dodge to the Commu-
7 nity in return for the right to divert water from the Gila
8 River upstream of the Reservation. The term of any such
9 exchange agreement, if approved as required by this sec-
10 tion, shall be for 100 years, plus any additional term occa-
11 sioned by the exercise of the option contained in the Lease
12 or other extension authorized in the Lease or this Act.
13 The Secretary shall commence negotiations with respect
14 to the exchange agreement forthwith upon the enactment
15 of this Act and shall process all environmental compliance
16 associated with the exchange agreement and the Lease in
17 an expeditious manner. The Secretary shall not execute
18 the exchange agreement until all such environmental com-
19 pliance has been finally concluded as provided in the Set-
20 tlement Agreement and any necessary order approving the
21 exchange, or any aspect of the exchange, has been ob-
22 tained from the United States District Court in Globe Eq-
23 uity No. 59 and the order is final and subject to no further
24 appeal.

1 **SEC. 10. APPROVAL OF WAIVERS.**

2 The waivers set forth in section 9.0 of the Settlement
3 Agreement shall be effective, and shall be binding upon,
4 the Community, and the United States, on behalf of the
5 Community and the Allottees, from and after the date ei-
6 ther of the conditions set forth in section 4(c) of the Set-
7 tlement Agreement occurs. The United States is author-
8 ized and directed to execute the Settlement Agreement on
9 behalf of the Allottees in its capacity as trustee for the
10 Allottees and of allotted lands on the Reservation, and the
11 Settlement Agreement shall be binding upon the Allottees.

12 **SEC. 11. MISCELLANEOUS.**

13 (a) Execution of the Settlement Agreement by the
14 Secretary as required by this Act, and the Secretary's per-
15 formance of the actions necessary to acquire title to Blue
16 Ridge Reservoir for the benefit of the Navajo Nation pur-
17 suant to section 5.0 of the Settlement Agreement shall not
18 constitute major Federal actions under the National Envi-
19 ronmental Policy Act (42 U.S.C. 4321 et seq.). The Sec-
20 retary shall carry out all environmental compliance re-
21 quired by sections 8 and 9 of this Act. Nothing in this
22 Act shall be construed as exempting the United States
23 from carrying out environmental compliance associated
24 with the use of water from Blue Ridge Reservoir by the
25 United States for the benefit of the Navajo Nation in the
26 Little Colorado River Basin in Arizona.

1 (b) The Navajo Nation, and the United States on be-
2 half of the Navajo Nation, are authorized to enter into
3 an agreement with the Town of Payson, Arizona, and the
4 unincorporated communities of Pine and Strawberry, Ari-
5 zona (“the Towns”) or any one of them, to subordinate
6 water rights held in Blue Ridge Reservoir by the United
7 States for the benefit of the Navajo Nation to rights to
8 the use of not to exceed a cumulative total of 3,000 acre-
9 feet per annum of water in Blue Ridge Reservoir acquired
10 by the Towns pursuant to the law of the State of Arizona.

11 (c) The Navajo Nation, and the United States on be-
12 half of the Navajo Nation, are authorized to enter into
13 an agreement with Phelps Dodge to subordinate water
14 rights held in Blue Ridge Reservoir by the United States
15 on behalf of the Navajo Nation to water rights acquired
16 by Phelps Dodge in Blue Ridge Reservoir subsequent to
17 the date of the enactment of this Act pursuant to the law
18 of the State of Arizona for use on land owned by Phelps
19 Dodge around Blue Ridge Reservoir identified in the Set-
20 tlement Agreement. The term of any such agreement and
21 the consideration to be paid therefor shall be as agreed
22 to among the Navajo Nation and Phelps Dodge.

23 (d) With regard to the environmental compliance re-
24 quired for the actions contemplated in sections 8 and 9
25 of this Act, the Bureau of Reclamation shall be designated

1 as the lead agency, and shall coordinate and cooperate
2 with the other affected Federal agencies as required under
3 applicable Federal environmental laws.

4 (e) The Secretary and the Community are authorized
5 to execute any amendments of the Settlement Agreement
6 and to perform any action required by any amendments
7 to the Settlement Agreement which may be mutually
8 agreed upon by the parties.

9 (f) Except for the waivers authorized by section 6 of
10 this Act, nothing in this Act or the Settlement Agreement
11 shall be construed to quantify or otherwise affect the
12 water rights, claims or entitlement to water of any Arizona
13 tribe, band or community or of any claimant in the Gila
14 River Adjudication, other than the Community, the United
15 States on behalf of the Community and the Allottees, and
16 Phelps Dodge.

17 (g) Any party to the Settlement Agreement, and to
18 the Lease and the exchange agreement referred to in sec-
19 tions 8 and 9 of this Act, respectively, if the same are
20 approved, may bring an action or actions exclusively in
21 the United States District Court for the District of Ari-
22 zona for the interpretation and enforcement of this Act,
23 the Settlement Agreement, the Lease and the exchange
24 agreement, naming the United States and the Community
25 as parties, and in any such action or actions, any claim

1 by the United States or the Community to sovereign im-
2 munity from suit is hereby waived.

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