

107TH CONGRESS
2D SESSION

H. R. 5443

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2002

Mr. HAYWORTH (for himself, Mr. KOLBE, Mr. PASTOR, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on 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.

1 **SEC. 2. DEFINITIONS.**

2 In titles I and II:

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

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

7 (A) is located—

8 (i) within the State; but

1 (ii) outside the exterior boundaries of
2 the Reservation; and

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

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

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

13 (A) located within the Reservation; and

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

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

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

24 (7) CAP CONTRACTOR.—The term “CAP con-
25 tractor” means a person or entity that has entered

1 into a long-term contract (as that term is used in
2 the repayment stipulation) with the United States
3 for delivery of water through the CAP system.

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

9 (9) CAP REPAYMENT CONTRACT.—

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

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

20 (10) CAP SUBCONTRACTOR.—The term “CAP
21 subcontractor” means a person or entity that has
22 entered into a long-term subcontract (as that term
23 is used in the repayment stipulation) with the
24 United States and the Central Arizona Water Con-

1 servation District for the delivery of water through
2 the CAP system.

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

5 (A) the Mark Wilmer Pumping Plant;

6 (B) the Hayden-Rhodes Aqueduct;

7 (C) the Fannin-McFarland Aqueduct;

8 (D) the Tucson Aqueduct;

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

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

16 (12) 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. 1501 et seq.).

21 (13) CENTRAL ARIZONA WATER CONSERVATION
22 DISTRICT.—The term “Central Arizona Water Con-
23 servation District” means the political subdivision of
24 the State that is the contractor under the CAP re-
25 payment contract.

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

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

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

13 (17) COMMUNITY REPAYMENT CONTRACT.—

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

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

23 (18) COMMUNITY WATER DELIVERY CON-
24 TRACT.—

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

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

9 (19) CRR ON-RESERVATION WORKS.—

10 (A) IN GENERAL.—The term “CRR on-
 11 Reservation works” means the portions of the
 12 San Carlos Irrigation Project located on the
 13 Reservation.

14 (B) INCLUSION.—The term “CRR on-Res-
 15 ervation works” includes the portion of the San
 16 Carlos Irrigation Project known as the “South-
 17 side Canal”, from the point at which the South-
 18 side Canal connects with the Pima Canal to the
 19 boundary of the Reservation.

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

22 (A) the Director of the Arizona Depart-
 23 ment of Water Resources; or

24 (B) with respect to an action to be carried
 25 out under this title, a State official or agency

1 designated by the Governor or the State legisla-
2 ture.

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

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

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

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

22 (25) GILA RIVER AGREEMENT.—

23 (A) IN GENERAL.—The term “Gila River
24 agreement” means the agreement entitled the

1 “Gila River Indian Community Water Rights
2 Settlement Agreement”, dated July 1, 2002.

3 (B) INCLUSIONS.—The term “Gila River
4 agreement” includes—

5 (i) all exhibits to that agreement; and

6 (ii) any amendment to that agreement
7 or to an exhibit to that agreement made or
8 added pursuant to that agreement.

9 (26) GLOBE EQUITY DECREE.—

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

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

19 (27) HAGGARD DECREE.—

20 (A) IN GENERAL.—The term “Haggard
21 Decree” means the decree dated June 11, 1903,
22 entered in United States of America, as guard-
23 ian of Chief Charley Juan Saul and Cyrus Sam,
24 Maricopa Indians and 400 other Maricopa Indi-
25 ans similarly situated v. Haggard, et al., Cause

1 No. 19, in the District Court for the Third Ju-
2 dicial District of the Territory of Arizona, in
3 and for the County of Maricopa.

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

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

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

14 (30) INJURY TO WATER RIGHTS.—

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

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

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

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

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

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

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

21 (35) REPAYMENT STIPULATION.—

22 (A) IN GENERAL.—The term “repayment
23 stipulation” means the Stipulation Regarding a
24 Stay of Litigation, Resolution of Issues During
25 the Stay, and for Ultimate Judgment Upon the

1 Satisfaction of Conditions, filed with the United
2 States District Court for the District of Arizona
3 on May 3, 2000, in Central Arizona Water Con-
4 servation District v. United States, et al., No.
5 CIV 95–625–TUC–WDB(EHC), No. CIV 95–
6 1720–PHX–EHC (Consolidated Action).

7 (B) INCLUSIONS.—The term “repayment
8 stipulation” includes any amendment to or revi-
9 sion of the stipulation described in subpara-
10 graph (A).

11 (36) RESERVATION.—

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

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

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

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

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

18 (40) SALT RIVER PROJECT.—The term “Salt
19 River Project” means the Salt River Project Agricul-
20 tural Improvement and Power District, a political
21 subdivision of the State, and the Salt River Valley
22 Water Users’ Association, an Arizona Territorial
23 corporation.

24 (41) SAN CARLOS APACHE TRIBE.—The term
25 “San Carlos Apache Tribe” means the San Carlos

1 Apache Tribe, a tribe of Apache Indians organized
2 under Section 16 of the Indian Reorganization Act
3 of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

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

10 (43) SAN CARLOS IRRIGATION PROJECT.—

11 (A) IN GENERAL.—The term “San Carlos
12 Irrigation Project” means the San Carlos irri-
13 gation project authorized under the Act of June
14 7, 1924 (43 Stat. 475).

15 (B) INCLUSIONS.—The term “San Carlos
16 Irrigation Project” includes any amendments
17 and supplements to the Act described in sub-
18 paragraph (A).

19 (44) SECRETARY.—The term “Secretary”
20 means the Secretary of the Interior.

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

24 (46) STATE.—The term “State” means the
25 State of Arizona.

1 (47) SUBCONTRACT.—

2 (A) IN GENERAL.—The term “sub-
3 contract” means a Central Arizona Project
4 water delivery subcontract.

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

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

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

17 (50) UNCONTRACTED MUNICIPAL AND INDUS-
18 TRIAL WATER.—The term “uncontracted municipal
19 and industrial water” means Central Arizona
20 Project municipal and industrial priority water that
21 is not subject to subcontract on the date of enact-
22 ment of this Act.

23 (51) UV DECREED ACRES.—

24 (A) IN GENERAL.—The term “UV decreed
25 acres” means the land located upstream and to

1 the east of the Coolidge Dam for which water
2 may be diverted pursuant to the Globe Equity
3 Decree.

4 (B) EXCLUSION.—The term “UV decreed
5 acres” does not include the reservation of the
6 San Carlos Apache Tribe.

7 (52) UV DECREED WATER RIGHTS.—The term
8 “UV decreed water rights” means the right to divert
9 water for use on UV decreed acres in accordance
10 with the Globe Equity Decree.

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

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

21 (55) UVD SETTLING PARTIES.—The term
22 “UVD settling parties” means the parties to the
23 UVD agreement other than the United States, the
24 San Carlos Irrigation and Drainage District, and
25 the Community.

1 (56) WATER OM&R FUND.—The term “Water
2 OM&R Fund” means the Gila River Indian Commu-
3 nity Water OM&R Trust Fund established by sec-
4 tion 208.

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

8 (58) WATER RIGHTS APPURTENANT TO NM 381
9 ACRES.—The term “water rights appurtenant to NM
10 381 acres” means the water rights—

11 (A) appurtenant to the 380.81 acres de-
12 scribed in the decree in Arizona v. California,
13 376 U.S. 340, 349 (1964); and

14 (B) appurtenant to other land, or for other
15 uses, for which the water rights described in
16 subparagraph (A) may be modified or used in
17 accordance with that decree.

18 (59) WATER RIGHTS FOR NM DOMESTIC PUR-
19 POSES.—The term “water rights for NM domestic
20 purposes” means the water rights for domestic pur-
21 poses of not more than 265 acre-feet of water for
22 consumptive use described in paragraph IV(D)(2) of
23 the decree in Arizona v. California, 376 U.S. 340,
24 350 (1964).

1 (60) 1982 ACT.—The term ‘1982 Act’ means
2 the Southern Arizona Water Rights Settlement Act
3 (96 Stat. 1274), as in effect on the day before the
4 date of enactment of this Act.

5 (61) 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 (62) 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 (63) 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 2002”.

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.—The total amount of entitle-
16 ments under long-term contracts (as defined in the
17 repayment stipulation) for the delivery of Central
18 Arizona Project water in the State shall not exceed
19 1,415,000 acre-feet, of which—

20 (A) 667,724 acre-feet shall be—

21 (i) under contract to Arizona Indian
22 tribes; or

23 (ii) available to the Secretary for allo-
24 cation to Arizona Indian tribes; and

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

(i) non-Indian municipal and industrial entities;

(ii) the Arizona Department of Water Resources; and

(iii) non-Indian agricultural entities.

(2) TRANSFER.—

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

(i) a use authorized under paragraph (1)(A) to a use authorized under paragraph (1)(B); or

(ii) a use authorized under paragraph (1)(B) to a use authorized under paragraph (1)(A).

(B) EXCEPTIONS.—

(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(B) under an Indian water rights settlement approved by an Act of Congress shall not be considered to be a transfer for purposes of subparagraph (A).

1 (ii) EXCHANGES.—An exchange of
2 Central Arizona Project water by an Ari-
3 zona Indian tribe to an entity described in
4 paragraph (1)(B) shall not be considered
5 to be a transfer for purposes of subpara-
6 graph (A).

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

9 (1) IN GENERAL.—Notwithstanding section 6 of
10 the Act of August 4, 1939 (commonly known as the
11 “Reclamation Project Act of 1939”) (43 U.S.C.
12 485e), and paragraphs (2) and (3) of section 304(b)
13 of the Colorado River Basin Project Act (43 U.S.C.
14 1524(b)), as soon as practicable after the date of en-
15 actment of this Act, the Secretary shall offer to
16 enter into subcontracts or to amend all Central Ari-
17 zona Project contracts and subcontracts in effect as
18 of that date in accordance with paragraph (2).

19 (2) REQUIREMENTS.—All subcontracts and
20 amendments to Central Arizona Project contracts
21 and subcontracts under paragraph (1)—

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

1 (B) shall have an initial delivery term that
2 is the greater of—

3 (i) 100 years; or

4 (ii) a term—

5 (I) authorized by Congress; or

6 (II) provided under the appro-
7 priate Central Arizona Project con-
8 tract or subcontract in existence on
9 the date of enactment of this Act;

10 (C) shall conform to the shortage sharing
11 criteria described in paragraph 8.16 of the Gila
12 River agreement and paragraph 5.3 of the
13 Tohono O’odham settlement agreement;

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

16 (E) shall not require—

17 (i) that any Central Arizona Project
18 water received in exchange for effluent be
19 deducted from the contractual entitlement
20 of the CAP contractor or CAP subcon-
21 tractor; or

22 (ii) that any additional modification of
23 the Central Arizona Project contracts or
24 subcontracts be made as a condition of ac-

1 ceptance of the subcontract or amend-
2 ments.

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

5 (A) a subcontract for non-Indian agricul-
6 tural use; and

7 (B) a contract executed under paragraph
8 5(d) of the repayment stipulation.

9 (e) PROHIBITION ON TRANSFER.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), no Central Arizona Project water shall be
12 leased, exchanged, forborne, or otherwise transferred
13 in any way for use directly or indirectly outside the
14 State.

15 (2) EXCEPTION.—Water may be leased, ex-
16 changed, forborne, or otherwise transferred under an
17 agreement with the Arizona Water Banking Author-
18 ity that is in accordance with section 414 of title 43,
19 Code of Federal Regulations.

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

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

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

12 (b) DUTIES.—

13 (1) SECRETARY.—The Secretary shall—

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

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

21 (2) STATE.—The State shall—

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

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

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

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

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

15 (a) APPROVAL OF AGREEMENT.—

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

18 (2) EXHIBITS.—The Secretary shall execute
 19 any of the exhibits to the master agreement that
 20 have not been executed as of the date of enactment
 21 of this Act.

22 (b) NONREIMBURSABLE DEBT.—In accordance with
 23 the master agreement, the portion of debt incurred under
 24 section 9(d) of the Act of August 4, 1939 (commonly
 25 known as the “Reclamation Project Act of 1939”) (43

1 U.S.C. 485h), and identified in the master agreement as
2 nonreimbursable to the United States, shall be non-
3 reimbursable and nonreturnable to the United States in
4 an amount not to exceed \$73,561,337.

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

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

12 (2) land within the exterior boundaries of the
13 Salt River Reservoir District;

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

16 (A) within the exterior boundaries of the
17 Central Arizona Water Conservation District;
18 or

19 (B) served by Central Arizona Project
20 water; and

21 (4) any person, entity, or land, solely on the
22 basis of—

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

24 (B) execution or performance of the Gila
25 River agreement; or

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

3 **SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT**
4 **FUND.**

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

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

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

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

1 shall be available annually, without further appro-
2 priation, in order of priority—

3 “(A) to pay fixed operation, maintenance,
4 and replacement charges associated with the de-
5 livery of Central Arizona Project water under
6 long-term contracts for use by Arizona Indian
7 tribes (as defined in section 2 of the Arizona
8 Water Settlements Act);

9 “(B) to make deposits, totaling
10 \$53,000,000 in the aggregate, in the Gila River
11 Indian Community Water OM&R Trust Fund
12 established by section 207 of the Gila River In-
13 dian Community Water Rights Settlement Act
14 of 2002;

15 “(C) to pay an amount equal to
16 \$147,000,000, adjusted to reflect changes since
17 January 1, 2000, in the Consumer Price Index
18 for all urban consumers published by the De-
19 partment of Labor, to the Gila River Indian
20 Community to rehabilitate the San Carlos Irri-
21 gation Project, of which not more than
22 \$25,000,000 shall be available annually, on re-
23 quest by the Gila River Indian Community in
24 accordance with attachment 6.5.1 of exhibit
25 20.1 of the Gila River Indian Community

1 Water Rights Settlement, dated July 1, 2002,
2 except that the total amount shall be increased
3 or decreased, as appropriate, based on ordinary
4 fluctuations in construction cost indices applica-
5 ble to the types of construction involved in the
6 rehabilitation;

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

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

13 “(I) the contract entered into be-
14 tween the United States and the Gila
15 River Indian Community, numbered
16 6–07–03–W0345, and dated May 4,
17 1998;

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

22 “(III)(aa) subsections (a) and (b)
23 of section 304 of the Southern Ari-
24 zona Water Rights Settlement
25 Amendments Act of 2002; or

1 “(bb) on occurrence of the event
2 described in section 317(1)(B) of the
3 Southern Arizona Water Rights Set-
4 tlement Amendments Act of 2002,
5 section 303(a) of the 1982 Act;

6 “(ii) to pay any costs authorized by
7 Congress to be paid (including any costs to
8 construct distribution systems and exclud-
9 ing costs otherwise payable by non-Fed-
10 eral, non-Indian parties) under any Ari-
11 zona Indian water rights settlement Act
12 enacted after May 9, 2000; and

13 “(iii) to pay other costs authorized
14 under—

15 “(I) the Gila River Indian Com-
16 munity Water Rights Settlement Act
17 of 2002; or

18 “(II)(aa) the Southern Arizona
19 Water Rights Settlement Amendments
20 Act of 2002; or

21 “(bb) on occurrence of the event
22 described in section 317(1)(B) of the
23 Southern Arizona Water Rights Set-
24 tlement Amendments Act of 2002, the
25 1982 Act;

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

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

11 “(ii) to make payments to those tribes
12 in accordance with paragraph 8(d)(i)(1)(v)
13 of the Central Arizona Project repayment
14 stipulation (as defined in section 2 of the
15 Arizona Water Settlements Act), except
16 that if a water rights settlement Act of
17 Congress authorizes such construction, the
18 applicable tribes shall be treated, and pay-
19 ments shall be made, in accordance with
20 subparagraph (D)(ii); and

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

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

9 “(A) to pay fixed operation, maintenance
10 and replacement charges associated with the de-
11 livery of Central Arizona Project water under
12 long-term contracts held by Arizona Indian
13 tribes (as defined in section 2 of the Arizona
14 Water Settlements Act of 2002);

15 “(B) to make the final outstanding annual
16 payment for the costs of each unit of the
17 projects authorized under title III that are to
18 be repaid by the Central Arizona Water Con-
19 servations District;

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

24 “(D) to reimburse the general fund of the
25 Treasury for costs associated with any Indian

1 water rights settlement previously paid under
2 subparagraphs (B) through (E) of paragraph
3 (2);

4 “(E) to pay to the general fund of the
5 Treasury the annual installment on any debt
6 relating to the Central Arizona Project under
7 section 9(d) of the Act of August 4, 1939 (com-
8 monly known as the “Reclamation Project Act
9 of 1939”) (43 U.S.C. 485h(d)) made non-
10 reimbursable under section 106(b) of the Cen-
11 tral Arizona Project Settlement Act of 2002;

12 “(F) to pay to the general fund of the
13 Treasury the difference between—

14 “(I) the costs of each unit of the
15 projects authorized under title III
16 that are repayable by the Central Ari-
17 zona Water Conservation District; and

18 “(II) any costs allocated to re-
19 payable functions under any Central
20 Arizona Project cost allocation under-
21 taken by the United States; and

22 “(G) for deposit in the general fund of the
23 Treasury.

24 “(4) INVESTMENT OF AMOUNTS.—

1 “(A) IN GENERAL.—The Secretary of the
2 Treasury shall invest such portion of the devel-
3 opment fund as is not, in the judgment of the
4 Secretary of the Interior, required to meet cur-
5 rent needs of the development fund. Invest-
6 ments may be made only in interest-bearing ob-
7 ligations of the United States.

8 “(B) ACQUISITION OF OBLIGATIONS.—For
9 the purpose of investments under subparagraph
10 (A), obligations may be acquired—

11 “(i) on original issue at the issue
12 price; or

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

15 “(C) SALE OF OBLIGATIONS.—Any obliga-
16 tion acquired by the development fund may be
17 sold by the Secretary of the Treasury at the
18 market price.

19 “(D) CREDITS TO FUND.—The interest on,
20 and the proceeds from the sale or redemption
21 of, any obligations held in the development fund
22 shall be credited to and form a part of the de-
23 velopment fund.”.

24 (b) LIMITATION.—Before the date on which the find-
25 ings of the Secretary under section 207(d) have been pub-

lished in the Federal Register, amounts made available under the amendments in subsection (a)—

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

(2) shall not be expended or withdrawn from that fund until the date on which the findings described in section 207(d) are published in the Federal Register.

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

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

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

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

SEC. 108. EFFECT.

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

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

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

3 **SEC. 109. REPEAL.**

4 Section 11(h) of the Salt River Pima-Maricopa In-
5 dian Community Water Rights Settlement Act of 1988
6 (102 Stat. 2559) is repealed.

7 **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

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

10 (1) the 1994 biological opinion, including any
11 funding transfers required by the opinion;

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

14 (3) any final biological opinion resulting from
15 the 1999 biological opinion, including any funding
16 transfers required by the opinion.

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

20 (c) AGREEMENTS.—

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

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

7 **SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE**
8 **UNDER TITLE II.**

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

12 (1) this title is repealed effective January 1,
13 2008, and any action taken by the Secretary and
14 any contract entered under any provision of this title
15 shall be void; and

16 (2) any amounts appropriated under section
17 110 that remain unexpended shall immediately re-
18 vert to the general fund of the Treasury.

19 (b) EXCEPTION.—No subcontract amendment exe-
20 cuted by the Secretary under the notice of June 4, 2002
21 (67 Fed. Reg. 38514) shall be considered to be a contract
22 entered into by the Secretary for purposes of subsection
23 (a)(1).

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

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

5 This title may be cited as the “Gila River Indian
6 Community Water Rights Settlement Act of 2002”.

7 **SEC. 202. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

9 (1) it is the policy of the United States, in
10 keeping with the trust responsibility of the United
11 States to Indian tribes—

12 (A) to promote Indian self-determination
13 and economic self-sufficiency; and

14 (B) to settle, whenever possible, Indian
15 water rights claims without lengthy and costly
16 litigation;

17 (2) meaningful Indian self-determination and
18 economic self-sufficiency largely depend on the devel-
19 opment of viable Indian reservation economies;

20 (3) the quantification of rights to water and de-
21 velopment of facilities needed to use tribal water
22 supplies in an effective manner is essential to the de-
23 velopment of viable Indian reservation economies,
24 particularly in arid western States;

1 (4) continued uncertainty concerning the extent
2 of the entitlement of the Gila River Indian Commu-
3 nity to water—

4 (A) has severely limited access by the
5 Community to water and financial resources
6 necessary to develop valuable agricultural land;
7 and

8 (B) has frustrated the efforts of the Com-
9 munity to achieve meaningful self-determination
10 and self-sufficiency;

11 (5) proceedings to determine and enforce the
12 full extent and nature of, and injury to, the water
13 rights of the Community are currently pending in
14 the United States District Court for the District of
15 Arizona, and water rights claims are pending in the
16 Superior Court of the State in and for Maricopa
17 County as part of the Gila River adjudication pro-
18 ceedings;

19 (6) because final resolution of pending litigation
20 would take many years and entail great expense,
21 continue economically and socially damaging limits
22 to access to water by the Community, prolong uncer-
23 tainty concerning the availability of water supplies,
24 and seriously impair long-term economic planning
25 and development, the Community and the neighbors

1 of the Community have sought to settle their dis-
2 putes concerning water and reduce the burdens of
3 litigation;

4 (7) after many years of negotiation, the United
5 States, the Community, and the neighbors of the
6 Community, many of whom are parties to the Gila
7 River adjudication proceedings, have entered into a
8 settlement agreement to—

9 (A) resolve permanently certain damage
10 claims and all water rights claims between the
11 United States and the Community and its
12 neighbors; and

13 (B) recognize the right of the allottees to
14 use water for irrigation purposes on the Res-
15 ervation; and

16 (8) to advance the goals of Federal Indian pol-
17 icy and to act consistently with the trust responsi-
18 bility of the United States to the Community and
19 the allottees, it is appropriate that the United States
20 participate in the implementation of the Gila River
21 agreement and contribute funds to enable the Com-
22 munity and the allottees to use the water entitle-
23 ments recognized or provided for in the Gila River
24 agreement or this title in developing a diverse and
25 efficient economy.

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

2 (1) to authorize, ratify, and confirm the Gila
3 River agreement;

4 (2) to authorize and direct the Secretary to exe-
5 cute and perform all obligations of the Secretary
6 under the Gila River agreement; and

7 (3) to authorize the actions and appropriations
8 necessary for the United States to meet obligations
9 of the United States under the Gila River agreement
10 and this title.

11 **SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMU-**
12 **NITY WATER RIGHTS SETTLEMENT AGREEE-**
13 **MENT.**

14 (a) IN GENERAL.—Except to the extent that the Gila
15 River agreement conflicts with a provision of this title, the
16 Gila River agreement is authorized, ratified, and con-
17 firmed.

18 (b) EXECUTION OF AGREEMENT.—The Secretary
19 shall execute the Gila River agreement, including all exhib-
20 its to the Gila River agreement requiring the signature
21 of the Secretary and any amendments necessary to make
22 the Gila River agreement consistent with this title, after
23 the Community has executed the Gila River agreement
24 and any such amendments.

25 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

1 (1) NO MAJOR FEDERAL ACTION.—Execution of
 2 the Gila River agreement by the Secretary under
 3 this section shall not constitute a major Federal ac-
 4 tion under the National Environmental Policy Act
 5 (42 U.S.C. 4321 et seq.).

6 (2) ENVIRONMENTAL COMPLIANCE ACTIVI-
 7 TIES.—The Secretary shall promptly carry out the
 8 environmental compliance activities necessary to im-
 9 plement the Gila River agreement, including activi-
 10 ties under the National Environmental Policy Act
 11 and the Endangered Species Act (16 U.S.C. 1531 et
 12 seq.).

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

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

19 (1) IN GENERAL.—In accordance with this title
 20 and exhibit 20.1 to the Gila River agreement, and
 21 as provided in this subsection, the Secretary shall
 22 provide for the rehabilitation and operation, mainte-
 23 nance, and replacement of the San Carlos Irrigation
 24 Project water diversion and delivery works.

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

5 (3) REHABILITATION COSTS ALLOCABLE TO
6 THE COMMUNITY.—The rehabilitation costs allocable
7 to the Community under exhibit 20.1 to the Gila
8 River agreement shall be paid from the funds avail-
9 able under paragraph (2)(C) of section 403(f) of the
10 Colorado River Basin Project Act (43 U.S.C.
11 1543(f)) (as amended by section 107(a)).

12 (4) REHABILITATION COSTS NOT ALLOCABLE
13 TO THE COMMUNITY.—

14 (A) IN GENERAL.—The rehabilitation costs
15 not allocable to the Community under exhibit
16 20.1 to the Gila River agreement shall be pro-
17 vided from funds available under paragraph
18 (2)(D)(iii)(I) of section 403(f) of the Colorado
19 River Basin Project Act (43 U.S.C. 1543(f))
20 (as amended by section 107(a)).

21 (B) SUPPLEMENTARY REPAYMENT CON-
22 TRACT.—The Secretary shall execute a supple-
23 mentary repayment contract with the San Car-
24 los Irrigation and Drainage District in the form
25 provided for in exhibit 20.1 to the Gila River

1 agreement which shall, among other things,
2 provide that—

3 (i) in accomplishing the work under
4 the supplemental repayment contract, the
5 San Carlos Irrigation and Drainage Dis-
6 trict may use the labor and contracting au-
7 thorities that are available under State
8 law; and

9 (ii) a portion of the San Carlos Irriga-
10 tion and Drainage District's share of the
11 rehabilitation costs specified in exhibit
12 20.1 to the Gila River agreement shall be
13 nonreimbursable.

14 (5) LEAD AGENCY.—The Bureau of Reclama-
15 tion shall be designated as the lead agency for over-
16 sight of the construction and rehabilitation of the
17 San Carlos Irrigation Project authorized by this sec-
18 tion.

19 (6) OPERATION AND MAINTENANCE RESPONSI-
20 BILITY.—

21 (A) IN GENERAL.—The Secretary shall re-
22 tain the operation and maintenance responsi-
23 bility for the CRR on-Reservation works until
24 such time as the Community assumes that re-
25 sponsibility pursuant to applicable law.

1 (B) FINANCIAL RESPONSIBILITY.—The
2 Secretary shall retain sole financial responsi-
3 bility for the payment, on behalf of the Commu-
4 nity, of the portion of the operation and main-
5 tenance costs that are attributable to the Com-
6 munity for the operation and maintenance of
7 the San Carlos Irrigation Project.

8 **SEC. 204. WATER RIGHTS.**

9 (a) RIGHTS HELD IN TRUST.—The water rights of
10 the Community described in the Gila River agreement
11 shall be held in trust by the United States on behalf of
12 the Community.

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

16 (1) an annual entitlement to 18,600 acre-feet of
17 CAP agricultural priority water in accordance with
18 the agreement among the Secretary, the Community,
19 and Roosevelt Water Conservation District dated
20 August 7, 1992;

21 (2) an annual entitlement to 18,100 acre-feet of
22 CAP Indian priority water, which was permanently
23 relinquished by Harquahala Valley Irrigation Dis-
24 trict in accordance with Contract No. 3–07–W0290
25 among the Central Arizona Water Conservation Dis-

1 trict, the Harquahala Valley Irrigation District, and
2 the United States, and converted to CAP Indian pri-
3 ority water under the Fort McDowell Indian Com-
4 munity Water Rights Settlement Act of 1990 (104
5 Stat. 4480);

6 (3) an annual entitlement to 17,000 acre-feet of
7 CAP municipal and industrial priority water under
8 the subcontract among the United States, the Cen-
9 tral Arizona Water Conservation District, and
10 Asarco, Subcontract No. 3-07-30-W0307, dated
11 November 7, 1993, in connection with which the
12 Secretary shall simultaneously execute and subse-
13 quently implement the exchange and lease agree-
14 ments attached to exhibit 11.1 to the Gila River
15 agreement; and

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

20 (c) WATER SERVICE CAPITAL CHARGES.—The Com-
21 munity shall not be responsible for water service capital
22 charges for CAP water.

23 (d) ALLOCATION AND REPAYMENT.—For the pur-
24 pose of determining the allocation and repayment of costs
25 of any stages of the Central Arizona Project constructed

1 after the date of enactment of this Act, the costs associ-
2 ated with the delivery of Community CAP water, whether
3 that water is delivered for use by the Community or in
4 accordance with any assignment, exchange, lease, option
5 to lease, or other agreement for the temporary disposition
6 of water entered into by the Community—

7 (1) shall be nonreimbursable; and

8 (2) shall be excluded from the repayment obli-
9 gation of the Central Arizona Water Conservation
10 District.

11 (e) APPLICATION OF PROVISIONS.—

12 (1) IN GENERAL.—The water rights recognized
13 and confirmed to the Community by the Gila River
14 agreement and this title shall be subject to section
15 7 of the Act of February 8, 1887 (25 U.S.C. 381).

16 (2) WATER CODE.—Not later than 3 years after
17 the enforceability date, the Community shall enact a
18 water code, subject to any applicable provision of
19 law, that—

20 (A) manages, regulates, and controls the
21 water resources on the Reservation;

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

1 (C) includes, subject to approval of the
2 Secretary—

3 (i) a process by which any allottee, or
4 any successor in interest to an allottee,
5 may request and be provided with a just
6 and equitable distribution of water for irri-
7 gation use on allotted land of the allottee;
8 and

9 (ii) a due process system for the con-
10 sideration and determination of any re-
11 quest by any allottee, or any successor in
12 interest to an allottee, for a just and equi-
13 table distribution of water, including a
14 process for appeal and adjudication of de-
15 nied or disputed distributions of water and
16 for resolution of contested administrative
17 decisions.

18 (3) ADMINISTRATION.—The Secretary shall ad-
19 minister all rights to water granted or confirmed to
20 the Community by the Gila River agreement until
21 such date as the water code described in paragraph
22 (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 Asarco, Phelps Dodge, and any of
3 the Cities, attached as exhibits to the Gila River agree-
4 ment, are authorized, ratified, and confirmed, and the Sec-
5 retary shall 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 by the Community
22 for use directly or indirectly outside the State.

23 (2) USE OFF RESERVATION.—Except as author-
24 ized by this section and subparagraph 4.7 of the
25 Gila River agreement, no water made available to

1 the Community under the Gila River agreement, the
2 Globe Equity Decree, the Haggard Decree, or this
3 title may be sold, leased, transferred, or used off the
4 Reservation other than by exchange.

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

11 **SEC. 206. EXTINGUISHMENT OF CLAIMS.**

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

21 (b) NO RECOGNITION OF WATER RIGHTS.—Notwith-
22 standing subsection (a) and except as provided in sub-
23 section 204(e), nothing in this title has the effect of recog-
24 nizing or establishing any right of a Community member
25 or allottee to water on the Reservation.

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

2 (a) IN GENERAL.—

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

5 (A) BY THE COMMUNITY.—Except as pro-
6 vided in the Gila River agreement, the Commu-
7 nity, on behalf of the Community and Commu-
8 nity members (but not members in their capac-
9 ities as allottees), and the Secretary, on behalf
10 of the United States and the Community and
11 Community members (but not members in their
12 capacities as allottees), as part of the perform-
13 ance of obligations under the Gila River agree-
14 ment, are authorized to execute a waiver and
15 release of any claims against the State (or any
16 agency or political subdivision of the State) or
17 any other person, entity, corporation, or munic-
18 ipal corporation under Federal, State, or other
19 law for—

20 (i)(I) past, present, and future claims
21 for water rights for land within the Res-
22 ervation, off-Reservation trust land, and
23 fee land arising from time immemorial
24 and, thereafter, forever; and

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

pancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever;

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

(II) past, present, and future injury to water rights based on aboriginal occupancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever; and

(III) injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District of the Tohono O'odham Nation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law;

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

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

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

10 (III) injury to water quality (other
11 than claims arising out of actions that re-
12 sulted in the remediations described in ex-
13 hibit 25.2.1.6 to the Gila River agreement)
14 arising after December 31, 2002, including
15 claims for trespass, nuisance, and real
16 property damage and claims under all cur-
17 rent and future Federal, State, and other
18 environmental laws and regulations (in-
19 cluding claims under the Comprehensive
20 Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. 9601
22 et seq.) and Ariz. Rev. Stat. 49–282), that
23 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 resulting from the off-Res-
4 ervation diversion or use of water in a
5 manner not in violation of the Gila River
6 agreement or State law;

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

23 (II) past, present, and future injury
24 to water quality (other than claims arising
25 out of actions that resulted in the remedi-

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

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

et seq.) and Ariz. Rev. Stat. 49–282), that
result from—

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

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

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

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

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

except that the waiver provided in this sub-
clause shall extend only to the State (or

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

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

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

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

1 corporation under Federal, State, or other law for
2 the damage claimed.

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

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

23 (B) injury to water rights, injury to water
24 quality, or injury to real property arising after
25 December 31, 2002, and through the enforce-

1 ability date, if the Salt River Project (or its
2 successors or assigns) acts in accordance with
3 the annual reservoir operations plan of the Salt
4 River Project through the enforceability date.

5 (4) CLAIMS AGAINST THE UNITED STATES.—

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

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

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

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

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

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

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

22 (D)(i) past and present subsidence damage
23 occurring to land within the Reservation, off-
24 Reservation trust land, or fee land arising from

1 time immemorial through the enforceability
2 date; and

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

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

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

22 (A)(i) past, present, and future claims for
23 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 pancy 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), aris-
14 ing from time immemorial and, thereafter,
15 forever;

16 (II) past, present, and future injury
17 to water rights based on aboriginal occu-
18 pancy 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 the amount required to be paid
20 under paragraph 27.4 of the Gila River agree-
21 ment;

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

1 (G) the judgments and decrees attached to
2 the Gila River agreement as exhibits 25.11A
3 (Gila River adjudication proceedings) and
4 25.11B (Globe Equity Decree proceedings) have
5 been approved by the respective courts;

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

11 (I) legislation has been enacted by the
12 State to—

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

16 (ii) authorize the firming program re-
17 quired by section 105; and

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

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

1 (K) a final judgment has been entered in
2 Central Arizona Water Conservation District v.
3 United States (No. CIV 95–625–TUC–
4 WDB(EHC), No. CIV 95–1720–PHX–EHC)
5 (Consolidated Action) in accordance with the
6 repayment stipulation.

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

21 **SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R**
22 **TRUST FUND.**

23 (a) ESTABLISHMENT.—There is established in the
24 Treasury of the United States a trust fund to be known

1 as the “Gila River Indian Community Water OM&R Trust
2 Fund”.

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

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

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

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

23 (1) withdraw amounts from the Water OM&R
24 Fund; and

1 (2) deposit the amounts in a private financial
 2 institution selected by agreement of the Community
 3 and the Secretary.

4 (f) LIMITATIONS.—

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

10 (2) FUNDS NOT AVAILABLE UNTIL ENFORCE-
 11 ABILITY DATE.—

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

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

19 **SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.**

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

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

4 (1) subsidence damage; and

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

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

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

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

24 (d) SPECIFIC SUBSIDENCE DAMAGE.—Notwith-
25 standing any other provision of this section, the Secretary,

1 acting through the Commissioner of Reclamation, shall re-
2 pair, remediate, and rehabilitate the subsidence damage
3 that has occurred to land within the Reservation, as speci-
4 fied in exhibit 29.21 to the Gila River agreement.

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

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

13 (b) WATER RIGHTS.—After-acquired trust land shall
14 not include federally reserved rights to surface water or
15 groundwater.

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

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

23 (a) REDUCTION OF TBI ELIGIBLE ACRES.—

24 (1) IN GENERAL.—In accordance with this title
25 and as provided in the UVD agreement, the Sec-

1 retary shall assist in reducing the total water de-
2 mand for irrigation use in the upper valley of the
3 Gila River by—

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

10 (B) entering into agreements regarding re-
11 duction of water demand through fallowing pro-
12 grams.

13 (2) ACQUISITIONS.—

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

25 (B) REQUIRED PHASE II ACQUISITION.—

1 (i) IN GENERAL.—Not later than De-
2 cember 31 of the sixth calendar year that
3 begins after the enforceability date, the
4 Secretary shall acquire the UV decreed
5 water rights associated with 1,000 acres of
6 land (other than special hot lands) that
7 would have been included in the initial cal-
8 culation of TBI eligible acres under the
9 UVD agreement if the initial calculation of
10 TBI eligible acres had been undertaken at
11 the time of the acquisition.

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

16 (C) ADDITIONAL ACQUISITION IN CASE OF
17 SETTLEMENT.—If the San Carlos Apache Tribe
18 reaches a comprehensive settlement with the
19 UVD settling parties and other necessary par-
20 ties that is approved by Congress and finally
21 approved by all courts the approval of which is
22 required, not later than December 31 of the
23 second calendar year that begins after the effec-
24 tive date of that settlement, the Secretary shall
25 acquire the UV decreed water rights associated

1 with not less than 500 nor more than 3,000
2 TBI eligible acres of land (other than special
3 hot lands).

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

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

17 (4) ALTERNATIVES TO ACQUISITION.—

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

1 (i) acquire UV decreed water rights
2 associated with a like number of UV de-
3 creed acres that are not TBI eligible acres;
4 and

5 (ii) sever and transfer those rights to
6 the San Carlos Irrigation Project for the
7 benefit of the Community and the San
8 Carlos Irrigation and Drainage District.

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

17 (i) the number of TBI eligible acres is
18 reduced; but

19 (ii) the owner of the UV decreed acres
20 subject to the reduction is permitted to pe-
21 riodically irrigate the UV decreed acres
22 under a fallowing agreement authorized
23 under the UVD agreement.

24 (5) DISPOSITION OF ACQUIRED WATER
25 RIGHTS.—

1 (A) IN GENERAL.—Of the UV decreed
2 water rights acquired by the Secretary pursuant
3 to subparagraphs (A) and (B) of paragraph (2),
4 the Secretary shall, in accordance with all appli-
5 cable law and the UVD agreement—

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

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

17 (B) SAN CARLOS APACHE SETTLEMENT.—
18 With respect to water rights acquired by the
19 Secretary pursuant to paragraph (2)(C), the
20 Secretary shall, in accordance with applicable
21 law—

22 (i) sever and transfer to the San Car-
23 los Irrigation Project, for the benefit of the
24 Community and the San Carlos Irrigation
25 and Drainage District, the UV decreed

1 water rights associated with 200 UV de-
2 creed acres;

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

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

10 (b) ADDITIONAL REDUCTIONS.—

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

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

23 (3) FUNDS AND RESOURCES.—The program
24 under this subsection shall not require any expendi-
25 ture of funds, or commitment of resources, by the

1 UVD settling parties other than such incidental ex-
2 penditures of funds and commitments of resources
3 as are required to cooperatively participate in the
4 program.

5 **SEC. 212. MISCELLANEOUS PROVISIONS.**

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

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

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

1 rendered pursuant to subparagraph 12.1.9 of the
2 UVD agreement or a petition for and collection of
3 attorney's fees and costs pursuant to subparagraph
4 12.3 of the UVD agreement).

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

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

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

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

1 (f) SALT RIVER PROJECT RIGHTS AND CON-
2 TRACTS.—

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

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

20 (3) CARE, OPERATION, AND MAINTENANCE.—
21 The Salt River Project shall retain sole authority
22 and responsibility for all decisions relating to the
23 care, operation, and maintenance of the Salt River
24 Project water delivery system, including the Salt
25 River Project reservoirs on the Salt River and Verde

1 River, vested in Salt River Project under the agree-
2 ment described in paragraph (1).

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

8 (h) LIMITATION ON LIABILITY OF UNITED
9 STATES.—

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

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

16 (B) to review or approve the expenditure of
17 those funds.

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

24 **SEC. 213. AUTHORIZATION OF APPROPRIATIONS.**

25 (a) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) REHABILITATION OF IRRIGATION WORKS.—

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

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

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

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

1 (4) WATER RIGHTS REDUCTION.—There are
2 authorized to be appropriated such sums as are nec-
3 essary to carry out the water rights reduction pro-
4 gram under section 211.

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

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

12 (B) pay the interest accrued on that
13 amount.

14 (6) ENVIRONMENTAL COMPLIANCE.—There are
15 authorized to be appropriated—

16 (A) such sums as are necessary to carry
17 out—

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

22 (ii) any mitigation measures adopted
23 by the Secretary; and

1 (B) to carry out the mitigation measures
2 in the Roosevelt Habitat Conservation Plan, not
3 more than \$10,000,000.

4 (b) AUTHORIZED COSTS.—

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

11 (2) EXCEPTION.—Amounts made available
12 under subsection (a)(4) to carry out section 211(b)
13 shall not be considered to be authorized costs for
14 purposes of section 403(f)(2)(D)(iii) of the Colorado
15 River Basin Project Act (43 U.S.C.
16 1543(f)(2)(D)(iii)) (as amended by section 107(a)).

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

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

20 (1) this title is repealed effective January 1,
21 2008, and any action taken by the Secretary and
22 any contract entered under any provision of this title
23 shall be void;

24 (2) any amounts appropriated under para-
25 graphs (1) through (5) of section 213(a), together

1 with any interest on those amounts, shall imme-
 2 diately revert to the general fund of the Treasury;

3 (3) any amounts made available under section
 4 213(b) that remain unexpended shall immediately
 5 revert to the general fund of the Treasury; and

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

9 **TITLE III—SOUTHERN ARIZONA**
 10 **WATER RIGHTS SETTLEMENT**

11 **SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLE-**
 12 **MENT.**

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

15 **“TITLE III—SOUTHERN ARIZONA**
 16 **WATER RIGHTS SETTLEMENT**

17 **“SEC. 301. SHORT TITLE.**

18 “This title may be cited as the ‘Southern Arizona
 19 Water Rights Settlement Amendments Act of 2002’.

20 **“SEC. 302. FINDINGS.**

21 “Congress finds that—

22 “(1) water rights claims within the San Xavier
 23 Reservation and the eastern Schuk Toak District of
 24 the Tohono O’odham Nation, including water rights
 25 claims of the Nation and allottees, are the subject of

1 lawsuits pending against the United States and nu-
2 merous parties in southern Arizona (including min-
3 ing companies, agricultural interests, and the city of
4 Tucson);

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

6 “(A) are expensive and time-consuming for
7 all participants; and

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

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

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

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

23 “(i) to make available to the Sec-
24 retary, for disposal in such manner as the

1 Secretary determined appropriate, 28,200
2 acre-feet of reclaimed water; and

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

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

13 “(ii) contributions to that fund that were
14 required to be made in accordance with section
15 313 of the 1982 Act were subsequently made;

16 “(C) on October 11, 1983, the Nation en-
17 tered into an agreement with the United States
18 in compliance with section 307(a)(1)(C) of the
19 1982 Act;

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

1 “(5) by providing the assistance specified in
2 this title, the Federal Government will enable the
3 implementation of a settlement of the lawsuits re-
4 ferred to in paragraph (1);

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

12 “(7) the settlement provided for under this title
13 will—

14 “(A) provide flexibility in the management
15 of water resources;

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

19 “(C) promote the conservation and man-
20 agement of water resources; and

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

23 “(i) the Nation; and

24 “(ii) the allottees.

1 **“SEC. 303. DEFINITIONS.**

2 “In this title:

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

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

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

11 “(A) is located—

12 “(i) within the State; but

13 “(ii) outside the exterior boundaries of
14 the Nation’s Reservation; and

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

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

23 “(5) AGREEMENT OF OCTOBER 11, 1983.—The
24 term ‘agreement of October 11, 1983’ means the
25 contract for the provision of water and the settle-
26 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) EFFECTIVE DATE.—The term ‘effective
23 date’ means the date of enactment of the Southern
24 Arizona Water Rights Settlement Amendments Act
25 of 2002.

1 “(22) ENFORCEABILITY DATE.—The term ‘en-
2 forceability date’ means the date on which the Sec-
3 retary publishes in the Federal Register the state-
4 ment of findings described in section 316.

5 “(23) EXEMPT WELL.—The term ‘exempt well’
6 means a water well—

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

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

11 “(i) the supply, service, or activities of
12 households or private residences;

13 “(ii) landscaping;

14 “(iii) livestock watering; or

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

18 “(I) sale;

19 “(II) human consumption; or

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

22 “(24) FARM.—The term ‘farm’ means a unit of
23 land on which 1 or more agricultural commodities
24 are produced that is served by an irrigation system.

1 “(25) FEE OWNER OF ALLOTTED LAND.—The
2 term ‘fee owner of allotted land’ means a person
3 that holds fee simple title in real property on the
4 Reservation that, at any time before the date on
5 which the person acquired fee simple title, was held
6 in trust by the Federal Government as an Indian al-
7 lotment.

8 “(26) INDIAN TRIBE.—The term ‘Indian tribe’
9 has the meaning given the term in section 4 of the
10 Indian Self-Determination and Education Assistance
11 Act (25 U.S.C. 450b).

12 “(27) INJURY TO WATER QUALITY.—The term
13 ‘injury to water quality’ means any contamination,
14 diminution, or deprivation of water quality under ap-
15 plicable law.

16 “(28) 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 applicable 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 “(29) IRRIGATION SYSTEM.—

5 “(A) IN GENERAL.—The term ‘irrigation
6 system’ means canals, laterals, ditches, sprin-
7 klers, bubblers, and other irrigation works used
8 to distribute water within the boundaries of a
9 farm.

10 “(B) INCLUSIONS.—The term ‘irrigation
11 system’, with respect to the cooperative farm,
12 includes activities, procedures, works, and de-
13 vices for—

14 “(i) rehabilitation of fields;

15 “(ii) remediation of sinkholes, sinks,
16 depressions, and fissures; and

17 “(iii) stabilization of the banks of the
18 Santa Cruz River.

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

22 “(31) NATION.—The term ‘Nation’ means the
23 Tohono O’odham Nation (formerly known as the
24 Papago Tribe) organized under a constitution ap-

1 proved in accordance with section 16 of the Act of
2 June 18, 1934 (25 U.S.C. 476).

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

6 “(A) the Sells Tohono O’odham Reserva-
7 tion established by the Executive order of Feb-
8 ruary 1, 1917, and the Act of February 21,
9 1931 (46 Stat. 1202, chapter 267);

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

12 “(C) the Gila Bend Indian Reservation es-
13 tablished by the Executive order of December
14 12, 1882, and modified by Executive order of
15 June 17, 1909;

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

18 “(E) all land acquired in accordance with
19 the Gila Bend Indian Reservation Lands Re-
20 placement Act (100 Stat. 1798); 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 “(33) NET IRRIGABLE ACRES.—The term ‘net
4 irrigable acres’ means, with respect to a farm, acre-
5 age of the farm that is suitable for the production
6 of agricultural commodities, as determined by the
7 Nation.

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

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

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

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

1 “(38) SAN XAVIER DISTRICT COUNCIL.—The
2 term ‘San Xavier District Council’ means the gov-
3 erning body of the San Xavier District, as estab-
4 lished under the constitution of the Nation.

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

9 “(40) SCHUK TOAK FARM.—The term ‘Schuk
10 Toak Farm’ means a farm constructed in the east-
11 ern Schuk Toak District served by the irrigation sys-
12 tem provided for under section 304(c)(3).

13 “(41) SECRETARY.—The term ‘Secretary’
14 means the Secretary of the Interior.

15 “(42) STATE.—The term ‘State’ means the
16 State of Arizona.

17 “(43) SUBJUGATE.—The term ‘subjugate’
18 means to prepare land for the production of an agri-
19 cultural commodity through irrigation.

20 “(44) SURFACE WATER.—The term ‘surface
21 water’ means all water that is appropriable under
22 State law.

23 “(45) TOHONO O’ODHAM SETTLEMENT AGREE-
24 MENT.—The term ‘Tohono O’odham settlement
25 agreement’ means the agreement (including all ex-

1 hibits of and attachments to the agreement) that
2 settles, and provides for the dismissal with prejudice
3 of, the claims asserted in the Adams case, the Alva-
4 rez case, and the Tucson case, as executed by the
5 parties to those cases and filed with the court of ju-
6 risdiction.

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

11 “(47) TUCSON INTERIM WATER LEASE.—The
12 term ‘Tucson interim water lease’ means the lease,
13 and any amendments and extensions of the lease,
14 between the city of Tucson, Arizona, and the Nation,
15 dated October 24, 1992.

16 “(48) TUCSON MANAGEMENT AREA.—The term
17 ‘Tucson management area’ means the area in the
18 State comprised of—

19 “(A) the area—

20 “(i) designated as the Tucson Active
21 Management Area under the Arizona
22 Groundwater Management Act of 1980
23 (1980 Ariz. Sess. Laws 1); and

24 “(ii) subsequently divided into the
25 Tucson Active Management Area and the

1 Santa Cruz Active Management Area
2 (1994 Ariz. Sess. Laws 296); and

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

6 “(49) TURNOUT.—The term ‘turnout’ means,
7 with respect to the Central Arizona Project, a point
8 of water delivery on the Central Arizona Project aq-
9 ueduct.

10 “(50) UNDERGROUND STORAGE.—The term
11 ‘underground storage’ means direct storage and in-
12 direct storage of water accomplished under a project
13 authorized under section 308(e).

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

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

20 “(A) the anticipated or actual use of the
21 water; or

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

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

1 “(54) 1982 ACT.—The term ‘1982 Act’ means
2 the Southern Arizona Water Rights Settlement Act
3 (96 Stat. 1274), as in effect on the day before the
4 effective date.

5 **“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGA-**
6 **TIONS.**

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

11 “(1) 27,000 acre-feet shall—

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

14 “(B) otherwise be used in accordance with
15 section 309; and

16 “(2) 10,800 acre-feet shall—

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

19 “(B) otherwise be used in accordance with
20 section 309.

21 “(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The
22 Secretary shall (without cost to the Nation, any allottee,
23 the San Xavier Cooperative Association, or the San Xavier
24 Allottees Association), as part of the main project works
25 of the Central Arizona Project, design, construct, operate,

1 maintain, and replace the delivery and distribution sys-
2 tems necessary to deliver the water described in subsection
3 (a).

4 “(c) DUTIES OF THE SECRETARY.—

5 “(1) COMPLETION OF DELIVERY AND DIS-
6 TRIBUTION SYSTEM AND IMPROVEMENT TO EXIST-
7 ING IRRIGATION SYSTEM.—Except as provided in
8 subsection (d), the Secretary shall complete—

9 “(A) not later than 2 years after the effec-
10 tive date, the design and construction of each
11 delivery and distribution system; and

12 “(B) not later than 8 years after the en-
13 forceability date, the improvements to the irri-
14 gation system that serves the cooperative farm.

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

17 “(A) IN GENERAL.—Except as provided in
18 subsection (d), not later than 8 years after the
19 effective date, in addition to the improvements
20 described in paragraph (1)(B), the Secretary
21 shall complete the design and construction of
22 the extension of the irrigation system for the
23 cooperative farm.

24 “(B) CAPACITY.—On completion of the ex-
25 tension, the extended cooperative farm irriga-

tion system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

“(3) CONSTRUCTION OF NEW FARM.—

“(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water described in section 303(a)(1)(A) of the 1982 Act.

“(B) PAYMENT IN LIEU OF OBLIGATION.—

“(i) IN GENERAL.—Subject to clause (ii), at the election of the San Xavier District, the Secretary is authorized to pay, and shall pay, to the San Xavier District \$18,300,000 in lieu of, and in full satisfaction of, the obligations of the United States to carry out within the San Xavier Reservation design and construction activities (relating to additional canals, laterals, farm ditches, and irrigation works nec-

1 essary for the distribution of water) with
2 respect to the portion of the 27,000 acre-
3 feet of water that is not required for the
4 irrigation system described in paragraphs
5 (1) and (2).

6 “(ii) ELECTION BY SAN XAVIER DIS-
7 TRICT.—The San Xavier District may
8 make an election under this subparagraph
9 only before the deadline for notification of
10 the Secretary described in clause (iii).

11 “(iii) NOTIFICATION.—Not later than
12 180 days after the enforceability date, if
13 the San Xavier District Council makes the
14 elections described in clauses (i) and (ii),
15 the San Xavier District Council shall no-
16 tify the Secretary of the election.

17 “(iv) FORM.—The notification re-
18 quired under clause (iii)—

19 “(I) shall be in writing; and

20 “(II) shall include a certified res-
21 olution of the San Xavier District
22 Council stating the election.

23 “(4) IRRIGATION AND DELIVERY AND DIS-
24 TRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK
25 DISTRICT.—Except as provided in subsection (d),

1 not later than 1 year after the effective date, the
2 Secretary shall complete the design and construction
3 of an irrigation system and delivery and distribution
4 system to serve the farm that—

5 “(A) is constructed in the eastern Schuk
6 Toak District; and

7 “(B) includes not less than 2,200 and not
8 more than 2,400 net irrigable acres.

9 “(d) EXTENSION OF DEADLINES.—

10 “(1) IN GENERAL.—The Secretary may extend
11 a deadline under subsection (c) if the Secretary de-
12 termines that compliance with the deadline is im-
13 practicable by reason of—

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

17 “(B) the inability of such a contractor,
18 under such a contract, to carry out the contract
19 by reason of force majeure, as defined by the
20 Secretary in the contract;

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

24 “(i) the Endangered Species Act of
25 1973 (16 U.S.C. 1531 et seq.); and

1 “(ii) the National Environmental Pol-
2 icy Act of 1969 (42 U.S.C. 4321 et seq.);
3 or

4 “(D) stoppage in work resulting from the
5 assessment of a tax or fee that is alleged in any
6 court of jurisdiction to be confiscatory or dis-
7 criminatory.

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

11 “(A) publish a notice of the extension in
12 the Federal Register; and

13 “(B)(i) include in the notice an estimate of
14 such additional period of time as is necessary to
15 complete the project or activity that is the sub-
16 ject of the extension; and

17 “(ii) specify a deadline that provides for a
18 period for completion of the project before the
19 end of the period described in clause (i).

20 “(e) AUTHORITY OF SECRETARY.—

21 “(1) IN GENERAL.—In carrying out this title,
22 after providing reasonable notice to the Nation, the
23 Secretary, in compliance with all applicable law, may
24 enter, construct works on, and take such other ac-
25 tions as are related to the entry or construction on

1 land within the San Xavier District and the Schuk
2 Toak District.

3 “(2) EFFECT ON FEDERAL ACTIVITY.—Nothing
4 in this subsection affects the authority of the Fed-
5 eral Government, or any Federal officer, agent, em-
6 ployee, or contractor, to conduct official Federal
7 business or carry out any Federal duty (including
8 any Federal business or duty under this title) on
9 land within the eastern Schuk Toak District or the
10 San Xavier District.

11 “(f) USE OF FUNDS.—

12 “(1) IN GENERAL.—With respect to any funds
13 received under subsection (c)(3)(B), the San Xavier
14 District—

15 “(A) shall hold the funds in trust, and in-
16 vest the funds in interest-bearing deposits and
17 securities, until expended;

18 “(B) may expend the principal of the
19 funds, and any interest and dividends that ac-
20 crue on the principal, only in accordance with
21 a budget that is—

22 “(i) authorized by the San Xavier
23 District Council; and

24 “(ii) approved by resolution of the
25 Legislative Council of the Nation; and

1 “(C) expend the funds—

2 “(i) for any subjugation of land, de-
3 velopment of water resources, or construc-
4 tion, operation, maintenance, or replace-
5 ment of facilities within the San Xavier
6 Reservation that is not required to be car-
7 ried out by the Federal Government under
8 this title or any other provision of law;

9 “(ii) to provide governmental services,
10 including—

11 “(I) programs for senior citizens;

12 “(II) health care services;

13 “(III) education;

14 “(IV) economic development
15 loans and assistance; and

16 “(V) legal assistance programs;

17 “(iii) to provide benefits to allottees;

18 “(iv) to pay the costs of activities of
19 the San Xavier Allottees Association; and

20 “(v) to pay any administrative costs
21 incurred by the Nation or the San Xavier
22 District in conjunction with any of the ac-
23 tivities described in clauses (i) through
24 (iv).

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

3 “(A) IN GENERAL.—The Secretary shall
4 not—

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

8 “(ii) be subject to liability for any
9 claim or cause of action arising from the
10 use or expenditure, by the Nation or the
11 San Xavier District, of those funds.

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

16 **“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; AL-**
17 **TERNATIVE WATER SUPPLIES.**

18 “(a) DELIVERY OF WATER.—

19 “(1) IN GENERAL.—The Secretary shall deliver
20 water from the main project works of the Central
21 Arizona Project, in such quantities, and in accord-
22 ance with such terms and conditions, as are con-
23 tained in the agreement of December 11, 1980, as
24 amended, and the Tohono O’odham settlement
25 agreement, to 1 or more of—

1 “(A) the cooperative farm;

2 “(B) the eastern Schuk Toak District;

3 “(C) turnouts existing on the effective
4 date, as agreed to in writing by the Secretary
5 and the Nation; and

6 “(D) any other point of delivery on the
7 Central Arizona Project main aqueduct that is
8 agreed to by—

9 “(i) the Secretary;

10 “(ii) the operator of the Central Ari-
11 zona Project; and

12 “(iii) the Nation.

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

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

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

21 “(i) the Secretary;

22 “(ii) the United States; or

23 “(iii) any officer, employee, con-
24 tractor, or agent of the Secretary or
25 United States.

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

2 “(1) DELIVERY.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), if the Secretary, under the
5 terms and conditions of the agreements referred
6 to in subsection (a)(1), is unable, during any
7 year, to deliver from the main project works of
8 the Central Arizona Project any portion of the
9 quantity of water covered by sections 304(a)
10 and 306(a), the Secretary shall identify, acquire
11 and deliver an equivalent quantity of water
12 from, any appropriate source.

13 “(B) EXCEPTION.—The Secretary shall
14 not acquire any water under subparagraph (A)
15 through any transaction that would cause de-
16 pletion of groundwater supplies or aquifers in
17 the San Xavier District or the eastern Schuk
18 Toak District.

19 “(2) PRIVATE LAND AND INTERESTS.—

20 “(A) ACQUISITION.—

21 “(i) IN GENERAL.—Subject to sub-
22 paragraph (B), the Secretary may acquire
23 such private land, or interests in private
24 land, that include rights in surface or
25 groundwater recognized under State law,

1 as are necessary for the acquisition and de-
2 livery of water under this subsection.

3 “(ii) COMPLIANCE.—In acquiring
4 rights in surface water under clause (i),
5 the Secretary shall comply with all applica-
6 ble severance and transfer requirements
7 under State law.

8 “(B) PROHIBITION ON TAKING.—The Sec-
9 retary shall not acquire any land, water, water
10 rights, or contract rights under subparagraph
11 (A) without the consent of the owner of the
12 land, water, water rights, or contract rights.

13 “(C) PRIORITY.—In acquiring any private
14 land or interest in private land under this para-
15 graph, the Secretary shall give priority to the
16 acquisition of land on which water has been put
17 to beneficial use during any 1-year period dur-
18 ing the 5-year period preceding the date of ac-
19 quisition of the land by the Secretary.

20 “(3) DELIVERIES FROM ACQUIRED LAND.—De-
21 liveries of water from land acquired under paragraph
22 (2) shall be made only to the extent that the water
23 may be transported within the Tucson management
24 area under applicable law.

25 “(4) DELIVERY OF EFFLUENT.—

1 “(A) IN GENERAL.—Except on receipt of
2 prior written consent of the Nation, the Sec-
3 retary shall not deliver effluent directly to the
4 Nation under this subsection.

5 “(B) NO SEPARATE DELIVERY SYSTEM.—
6 The Secretary shall not construct a separate de-
7 livery system to deliver effluent to the San Xa-
8 vier Reservation or the eastern Schuk Toak
9 District.

10 “(C) NO IMPOSITION OF OBLIGATION.—
11 Nothing in this paragraph imposes any obliga-
12 tion on the United States to deliver effluent to
13 the Nation.

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

19 “(1) for—

20 “(A) the exchange of water; or

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

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

1 “(d) COMPENSATION AND DISBURSEMENTS.—

2 “(1) COMPENSATION.—If the Secretary is un-
3 able to acquire and deliver sufficient quantities of
4 water under section 304(a), this section, or section
5 306(a), the Secretary shall provide compensation in
6 accordance with paragraph (2) in amounts equal
7 to—

8 “(A)(i) the value of such quantities of
9 water as are not acquired and delivered, if the
10 delivery and distribution system for, and the
11 improvements to, the irrigation system for the
12 cooperative farm have not been completed by
13 the deadline required under section 304(c)(2);
14 or

15 “(ii) the value of such quantities of water
16 as—

17 “(I) are ordered by the Nation for use
18 by the Cooperative Association in the irri-
19 gation system; but

20 “(II) are not delivered in any calendar
21 year;

22 “(B)(i) the value of such quantities of
23 water as are not acquired and delivered, if the
24 extension of the irrigation system is not com-

1 pleted by the deadline required under section
2 304(c)(4); or

3 “(ii) the value of such quantities of water
4 as—

5 “(I) are ordered by the Nation for use
6 by the Cooperative Association in the ex-
7 tension to the irrigation system; but

8 “(II) are not delivered in any calendar
9 year; and

10 “(C)(i) the value of such quantities of
11 water as are not acquired and delivered, if the
12 irrigation system is not completed by the dead-
13 line required under section 304; or

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

16 “(I) are ordered by the Nation for use
17 in the irrigation system, or for use by any
18 person or entity (other than the Coopera-
19 tive Association); but

20 “(II) are not delivered in any calendar
21 year.

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

1 “(A) with respect to damages payable
 2 under subparagraphs (A) and (B) of paragraph
 3 (1), to the Cooperative Association; and

4 “(B) with respect to damages payable
 5 under paragraph (1)(C), to the Nation for re-
 6 tention by the Nation or disbursement to water
 7 users, under the provisions of the water code or
 8 other applicable laws of the Nation.

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

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

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

18 “(1) 23,000 acre-feet shall—

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

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

23 “(2) 5,200 acre-feet shall—

24 “(A) be delivered to, and used by, the east-
 25 ern Schuk Toak District; or

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

3 “(b) STATE CONTRIBUTION.—To assist the Secretary
4 in firming water under section 105(b)(1)(A) of the Ari-
5 zona Water Settlements Act, the State shall contribute
6 \$3,000,000—

7 “(1) through the Arizona Water Banking Au-
8 thority;

9 “(2) in accordance with a schedule that is ac-
10 ceptable to the Secretary and the State; and

11 “(3) in the form of cash or in-kind goods and
12 services.

13 **“SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIV-**
14 **ERY, REVENUE SHARING.**

15 “(a) CONDITIONS ON ACTIONS OF SECRETARY.—The
16 Secretary shall carry out section 304(c), subsections (a),
17 (b), and (d) of section 305, and section 306, only if—

18 “(1) the Nation agrees—

19 “(A) except as provided in section 308, to
20 limit the quantity of groundwater withdrawn by
21 nonexempt wells from beneath the San Xavier
22 Reservation to not more than 10,000 acre-feet;

23 “(B) except as provided in section 308, to
24 limit the quantity of groundwater withdrawn by
25 nonexempt wells from beneath the eastern

1 Schuk Toak District to not more than 3,200
2 acre-feet;

3 “(C) to comply with a water management
4 plan established by the Secretary under section
5 308(d);

6 “(D) to consent to the San Xavier District
7 being deemed a tribal organization (as defined
8 in section 900.6 of title 25, Code of Federal
9 Regulations (or any successor regulation)) for
10 purposes identified in subparagraph (E)(iii)(I),
11 as permitted with respect to tribal organizations
12 under title I of the Indian Self Determination
13 and Education Assistance Act (25 U.S.C. 450
14 et seq.);

15 “(E) subject to compliance by the Nation
16 with other applicable provisions of part 900 of
17 title 25, Code of Federal Regulations (or any
18 successor regulations), to consent to contracting
19 by the San Xavier District under section
20 311(b), on the conditions that—

21 “(i)(I) the plaintiffs in the Adams
22 case, Alvarez case, and Tucson case have
23 stipulated to the dismissal, with prejudice,
24 of claims in those cases; and

1 “(II) those cases have been dismissed
2 with prejudice;

3 “(ii) the San Xavier Cooperative Asso-
4 ciation has agreed to assume responsibility,
5 after completion of each of the irrigation
6 systems described in paragraphs (1) and
7 (2) of section 304(c) and on the delivery of
8 water through that system, for the oper-
9 ation, maintenance, and replacement of
10 that system in accordance with the first
11 section of the Act of August 1, 1914 (25
12 U.S.C. 385); and

13 “(iii) with respect to the consent of
14 the Nation to contracting—

15 “(I) the consent is limited solely
16 to contracts for—

17 “(aa) the design and con-
18 struction of the delivery and dis-
19 tribution system and the rehabili-
20 tation of the irrigation system for
21 the cooperative farm;

22 “(bb) the extension of the ir-
23 rigation system for the coopera-
24 tive farm;

1 “(cc) the subjugation of land
2 to be served by the system;

3 “(dd) the design and con-
4 struction of storage facilities sole-
5 ly for water deliverable for use
6 within the San Xavier Reserva-
7 tion; and

8 “(ee) the completion by the
9 Secretary of a water resources
10 study of the San Xavier Reserva-
11 tion and subsequent preparation
12 of a water management plan
13 under section 308(d);

14 “(II) the Nation shall reserve the
15 right to seek retrocession or re-
16 assumption of contracts described in
17 subclause (I), and recontracting under
18 subpart P and other applicable provi-
19 sions of part 900 of title 25, Code of
20 Federal Regulations (or any successor
21 regulations);

22 “(III) the Nation, on granting
23 consent to such contracting, shall be
24 released from any responsibility, li-
25 ability, claim, or cost from and after

1 the date on which consent is given,
2 with respect to past action or inaction
3 by the Nation, and subsequent action
4 or inaction by the San Xavier Dis-
5 trict, relating to the design and con-
6 struction of irrigation systems for the
7 cooperative farm or the Central Ari-
8 zona Project link pipeline; and

9 “(IV) the Secretary shall, on the
10 request of the Nation, execute a waiv-
11 er and release to carry out subclause
12 (III);

13 “(F) to subjugate, at no cost to the United
14 States, the land for which the irrigation sys-
15 tems under paragraphs (2) and (3) of section
16 304(c) will be planned, designed, and con-
17 structed by the Secretary, on the condition
18 that—

19 “(i) the obligation of the Nation to
20 subjugate the land in the cooperative farm
21 that is to be served by the extension of the
22 irrigation system under section 304(c)(2)
23 shall be determined by the Secretary, in
24 consultation with the Nation and the San
25 Xavier Cooperative Association; and

1 “(ii) subject to approval by the Sec-
2 retary of a contract with the San Xavier
3 District executed under section 311, to
4 perform that subjugation, a determination
5 by the Secretary of the subjugation costs
6 under clause (i), and the provision of no-
7 tice by the San Xavier District to the Na-
8 tion at least 180 days before the date on
9 which the District Council certifies by reso-
10 lution that the subjugation is scheduled to
11 commence, the Nation pays to the San Xa-
12 vier District, not later than 90 days before
13 the date on which the subjugation is sched-
14 uled to commence, from the trust fund
15 under section 315, or from other sources
16 of funds held by the Nation, the amount
17 determined by the Secretary under clause
18 (i); and

19 “(G) subject to valid existing rights, sec-
20 tion 7 of the Act of February 8, 1887 (25
21 U.S.C. 381), this title, other applicable Federal
22 law, a water management plan developed under
23 section 308(d), and the water code and other
24 applicable laws of the Nation, that the Na-
25 tion—

1 “(i) shall allocate as a first right of
2 beneficial consumptive use by allottees, the
3 San Xavier District, and other persons
4 within the San Xavier Reservation—

5 “(I) 35,000 acre-feet of the
6 50,000 acre-feet of water deliverable
7 under sections 304(a)(1) and
8 306(a)(1), including the use of the al-
9 location—

10 “(aa) to fulfill the obliga-
11 tions prescribed in the Asarco
12 agreement; and

13 “(bb) for groundwater stor-
14 age, maintenance of instream
15 flows, and maintenance of ripar-
16 ian vegetation and habitat;

17 “(II) the 10,000 acre-feet of
18 groundwater identified in subpara-
19 graph (A);

20 “(III) the groundwater with-
21 drawn from exempt wells;

22 “(IV) the deferred pumping stor-
23 age credits authorized by section
24 308(f)(1)(B); and

1 “(V) the direct and indirect stor-
2 age credits resulting from a project
3 authorized in section 308(e) that can-
4 not be lawfully transferred or other-
5 wise disposed of to persons for recov-
6 ery outside the territorial jurisdiction
7 of the Nation; and

8 “(ii) has the right—

9 “(I) to use, or authorize other
10 persons or entities to use, any portion
11 of the allocation of 35,000 acre-feet of
12 water deliverable under sections
13 304(a)(1) and 306(a)(1) outside the
14 San Xavier Reservation for any period
15 during which there is no identified ac-
16 tual use of the water within the San
17 Xavier Reservation;

18 “(II) as a first right of use, to
19 use the remaining acre-feet of water
20 deliverable under sections 304(a)(1)
21 and 306(a)(1) for any purpose and
22 duration within or outside the terri-
23 torial jurisdiction of the Nation au-
24 thorized by this title; and

1 “(III) subject to section 308, as
2 an exclusive right, to transfer or oth-
3 erwise dispose of the direct and indi-
4 rect storage credits that may be law-
5 fully transferred or otherwise disposed
6 of to persons for recovery outside the
7 territorial jurisdiction of the Nation;

8 “(iii) shall issue permits to persons or
9 entities for use of the water resources re-
10 ferred to in clause (i);

11 “(iv) shall, on timely receipt of an
12 order for water by a permittee under a
13 permit for Central Arizona Project water
14 referred to in clause (i), submit the order
15 to—

16 “(I) the Secretary; or

17 “(II) the operating agency for
18 the Central Arizona Project;

19 “(v) shall issue permits for water de-
20 liverable under sections 304(a)(2) and
21 306(a)(2), including quantities of water
22 reasonably necessary for the irrigation sys-
23 tem referred to in section 304(c)(3);

24 “(vi) shall issue permits for ground-
25 water that may be withdrawn from non-

1 exempt wells in the eastern Schuk Toak
2 District; and

3 “(vii) shall, on timely receipt of an
4 order for water by a permittee under a
5 permit for water referred to in clause (v),
6 submit the order to—

7 “(I) the Secretary; or

8 “(II) the operating agency for
9 the Central Arizona Project; and

10 “(2) the Adams case, Alvarez case, and Tucson
11 case have been dismissed with prejudice.

12 “(b) RESPONSIBILITIES ON COMPLETION.—On com-
13 pletion of an irrigation system or extension of an irrigation
14 system described in paragraphs (1) and (2), or in para-
15 graph (3), of section 304(c), if the irrigation system is
16 constructed on allotted land, neither the United States nor
17 the Nation shall be responsible for the operation, mainte-
18 nance, or replacement of the system.

19 “(c) PAYMENT OF CHARGES.—The Nation shall not
20 be responsible for payment of any water service capital
21 charge for Central Arizona Project water delivered under
22 section 304, subsection (a) or (b) of section 305, or section
23 306.

1 **“SEC. 308. WATER CODE; WATER MANAGEMENT PLAN;**
2 **STORAGE PROJECTS; STORAGE ACCOUNTS;**
3 **GROUNDWATER.**

4 “(a) WATER RESOURCES.—Water resources de-
5 scribed in clauses (i) and (ii) of section 307(a)(1)(G)—

6 “(1) shall be subject to section 7 of the Act of
7 February 8, 1887 (25 U.S.C. 381); and

8 “(2) shall be apportioned pursuant to clauses
9 (i) and (ii) of section 307(a)(1)(G).

10 “(b) WATER CODE.—Subject to this title and any
11 other applicable law, the Nation shall—

12 “(1) manage, regulate, and control the water
13 resources of the Nation (including the water re-
14 sources provided to the Nation under this title);

15 “(2) establish conditions, limitations, and per-
16 mit requirements, and promulgate regulations, relat-
17 ing to the storage, recovery, and use of surface
18 water and groundwater within the Nation’s Reserva-
19 tion; and

20 “(3) enact and maintain—

21 “(A) as soon as practicable after the effec-
22 tive date, an interim allottee water rights code
23 that—

24 “(i) is consistent with subsection (a);

25 “(ii) prescribes the rights of allottees
26 identified in paragraph (4); and

1 “(iii) provides that the interim allottee
2 water rights code shall be incorporated in
3 the comprehensive water code referred to
4 in subparagraph (B); and

5 “(B) not later than 3 years after the effec-
6 tive date, a comprehensive water code applicable
7 to the water resources owned or held by the Na-
8 tion or the United States for the benefit of—

9 “(i) land within the Nation’s Reserva-
10 tion; or

11 “(ii) allottees;

12 “(4) include in each of the water codes enacted
13 under subparagraphs (A) and (B) of paragraph
14 (3)—

15 “(A) an acknowledgement of the rights de-
16 scribed in subsection (a);

17 “(B) a process by which a just and equi-
18 table distribution of the water resources re-
19 ferred to in subsection (a), and any compensa-
20 tion provided under section 305(d)(1)(C), shall
21 be provided to allottees;

22 “(C) a process by which an allottee may
23 request and receive a permit for the use of any
24 water resources referred to in subsection (a),
25 except the water resources referred to in section

1 307(a)(1)(G)(ii)(III) and subject to the Na-
2 tion’s first right of use under section
3 307(a)(1)(G)(ii)(II);

4 “(D) provisions for the protection of due
5 process with respect to members of the Nation
6 and allottees, including—

7 “(i) a fair procedure for consideration
8 and determination of any request by—

9 “(I) a member of the Nation, for
10 a permit for use of available water re-
11 sources granted or confirmed by this
12 title; and

13 “(II) an allottee, for a permit for
14 use of—

15 “(aa) the water resources
16 identified in section
17 307(a)(1)(G)(i) that are subject
18 to a first right of beneficial con-
19 sumptive use; or

20 “(bb) subject to the first
21 right of use of the Nation, avail-
22 able water resources identified in
23 section 307(a)(1)(G)(i)(II)(bb);

24 “(ii) provisions for—

1 “(I) appeals and adjudications of
2 denied or disputed permits; and

3 “(II) resolution of contested ad-
4 ministrative decisions; and

5 “(iii) a waiver by the Nation of the
6 sovereign immunity of the Nation only
7 with respect to proceedings described in
8 clause (ii) for claims of declaratory and in-
9 junctive relief; and

10 “(E) a process for satisfying any entitle-
11 ment to the water resources referred to in sub-
12 paragraph (C) for which fee owners of allotted
13 land have received final determinations under
14 applicable law; and

15 “(5) submit to the Secretary the comprehensive
16 water code, for approval by the Secretary only of the
17 provisions of the water code that implement, with re-
18 spect to the allottees, the standards described in
19 paragraph (4).

20 “(c) WATER CODE APPROVAL.—

21 “(1) IN GENERAL.—On receipt of a comprehen-
22 sive water code under subsection (b)(5), the Sec-
23 retary shall—

24 “(A) issue a written approval of the water
25 code; or

1 “(B) provide a written notification to the
2 Nation that—

3 “(i) identifies such provisions of the
4 water code that do not conform to sub-
5 section (b); and

6 “(ii) recommends specific corrective
7 language for each nonconforming provi-
8 sion.

9 “(2) REVISION BY NATION.—If the Secretary
10 identifies nonconforming provisions in the water
11 code under paragraph (1)(B)(i), the Nation shall re-
12 vise the water code in accordance with the rec-
13 ommendations of the Secretary under paragraph
14 (1)(B)(ii).

15 “(3) INTERIM AUTHORITY.—Until such time as
16 the Nation revises the water code of the Nation in
17 accordance with paragraph (2) and the Secretary
18 subsequently approves the water code, the Secretary
19 may exercise any lawful authority of the Secretary
20 under section 7 of the Act of February 8, 1887 (25
21 U.S.C. 381).

22 “(4) LIMITATION.—Except as provided in this
23 subsection, nothing in this title requires the approval
24 of the Secretary of the water code of the Nation (or
25 any amendment to that water code).

1 “(d) WATER MANAGEMENT PLANS.—

2 “(1) IN GENERAL.—The Secretary shall estab-
3 lish, for the Reservation and the eastern Schuk
4 Toak District, water management plans that meet
5 the requirements described in paragraph (2).

6 “(2) REQUIREMENTS.—A water plan estab-
7 lished under paragraph (1)—

8 “(A) shall be developed under contracts ex-
9 ecuted under section 311 between the Secretary
10 and the San Xavier District for the San Xavier
11 Reservation, and between the Secretary and the
12 Nation for the eastern Schuk Toak District, as
13 applicable, that permit expenditures, exclusive
14 of administrative expenses of the Secretary, of
15 not more than—

16 “(i) with respect to a contract be-
17 tween the Secretary and the San Xavier
18 District, \$891,200; and

19 “(ii) with respect to a contract be-
20 tween the Secretary and the Nation,
21 \$237,200;

22 “(B) shall, at a minimum—

23 “(i) provide for the measurement of
24 all groundwater withdrawals, including

1 withdrawals from each well that is not an
2 exempt well;

3 “(ii) provide for—

4 “(I) reasonable recordkeeping of
5 water use, including the quantities of
6 water stored underground and recov-
7 ered each calendar year; and

8 “(II) a system for the reporting
9 of withdrawals from each well that is
10 not an exempt well;

11 “(iii) provide for the direct storage,
12 indirect storage, and deferred storage of
13 water, including the implementation of un-
14 derground storage and recovery projects, in
15 accordance with this section;

16 “(iv) provide for the annual exchange
17 of information collected under clauses (i)
18 through (iii)—

19 “(I) between the Nation and the
20 Arizona Department of Water Re-
21 sources; and

22 “(II) between the Nation and the
23 city of Tucson, Arizona;

24 “(v) provide for—

1 “(I) the efficient use of water;

2 and

3 “(II) the prevention of waste;

4 “(vi) except on approval of the district
5 council for a district in which a direct stor-
6 age project is established under subsection
7 (e), provide that no direct storage credits
8 earned as a result of the project shall be
9 recovered at any location at which the re-
10 covery would adversely affect surface or
11 groundwater supplies, or lower the water
12 table at any location, within the district;
13 and

14 “(vii) provide for amendments to the
15 water plan in accordance with this title;

16 “(C) shall authorize the establishment and
17 maintenance of 1 or more underground storage
18 and recovery projects in accordance with sub-
19 section (e), as applicable, within—

20 “(i) the San Xavier Reservation; or

21 “(ii) the eastern Schuk Toak District;

22 and

23 “(D) shall be implemented and maintained
24 by the Nation, with no obligation by the Sec-
25 retary.

1 “(e) UNDERGROUND STORAGE AND RECOVERY
2 PROJECTS.—The Nation is authorized to establish direct
3 storage and recovery projects and indirect storage and re-
4 covery projects in accordance with the Tohono O’odham
5 settlement agreement.

6 “(f) GROUNDWATER.—

7 “(1) RESERVATION.—

8 “(A) IN GENERAL.—In accordance with
9 section 307(a)(1)(A), 10,000 acre-feet of
10 groundwater may be pumped annually within
11 the San Xavier Reservation.

12 “(B) DEFERRED PUMPING.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), all or any portion of the 10,000 acre-
15 feet of water not pumped under subpara-
16 graph (A) in a year—

17 “(I) may be withdrawn in a sub-
18 sequent year; and

19 “(II) if any of that water is with-
20 drawn, shall be accounted for in ac-
21 cordance with the Tohono O’odham
22 settlement agreement as an equivalent
23 acre-feet of deferred pumping storage
24 credits.

1 “(ii) LIMITATION.—The quantity of
2 water authorized to be recovered as de-
3 ferred pumping storage credits under this
4 subparagraph shall not exceed—

5 “(I) 50,000 acre-feet for any 10-
6 year period; or

7 “(II) 10,000 acre-feet in any
8 year.

9 “(C) RECOVERY OF ADDITIONAL WATER.—
10 In addition to the quantity of groundwater au-
11 thorized to be pumped under subparagraphs
12 (A) and (B), the Nation may annually recover
13 within the San Xavier Reservation all or a por-
14 tion of the credits for water stored under a
15 project described in subsection (e).

16 “(2) EASTERN SCHUK TOAK DISTRICT.—

17 “(A) IN GENERAL.—In accordance with
18 section 307(a)(1)(B), 3,200 acre-feet of ground-
19 water may be pumped annually within the east-
20 ern Schuk Toak District.

21 “(B) DEFERRED PUMPING.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), all or any portion of the 3,200 acre-
24 feet of water not pumped under subpara-
25 graph (A) in a year—

1 “(I) may be withdrawn in a sub-
2 sequent year; and

3 “(II) if any of that water is with-
4 drawn, shall be accounted for in ac-
5 cordance with the Tohono O’odham
6 settlement agreement as an equivalent
7 acre-feet of deferred pumping storage
8 credits.

9 “(ii) LIMITATION.—The quantity of
10 water authorized to be recovered as de-
11 ferred pumping storage credits under this
12 subparagraph shall not exceed—

13 “(I) 16,000 acre-feet for any 10-
14 year period; or

15 “(II) 3,200 acre-feet in any year.

16 “(C) RECOVERY OF ADDITIONAL WATER.—
17 In addition to the quantity of groundwater au-
18 thorized to be pumped under subparagraphs
19 (A) and (B), the Nation may annually recover
20 within the eastern Schuk Toak District all or a
21 portion of the credits for water stored under a
22 project described in subsection (e).

23 “(3) INABILITY TO RECOVER GROUNDWATER.—

24 “(A) IN GENERAL.—The authorizations to
25 pump groundwater in paragraphs (1)(B),

1 (1)(C), and (2) neither warrant nor guarantee
2 that the groundwater—

3 “(i) physically exists; or

4 “(ii) is recoverable.

5 “(B) CLAIMS.—With respect to ground-
6 water described in subparagraph (A)—

7 “(i) the inability of any person to
8 pump or recover that groundwater shall
9 not be the basis for any claim by the
10 United States or the Nation against any
11 person or entity withdrawing or using the
12 water from any common supply; and

13 “(ii) the United States and the Nation
14 shall be barred from asserting any and all
15 claims for reserved water rights with re-
16 spect to that groundwater.

17 “(g) EXEMPT WELLS.—Any groundwater pumped
18 from an exempt well located within the San Xavier Res-
19 ervation or the eastern Schuk Toak District shall be ex-
20 empt from all pumping limitations under this title.

21 “(h) INABILITY OF SECRETARY TO DELIVER
22 WATER.—The Nation is authorized to pump additional
23 groundwater in any year in which the Secretary is unable
24 to deliver water required to carry out sections 304(a) and

1 306(a) in accordance with the Tohono O’odham settlement
 2 agreement.

3 “(i) PAYMENT OF COMPENSATION.—Nothing in this
 4 section affects any obligation of the Secretary to pay com-
 5 pensation in accordance with section 305(d).

6 **“SEC. 309. USES OF WATER.**

7 “(a) PERMISSIBLE USES.—Subject to other provi-
 8 sions of this section and other applicable law, the Nation
 9 may devote all water supplies granted or confirmed to the
 10 Nation under this title, whether delivered by the Secretary
 11 or pumped by the Nation, to any use (including any agri-
 12 cultural, municipal, domestic, industrial, commercial, min-
 13 ing, underground storage, instream flow, riparian habitat
 14 maintenance, or recreational use).

15 “(b) USE AREA.—

16 “(1) USE WITHIN RESERVATION.—Subject to
 17 subsection (d), the Nation may use at any location
 18 within the Nation’s Reservation—

19 “(A) the water supplies acquired under
 20 sections 304(a) and 306(a);

21 “(B) groundwater supplies; and

22 “(C) direct or indirect storage credits ac-
 23 quired as a result of projects authorized under
 24 section 308(e), or deferred storage credits de-
 25 scribed in section 308(f), except to the extent

1 that use of those storage credits causes the
2 withdrawal of groundwater in violation of appli-
3 cable Federal law.

4 “(2) USE OUTSIDE RESERVATION.—

5 “(A) IN GENERAL.—Water received by the
6 Nation under this title may be sold, leased,
7 transferred, or used outside of the Nation’s
8 Reservation only in accordance with this title.

9 “(B) USE WITHIN CERTAIN AREA.—Sub-
10 ject to subsection (c), the Nation may use the
11 Central Arizona Project water supplies acquired
12 under sections 304(a) and 306(a) within the
13 Central Arizona Project service area.

14 “(C) STATE LAW.—With the exception of
15 Central Arizona Project water, the Nation may
16 use any water supplies and direct and indirect
17 storage credits acquired as a result of a project
18 authorized under section 308(e) at any location
19 outside of the Nation’s Reservation, but within
20 the State, only in accordance with State law.

21 “(D) LIMITATION.—No water acquired
22 under section 304(a) or 306(a) shall be leased,
23 exchanged, forborne, or otherwise transferred
24 by the Nation for any direct or indirect use out-
25 side the State.

1 “(c) EXCHANGES AND LEASES; CONDITIONS ON EX-
2 CHANGES AND LEASES; RIGHT OF FIRST REFUSAL.—

3 “(1) IN GENERAL.—With respect to users out-
4 side the Nation’s Reservation, the Nation may, for
5 a term of not to exceed 100 years, assign, exchange,
6 lease, provide an option to lease, or otherwise tempo-
7 rarily dispose of to the users, Central Arizona
8 Project water to which the Nation is entitled under
9 sections 304(a) and 306(a) or direct and indirect
10 storage credits acquired under section 308, if the as-
11 signment, exchange, lease, option, or temporary dis-
12 posal is carried out in accordance with—

13 “(A) this subsection; and

14 “(B) subsection (b)(2).

15 “(2) LIMITATION ON ALIENATION.—The Nation
16 shall not permanently alienate any water right under
17 paragraph (1).

18 “(3) AUTHORIZED USES.—The water described
19 in paragraph (1) shall be delivered within the Cen-
20 tral Arizona Project service area for any use author-
21 ized under applicable law.

22 “(4) CONTRACT.—An assignment, exchange,
23 lease, option, or temporary disposal described in
24 paragraph (1) shall be executed only in accordance
25 with a contract that—

1 “(A) is accepted by the Nation;

2 “(B) is ratified under a resolution of the
3 Legislative Council of the Nation;

4 “(C) is approved by the United States as
5 Trustee; and

6 “(D) with respect to any contract to which
7 the United States or the Secretary is a party,
8 provides that an action may be maintained by
9 the contracting party against the United States
10 and the Secretary for a breach of the contract
11 by the United States or Secretary, as appropriate.
12

13 “(5) TERMS EXCEEDING 25 YEARS.—The terms
14 and conditions established in the Tohono O’odham
15 settlement agreement shall apply to any contract
16 under paragraph (4) that has a term of greater than
17 25 years.

18 “(d) LIMITATIONS ON USE, EXCHANGES, AND
19 LEASES.—The rights of the Nation to use water supplies
20 under subsection (a), and to assign, exchange, lease, provide
21 options to lease, or temporarily dispose of the water
22 supplies under subsection (c), shall be exercised on conditions
23 that ensure, to the maximum extent practicable, the
24 availability of water supplies to satisfy the first right of

1 beneficial consumptive use under section
2 307(a)(1)(G)(i)(I).

3 “(e) WATER SERVICE CAPITAL CHARGES.—In any
4 transaction entered into by the Nation and another person
5 under subsection (c) with respect to Central Arizona
6 Project water of the Nation, the person shall not be obli-
7 gated to pay to the United States or the Central Arizona
8 Water Conservation District any water service capital
9 charge.

10 “(f) WATER RIGHTS UNAFFECTED BY USE OR NON-
11 USE.—The failure of the Nation to make use of water pro-
12 vided under this title, or the use of, or failure to make
13 use of, that water by any other person that enters into
14 a contract with the Nation under subsection (c) for the
15 assignment, exchange, lease, option for lease, or tem-
16 porary disposal of water, shall not diminish, reduce, or im-
17 pair—

18 “(1) any water right of the Nation, as estab-
19 lished under this title or any other applicable law; or

20 “(2) any water use right recognized under this
21 title, including—

22 “(A) the first right of beneficial consump-
23 tive use referred to in section
24 307(a)(1)(G)(i)(I); or

1 “(B) the allottee use rights referred to in
2 section 308(a).

3 “(g) AMENDMENT TO AGREEMENT OF DECEMBER
4 11, 1980.—The Secretary shall amend the agreement of
5 December 11, 1980 to provide that—

6 “(1) the contract shall be—

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

10 “(B) without limit as to term;

11 “(2) the Nation may, with the approval of the
12 Secretary—

13 “(A) in accordance with subsection (c), as-
14 sign, exchange, lease, enter into an option to
15 lease, or otherwise temporarily dispose of water
16 to which the Nation is entitled under sections
17 304(a) and 306(a); and

18 “(B) renegotiate any lease at any time
19 during the term of the lease if the term of the
20 renegotiated lease does not exceed 100 years;

21 “(3)(A) the Nation shall be entitled to all con-
22 sideration due to the Nation under any leases and
23 any options to lease or exchanges or options to ex-
24 change the Nation’s Central Arizona Project water
25 entered into by the Nation; and

1 “(B) the United States shall have no trust obli-
2 gation or other obligation to monitor, administer, or
3 account for any consideration received by the Nation
4 under those leases or options to lease and exchanges
5 or options to exchange;

6 “(4)(A) all of the Nation’s Central Arizona
7 Project water shall be delivered through the delivery
8 and distribution system; and

9 “(B) if the delivery capacity of the delivery and
10 distribution system is significantly reduced or is an-
11 ticipated to be significantly reduced for an extended
12 period of time, the Nation shall have the same Cen-
13 tral Arizona Project delivery rights as other Central
14 Arizona Project contractors and Central Arizona
15 Project subcontractors, if the Central Arizona
16 Project contractors or Central Arizona Project sub-
17 contractors are allowed to take delivery of water
18 other than through the delivery and distribution sys-
19 tem;

20 “(5) the Nation may use the Nation’s Central
21 Arizona Project water on or off of the Nation’s Res-
22 ervation for the purposes of the Nation;

23 “(6) as authorized by subparagraph (A) of sec-
24 tion 403(f)(2) of the Colorado River Basin Project
25 Act (43 U.S.C. 1543(f)(2)) (as amended by section

1 107(a)) and to the extent that funds are available in
2 the Lower Colorado River Basin Development Fund
3 established by section 403 of that Act (43 U.S.C.
4 1543), the United States shall pay to the Central
5 Arizona Project operating agency the fixed oper-
6 ation, maintenance, and replacement charges associ-
7 ated with the delivery of the Nation's Central Ari-
8 zona Project water, except for the Nation's Central
9 Arizona Project water leased by others;

10 “(7) the costs associated with the construction
11 of the delivery and distribution system—

12 “(A) shall be nonreimbursable; and

13 “(B) shall be excluded from any repayment
14 obligation of the Nation;

15 “(8) no water service capital charges shall be
16 due or payable for the Nation's Central Arizona
17 Project water, regardless of whether the Central Ari-
18 zona Project water is delivered for use by the Nation
19 or is delivered pursuant to any leases or options to
20 lease or exchanges or options to exchange the Na-
21 tion's Central Arizona Project water entered into by
22 the Nation;

23 “(9) the agreement of December 11, 1980, con-
24 forms with section 104(d) and section 306(a) of the
25 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) 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 “(E) the FICO agreement (attached to the
6 Tohono O’odham settlement agreement as Ex-
7 hibit 14.1).

8 “(3) RELATION TO OTHER LAW.—

9 “(A) IN GENERAL.—Execution of an
10 agreement described in paragraph (2)(B) shall
11 not constitute major Federal action under the
12 National Environmental Policy Act (42 U.S.C.
13 4321 et seq.).

14 “(B) ENVIRONMENTAL COMPLIANCE AC-
15 TIVITIES.—The Secretary shall carry out all
16 necessary environmental compliance activities
17 during the implementation of the agreements
18 described in paragraph (2)(B), including activi-
19 ties under—

20 “(i) the National Environmental Pol-
21 icy Act (42 U.S.C. 4321 et seq.); and

22 “(ii) the Endangered Species Act of
23 1973 (16 U.S.C. 1531 et seq.).

24 “(C) LEAD AGENCY.—The Bureau of Rec-
25 lamation shall be the lead agency with respect

1 to environmental compliance under the agree-
2 ments described in paragraph (2)(B).

3 “(i) DISBURSEMENTS FROM TUCSON INTERIM
4 WATER LEASE.—The Secretary shall disburse to the Na-
5 tion, without condition, all proceeds from the Tucson in-
6 terim water lease.

7 “(j) USE OF GROSS PROCEEDS.—

8 “(1) DEFINITION OF GROSS PROCEEDS.—In
9 this subsection, the term ‘gross proceeds’ means all
10 proceeds, without reduction, received by the Nation
11 from—

12 “(A) the Tucson interim water lease (as
13 described in subsection (i)(2)(B)(i));

14 “(B) the Asarco agreement; and

15 “(C) any agreement similar to the Asarco
16 agreement to store Central Arizona Project
17 water of the Nation, instead of pumping
18 groundwater, for the purpose of protecting
19 water of the Nation.

20 “(2) ENTITLEMENT.—The Nation shall be enti-
21 tled to receive all gross proceeds under this title.

22 “(k) STATUTORY CONSTRUCTION.—Nothing in this
23 title establishes whether reserved water may be put to use,
24 or sold for use, off any reservation to which reserved water
25 rights attach.

1 **“SEC. 310. COOPERATIVE FUND.**

2 “(a) REAUTHORIZATION.—

3 “(1) IN GENERAL.—Congress reauthorizes, for
4 use in carrying out this title, the cooperative fund
5 established in the Treasury of the United States by
6 section 313 of the 1982 Act.

7 “(2) AMOUNTS IN COOPERATIVE FUND.—The
8 cooperative fund shall consist of—

9 “(A)(i) \$5,250,000, as appropriated to the
10 cooperative fund under section 313(b)(3)(A) the
11 1982 Act; and

12 “(ii) such amount, not to exceed
13 \$32,000,000, as the Secretary determines, after
14 providing notice to Congress, is necessary to
15 carry out this title; and

16 “(B) any additional Federal funds depos-
17 ited to the cooperative fund under Federal law;

18 “(C) \$5,250,000, as deposited in the coop-
19 erative fund under section 313(b)(1)(B) of the
20 1982 Act, of which—

21 “(i) \$2,750,000 was contributed by
22 the State;

23 “(ii) \$1,500,000 was contributed by
24 the city of Tucson;

25 “(iii) \$1,000,000 was contributed
26 by—

1 “(I) the Anamax Mining Com-
2 pany;

3 “(II) the Cyprus-Pima Mining
4 Company;

5 “(III) the American Smelting
6 and Refining Company;

7 “(IV) the Duval Corporation; and

8 “(V) the Farmers Investment
9 Company; and

10 “(iv) all interest accrued on all
11 amounts in the cooperative fund beginning
12 on October 12, 1982, less any interest ex-
13 pended under subsection (b)(2); and

14 “(D) all revenues received from—

15 “(i) the sale or lease of effluent re-
16 ceived by the Secretary under the contract
17 between the United States and the city of
18 Tucson to provide for delivery of reclaimed
19 water to the Secretary, dated October 11,
20 1983; and

21 “(ii) the sale or lease of storage cred-
22 its derived from the storage of that efflu-
23 ent.

24 “(b) EXPENDITURES FROM FUND.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 upon request by the Secretary of the Interior, the
3 Secretary of the Treasury shall transfer from the co-
4 operative fund to the Secretary of the Interior such
5 amounts as the Secretary of the Interior determines
6 are necessary to carry out obligations of the Sec-
7 retary of the Interior under this title, including to
8 pay—

9 “(A) the variable costs relating to the de-
10 livery of water under sections 304 through 306;

11 “(B) fixed operation maintenance and re-
12 placement costs relating to the delivery of water
13 under sections 304 through 306, to the extent
14 that funds are not available from the Lower
15 Colorado River Basin Development Fund to pay
16 those costs;

17 “(C) the costs of acquisition and delivery
18 of water from alternative sources under section
19 305; and

20 “(D) any compensation provided by the
21 Secretary of the Interior under section 305(e).

22 “(2) EXPENDITURE OF INTEREST.—With re-
23 spect to interest income accruing from amounts in
24 the cooperative fund—

1 “(A) the Secretary of the Interior may ex-
2 pend only interest income accruing after the ef-
3 fective date; and

4 “(B) that interest income may be expended
5 by the Secretary of the Interior, without further
6 appropriation.

7 “(c) INVESTMENT OF AMOUNTS.—

8 “(1) IN GENERAL.—The Secretary of the
9 Treasury shall invest such portion of the cooperative
10 fund as is not, in the judgment of the Secretary of
11 the Treasury, required to meet current withdrawals
12 determined by the Secretary of the Interior. Invest-
13 ments may be made only in interest-bearing obliga-
14 tions of the United States.

15 “(2) CREDITS TO COOPERATIVE FUND.—The
16 interest on, and the proceeds from the sale or re-
17 demption of, any obligations held in the cooperative
18 fund shall be credited to and form a part of the co-
19 operative fund.

20 “(d) TRANSFERS OF AMOUNTS.—

21 “(1) IN GENERAL.—The amounts required to
22 be transferred to the cooperative fund under this
23 section shall be transferred at least monthly from
24 the general fund of the Treasury to the cooperative

1 fund on the basis of estimates made by the Sec-
2 retary of the Treasury.

3 “(2) ADJUSTMENTS.—Proper adjustment shall
4 be made in amounts subsequently transferred to the
5 extent prior estimates were in excess of or less than
6 the amounts required to be transferred.

7 **“SEC. 311. CONTRACTING AUTHORITY; ENVIRONMENTAL**
8 **COMPLIANCE; WATER QUALITY; STUDIES;**
9 **ARID LAND ASSISTANCE.**

10 “(a) FUNCTIONS OF SECRETARY.—Except as pro-
11 vided in subsection (f), the functions of the Secretary (or
12 the Commissioner of Reclamation, acting on behalf of the
13 Secretary) under this title shall be subject to the Indian
14 Self-Determination and Education Assistance Act (25
15 U.S.C. 450 et seq.) to the same extent as if those func-
16 tions were carried out by the Assistant Secretary for In-
17 dian Affairs.

18 “(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

19 “(1) IN GENERAL.—Subject to the consent of
20 the Nation and other requirements under section
21 307(a)(1)(D), the San Xavier District shall be con-
22 sidered to be an eligible contractor for purposes of
23 this title.

24 “(2) TECHNICAL ASSISTANCE.—The Secretary
25 shall provide to the San Xavier District technical as-

1 sistance in carrying out the contracting require-
2 ments under the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450 et seq.).

4 “(c) GROUNDWATER MONITORING PROGRAMS.—

5 “(1) SAN XAVIER INDIAN RESERVATION PRO-
6 GRAM.—

7 “(A) IN GENERAL.—Not later than 180
8 days after the enforceability date, the Secretary
9 shall design and carry out a comprehensive
10 groundwater monitoring program (including the
11 drilling of wells and other appropriate actions)
12 to test, assess, and provide for the long-term
13 monitoring of the quality of groundwater with-
14 drawn from exempt wells and other wells within
15 the San Xavier Reservation.

16 “(B) LIMITATION ON EXPENDITURES.—In
17 carrying out this paragraph, the Secretary shall
18 expend not more than \$215,000.

19 “(2) EASTERN SCHUK TOAK DISTRICT PRO-
20 GRAM.—

21 “(A) IN GENERAL.—Not later than 180
22 days after the enforceability date, the Secretary
23 shall design and carry out a comprehensive
24 groundwater monitoring program (including the
25 drilling of wells and other appropriate actions)

1 to test, assess, and provide for the long-term
2 monitoring of the quality of groundwater with-
3 drawn from exempt wells and other wells within
4 the eastern Schuk Toak District.

5 “(B) LIMITATION ON EXPENDITURES.—In
6 carrying out this paragraph, the Secretary shall
7 expend not more than \$175,000.

8 “(3) DUTIES OF SECRETARY.—

9 “(A) CONSULTATION.—In carrying out
10 paragraphs (1) and (2), the Secretary shall con-
11 sult with representatives of—

12 “(i) the Nation;

13 “(ii) the San Xavier District and
14 Schuk Toak District, respectively; and

15 “(iii) appropriate State and local enti-
16 ties.

17 “(B) LIMITATION ON OBLIGATIONS OF
18 SECRETARY.—With respect to the groundwater
19 monitoring programs described in paragraphs
20 (1) and (2), the Secretary shall have no con-
21 tinuing obligation relating to those programs
22 beyond the obligations described in those para-
23 graphs.

24 “(d) WATER RESOURCES STUDY.—To assist the Na-
25 tion in developing sources of water, the Secretary shall

1 conduct a study to determine the availability and suit-
2 ability of water resources that are located—

3 “(1) within the territorial jurisdiction of the
4 Nation; but

5 “(2) outside the Tucson management area.

6 “(e) ARID LAND RENEWABLE RESOURCES.—If a
7 Federal entity is established to provide financial assistance
8 to carry out arid land renewable resources projects and
9 to encourage and ensure investment in the development
10 of domestic sources of arid land renewable resources, the
11 entity shall—

12 “(1) give first priority to the needs of the Na-
13 tion in providing that assistance; and

14 “(2) make available to the Nation, San Xavier
15 District, Schuk Toak District, and San Xavier Coop-
16 erative Association price guarantees, loans, loan
17 guarantees, purchase agreements, and joint venture
18 projects at a level that the entity determines will—

19 “(A) facilitate the cultivation of such min-
20 imum number of acres as is determined by the
21 entity to be necessary to ensure economically
22 successful cultivation of arid land crops; and

23 “(B) contribute significantly to the econ-
24 omy of the Nation.

25 “(f) ASARCO LAND EXCHANGE STUDY.—

1 “(1) IN GENERAL.—Not later than 2 years
 2 after the effective date, the Secretary, in consulta-
 3 tion with the Nation, the San Xavier District, the
 4 San Xavier Allottees’ Association, and Asarco, con-
 5 duct, and submit to Congress, a study on the feasi-
 6 bility of a land exchange or land exchanges with
 7 Asarco to provide land for future use by—

8 “(A) beneficial landowners of the Mission
 9 Complex Mining Leases of September 18, 1959;
 10 and

11 “(B) beneficial landowners of the Mission
 12 Complex Business Leases of May 12, 1959.

13 “(2) COMPONENTS.—The study under para-
 14 graph (1) shall include—

15 “(A) an analysis of the manner in which
 16 land exchanges could be accomplished to main-
 17 tain a contiguous land base for the San Xavier
 18 Reservation; and

19 “(B) a description of the legal status ex-
 20 changed land should have to maintain the polit-
 21 ical integrity of the San Xavier Reservation.

22 **“SEC. 312. WAIVER AND RELEASE OF CLAIMS.**

23 “(a) WAIVER OF CLAIMS BY THE NATION.—The
 24 Tohono O’odham settlement agreement shall provide that

1 the Nation, on behalf of the Nation and members of the
2 Nation, waives and releases—

3 “(1) any and all past, present, and future
4 claims for water rights (including claims based on
5 aboriginal occupancy) arising from time immemorial
6 and, thereafter, forever, and claims for injuries to
7 water rights arising from time immemorial through
8 the enforceability date, for land within the Tucson
9 management area, against—

10 “(A) the State (or any agency or political
11 subdivision of the State);

12 “(B) any municipal corporation; and

13 “(C) any other person or entity;

14 “(2) any and all claims for water rights arising
15 from time immemorial and, thereafter, forever,
16 claims for injuries to water rights arising from time
17 immemorial through the enforceability date, and fail-
18 ure to protect, acquire, or develop water rights for
19 land within the San Xavier Reservation and the
20 eastern Schuk Toak District from time immemorial
21 through the enforceability date, against the Federal
22 Government (including any agency, officer, and em-
23 ployee of the Federal Government);

24 “(3) any and all claims for injury to water
25 rights arising after the enforceability date for land

1 within the San Xavier Reservation and the eastern
2 Schuk Toak District resulting from the off-Reserva-
3 tion diversion or use of water in a manner not in
4 violation of the Tohono O’odham settlement agree-
5 ment against—

6 “(A) the State (or any agency or political
7 subdivision of the State);

8 “(B) any municipal corporation; and

9 “(C) any other person or entity; and

10 “(4) any and all past, present, and future
11 claims arising out of or relating to the negotiation
12 or execution of the Tohono O’odham settlement
13 agreement or the negotiation or enactment of this
14 Act, 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.

19 “(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASS-
20 ES.—The Tohono O’odham settlement agreement shall
21 provide that each allottee class waives and releases—

22 “(1) any and all past, present, and future
23 claims for water rights (including claims based on
24 aboriginal occupancy) arising from time immemorial
25 and, thereafter, forever, claims for injuries to water

1 rights arising from time immemorial through the en-
2 forceability date, against—

3 “(A) the State (or any agency or political
4 subdivision of the State);

5 “(B) any municipal corporation; and

6 “(C) any other person or entity (other
7 than the Nation);

8 “(2) any and all claims for water rights arising
9 from time immemorial and, thereafter, forever,
10 claims for injuries to water rights arising from time
11 immemorial through the enforceability date, and fail-
12 ure to protect, acquire, or develop water rights for
13 land within the San Xavier Reservation from time
14 immemorial through the enforceability date, against
15 the Federal Government (including any agency, offi-
16 cer, and employee of the Federal Government);

17 “(3) any and all claims for injury to water
18 rights arising after the enforceability date for land
19 within the San Xavier Reservation resulting from
20 the off-Reservation diversion or use of water in a
21 manner not in violation of the Tohono O’odham set-
22 tlement agreement against—

23 “(A) the State (or any agency or political
24 subdivision of the State);

25 “(B) any municipal corporation; and

1 “(C) any other person or entity; and

2 “(4) any and all past, present, and future
3 claims arising out of or relating to the negotiation
4 or execution of the Tohono O’odham settlement
5 agreement or the negotiation or enactment of this
6 Act, against—

7 “(A) the State (or any agency or political
8 subdivision of the State);

9 “(B) any municipal corporation; and

10 “(C) any other person or entity; and

11 “(4) any and all past, present, and future
12 claims for water rights arising from time immemo-
13 rial and, thereafter, forever, and claims for injuries
14 to water rights arising from time immemorial
15 through the enforceability date, against the Nation
16 (except that under section 307(a)(1)(F) and sub-
17 sections (a) and (b) of section 308, the allottees and
18 fee owners of allotted land shall retain any rights of
19 the allottees and owners to share in the water re-
20 sources granted or confirmed under this title and
21 the Tohono O’odham settlement agreement with re-
22 spect to uses within the San Xavier Reservation).

23 “(c) WAIVER OF CLAIMS BY THE UNITED STATES.—

24 The Tohono O’odham settlement agreement shall provide
25 that the United States as Trustee waives and releases—

1 “(1) any and all past, present, and future
2 claims for water rights (including claims based on
3 aboriginal occupancy) arising from time immemorial
4 and, thereafter, forever, and claims for injuries to
5 water rights arising from time immemorial through
6 the enforceability date, for land within the Tucson
7 management area, against—

8 “(A) the Nation;

9 “(B) the State (or any agency or political
10 subdivision of the State);

11 “(C) any municipal corporation; and

12 “(D) any other person or entity;

13 “(2) any and all claims for injury to water
14 rights arising after the enforceability date for land
15 within the San Xavier Reservation and the eastern
16 Schuk Toak District resulting from the off-Reserva-
17 tion diversion or use of water in a manner not in
18 violation of the Tohono O’odham settlement agree-
19 ment against—

20 “(A) the Nation;

21 “(B) the State (or any agency or political
22 subdivision of the State);

23 “(C) any municipal corporation; and

24 “(D) any other person or entity;

1 “(3) on and after the enforceability date, any
2 and all claims on behalf of the allottees for injuries
3 to water rights against the Nation (except that
4 under section 307(a)(1)(F) and subsections (a) and
5 (b) of section 308, the allottees shall retain any
6 rights of the allottees in the water resources granted
7 or confirmed under this title and the Tohono
8 O’odham settlement agreement with respect to uses
9 within the San Xavier Reservation); and

10 “(4) contingent on the effectiveness of a waiver
11 of such claims as are provided for in the Asarco
12 agreement, claims against Asarco on behalf of the
13 allottee class for the fourth cause of action in the Al-
14 varez case, as defined in the Tohono O’odham settle-
15 ment agreement.

16 “(d) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any
17 party to the Tohono O’odham settlement agreement may
18 waive and release, prohibit the assertion of, or agree not
19 to assert, any claims (including claims for subsidence dam-
20 age or injury to water quality) in addition to claims for
21 water rights and injuries to water rights on such terms
22 and conditions as may be agreed to by the parties.

23 “(e) RIGHTS OF ALLOTTEES; PROHIBITION OF
24 CLAIMS.—

1 “(1) IN GENERAL.—As of the enforceability
2 date—

3 “(A) the water rights and other benefits
4 granted or confirmed by this title and the
5 Tohono O’odham settlement agreement shall be
6 in full satisfaction of—

7 “(i) all claims for water rights and
8 claims for injuries to water rights of the
9 Nation and its members; and

10 “(ii) all claims for water rights and
11 injuries to water rights of the allottees;

12 “(B) any entitlement to water within the
13 Tucson management area of the Nation, indi-
14 vidual members of the Nation, or any allottee
15 shall be satisfied out of the water resources
16 granted or confirmed under this title and the
17 Tohono O’odham settlement agreement; and

18 “(C) any rights of the allottees to ground-
19 water, surface water, or effluent shall be limited
20 to the water rights granted or confirmed under
21 this title and the Tohono O’odham settlement
22 agreement.

23 “(2) LIMITATION OF CERTAIN CLAIMS BY
24 ALLOTTEES.—No allottee within the San Xavier
25 Reservation may—

“(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial through the enforceability date, against—

“(i) the Federal Government;

“(ii) the State (or any agency or political subdivision of the State);

“(iii) any municipal corporation; or

“(iv) any other person or entity; or

“(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

“(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

“(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

“(i) the claim has been waived and released in the Tohono O’odham settlement agreement; and

“(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

1 “(B) OFFSET.—Any benefits awarded to a
 2 fee owner of allotted land as a result of a suc-
 3 cessful claim shall be offset by benefits received
 4 by that fee owner of allotted land under this
 5 title.

6 “(4) LIMITATION OF CLAIMS AGAINST THE NA-
 7 TION.—

8 “(A) IN GENERAL.—Except as provided in
 9 subparagraph (B), no allottee may assert
 10 against the Nation any claims for water rights
 11 arising from time immemorial and, thereafter,
 12 forever, claims for injury to water rights arising
 13 from time immemorial through the enforce-
 14 ability date, or, beginning on the enforceability
 15 date, claims for future injury to water rights.

16 “(B) EXCEPTION.—Under section
 17 307(a)(1)(F) and subsections (a) and (b) of
 18 section 308, the allottees shall retain any rights
 19 to share in the water resources granted or con-
 20 firmed under this title and the Tohono
 21 O’odham settlement agreement.

22 “(f) CONSENT.—

23 “(1) GRANT OF CONSENT.—Congress grants to
 24 the Nation and the San Xavier Cooperative Associa-
 25 tion under section 305(d) consent to maintain civil

1 actions against the United States in the courts of
2 the United States under section 1346 or section
3 1491 of title 28, United States Code, respectively, to
4 recover damages, if any, for the breach of any obli-
5 gation of the Secretary under those sections.

6 “(2) NO SUFFICIENT FUNDS DEFENSE.—The
7 lack of sufficient funds in the cooperative fund to
8 carry out the obligations of the Secretary may not
9 be raised by the United States as a defense to any
10 claim asserted under paragraph (1).

11 “(3) REMEDY.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), the exclusive remedy for a civil ac-
14 tion maintained under this subsection shall be
15 monetary damages.

16 “(B) OFFSET.—A court that makes an
17 award for damages for a claim under this sub-
18 section shall offset against the award any
19 amount of funds—

20 “(i) made available by any Act of ap-
21 propriation; and

22 “(ii) paid to the claimant by the Sec-
23 retary in partial or complete satisfaction of
24 the claim.

1 “(4) NO CLAIMS ESTABLISHED.—Except as
 2 provided in paragraph (1), nothing in the subsection
 3 establishes any claim against the United States.

4 “(g) JURISDICTION; WAIVER OF IMMUNITY; PAR-
 5 TIES.—

6 “(1) JURISDICTION.—

7 “(A) IN GENERAL.—Except as provided in
 8 subsection (i), the courts of the United States,
 9 or a State court having jurisdiction over Gila
 10 River adjudication proceedings and decrees,
 11 shall have jurisdiction over—

12 “(i) civil actions relating to the inter-
 13 pretation and enforcement of—

14 “(I) this title;

15 “(II) the Tohono O’odham settle-
 16 ment agreement; and

17 “(III) agreements referred to in
 18 section 309(h)(2); and

19 “(ii) civil actions brought by or
 20 against the allottees or fee owners of allot-
 21 ted land for the interpretation of, or legal
 22 or equitable remedies with respect to,
 23 claims of water rights of the allottees or
 24 fee owners of allotted land that are not—

25 “(I) claims for water rights; or

1 “(II) claims waived and released
2 under the Tohono O’odham settlement
3 agreement.

4 “(B) LIMITATION.—Except as provided in
5 subparagraph (A), no State court or court of
6 the Nation shall have jurisdiction over any civil
7 action described in subparagraph (A).

8 “(2) WAIVER.—

9 “(A) IN GENERAL.—The United States
10 and the Nation waive sovereign immunity solely
11 for claims for—

12 “(i) declaratory judgment or injunc-
13 tive relief in any civil action arising under
14 this title; and

15 “(ii) such claims and remedies as may
16 be prescribed in any agreement authorized
17 under this title.

18 “(B) LIMITATION ON STANDING.—If a
19 governmental entity not described in subpara-
20 graph (A) asserts immunity in any civil action
21 that arises under this title (unless the entity
22 waives immunity for declaratory judgment or
23 injunctive relief) or any agreement authorized
24 under this title (unless the entity waives immu-

1 nity for the claims and remedies prescribed in
2 the agreement)—

3 “(i) the governmental entity shall not
4 have standing to initiate or assert any
5 claim, or seek any remedy against the
6 United States or the Nation, in the civil
7 action; and

8 “(ii) the waivers of sovereign immu-
9 nity under subparagraph (A) shall have no
10 effect in the civil action.

11 “(C) MONETARY RELIEF.—A waiver of im-
12 munity under this paragraph shall not extend
13 to any claim for damages, costs, attorneys’ fees,
14 or other monetary relief.

15 “(3) NATION AS A PARTY.—

16 “(A) IN GENERAL.—Not later than 60
17 days before the date on which a civil action
18 under paragraph (1)(A)(ii) is filed by an allot-
19 tee or fee owner of allotted land, the allottee or
20 fee owner, as the case may be, shall provide to
21 the Nation a notice of intent to file the civil ac-
22 tion, accompanied by a request for consultation.

23 “(B) JOINDER.—If the Nation is not a
24 party to a civil action as originally commenced

1 under paragraph (1)(A)(ii), the Nation shall be
2 joined as a party.

3 “(h) REGULATION AND JURISDICTION OVER DIS-
4 PUTE RESOLUTION.—

5 “(1) REGULATION.—The Nation shall have ju-
6 risdiction to manage, control, permit, administer,
7 and otherwise regulate the water resources granted
8 or confirmed under this title and the Tohono
9 O’odham settlement agreement—

10 “(A) with respect to the use of those re-
11 sources by—

12 “(i) the Nation;

13 “(ii) individual members of the Na-
14 tion;

15 “(iii) districts of the Nation; and

16 “(iv) allottees; and

17 “(B) with respect to any entitlement to
18 those resources for which a fee owner of allot-
19 ted land has received a final determination
20 under applicable law.

21 “(2) JURISDICTION.—Subject to a requirement
22 of exhaustion of any administrative or other rem-
23 edies prescribed under the laws of the Nation, juris-
24 diction over any disputes relating to the matters de-

1 scribed in paragraph (1) shall be vested in the
2 courts of the Nation.

3 “(3) APPLICABLE LAW.—The regulatory and
4 remedial procedures referred to in paragraphs (1)
5 and (2) shall be subject to all applicable law.

6 “(i) NO EXPANSION OF FEDERAL JURISDICTION.—
7 Nothing in this title expands or otherwise affects the juris-
8 diction of any Federal court.

9 **“SEC. 313. AFTER-ACQUIRED TRUST LAND.**

10 “(a) IN GENERAL.—Except as provided in subsection
11 (b)—

12 “(1) the Nation may seek to have taken into
13 trust by the United States, for the benefit of the
14 Nation, legal title to additional land within the State
15 and outside the exterior boundaries of the Nation’s
16 Reservation only in accordance with an Act of Con-
17 gress specifically authorizing the transfer for the
18 benefit of the Nation;

19 “(2) it is the intent of Congress in enacting this
20 title that future Acts of Congress described in para-
21 graph (1) should provide that land taken into trust
22 under that paragraph will include only such water
23 rights and water use privileges as are consistent
24 with State water law and State water management
25 policy; and

1 “(3) after-acquired trust land shall not include
2 Federal reserved rights to surface water or ground-
3 water.

4 “(b) EXCEPTION.—Subsection (a) shall not apply to
5 land acquired by the Nation under the Gila Bend Indian
6 Reservation Lands Replacement Act (100 Stat. 1798).

7 **“SEC. 314. NONREIMBURSABLE COSTS.**

8 “(a) CENTRAL ARIZONA WATER CONSERVATION DIS-
9 TRICT.—For the purpose of determining the allocation
10 and repayment of costs of any stage of the Central Ari-
11 zona Project constructed after the effective date, the costs
12 associated with the delivery of Central Arizona Project
13 water acquired under sections 304(a) and 306(a), whether
14 that water is delivered for use by the Nation or in accord-
15 ance with any assignment, exchange, lease, option to lease,
16 or other agreement for the temporary disposition of water
17 entered into by the Nation—

18 “(1) shall be nonreimbursable; and

19 “(2) shall be excluded from the repayment obli-
20 gation of the Central Arizona Water Conservation
21 District.

22 “(b) CLAIMS BY UNITED STATES.—The United
23 States shall—

1 “(1) make no claim against the Nation or any
2 allottee for reimbursement or repayment of any cost
3 associated with—

4 “(A) the construction of facilities under
5 the Colorado River Basin Project Act (43
6 U.S.C. 1501 et seq.);

7 “(B) the delivery of Central Arizona
8 Project water for any use authorized under this
9 title; or

10 “(C) the implementation of this title;

11 “(2) make no claim against the Nation for re-
12 imbursement or repayment of the costs associated
13 with the construction of facilities described in para-
14 graph (1)(A) for the benefit of and use on land
15 that—

16 “(A) is known as the ‘San Lucy Farm’;
17 and

18 “(B) was acquired by the Nation under the
19 Gila Bend Indian Reservation Lands Replace-
20 ment Act (100 Stat. 1798); and

21 “(3) impose no assessment with respect to the
22 costs referred to in paragraphs (1) and (2)
23 against—

24 “(A) trust or allotted land within the terri-
25 torial jurisdiction of the Nation; or

1 “(B) the land described in paragraph
2 (2)(B).

3 **“SEC. 315. TRUST FUND.**

4 “(a) REAUTHORIZATION.—

5 “(1) IN GENERAL.—Congress reauthorizes the
6 trust fund established in the Treasury of the United
7 States by section 309 of the 1982 Act, containing an
8 initial deposit of \$15,000,000 made under that sec-
9 tion, for use in carrying out this title.

10 “(2) INVESTMENT.—The Nation shall—

11 “(A) hold the amount described in para-
12 graph (1) in trust for the benefit of the Nation;
13 and

14 “(B) invest the amount in interest-bearing
15 deposits and securities (including deposits and
16 securities of the United States).

17 “(b) EXPENDITURES.—

18 “(1) IN GENERAL.—Subject to subsection (c),
19 the authorized governing body of the Nation, as
20 trustee for the Nation, may expend for each fiscal
21 year only the interest and dividends that accrue dur-
22 ing the fiscal year on the amount held and invested
23 under subsection (a)(2).

24 “(2) USE OF FUNDS.—The Nation may expend
25 interest and dividends described in paragraph (1)

1 only for the subjugation of land, the development of
2 water resources, and the construction, operation,
3 maintenance, and replacement of related facilities on
4 the San Xavier Reservation, that are not the obliga-
5 tion of the United States under this Act or any
6 other provision of law.

7 “(3) RESPONSIBILITY OF SECRETARY.—The
8 Secretary shall not—

9 “(A) be responsible for the review, ap-
10 proval, or audit of the use and expenditure of
11 any funds from the trust fund reauthorized by
12 subsection (a)(1); or

13 “(B) be subject to liability for any claim or
14 cause of action arising from the use or expendi-
15 ture by the Nation of those funds.

16 “(c) CONDITIONS OF TRUST.—

17 “(1) RESERVE FOR THE COST OF SUBJUGA-
18 TION.—The Nation shall reserve in the trust fund
19 reauthorized by subsection (a)(1)—

20 “(A) the principal amount of at least
21 \$3,000,000; and

22 “(B) interest on that amount that accrues
23 during the period beginning on the effective
24 date and ending on the earlier of—

1 “(i) the date on which full payment of
2 such costs has been made; or

3 “(ii) the date that is 10 years after
4 the effective date.

5 “(2) PAYMENT.—The costs described in para-
6 graph (1) shall be paid in the amount and on the
7 terms prescribed in section 307(a)(1)(E).

8 “(3) LIMITATION ON RESTRICTIONS.—On the
9 occurrence of an event described in clause (i) or (ii)
10 of paragraph (1)(B)—

11 “(A) the restrictions imposed on funds
12 from the trust fund described in subsection
13 (a)(1) shall terminate; and

14 “(B) any of those funds remaining that
15 were reserved under paragraph (1) may be used
16 by the Nation under subsection (b)(1).

17 **“SEC. 316. EFFECTIVE DATE OF WAIVERS AND RELEASES.**

18 “The waivers and releases of claims described in sec-
19 tion 312 shall become effective as of the date on which
20 the Secretary publishes in the Federal Register a state-
21 ment of findings that—

22 “(1)(A) to the extent that the Tohono O’odham
23 settlement agreement conflicts with this title, the
24 Tohono O’odham settlement agreement has been re-

1 vised through an amendment to eliminate those con-
2 flicts; and

3 “(B) the Tohono O’odham settlement agree-
4 ment, as so revised, has been executed by the parties
5 and the Secretary;

6 “(2) the Secretary and other parties to the
7 agreements described in section 309(h)(2) have exe-
8 cuted those agreements;

9 “(3) the Secretary has approved the interim al-
10 lottee water rights code described in section
11 308(b)(3)(A);

12 “(4) final dismissal with prejudice has been en-
13 tered in each of the Adams case, the Alvarez case,
14 and the Tucson case, on the sole condition that the
15 Secretary publishes the findings specified in this sec-
16 tion;

17 “(5) the judgment and decree attached to the
18 Tohono O’odham settlement agreement as exhibit
19 19.1 has been approved by the State court having
20 jurisdiction over the Gila River adjudication pro-
21 ceedings;

22 “(6) certain implementation costs have been
23 identified and retained in the Lower Colorado River
24 Basin Development Fund, including—

1 “(A) \$18,300,000 in lieu of construction to
2 implement section 304(f)(2);

3 “(B) \$891,200 to implement a water man-
4 agement plan for the San Xavier Reservation
5 under section 308(d);

6 “(C) \$237,200 to implement a water man-
7 agement plan for the eastern Schuk Toak Dis-
8 trict under section 308(d);

9 “(D) \$4,000,000 to complete the water re-
10 sources study under section 311(d);

11 “(E) \$215,000 to develop and implement a
12 groundwater monitoring program for the San
13 Xavier Reservation under section 311(c)(1);
14 and

15 “(F) \$175,000 to develop and implement a
16 groundwater monitoring program for the east-
17 ern Schuk Toak District under section
18 311(c)(2);

19 “(7) the State has enacted legislation that—

20 “(A) qualifies the Nation to earn long-term
21 storage credits under the Asarco agreement;
22 and

23 “(B) implements the San Xavier ground-
24 water protection program in accordance with

1 paragraph 8 of the Tohono O’odham settlement
2 agreement; and

3 “(8)(A) the State has enacted legislation to en-
4 able the State to carry out section 305(c) and
5 306(b); and

6 “(B) the Secretary and the State have agreed
7 to an acceptable firming schedule referred to in sec-
8 tion 105(b)(2)(C) of the Arizona Water Settlements
9 Act.

10 **“SEC. 317. FAILURE TO MAKE FINDINGS.**

11 “If the Secretarial statement of findings described in
12 section 316 is not published by December 31, 2007—

13 “(1) with the exception of section 304(c)—

14 “(A) section 316 and any Secretarial ac-
15 tions and contracts taken or entered into under
16 this title shall be of no further force and effect;
17 and

18 “(B) on and after January 1, 2008, the
19 1982 Act, as in effect on the day before the ef-
20 fective date, shall be of full force and effect;

21 “(2) any funds made available to carry out sec-
22 tions 305(d) and 306(b), unless already expended by
23 the Secretary in carrying out this title, shall imme-
24 diately revert to the general fund of the Treasury;
25 and

1 “(3) any funds made available by the State
2 under this title, together with any interest on those
3 funds, shall immediately revert to the State.

4 **“SEC. 318. MISCELLANEOUS PROVISIONS.**

5 “(a) IN GENERAL.—Nothing in this title—

6 “(1) establishes the applicability or inapplica-
7 bility to groundwater of any doctrine of Federal re-
8 served rights;

9 “(2) limits the ability of the Nation to enter
10 into any agreement with the Arizona Water Banking
11 Authority (or a successor agency) in accordance with
12 State law;

13 “(3) prohibits the Nation, any individual mem-
14 ber of the Nation, an allottee, or a fee owner of al-
15 lotted land in the San Xavier Reservation from law-
16 fully acquiring water rights for use in the Tucson
17 management area in addition to the water rights
18 granted or confirmed under this title and the
19 Tohono O’odham settlement agreement;

20 “(4) abrogates any rights or remedies existing
21 under section 1346 or 1491 of title 28, United
22 States Code;

23 “(5) affects the obligations of the parties under
24 the Agreement of December 11, 1980 with respect
25 to the 8,000 acre feet of Central Arizona Project

1 water contracted by the Nation for the Sif Oidak
2 District;

3 “(6)(A) applies to any exempt well;

4 “(B) prohibits or limits the drilling of any ex-
5 empt well within—

6 “(i) the San Xavier Reservation; or

7 “(ii) the eastern Schuk Toak District; or

8 “(C) subjects water from any exempt well to
9 any pumping limitation under this title; or

10 “(7) diminishes or abrogates rights to use water
11 under—

12 “(A) contracts of the Nation in existence
13 before the enforceability date; or

14 “(B) the well site agreement referred to in
15 the Asarco Agreement and any well site agree-
16 ment entered into under the Asarco agreement.

17 “(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water
18 received under a lease or exchange of the Central Arizona
19 Project water under this title does not affect any future
20 allocation or reallocation of Central Arizona Project water
21 by the Secretary.

22 **“SEC. 319. AUTHORIZATION OF APPROPRIATIONS.**

23 “Except as otherwise provided in this title, there are
24 authorized to be appropriated to the Secretary—

1 “(1) to construct features of irrigation systems
2 described in paragraphs (1) through (3) of section
3 304(c) that are not authorized to be constructed
4 under any other provision of law, an amount equal
5 to the sum of—

6 “(A) \$3,500,000; and

7 “(B) such additional amount as the Sec-
8 retary determines to be necessary to adjust the
9 amount under subparagraph (A) to account for
10 ordinary fluctuations in the costs of construc-
11 tion of irrigation features for the period begin-
12 ning on October 12, 1982, and ending on the
13 date on which the construction of the features
14 described in this paragraph is initiated, as indi-
15 cated by engineering cost indices applicable to
16 the type of construction involved;

17 “(2) to carry out section 304(f)(2),
18 \$18,300,000;

19 “(3) to carry out section 311(d), \$4,000,000;
20 and

21 “(4) such sums as are necessary to carry out
22 provisions of this title other than the provisions re-
23 ferred to in paragraphs (1) through (3).”.

○