

108TH CONGRESS
2D SESSION

S. 437

AN ACT

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”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Arbitration.
- Sec. 4. Antideficiency.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. General permissible uses of the Central Arizona Project.
- Sec. 104. Allocation of Central Arizona Project water.
- Sec. 105. Firming of Central Arizona Project Indian water.
- Sec. 106. Acquisition of agricultural priority water.
- Sec. 107. Lower Colorado River Basin Development Fund.
- Sec. 108. Effect.
- Sec. 109. Repeal.
- Sec. 110. Authorization of appropriations.
- Sec. 111. Repeal on failure of enforceability date under title II.

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS
 SETTLEMENT

- Sec. 201. Short title.
- Sec. 202. Purposes.
- Sec. 203. Approval of the Gila River Indian Community Water Rights Settlement Agreement.
- Sec. 204. Water rights.
- Sec. 205. Community water delivery contract amendments.
- Sec. 206. Satisfaction of claims.
- Sec. 207. Waiver and release of claims.
- Sec. 208. Gila River Indian Community Water OM&R Trust Fund.
- Sec. 209. Subsidence remediation program.
- Sec. 210. After-acquired trust land.
- Sec. 211. Reduction of water rights.
- Sec. 212. New Mexico Unit of the Central Arizona Project.
- Sec. 213. Miscellaneous provisions.
- Sec. 214. Authorization of appropriations.
- Sec. 215. Repeal on failure of enforceability date.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

- Sec. 301. Southern Arizona water rights settlement.
- Sec. 302. Southern Arizona water rights settlement effective date.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS
 SETTLEMENT

- Sec. 401. Effect of titles I, II, and III.
- Sec. 402. Annual report.
- Sec. 403. Authorization of appropriations.

1 **SEC. 2. DEFINITIONS.**

2 In titles I and II:

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

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

7 (A) is located—

8 (i) within the State; but

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

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

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

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

21 (A) located within the Reservation; and

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

23 (5) **ARIZONA INDIAN TRIBE.**—The term “Ari-
24 zona Indian tribe” means an Indian tribe (as de-
25 fined in section 4 of the Indian Self-Determination

1 and Education Assistance Act (25 U.S.C. 450b))
 2 that is located in the State.

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

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

12 (8) CAP OPERATING AGENCY.—The term
 13 “CAP operating agency” means the entity or entities
 14 authorized to assume responsibility for the care, op-
 15 eration, maintenance, and replacement of the CAP
 16 system.

17 (9) CAP REPAYMENT CONTRACT.—

18 (A) IN GENERAL.—The term “CAP repay-
 19 ment contract” means the contract dated De-
 20 cember 1, 1988 (Contract No. 14–0906–09W–
 21 09245, Amendment No. 1) between the United
 22 States and the Central Arizona Water Con-
 23 servation District for the delivery of water and
 24 the repayment of costs of the Central Arizona
 25 Project.

1 (B) INCLUSIONS.—The term “CAP repay-
2 ment contract” includes all amendments to and
3 revisions of that contract.

4 (10) CAP SUBCONTRACTOR.—The term “CAP
5 subcontractor” means a person or entity that has
6 entered into a long-term subcontract (as that term
7 is used in the repayment stipulation) with the
8 United States and the Central Arizona Water Con-
9 servation District for the delivery of water through
10 the CAP system.

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

13 (A) the Mark Wilmer Pumping Plant;

14 (B) the Hayden-Rhodes Aqueduct;

15 (C) the Fannin-McFarland Aqueduct;

16 (D) the Tucson Aqueduct;

17 (E) the pumping plants and appurtenant
18 works of the Central Arizona Project aqueduct
19 system that are associated with the features de-
20 scribed in subparagraphs (A) through (D); and

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

24 (12) CENTRAL ARIZONA PROJECT.—The term
25 “Central Arizona Project” means the reclamation

1 project authorized and constructed by the United
 2 States in accordance with title III of the Colorado
 3 River Basin Project Act (43 U.S.C. 1521 et seq.).

4 (13) CENTRAL ARIZONA WATER CONSERVATION
 5 DISTRICT.—The term “Central Arizona Water Con-
 6 servation District” means the political subdivision of
 7 the State that is the contractor under the CAP re-
 8 payment contract.

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

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

17 (16) COMMUNITY CAP WATER.—The term
 18 “Community CAP water” means water to which the
 19 Community is entitled under the Community water
 20 delivery contract.

21 (17) COMMUNITY REPAYMENT CONTRACT.—

22 (A) IN GENERAL.—The term “Community
 23 repayment contract” means Contract No. 6-
 24 0907-0903-09W0345 between the United
 25 States and the Community dated July 20,

1 1998, providing for the construction of water
 2 delivery facilities on the Reservation.

3 (B) INCLUSIONS.—The term “Community
 4 repayment contract” includes any amendments
 5 to the contract described in subparagraph (A).

6 (18) COMMUNITY WATER DELIVERY CON-
 7 TRACT.—

8 (A) IN GENERAL.—The term “Community
 9 water delivery contract” means Contract No. 3-
 10 0907-0930-09W0284 between the Community
 11 and the United States dated October 22, 1992.

12 (B) INCLUSIONS.—The term “Community
 13 water delivery contract” includes any amend-
 14 ments to the contract described in subpara-
 15 graph (A).

16 (19) CRR PROJECT WORKS.—

17 (A) IN GENERAL.—The term “CRR
 18 project works” means the portions of the San
 19 Carlos Irrigation Project located on the Res-
 20 ervation.

21 (B) INCLUSION.—The term “CRR Project
 22 works” includes the portion of the San Carlos
 23 Irrigation Project known as the “Southside
 24 Canal”, from the point at which the Southside

1 Canal connects with the Pima Canal to the
2 boundary of the Reservation.

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

5 (A) the Director of the Arizona Depart-
6 ment of Water Resources; or

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

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

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

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

22 (24) FRANKLIN IRRIGATION DISTRICT.—The
23 term “Franklin Irrigation District” means the entity
24 of that name that is a political subdivision of the
25 State and organized under the laws of the State.

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

10 (26) GILA RIVER AGREEMENT.—

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

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

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

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

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

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

7 (28) GLOBE EQUITY DECREE.—

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

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

17 (29) HAGGARD DECREE.—

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

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

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

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

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

13 (32) INJURY TO WATER RIGHTS.—

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

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

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

1 (33) 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 (34) MASTER AGREEMENT.—The term “master
7 agreement” means the agreement entitled “Arizona
8 Water Settlement Agreement” among the Director,
9 the Central Arizona Water Conservation District,
10 and the Secretary, dated August 16, 2004.

11 (35) NM CAP ENTITY.—The term “NM CAP
12 entity” means the entity or entities that the State
13 of New Mexico may authorize to assume responsi-
14 bility for the design, construction, operation, mainte-
15 nance, and replacement of the New Mexico Unit.

16 (36) NEW MEXICO CONSUMPTIVE USE AND
17 FORBEARANCE AGREEMENT.—

18 (A) IN GENERAL.—The term “New Mexico
19 Consumptive Use and Forbearance Agreement”
20 means that agreement entitled the “New Mex-
21 ico Consumptive Use and Forbearance Agree-
22 ment,” entered into by and among the United
23 States, the Community, the San Carlos Irriga-
24 tion and Drainage District, and all of the sig-
25 natories to the UVD Agreement, and approved

1 by the State of New Mexico, and authorized,
2 ratified, and approved by section 212(b).

3 (B) INCLUSIONS.—The “New Mexico Con-
4 sumptive Use and Forbearance Agreement”
5 includes—

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

10 (ii) any amendment to that agreement
11 made or added pursuant to that agree-
12 ment.

13 (37) NEW MEXICO UNIT.—The term “New
14 Mexico Unit” means that unit or units of the Cen-
15 tral Arizona Project authorized by sections
16 301(a)(4) and 304 of the Colorado River Basin
17 Project Act (43 U.S.C. 1521(a)(4), 1524) (as
18 amended by section 212).

19 (38) NEW MEXICO UNIT AGREEMENT.—

20 (A) IN GENERAL.—The term “New Mexico
21 Unit Agreement” means that agreement enti-
22 tled the “New Mexico Unit Agreement,” to be
23 entered into by and between the United States
24 and the NM CAP entity upon notice to the Sec-
25 retary from the State of New Mexico that the

1 State of New Mexico intends to have the New
2 Mexico Unit constructed or developed.

3 (B) INCLUSIONS.—The “New Mexico Unit
4 Agreement” includes—

5 (i) all exhibits to that agreement; and

6 (ii) any amendment to that agreement
7 made or added pursuant to that agree-
8 ment.

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

14 (40) PHELPS DODGE.—The term “Phelps
15 Dodge” means the Phelps Dodge Corporation, a
16 New York corporation of that name, and Phelps
17 Dodge’s subsidiaries (including Phelps Dodge
18 Morenci, Inc., a Delaware corporation of that name),
19 and Phelps Dodge’s successors or assigns.

20 (41) REPAYMENT STIPULATION.—The term
21 “repayment stipulation” means the Revised Stipula-
22 tion Regarding a Stay of Litigation, Resolution of
23 Issues During the Stay, and for Ultimate Judgment
24 Upon the Satisfaction of Conditions, filed with the
25 United States District Court for the District of Ari-

1 zona in Central Arizona Water Conservation District
2 v. United States, et al., No. CIV 95–09625–09TUC–
3 09WDB(EHC), No. CIV 95–091720–09PHX–
4 09EHC (Consolidated Action), and that court’s
5 order dated April 28, 2003, and any amendments or
6 revisions thereto.

7 (42) RESERVATION.—

8 (A) IN GENERAL.—Except as provided in
9 sections 207(d) and 210(d), the term “Reserva-
10 tion” means the land located within the exterior
11 boundaries of the reservation created under sec-
12 tions 3 and 4 of the Act of February 28, 1859
13 (11 Stat. 401, chapter LXVI) and Executive
14 Orders of August 31, 1876, June 14, 1879,
15 May 5, 1882, November 15, 1883, July 31,
16 1911, June 2, 1913, August 27, 1914, and July
17 19, 1915.

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

22 (43) ROOSEVELT HABITAT CONSERVATION
23 PLAN.—The term “Roosevelt Habitat Conservation
24 Plan” means the habitat conservation plan approved
25 by the United States Fish and Wildlife Service

1 under section 10(a)(1)(B) of the Endangered Spe-
2 cies Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the
3 incidental taking of endangered, threatened, and
4 candidate species resulting from the continued oper-
5 ation by the Salt River Project of Roosevelt Dam
6 and Lake, near Phoenix, Arizona.

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

12 (45) SAFFORD.—The term “Safford” means
13 the city of Safford, Arizona.

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

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

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

7 (49) SAN CARLOS IRRIGATION PROJECT.—

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

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

16 (50) SECRETARY.—The term “Secretary”
17 means the Secretary of the Interior.

18 (51) SPECIAL HOT LANDS.—The term “special
19 hot lands” has the meaning given the term in sub-
20 paragraph 2.34 of the UVD agreement.

21 (52) STATE.—The term “State” means the
22 State of Arizona.

23 (53) SUBCONTRACT.—

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

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

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

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

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

22 (57) UV DECREED ACRES.—

23 (A) IN GENERAL.—The term “UV decreed
24 acres” means the land located upstream and to
25 the east of the Coolidge Dam for which water

1 may be diverted pursuant to the Globe Equity
2 Decree.

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

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

10 (59) UV IMPACT ZONE.—The term “UV impact
11 zone” has the meaning given the term in subpara-
12 graph 2.47 of the UVD agreement.

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

16 (61) UVD AGREEMENT.—The term “UVD
17 agreement” means the agreement among the Com-
18 munity, the United States, the San Carlos Irrigation
19 and Drainage District, the Franklin Irrigation Dis-
20 trict, the Gila Valley Irrigation District, Phelps
21 Dodge, and other parties located in the upper valley
22 of the Gila River, dated September 2, 2004.

23 (62) UV SIGNATORIES PARTIES.—The term
24 “UV signatories” means the parties to the UVD
25 agreement other than the United States, the San

1 Carlos Irrigation and Drainage District, and the
2 Community.

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

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

10 (65) WATER RIGHTS APPURTENANT TO NEW
11 MEXICO 381 ACRES.—The term “water rights appur-
12 tenant to New Mexico 381 acres” means the water
13 rights—

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

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

21 (66) WATER RIGHTS FOR NEW MEXICO DOMES-
22 TIC PURPOSES.—The term “water rights for New
23 Mexico domestic purposes” means the water rights
24 for domestic purposes of not more than 265 acre-
25 feet of water for consumptive use described in para-

1 graph IV(D)(2) of the decree in *Arizona v. Cali-*
2 *fornia*, 376 U.S. 340, 350 (1964).

3 (67) 1994 BIOLOGICAL OPINION.—The term
4 “1994 biological opinion” means the biological opin-
5 ion, numbered 2–21–90–F–119, and dated April 15,
6 1994, relating to the transportation and delivery of
7 Central Arizona Project water to the Gila River
8 basin.

9 (68) 1996 BIOLOGICAL OPINION.—The term
10 “1996 biological opinion” means the biological opin-
11 ion, numbered 2–21–95–F–462 and dated July 23,
12 1996, relating to the impacts of modifying Roosevelt
13 Dam on the southwestern willow flycatcher.

14 (69) 1999 BIOLOGICAL OPINION.—The term
15 “1999 biological opinion” means the draft biological
16 opinion numbered 2–21–91–F–706, and dated May
17 1999, relating to the impacts of the Central Arizona
18 Project on Gila Topminnow in the Santa Cruz River
19 basin through the introduction and spread of non-
20 native aquatic species.

21 **SEC. 3. ARBITRATION.**

22 (a) NO PARTICIPATION BY THE UNITED STATES.—

23 (1) IN GENERAL.—No arbitration decision ren-
24 dered pursuant to subparagraph 12.1 of the UVD
25 agreement or exhibit 20.1 of the Gila River agree-

1 ment (including the joint control board agreement
2 attached to exhibit 20.1) shall be considered invalid
3 solely because the United States failed or refused to
4 participate in such arbitration proceedings that re-
5 sulted in such arbitration decision, so long as the
6 matters in arbitration under subparagraph 12.1 of
7 the UVD agreement or exhibit 20.1 of the Gila
8 River Agreement concern aspects of the water rights
9 of the Community, the San Carlos Irrigation
10 Project, or the Miscellaneous Flow Lands (as de-
11 fined in subparagraph 2.18A of the UVD agree-
12 ment) and not the water rights of the United States
13 in its own right, any other rights of the United
14 States, or the water rights or any other rights of the
15 United States acting on behalf of or for the benefit
16 of another tribe.

17 (2) *ARBITRATION INEFFECTIVE.*—If an issue
18 otherwise subject to arbitration under subparagraph
19 12.1 of the UVD agreement or exhibit 20.1 of the
20 Gila River Agreement cannot be arbitrated or if an
21 arbitration decision will not be effective because the
22 United States cannot or will not participate in the
23 arbitration, then the issue shall be submitted for de-
24 cision to a court of competent jurisdiction, but not
25 a court of the Community.

1 (b) PARTICIPATION BY THE SECRETARY.—Notwith-
 2 standing any provision of any agreement, exhibit, attach-
 3 ment, or other document ratified by this Act, if the Sec-
 4 retary is required to enter arbitration pursuant to this Act
 5 or any such document, the Secretary shall follow the pro-
 6 cedures for arbitration established by chapter 5 of title
 7 5, United States Code.

8 **SEC. 4. ANTIDEFICIENCY.**

9 The United States shall not be liable for failure to
 10 carry out any obligation or activity required by this Act,
 11 including all titles and all agreements or exhibits ratified
 12 or confirmed by this Act, funded by—

13 (1) the Lower Basin Development Fund estab-
 14 lished by section 403 of the Colorado River Basin
 15 Project Act (43 U.S.C. 1543), if there are not
 16 enough monies in that fund to fulfill those obliga-
 17 tions or carry out those activities; or

18 (2) appropriations, if appropriations are not
 19 provided by Congress.

20 **TITLE I—CENTRAL ARIZONA**
 21 **PROJECT SETTLEMENT**

22 **SEC. 101. SHORT TITLE.**

23 This title may be cited as the “Central Arizona
 24 Project Settlement Act of 2004”.

1 **SEC. 102. FINDINGS.**

2 Congress finds that—

3 (1) the water provided by the Central Arizona
4 Project to Maricopa, Pinal, and Pima Counties in
5 the State of Arizona, is vital to citizens of the State;
6 and

7 (2) an agreement on the allocation of Central
8 Arizona Project water among interested persons, in-
9 cluding Federal and State interests, would provide
10 important benefits to the Federal Government, the
11 State of Arizona, Arizona Indian Tribes, and the
12 citizens of the State.

13 **SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL**
14 **ARIZONA PROJECT.**

15 In accordance with the CAP repayment contract, the
16 Central Arizona Project may be used to transport non-
17 project water for—

18 (1) domestic, municipal, fish and wildlife, and
19 industrial purposes; and

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

22 **SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT**
23 **WATER.**

24 (a) NON-INDIAN AGRICULTURAL PRIORITY
25 WATER.—

1 (1) REALLOCATION TO ARIZONA INDIAN
2 TRIBES.—

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

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

10 (ii) 28,200 acre-feet shall be reallo-
11 cated to the Tohono O’odham Nation; and

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

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

19 (i) such water shall be used to resolve
20 Indian water claims in Arizona, and may
21 be allocated by the Secretary to Arizona
22 Indian Tribes in fulfillment of future Ari-
23 zona Indian water rights settlement agree-
24 ments approved by an Act of Congress. In
25 the absence of an Arizona Indian water

1 rights settlement that is approved by an
2 Act of Congress after the date of enact-
3 ment of this Act, the Secretary shall not
4 allocate any such water until December 31,
5 2030. Any allocations made by the Sec-
6 retary after such date shall be accom-
7 panied by a certification that the Secretary
8 is making the allocation in order to assist
9 in the resolution of an Arizona Indian
10 water right claim. Any such water allo-
11 cated to an Arizona Indian Tribe pursuant
12 to a water delivery contract with the Sec-
13 retary under this clause shall be counted
14 on an acre-foot per acre-foot basis against
15 any claim to water for that Tribe's res-
16 ervation;

17 (ii) notwithstanding clause (i), the
18 Secretary shall retain 6,411 acre-feet of
19 water for use for a future water rights set-
20 tlement agreement approved by an Act of
21 Congress that settles the Navajo Nation's
22 claims to water in Arizona. If Congress
23 does not approve this settlement before
24 December 31, 2030, the 6,411 acre-feet of

1 CAP water shall be available to the Sec-
2 retary under clause (i); and

3 (iii) 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 (C) REPORT.—The Secretary, in consulta-
11 tion with Arizona Indian tribes and the State,
12 shall prepare a report for Congress by Decem-
13 ber 31, 2016, that assesses whether the poten-
14 tial benefits of subparagraph (A) are being con-
15 veyed to Arizona Indian tribes pursuant to
16 water rights settlements enacted subsequent to
17 this Act. For those Arizona Indian tribes that
18 have not yet settled water rights claims, the
19 Secretary shall describe whether any active ne-
20 gotiations are taking place, and identify any
21 critical water needs that exist on the reserva-
22 tion of each such Arizona Indian tribe. The
23 Secretary shall also identify and report on the
24 use of unused quantities of agricultural priority

1 water made available to Arizona Indian tribes
2 under subparagraph (A).

3 (2) REALLOCATION TO THE ARIZONA DEPART-
4 MENT OF WATER RESOURCES.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B) and subparagraph 9.3 of the master
7 agreement, the Secretary shall reallocate up to
8 96,295 acre-feet of agricultural priority water
9 made available pursuant to the master agree-
10 ment to the Arizona Department of Water Re-
11 sources, to be held under contract in trust for
12 further allocation under subparagraph (C).

13 (B) REQUIRED DOCUMENTATION.—The re-
14 allocation of agricultural priority water under
15 subparagraph (A) is subject to the condition
16 that the Secretary execute any appropriate doc-
17 uments to memorialize the reallocation,
18 including—

19 (i) an allocation decision; and
20 (ii) a contract that prohibits the direct
21 use of the agricultural priority water by
22 the Arizona Department of Water Re-
23 sources.

1 (C) FURTHER ALLOCATION.—With respect
2 to the allocation of agricultural priority water
3 under subparagraph (A)—

4 (i) before that water may be further
5 allocated—

6 (I) the Director shall submit to
7 the Secretary, and the Secretary shall
8 receive, a recommendation for re-
9 allocation;

10 (II) as soon as practicable after
11 receiving the recommendation, the
12 Secretary shall carry out all necessary
13 reviews of the proposed reallocation,
14 in accordance with applicable Federal
15 law; and

16 (III) if the recommendation is re-
17 jected by the Secretary, the Secretary
18 shall—

19 (aa) request a revised rec-
20 ommendation from the Director;
21 and

22 (bb) proceed with any re-
23 views required under subclause
24 (II); and

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

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

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

17 (b) UNCONTRACTED CENTRAL ARIZONA PROJECT
 18 MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

19 (1) REALLOCATION.—The Secretary shall, on
 20 the recommendation of the Director, reallocate
 21 65,647 acre-feet of uncontracted municipal and in-
 22 dustrial water, of which—

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

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

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

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

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

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

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

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

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

17 (J) 808 acre-feet shall be reallocated to the
18 AVRA Cooperative;

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

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

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

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

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

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

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

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

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

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

17 (2) SUBCONTRACTS.—

18 (A) IN GENERAL.—As soon as practicable
19 after the date of enactment of this Act, and in
20 accordance with paragraphs (1) and (2) of sub-
21 section (d) and any other applicable Federal
22 laws, the Secretary shall offer to enter into sub-
23 contracts for the delivery of the uncontracted
24 municipal and industrial water reallocated
25 under paragraph (1).

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

6 (i) request a revised recommendation
 7 from the Director; and

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

12 (c) LIMITATIONS.—

13 (1) AMOUNT.—

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

20 (i) 650,724 acre-feet shall be—

21 (I) under contract to Arizona In-
 22 dian tribes; or

23 (II) available to the Secretary for
 24 allocation to Arizona Indian tribes;
 25 and

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

3 (I) non-Indian municipal and in-
4 dustrial entities;

5 (II) the Arizona Department of
6 Water Resources; and

7 (III) non-Indian agricultural en-
8 tities.

9 (B) EXCEPTION.—Subparagraph (A) shall
10 not apply to Central Arizona Project water de-
11 livered to water users in Arizona in exchange
12 for Gila River water used in New Mexico as
13 provided in section 304 of the Colorado River
14 Basin Project Act (43 U.S.C. 1524) (as amend-
15 ed by section 212).

16 (2) TRANSFER.—

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

20 (i) a use authorized under paragraph
21 (1)(A)(i) to a use authorized under para-
22 graph (1)(A)(ii); or

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

1 (B) EXCEPTIONS.—

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

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

15 (iii) Notwithstanding subparagraph
16 (A), up to 17,000 acre-feet of CAP munic-
17 ipal and industrial water under the sub-
18 contract among the United States, the
19 Central Arizona Water Conservation Dis-
20 trict, and Asarco, subcontract No. 3-07-
21 30-W0307, dated November 7, 1993, may
22 be reallocated to the Community on execu-
23 tion of an exchange and lease agreement
24 among the Community, the United States,
25 and Asarco.

1 (d) CENTRAL ARIZONA PROJECT CONTRACTS AND
2 SUBCONTRACTS.—

3 (1) IN GENERAL.—Notwithstanding section 6 of
4 the Reclamation Project Act of 1939 (43 U.S.C.
5 485e), and paragraphs (2) and (3) of section 304(b)
6 of the Colorado River Basin Project Act (43 U.S.C.
7 1524(b)), as soon as practicable after the date of en-
8 actment of this Act, the Secretary shall offer to
9 enter into subcontracts or to amend all Central Ari-
10 zona Project contracts and subcontracts in effect as
11 of that date in accordance with paragraph (2).

12 (2) REQUIREMENTS.—All subcontracts and
13 amendments to Central Arizona Project contracts
14 and subcontracts under paragraph (1)—

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

18 (B) shall have an initial delivery term that
19 is the greater of—

20 (i) 100 years; or

21 (ii) a term—

22 (I) authorized by Congress; or

23 (II) provided under the appro-
24 priate Central Arizona Project con-

1 tract or subcontract in existence on
2 the date of enactment of this Act;

3 (C) shall conform to the shortage sharing
4 criteria described in paragraph 5.3 of the
5 Tohono O’odham settlement agreement;

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

8 (E) shall not require—

9 (i) that any Central Arizona Project
10 water received in exchange for effluent be
11 deducted from the contractual entitlement
12 of the CAP contractor or CAP subcon-
13 tractor; or

14 (ii) that any additional modification of
15 the Central Arizona Project contracts or
16 subcontracts be made as a condition of ac-
17 ceptance of the subcontract or amend-
18 ments.

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

21 (A) a subcontract for non-Indian agricul-
22 tural use; or

23 (B) a contract executed under paragraph
24 5(d) of the repayment stipulation.

25 (e) PROHIBITION ON TRANSFER.—

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

6 (2) EXCEPTIONS.—Central Arizona Project
 7 water may be—

8 (A) leased, exchanged, forborne, or other-
 9 wise transferred under an agreement with the
 10 Arizona Water Banking Authority that is in ac-
 11 cordance with part 414 of title 43, Code of
 12 Federal Regulations; and

13 (B) delivered to users in Arizona in ex-
 14 change for Gila River water used in New Mex-
 15 ico as provided in section 304 of the Colorado
 16 River Basin Project Act (43 U.S.C. 1524) (as
 17 amended by section 212).

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

22 **SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN**
 23 **WATER.**

24 (a) FIRMING PROGRAM.—The Secretary and the
 25 State shall develop a firming program to ensure that

1 60,648 acre-feet of the agricultural priority water made
2 available pursuant to the master agreement and reallo-
3 cated to Arizona Indian tribes under section 104(a)(1),
4 shall, for a 100-year period, be delivered during water
5 shortages in the same manner as water with a municipal
6 and industrial delivery priority in the Central Arizona
7 Project system is delivered during water shortages.

8 (b) DUTIES.—

9 (1) SECRETARY.—The Secretary shall—

10 (A) firm 28,200 acre-feet of agricultural
11 priority water reallocated to the Tohono
12 O’odham Nation under section 104(a)(1)(A)(ii);
13 and

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

17 (2) STATE.—The State shall—

18 (A) firm 15,000 acre-feet of agricultural
19 priority water reallocated to the Community
20 under section 104(a)(1)(A)(i);

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

24 (C) assist the Secretary in carrying out ob-
25 ligations of the Secretary under paragraph

1 (1)(A) in accordance with section 306 of the
2 Southern Arizona Water Rights Settlement
3 Amendments Act (as added by section 301).

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary such
6 sums as are necessary to carry out the duties of the Sec-
7 retary under subsection (b)(1).

8 **SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY**
9 **WATER.**

10 (a) APPROVAL OF AGREEMENT.—

11 (1) IN GENERAL.—Except to the extent that
12 any provision of the master agreement conflicts with
13 any provision of this title, the master agreement is
14 authorized, ratified, and confirmed. To the extent
15 that amendments are executed to make the master
16 agreement consistent with this title, such amend-
17 ments are also authorized, ratified, and confirmed.

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

23 (3) DEBT COLLECTION.—For any agricultural
24 priority water that is not relinquished under the
25 master agreement, the subcontractor shall continue

1 to pay, consistent with the master agreement, the
2 portion of the debt associated with any retained
3 water under section 9(d) of the Reclamation Project
4 Act of 1939 (43 U.S.C. 485h(d)), and the Secretary
5 shall apply such revenues toward the reimbursable
6 section 9(d) debt of that subcontractor.

7 (4) EFFECTIVE DATE.—The provisions of sub-
8 sections (b) and (c) shall take effect on the date of
9 enactment of this Act.

10 (b) NONREIMBURSABLE DEBT.—

11 (1) IN GENERAL.—In accordance with the mas-
12 ter agreement, the portion of debt incurred under
13 section 9(d) of the Reclamation Project Act of 1939
14 (43 U.S.C. 485h(d)), and identified in the master
15 agreement as nonreimbursable to the United States,
16 shall be nonreimbursable and nonreturnable to the
17 United States in an amount not to exceed
18 \$73,561,337.

19 (2) EXTENSION.—In accordance with the mas-
20 ter agreement, the Secretary may extend, on an an-
21 nual basis, the repayment schedule of debt incurred
22 under section 9(d) of the Reclamation Project Act of
23 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

24 (c) EXEMPTION.—The Reclamation Reform Act of
25 1982 (43 U.S.C. 390aa et seq.) and any other acreage

1 limitation or full cost pricing provisions of Federal law
2 shall not apply to—

3 (1) land within the exterior boundaries of the
4 Central Arizona Water Conservation District or
5 served by Central Arizona Project water;

6 (2) land within the exterior boundaries of the
7 Salt River Reservoir District;

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

10 (A) within the exterior boundaries of the
11 Central Arizona Water Conservation District;

12 or

13 (B) served by Central Arizona Project
14 water; or

15 (4) any person, entity, or land, solely on the
16 basis of—

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

18 (B) execution or performance of the Gila
19 River agreement; or

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

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

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

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

7 “(1) CREDITING AGAINST CENTRAL ARIZONA
8 WATER CONSERVATION DISTRICT PAYMENTS.—

9 Funds credited to the development fund pursuant to
10 subsection (b) and paragraphs (1) and (3) of sub-
11 section (c), the portion of revenues derived from the
12 sale of power and energy for use in the State of Ari-
13 zona pursuant to subsection (c)(2) in excess of the
14 amount necessary to meet the requirements of para-
15 graphs (1) and (2) of subsection (d), and any annual
16 payment by the Central Arizona Water Conservation
17 District to effect repayment of reimbursable Central
18 Arizona Project construction costs, shall be credited
19 annually against the annual payment owed by the
20 Central Arizona Water Conservation District to the
21 United States for the Central Arizona Project.

22 “(2) FURTHER USE OF REVENUE FUNDS CRED-
23 ITED AGAINST PAYMENTS OF CENTRAL ARIZONA
24 WATER CONSERVATION DISTRICT.—After being cred-
25 ited in accordance with paragraph (1), the funds
26 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 annually the fixed operation,
4 maintenance, and replacement charges associ-
5 ated with the delivery of Central Arizona
6 Project water held under long-term contracts
7 for use by Arizona Indian tribes (as defined in
8 section 2 of the Arizona Water Settlements
9 Act) in accordance with clause 8(d)(i)(1)(i) of
10 the Repayment Stipulation (as defined in sec-
11 tion 2 of the Arizona Water Settlements Act);

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

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

1 dices applicable to the types of construction in-
2 volved in the rehabilitation;

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

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

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

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

10 “(iii) 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 July 20,
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) section 304 of the South-
23 ern Arizona Water Rights Settlement
24 Amendments Act of 2004;

1 “(iv) to pay \$52,396,000 for the reha-
2 bilitation of the San Carlos Irrigation
3 Project as provided in section 203(d)(4) of
4 the Arizona Water Settlements Act, of
5 which not more than \$9,000,000 shall be
6 available annually, except that the total
7 amount of \$52,396,000 shall be increased
8 or decreased, as appropriate, based on or-
9 dinary fluctuations since January 1, 2000,
10 in construction cost indices applicable to
11 the types of construction involved in the
12 rehabilitation;

13 “(v) to pay other costs specifically
14 identified under—

15 “(I) sections 213(g)(1) and 214
16 of the Arizona Water Settlements Act;
17 and

18 “(II) the Southern Arizona
19 Water Rights Settlement Amendments
20 Act of 2004;

21 “(vi) to pay a total of not more than
22 \$250,000,000 to the credit of the Future
23 Indian Water Settlement Subaccount of
24 the Lower Colorado Basin Development
25 Fund, for use for Indian water rights set-

1 tlements in Arizona approved by Congress
2 after the date of enactment of this Act,
3 subject to the requirement that, notwith-
4 standing any other provision of this Act,
5 any funds credited to the Future Indian
6 Water Settlement Subaccount that are not
7 used in furtherance of a congressionally
8 approved Indian water rights settlement in
9 Arizona by December 31, 2030, shall be
10 returned to the main Lower Colorado
11 Basin Development Fund for expenditure
12 on authorized uses pursuant to this Act,
13 provided that any interest earned on funds
14 held in the Future Indian Water Settle-
15 ment Subaccount shall remain in such sub-
16 account until disbursed or returned in ac-
17 cordance with this section;

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

1 “(viii) to pay the Secretary’s costs of
2 implementing the Central Arizona Project
3 Settlement Act of 2004;

4 “(E) in addition to amounts made avail-
5 able for the purpose through annual
6 appropriations—

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

14 “(ii) to make payments to those tribes
15 in accordance with paragraph 8(d)(i)(1)(iv)
16 of the repayment stipulation (as defined in
17 section 2 of the Arizona Water Settlements
18 Act), except that if a water rights settle-
19 ment Act of Congress authorizes such con-
20 struction, payments to those tribes shall be
21 made from funds in the Future Indian
22 Water Settlement Subaccount; and

23 “(F) if any amounts remain in the develop-
24 ment fund at the end of a fiscal year, to be car-
25 ried over to the following fiscal year for use for

1 the purposes described in subparagraphs (A)
2 through (E).

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

11 “(A) to pay annually the fixed operation,
12 maintenance and replacement charges associ-
13 ated with the delivery of Central Arizona
14 Project water under long-term contracts held by
15 Arizona Indian tribes (as defined in section 2 of
16 the Arizona Water Settlements Act);

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

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

1 “(D) to reimburse the general fund of the
2 Treasury for costs previously paid under sub-
3 paragraphs (B) through (E) of paragraph (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 Reclamation Project Act of
8 1939 (43 U.S.C. 485h(d)), made nonreimburs-
9 able under section 106(b) of the Arizona Water
10 Settlements Act;

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

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

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

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

23 “(4) INVESTMENT OF AMOUNTS.—

24 “(A) IN GENERAL.—The Secretary of the
25 Treasury shall invest such portion of the devel-

1 opment fund as is not, in the judgment of the
2 Secretary of the Interior, required to meet cur-
3 rent needs of the development fund.

4 “(B) PERMITTED INVESTMENTS.—

5 “(i) IN GENERAL.—Notwithstanding
6 any other provision of law, including any
7 provision requiring the consent or concur-
8 rence of any party, the investments re-
9 ferred to in subparagraph (A) shall include
10 1 or more of the following:

11 “(I) Any investments referred to
12 in the Act of June 24, 1938 (25
13 U.S.C. 162a).

14 “(II) Investments in obligations
15 of government corporations and gov-
16 ernment-sponsored entities whose
17 charter statutes provide that their ob-
18 ligations are lawful investments for
19 federally managed funds.

20 “(III) The obligations referred to
21 in section 201 of the Social Security
22 Act (42 U.S.C. 401).

23 “(ii) LAWFUL INVESTMENTS.—For
24 purposes of clause (i), obligations of gov-
25 ernment corporations and government-

1 sponsored entities whose charter statutes
2 provide that their obligations are lawful in-
3 vestments for federally managed funds in-
4 cludes any of the following securities or se-
5 curities with comparable language con-
6 cerning the investment of federally man-
7 aged funds:

8 “(I) Obligations of the United
9 States Postal Service as authorized by
10 section 2005 of title 39, United States
11 Code.

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

17 “(III) Mortgages, obligations, or
18 other securities of the Federal Home
19 Loan Mortgage Corporation as au-
20 thorized by section 303 of the Federal
21 Home Loan Mortgage Corporation
22 Act (12 U.S.C. 1452).

23 “(IV) Bonds, notes, or deben-
24 tures of the Commodity Credit Cor-
25 poration as authorized by section 4 of

1 the Act of March 4, 1939 (15 U.S.C.
2 713a-4).

3 “(C) ACQUISITION OF OBLIGATIONS.—For
4 the purpose of investments under subparagraph
5 (A), obligations may be acquired—

6 “ (i) on original issue at the issue
7 price; or

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

10 “(D) SALE OF OBLIGATIONS.—Any obliga-
11 tion acquired by the development fund may be
12 sold by the Secretary of the Treasury at the
13 market price.

14 “(E) CREDITS TO FUND.—The interest on,
15 and the proceeds from the sale or redemption
16 of, any obligations held in the development fund
17 shall be credited to and form a part of the de-
18 velopment fund.

19 “(5) AMOUNTS NOT AVAILABLE FOR CERTAIN
20 FEDERAL OBLIGATIONS.—None of the provisions of
21 this section, including paragraphs (2)(A) and (3)(A),
22 shall be construed to make any of the funds referred
23 to in this section available for the fulfillment of any
24 Federal obligation relating to the payment of OM&R
25 charges if such obligation is undertaken pursuant to

1 Public Law 95–328, Public Law 98–530, or any set-
2 tlement agreement with the United States (or
3 amendments thereto) approved by or pursuant to ei-
4 ther of those acts.”.

5 (b) LIMITATION.—Amounts made available under the
6 amendment made by subsection (a)—

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

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

13 (A) the date on which the findings de-
14 scribed in section 207(c) are published in the
15 Federal Register; or

16 (B) January 1, 2010.

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

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

21 (2) in section 403(e), by deleting the first word
22 and inserting “Except as provided in subsection (f),
23 revenues”.

1 **SEC. 108. EFFECT.**

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

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

8 (2) any rights to use Colorado River water ex-
9 isting on the date of enactment of this Act.

10 **SEC. 109. REPEAL.**

11 Section 11(h) of the Salt River Pima-Maricopa In-
12 dian Community Water Rights Settlement Act of 1988
13 (102 Stat. 2559) is repealed.

14 **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

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

17 (1) the 1994 biological opinion, including any
18 funding transfers required by the opinion;

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

21 (3) any final biological opinion resulting from
22 the 1999 biological opinion, including any funding
23 transfers required by the opinion.

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

1 (c) AGREEMENTS.—

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

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

13 **SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE**
14 **UNDER TITLE II.**

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

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

22 (2) any amounts appropriated under section
23 110 that remain unexpended shall immediately re-
24 vert to the general fund of the Treasury.

1 (b) EXCEPTION.—No subcontract amendment exe-
2 cuted by the Secretary under the notice of June 18, 2003
3 (67 Fed. Reg. 36578), shall be considered to be a contract
4 entered into by the Secretary for purposes of subsection
5 (a)(1).

6 **TITLE II—GILA RIVER INDIAN**
7 **COMMUNITY WATER RIGHTS**
8 **SETTLEMENT**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Gila River Indian
11 Community Water Rights Settlement Act of 2004”.

12 **SEC. 202. PURPOSES.**

13 The purposes of this title are—

14 (1) to resolve permanently certain damage
15 claims and all water rights claims among the United
16 States on behalf of the Community, its members,
17 and allottees, and the Community and its neighbors;

18 (2) to authorize, ratify, and confirm the Gila
19 River agreement;

20 (3) to authorize and direct the Secretary to exe-
21 cute and perform all obligations of the Secretary
22 under the Gila River agreement;

23 (4) to authorize the actions and appropriations
24 necessary for the United States to meet obligations

1 of the United States under the Gila River agreement
2 and this title; and

3 (5) to authorize and direct the Secretary to exe-
4 cute the New Mexico Consumptive Use and Forbear-
5 ance Agreement to allow the Secretary to exercise
6 the rights authorized by subsections (d) and (f) of
7 section 304 of the Colorado River Basin Project Act
8 (43 U.S.C. 1524).

9 **SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMU-**
10 **NITY WATER RIGHTS SETTLEMENT AGREE-**
11 **MENT.**

12 (a) IN GENERAL.—Except to the extent that any pro-
13 vision of the Gila River agreement conflicts with any provi-
14 sion of this title, the Gila River agreement is authorized,
15 ratified, and confirmed. To the extent amendments are ex-
16 ecuted to make the Gila River agreement consistent with
17 this title, such amendments are also authorized, ratified,
18 and confirmed.

19 (b) EXECUTION OF AGREEMENT.—To the extent that
20 the Gila River agreement does not conflict with this title,
21 the Secretary is directed to and shall execute the Gila
22 River agreement, including all exhibits to the Gila River
23 agreement requiring the signature of the Secretary and
24 any amendments necessary to make the Gila River agree-
25 ment consistent with this title, after the Community has

1 executed the Gila River agreement and any such amend-
2 ments.

3 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

4 (1) ENVIRONMENTAL COMPLIANCE.—In imple-
5 menting the Gila River agreement, the Secretary
6 shall promptly comply with all aspects of the Na-
7 tional Environmental Policy Act of 1969 (42 U.S.C.
8 4321 et seq.), the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.), and all other applicable
10 environmental Acts and regulations.

11 (2) EXECUTION OF THE GILA RIVER AGREE-
12 MENT.—Execution of the Gila River agreement by
13 the Secretary under this section shall not constitute
14 a major Federal action under the National Environ-
15 mental Policy Act (42 U.S.C. 4321 et seq.). The
16 Secretary is directed to carry out all necessary envi-
17 ronmental compliance required by Federal law in im-
18 plementing the Gila River agreement.

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

22 (d) REHABILITATION AND OPERATION, MAINTENANCE,
23 AND REPLACEMENT OF CERTAIN WATER
24 WORKS.—

1 (1) IN GENERAL.—In addition to any obliga-
2 tions of the Secretary with respect to the San Carlos
3 Irrigation Project, including any operation or main-
4 tenance responsibility existing on the date of enact-
5 ment of this Act, the Secretary shall—

6 (A) in accordance with exhibit 20.1 to the
7 Gila River agreement, provide for the rehabili-
8 tation of the San Carlos Irrigation Project
9 water diversion and delivery works with the
10 funds provided for under section 403(f)(2) of
11 the Colorado River Basin Project Act; and

12 (B) provide electric power for San Carlos
13 Irrigation Project wells and irrigation pumps at
14 the Secretary's direct cost of transmission, dis-
15 tribution, and administration, using the least
16 expensive source of power available.

17 (2) JOINT CONTROL BOARD AGREEMENT.—

18 (A) IN GENERAL.—Except to the extent
19 that it is in conflict with this title, the Sec-
20 retary shall execute the joint control board
21 agreement described in exhibit 20.1 to the Gila
22 River agreement, including all exhibits to the
23 joint control board agreement requiring the sig-
24 nature of the Secretary and any amendments

1 necessary to the joint control board agreement
2 consistent with this title.

3 (B) CONTROLS.—The joint control board
4 agreement shall contain the following provi-
5 sions, among others:

6 (i) The Secretary, acting through the
7 Bureau of Indian Affairs, shall continue to
8 be responsible for the operation and main-
9 tenance of Picacho Dam and Coolidge
10 Dam and Reservoir, and for scheduling
11 and delivering water to the Community
12 and the District through the San Carlos
13 Irrigation Project joint works.

14 (ii) The actions and decisions of the
15 joint control board that pertain to con-
16 struction and maintenance of those San
17 Carlos Irrigation Project joint works that
18 are the subject of the joint control board
19 agreement shall be subject to the approval
20 of the Secretary, acting through the Bu-
21 reau of Indian Affairs within 30 days
22 thereof, or sooner in emergency situations,
23 which approval shall not be unreasonably
24 withheld. Should a required decision of the
25 Bureau of Indian Affairs not be received

1 by the joint control board within 60 days
2 following an action or decision of the joint
3 control board, the joint control board ac-
4 tion or decision shall be deemed to have
5 been approved by the Secretary.

6 (3) REHABILITATION COSTS ALLOCABLE TO
7 THE COMMUNITY.—The rehabilitation costs allocable
8 to the Community under exhibit 20.1 to the Gila
9 River agreement shall be paid from the funds avail-
10 able under paragraph (2)(C) of section 403(f) of the
11 Colorado River Basin Project Act (43 U.S.C.
12 1543(f)) (as amended by section 107(a)).

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

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

22 (B) SUPPLEMENTARY REPAYMENT CON-
23 TRACT.—Prior to the advance of any funds
24 made available to the San Carlos Irrigation and
25 Drainage District pursuant to the provisions of

1 this Act, the Secretary shall execute a supple-
2 mentary repayment contract with the San Car-
3 los Irrigation and Drainage District in the form
4 provided for in exhibit 20.1 to the Gila River
5 agreement which shall, among other things,
6 provide that—

7 (i) in accomplishing the work under
8 the supplemental repayment contract—

9 (I) the San Carlos Irrigation and
10 Drainage District—

11 (aa) may use locally accept-
12 ed engineering standards and the
13 labor and contracting authorities
14 that are available to the District
15 under State law; and

16 (bb) shall be subject to the
17 value engineering program of the
18 Bureau of Reclamation estab-
19 lished pursuant to OMB Circular
20 A-131; and

21 (II) in accordance with FAR
22 Part 48.101(b), the incentive returned
23 to the contractor through this “Incen-
24 tive Clause” shall be 55 percent after
25 the Contractor is reimbursed for the

1 allowable costs of developing and im-
2 plementing the proposal and the Gov-
3 ernment shall retain 45 percent of
4 such savings in the form of reduced
5 expenditures;

6 (ii) up to 18,000 acre-feet annually of
7 conserved water will be made available by
8 the San Carlos Irrigation and Drainage
9 District to the United States pursuant to
10 the terms of exhibit 20.1 to the Gila River
11 agreement; and

12 (iii) a portion of the San Carlos Irri-
13 gation and Drainage District's share of the
14 rehabilitation costs specified in exhibit
15 20.1 to the Gila River agreement shall be
16 nonreimbursable.

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

22 (6) FINANCIAL RESPONSIBILITY.—Except as
23 expressly provided by this section, nothing in this
24 Act shall affect—

1 (A) any responsibility of the Secretary
2 under the provisions of the Act of June 7, 1924
3 (commonly known as the “San Carlos Irrigation
4 Project Act of 1924”) (43 Stat. 475); or

5 (B) any other financial responsibility of the
6 Secretary relating to operation and mainte-
7 nance of the San Carlos Irrigation Project ex-
8 isting on the date of enactment of this Act.

9 **SEC. 204. WATER RIGHTS.**

10 (a) RIGHTS HELD IN TRUST; ALLOTTEES.—

11 (1) INTENT OF CONGRESS.—It is the intent of
12 Congress to provide allottees with benefits that are
13 equal to or that exceed the benefits that the allottees
14 currently possess, taking into account—

15 (A) the potential risks, cost, and time
16 delay associated with the litigation that will be
17 resolved by the Gila River agreement;

18 (B) the availability of funding under title
19 I for the rehabilitation of the San Carlos Irriga-
20 tion Project and for other benefits;

21 (C) the availability of water from the CAP
22 system and other sources after the enforce-
23 ability date, which will supplement less secure
24 existing water supplies; and

1 (D) the applicability of section 7 of the Act
2 of February 8, 1887 (25 U.S.C. 381), and this
3 title to protect the interests of allottees.

4 (2) HOLDING IN TRUST.—The water rights and
5 resources described in the Gila River agreement
6 shall be held in trust by the United States on behalf
7 of the Community and the allottees as described in
8 this section.

9 (3) ALLOTTED LAND.—As specified in and pro-
10 vided for under this Act—

11 (A) agricultural allottees, other than
12 allottees with rights under the Globe Equity
13 Decree, shall be entitled to a just and equitable
14 allocation of water from the Community for ir-
15 rigation purposes from the water resources de-
16 scribed in the Gila River agreement;

17 (B) allotted land with rights under the
18 Globe Equity Decree shall be entitled to
19 receive—

20 (i) a similar quantity of water from
21 the Community to the quantity historically
22 delivered under the Globe Equity Decree;
23 and

24 (ii) the benefit of the rehabilitation of
25 the San Carlos Irrigation Project as pro-

1 vided in this Act, a more secure source of
2 water, and other benefits under this Act;

3 (C) the water rights and resources and
4 other benefits provided by this Act are a com-
5 plete substitution of any rights that may have
6 been held by, or any claims that may have been
7 asserted by, the allottees before the date of en-
8 actment of this Act for land within the exterior
9 boundaries of the Reservation;

10 (D) any entitlement to water of allottees
11 for land located within the exterior boundaries
12 of the Reservation shall be satisfied by the
13 Community using the water resources described
14 in subparagraph 4.1 in the Gila River agree-
15 ment;

16 (E) before asserting any claim against the
17 United States under section 1491(a) of title 28,
18 United States Code, or under section 7 of the
19 Act of February 8, 1887 (25 U.S.C. 381), an
20 allottee shall first exhaust remedies available to
21 the allottee under the Community's water code
22 and Community law; and

23 (F) following exhaustion of remedies on
24 claims relating to section 7 of the Act of Feb-

1 ruary 8, 1887 (25 U.S.C. 381), a claimant may
2 petition the Secretary for relief.

3 (4) ACTIONS, CLAIMS, AND LAWSUITS.—

4 (A) IN GENERAL.—Nothing in this Act au-
5 thorizes any action, claim, or lawsuit by an al-
6 lottee against any person, entity, corporation,
7 or municipal corporation, under Federal, State,
8 or other law.

9 (B) THE COMMUNITY AND THE UNITED
10 STATES.—Except as provided in subparagraphs
11 (E) and (F) of paragraph (3) and subsection
12 (e)(2)(C), nothing in this Act either authorizes
13 any action, claim, or lawsuit by an allottee
14 against the Community under Federal, State,
15 or other law, or alters available actions pursu-
16 ant to section 1491(a) of title 28, of the United
17 States Code, or section 381 of title 25, of the
18 United States Code.

19 (b) REALLOCATION.—

20 (1) IN GENERAL.—In accordance with this title
21 and the Gila River agreement, the Secretary shall
22 reallocate and contract with the Community for the
23 delivery in accordance with this section of—

24 (A) an annual entitlement to 18,600 acre-
25 feet of CAP agricultural priority water in ac-

1 cordance with the agreement among the Sec-
2 retary, the Community, and Roosevelt Water
3 Conservation District dated August 7, 1992;

4 (B) an annual entitlement to 18,100 acre-
5 feet of CAP Indian priority water, which was
6 permanently relinquished by Harquahala Valley
7 Irrigation District in accordance with Contract
8 No. 3-0907-0930-09W0290 among the Cen-
9 tral Arizona Water Conservation District, the
10 Harquahala Valley Irrigation District, and the
11 United States, and converted to CAP Indian
12 priority water under the Fort McDowell Indian
13 Community Water Rights Settlement Act of
14 1990 (104 Stat. 4480);

15 (C) on execution of an exchange and lease
16 agreement among the Community, the United
17 States, and Asarco, an annual entitlement of up
18 to 17,000 acre-feet of CAP municipal and in-
19 dustrial priority water under the subcontract
20 among the United States, the Central Arizona
21 Water Conservation District, and Asarco, Sub-
22 contract No. 3-07-30-W0307, dated November
23 7, 1993; and

24 (D) as provided in section 104(a)(1)(A)(i),
25 an annual entitlement to 102,000 acre-feet of

1 CAP agricultural priority water acquired pursu-
2 ant to the master agreement.

3 (2) SOLE AUTHORITY.—In accordance with this
4 section, the Community shall have the sole author-
5 ity, subject to the Secretary's approval pursuant to
6 section 205(a)(2), to lease, distribute, exchange, or
7 allocate the CAP water described in this subsection,
8 except that this paragraph shall not impair the right
9 of an allottee to lease land of the allottee together
10 with the water rights appurtenant to the land. Noth-
11 ing in this paragraph shall affect the validity of any
12 lease or exchange ratified in section 205(c) or
13 205(d).

14 (c) WATER SERVICE CAPITAL CHARGES.—The Com-
15 munity shall not be responsible for water service capital
16 charges for CAP water.

17 (d) ALLOCATION AND REPAYMENT.—For the pur-
18 pose of determining the allocation and repayment of costs
19 of any stages of the Central Arizona Project constructed
20 after the date of enactment of this Act, the costs associ-
21 ated with the delivery of water described in subsection (b),
22 whether that water is delivered for use by the Community
23 or in accordance with any assignment, exchange, lease, op-
24 tion to lease, or other agreement for the temporary dis-
25 position of water entered into by the Community—

1 (1) shall be nonreimbursable; and

2 (2) shall be excluded from the repayment obli-
3 gation of the Central Arizona Water Conservation
4 District.

5 (e) APPLICATION OF PROVISIONS.—

6 (1) IN GENERAL.—The water rights recognized
7 and confirmed to the Community and allottees by
8 the Gila River agreement and this title shall be sub-
9 ject to section 7 of the Act of February 8, 1887 (25
10 U.S.C. 381).

11 (2) WATER CODE.—

12 (A) IN GENERAL.—Not later than 18
13 months after the enforceability date, the Com-
14 munity shall enact a water code, subject to any
15 applicable provision of law (including subsection
16 (a)(3)), that—

17 (i) manages, regulates, and controls
18 the water resources on the Reservation;

19 (ii) governs all of the water rights
20 that are held in trust by the United States;
21 and

22 (iii) provides that, subject to approval
23 of the Secretary—

24 (I) the Community shall manage,
25 regulate, and control the water re-

1 sources described in the Gila River
2 agreement and allocate water to all
3 water users on the Reservation pursu-
4 ant to the water code;

5 (II) the Community shall estab-
6 lish conditions, limitations, and permit
7 requirements relating to the storage,
8 recovery, and use of the water re-
9 sources described in the Gila River
10 agreement;

11 (III) any allocation of water shall
12 be from the pooled water resources
13 described in the Gila River agreement;

14 (IV) charges for delivery of water
15 for irrigation purposes to water users
16 on the Reservation (including water
17 users on allotted land) shall be as-
18 sessed on a just and equitable basis
19 without regard to the status of the
20 Reservation land on which the water
21 is used;

22 (V) there is a process by which
23 any user of or applicant to use water
24 for irrigation purposes (including
25 water users on allotted land) may re-

1 quest that the Community provide
2 water for irrigation use in accordance
3 with this title;

4 (VI) there is a due process sys-
5 tem for the consideration and deter-
6 mination by the Community of any re-
7 quest by any water user on the Res-
8 ervation (including water users on al-
9 lotted land), for an allocation of
10 water, including a process for appeal
11 and adjudication of denied or disputed
12 distributions of water and for resolu-
13 tion of contested administrative deci-
14 sions; and

15 (VII) there is a requirement that
16 any allottee with a claim relating to
17 the enforcement of rights of the allot-
18 tee under the water code or relating
19 to the amount of water allocated to
20 land of the allottee must first exhaust
21 remedies available to the allottee
22 under Community law and the water
23 code before initiating an action
24 against the United States or peti-

1 tioning the Secretary pursuant to sub-
2 section (a)(3)(F).

3 (B) APPROVAL.—Any provision of the
4 water code and any amendments to the water
5 code that affect the rights of the allottees shall
6 be subject to the approval of the Secretary, and
7 no such provision or amendment shall be valid
8 until approved by the Secretary.

9 (C) INCLUSION OF REQUIREMENT IN
10 WATER CODE.—The Community is authorized
11 to and shall include in the water code the re-
12 quirement in subparagraph (A)(VII) that any
13 allottee with a claim relating to the enforcement
14 of rights of the allottee under the water code or
15 relating to the amount of water allocated to
16 land of the allottee must first exhaust remedies
17 available to the allottee under Community law
18 and the water code before initiating an action
19 against the United States.

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

1 Community shall have authority, subject to the Sec-
2 retary's authority under section 7 of the Act of Feb-
3 ruary 8, 1887 (25 U.S.C. 381), to manage, regulate,
4 and control the water resources described in the Gila
5 River agreement, subject to paragraph (2), except
6 that this paragraph shall not impair the right of an
7 allottee to lease land of the allottee together with the
8 water rights appurtenant to the land.

9 **SEC. 205. COMMUNITY WATER DELIVERY CONTRACT**
10 **AMENDMENTS.**

11 (a) IN GENERAL.—The Secretary shall amend the
12 Community water delivery contract to provide, among
13 other things, in accordance with the Gila River agreement,
14 that—

15 (1) the contract shall be—

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

19 (B) without limit as to term;

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

24 (A) enter into contracts or options to lease
25 (for a term not to exceed 100 years) or con-

1 tracts or options to exchange, Community CAP
2 water within Maricopa, Pinal, Pima, La Paz,
3 Yavapai, Gila, Graham, Greenlee, Santa Cruz,
4 or Coconino Counties, Arizona, providing for
5 the temporary delivery to others of any portion
6 of the Community CAP water; and

7 (B) renegotiate any lease at any time dur-
8 ing the term of the lease, so long as the term
9 of the renegotiated lease does not exceed 100
10 years;

11 (3)(A) the Community, and not the United
12 States, shall be entitled to all consideration due to
13 the Community under any leases or options to lease
14 and exchanges or options to exchange Community
15 CAP water entered into by the Community; and

16 (B) the United States shall have no trust obli-
17 gation or other obligation to monitor, administer, or
18 account for—

19 (i) any funds received by the Community
20 as consideration under any such leases or op-
21 tions to lease and exchanges or options to ex-
22 change; or

23 (ii) the expenditure of such funds;

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

1 (B) if the delivery capacity of the CAP system
2 is significantly reduced or is anticipated to be sig-
3 nificantly reduced for an extended period of time,
4 the Community shall have the same CAP delivery
5 rights as other CAP contractors and CAP sub-
6 contractors, if such CAP contractors or CAP sub-
7 contractors are allowed to take delivery of water
8 other than through the CAP system;

9 (5) the Community may use Community CAP
10 water on or off the Reservation for Community pur-
11 poses;

12 (6) as authorized by subparagraph (A) of sec-
13 tion 403(f)(2) of the Colorado River Basin Project
14 Act (43 U.S.C. 1543(f)(2)) (as amended by section
15 107(a)) and to the extent that funds are available in
16 the Lower Colorado River Basin Development Fund
17 established by section 403 of that Act (43 U.S.C.
18 1543), the United States shall pay to the CAP oper-
19 ating agency the fixed OM&R charges associated
20 with the delivery of Community CAP water, except
21 for Community CAP water leased by others;

22 (7) the costs associated with the construction of
23 the CAP system allocable to the Community—

24 (A) shall be nonreimbursable; and

1 (B) shall be excluded from any repayment
2 obligation of the Community; and

3 (8) no CAP water service capital charges shall
4 be due or payable for Community CAP water,
5 whether CAP water is delivered for use by the Com-
6 munity or is delivered under any leases, options to
7 lease, exchanges or options to exchange Community
8 CAP water entered into by the Community.

9 (b) AMENDED AND RESTATED COMMUNITY WATER
10 DELIVERY CONTRACT.—To the extent it is not in conflict
11 with the provisions of this Act, the Amended and Restated
12 Community CAP Water Delivery Contract set forth in ex-
13 hibit 8.2 to the Gila River agreement is authorized, rati-
14 fied, and confirmed, and the Secretary is directed to and
15 shall execute the contract. To the extent amendments are
16 executed to make the Amended and Restated Community
17 CAP Water Delivery Contract consistent with this title,
18 such amendments are also authorized, ratified, and con-
19 firmed.

20 (c) LEASES.—To the extent they are not in conflict
21 with the provisions of this Act, the leases of Community
22 CAP water by the Community to Phelps Dodge, and any
23 of the Cities, attached as exhibits to the Gila River agree-
24 ment, are authorized, ratified, and confirmed, and the Sec-
25 retary is directed to and shall execute the leases. To the

1 extent amendments are executed to make such leases con-
2 sistent with this title, such amendments are also author-
3 ized, ratified, and confirmed.

4 (d) RECLAIMED WATER EXCHANGE AGREEMENT.—
5 To the extent it is not in conflict with the provisions of
6 this Act, the Reclaimed Water Exchange Agreement
7 among the cities of Chandler and Mesa, Arizona, the Com-
8 munity, and the United States, attached as exhibit 18.1
9 to the Gila River agreement, is authorized, ratified, and
10 confirmed, and the Secretary shall execute the agreement.
11 To the extent amendments are executed to make the Re-
12 claimed Water Exchange Agreement consistent with this
13 title, such amendments are also authorized, ratified, and
14 confirmed.

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

21 (f) PROHIBITIONS.—

22 (1) USE OUTSIDE THE STATE.—None of the
23 Community CAP water shall be leased, exchanged,
24 forborne, or otherwise transferred in any way by the

1 Community for use directly or indirectly outside the
2 State.

3 (2) USE OFF RESERVATION.—Except as author-
4 ized by this section and subparagraph 4.7 of the
5 Gila River agreement, no water made available to
6 the Community under the Gila River agreement, the
7 Globe Equity Decree, the Haggard Decree, or this
8 title may be sold, leased, transferred, or used off the
9 Reservation other than by exchange.

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

16 **SEC. 206. SATISFACTION OF CLAIMS.**

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

1 land within the exterior boundaries of the Reservation, off-
 2 Reservation trust land, and fee land.

3 (b) NO RECOGNITION OF WATER RIGHTS.—Notwith-
 4 standing subsection (a) and except as provided in section
 5 204(a), nothing in this title has the effect of recognizing
 6 or establishing any right of a Community member or allot-
 7 tee to water on the Reservation.

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

9 (a) IN GENERAL.—

10 (1) CLAIMS AGAINST THE STATE AND OTH-
 11 ERS.—

12 (A) CLAIMS FOR WATER RIGHTS AND IN-
 13 JURY TO WATER RIGHTS BY THE COMMUNITY
 14 AND THE UNITED STATES ON BEHALF OF THE
 15 COMMUNITY.—Except as provided in subpara-
 16 graph 25.12 of the Gila River agreement, the
 17 Community, on behalf of the Community and
 18 Community members (but not members in their
 19 capacities as allottees), and the United States,
 20 on behalf of the Community and Community
 21 members (but not members in their capacities
 22 as allottees), as part of the performance of their
 23 obligations under the Gila River agreement, are
 24 authorized to execute a waiver and release of
 25 any claims against the State (or any agency or

1 political subdivision of the State) or any other
2 person, entity, corporation, or municipal cor-
3 poration under Federal, State, or other law
4 for—

5 (i)(I) past, present, and future claims
6 for water rights for land within the exte-
7 rior boundaries of the Reservation, off-Res-
8 ervation trust land, and fee land arising
9 from time immemorial and, thereafter, for-
10 ever; and

11 (II) past, present, and future claims
12 for water rights arising from time imme-
13 morial and, thereafter, forever, that are
14 based on aboriginal occupancy of land by
15 the Community and Community members,
16 or their predecessors;

17 (ii)(I) past and present claims for in-
18 jury to water rights for land within the ex-
19 terior boundaries of the Reservation, off-
20 Reservation trust land, and fee land aris-
21 ing from time immemorial through the en-
22 forceability date;

23 (II) past, present, and future claims
24 for injury to water rights arising from time
25 immemorial and, thereafter, forever, that

1 are based on aboriginal occupancy of land
2 by the Community and Community mem-
3 bers, or their predecessors; and

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

12 (iii) past, present, and future claims
13 arising out of or relating in any manner to
14 the negotiation or execution of the Gila
15 River agreement or the negotiation or en-
16 actment of titles I and II; and

17 (iv)(I) past and present claims for
18 subsidence damage occurring to land with-
19 in the exterior boundaries of the Reserva-
20 tion, off-Reservation trust land, or fee land
21 arising from time immemorial through the
22 enforceability date; and

23 (II) claims for subsidence damage
24 arising after the enforceability date occur-
25 ring to land within the exterior boundaries

1 of the Reservation, off-Reservation trust
 2 land, or fee land resulting from the diver-
 3 sion of underground water in a manner not
 4 in violation of the Gila River agreement or
 5 State law.

6 (B) CLAIMS FOR WATER RIGHTS AND IN-
 7 JURY TO WATER RIGHTS BY THE UNITED
 8 STATES AS TRUSTEE FOR THE ALLOTTEES.—

9 Except as provided in subparagraph 25.12 of
 10 the Gila River agreement, the United States, as
 11 trustee for the allottees, as part of the perform-
 12 ance of its obligations under the Gila River
 13 agreement, is authorized to execute a waiver
 14 and release of any claims against the State (or
 15 any agency or political subdivision of the State)
 16 or any other person, entity, corporation, or mu-
 17 nicipal corporation under Federal, State, or
 18 other law, for—

19 (i)(I) past, present, and future claims
 20 for water rights for land within the exte-
 21 rior boundaries of the Reservation arising
 22 from time immemorial and, thereafter, for-
 23 ever; and

24 (II) past, present, and future claims
 25 for water rights arising from time imme-

1 memorial and, thereafter, forever, that are
2 based on aboriginal occupancy of land by
3 allottees, or their predecessors;

4 (ii)(I) past and present claims for in-
5 jury to water rights for land within the ex-
6 terior boundaries of the Reservation aris-
7 ing from time immemorial through the en-
8 forceability date;

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

14 (III) claims for injury to water rights
15 arising after the enforceability date for
16 land within the exterior boundaries of the
17 Reservation resulting from the off-Reserva-
18 tion diversion or use of water in a manner
19 not in violation of the Gila River agree-
20 ment or State law;

21 (iii) past, present, and future claims
22 arising out of or relating in any manner to
23 the negotiation or execution of the Gila
24 River agreement or the negotiation or en-
25 actment of titles I and II; and

1 (iv) past and present claims for sub-
2 sidence damage occurring to land within
3 the exterior boundaries of the Reservation
4 arising from time immemorial through the
5 enforceability date.

6 (C) CLAIMS FOR INJURY TO WATER QUAL-
7 ITY BY THE COMMUNITY.—Except as provided
8 in subparagraph 25.12 of the Gila River agree-
9 ment, the Community, on behalf of the Commu-
10 nity and Community members (but not mem-
11 bers in their capacities as allottees), as part of
12 the performance of its obligations under the
13 Gila River agreement, is authorized to execute
14 a waiver and release of any claims, and to agree
15 to waive its right to request the United States
16 to bring any claims, against the State (or any
17 agency or political subdivision of the State) or
18 any other person, entity, corporation, or munic-
19 ipal corporation under Federal, State, or other
20 law for—

21 (i) past and present claims for injury
22 to water quality (other than claims arising
23 out of the actions that resulted in the re-
24 mediations described in exhibit 25.4.1.1 to
25 the Gila River agreement), including

1 claims for trespass, nuisance, and real
2 property damage and claims under all cur-
3 rent and future Federal, State, and other
4 environmental laws and regulations, includ-
5 ing claims under the Comprehensive Envi-
6 ronmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9601 et
8 seq.) and the Arizona Water Quality As-
9 surance Revolving Fund (Ariz. Rev. Stat.
10 49–281 et seq. as amended) arising from
11 time immemorial through December 31,
12 2002, for land within the exterior bound-
13 aries of the Reservation, off-Reservation
14 trust land, and fee land;

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

1 and Liability Act of 1980 (42 U.S.C. 9601
2 et seq.) and the Arizona Water Quality As-
3 surance Revolving Fund (Ariz. Rev. Stat.
4 49–281 et seq.), arising from time imme-
5 morial and, thereafter, forever, that are
6 based on aboriginal occupancy of land by
7 the Community and Community members,
8 or their predecessors;

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

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

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

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

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

17 (V) the off-Reservation applica-
18 tion of water to land for irrigation,
19 except that the waiver provided in this
20 clause shall extend only to the State (or
21 any agency or political subdivision of the
22 State) or any other person, entity, or mu-
23 nicipal or other corporation to the extent
24 that the person, entity, or corporation is

1 engaged in an activity specified in this
2 clause.

3 (D) PAST AND PRESENT CLAIMS FOR IN-
4 JURY TO WATER QUALITY BY THE UNITED
5 STATES.—Except as provided in subparagraph
6 25.12 of the Gila River agreement and except
7 for any claims arising out of the actions that
8 resulted in the remediations described in exhibit
9 25.4.1.1 to the Gila River agreement, the
10 United States, acting as trustee for the Com-
11 munity, Community members and allottees, and
12 as part of the performance of its obligations
13 under the Gila River agreement, to the extent
14 consistent with this section, is authorized to
15 execute a waiver and release of any claims aris-
16 ing from time immemorial through December
17 31, 2002, for injury to water quality where all
18 of the following conditions are met:

19 (i) The claims are brought solely on
20 behalf of the Community, members, or
21 allottees.

22 (ii) The claims are brought against
23 the State (or any agency or political sub-
24 division of the State) or any person, entity,
25 corporation, or municipal corporation.

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

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

18 (E) FUTURE CLAIMS FOR INJURY TO
19 WATER QUALITY BY THE UNITED STATES.—Ex-
20 cept as provided in subparagraph 25.12 of the
21 Gila River agreement and except for any claims
22 arising out of the actions that resulted in the
23 remediations described in exhibit 25.4.1.1 to
24 the Gila River agreement, the United States, in
25 its own right and as trustee for the Community,

1 its members and allottees, as part of the per-
2 formance of its obligations under the Gila River
3 agreement, to the extent consistent with this
4 section, is authorized to execute a waiver and
5 release of the following claims for injury or
6 threat of injury to water quality arising after
7 December 31, 2002, against the State (or any
8 agency or political subdivision of the State) or
9 any other person, entity, corporation, or munic-
10 ipal corporation under Federal, State, or other
11 law:

12 (i) All common law claims for injury
13 or threat of injury to water quality where
14 the injury or threat of injury asserted is to
15 the Community's, Community members' or
16 allottees' interests in trust land, water, or
17 natural resources located within the exte-
18 rior boundaries of the Reservation or with-
19 in off-Reservation trust lands caused by—

20 (I) the delivery of water to the

21 Community;

22 (II) the off-Reservation diversion

23 (other than pumping), or ownership
24 or operation of structures for the off-

1 Reservation diversion (other than
2 pumping), of water;

3 (III) the off-Reservation pump-
4 ing, or ownership or operation of
5 structures for the off-Reservation
6 pumping, of water in a manner not in
7 violation of the Gila River agreement
8 or of any applicable pumping limita-
9 tions under State law;

10 (IV) the recharge, or ownership
11 or operation of structures for the re-
12 charge, of water under a State permit;
13 and

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

16 (ii) All natural resource damage
17 claims for injury or threat of injury to
18 water quality where the United States,
19 through the Secretary of the Interior or
20 other designated officials, would act on be-
21 half of the Community, its members or
22 allottees as a natural resource trustee pur-
23 suant to the National Contingency Plan,
24 (as currently set forth in section
25 300.600(b)(2) of title 40, Code of Federal

1 Regulations, or as it may hereafter be
2 amended), and where the claim is based on
3 injury to natural resources or threat of in-
4 jury to natural resources within the exte-
5 rior boundaries of the Reservation or off-
6 Reservation trust lands, caused by—

7 (I) the delivery of water to the
8 Community;

9 (II) the off-Reservation diversion
10 (other than pumping), or ownership
11 or operation of structures for the off-
12 Reservation diversion (other than
13 pumping), of water;

14 (III) the off-Reservation pump-
15 ing, or ownership or operation of
16 structures for the off-Reservation
17 pumping, of water in a manner not in
18 violation of the Gila River agreement
19 or of any applicable pumping limita-
20 tions under State law;

21 (IV) the recharge, or ownership
22 or operation of structures for the re-
23 charge, of water under a State permit;
24 and

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

3 (F) CLAIMS BY THE COMMUNITY AGAINST
4 THE SALT RIVER PROJECT.—

5 (i) IN GENERAL.—Except as provided
6 in subparagraph 25.12 of the Gila River
7 agreement, to the extent consistent with
8 this section, the Community, on behalf of
9 the Community and Community members
10 (but not members in their capacities as
11 allottees), as part of the performance of its
12 obligations under the Gila River agree-
13 ment, is authorized to execute a waiver
14 and release of claims against the Salt
15 River Project (or its successors or assigns
16 or its officers, governors, directors, employ-
17 ees, agents, or shareholders), where all of
18 the following conditions are met:

19 (I) The claims are brought solely
20 on behalf of the Community or its,
21 members.

22 (II) The claims arise from the
23 discharge, transportation, seepage, or
24 other movement of water in, through,
25 or from drains, canals, or other facili-

1 ties or land in the Salt River Res-
2 ervoir District to trust land located
3 within the exterior boundaries of the
4 Reservation.

5 (III) The claims arise from time
6 immemorial through the enforceability
7 date.

8 (IV) The claims assert a past or
9 present injury to water rights, injury
10 on the Reservation to water quality,
11 or injury to trust property located
12 within the exterior boundaries of the
13 Reservation.

14 (ii) EFFECT OF WAIVER.—The waiver
15 provided for in this subparagraph is effec-
16 tive as of December 31, 2002, and shall
17 continue to preclude claims as they may
18 arise until the enforceability date, or until
19 such time as the Salt River Project alters
20 its historical operations of the drains, ca-
21 nals, or other facilities within the Salt
22 River Reservoir District in a manner that
23 would cause significant harm to trust lands
24 within the exterior boundaries of the Res-
25 ervation, whichever occurs earlier.

1 (G) CLAIMS BY THE UNITED STATES
2 AGAINST THE SALT RIVER PROJECT.—

3 (i) IN GENERAL.—Except as provided
4 in subparagraph 25.12 of the Gila River
5 agreement, to the extent consistent with
6 this section, the United States, acting as
7 trustee for the Community, Community
8 members and allottees, and as part of the
9 performance of its obligations under the
10 Gila River agreement, is authorized to exe-
11 cute a waiver and release of claims against
12 the Salt River Project (or its successors or
13 assigns or its officers, governors, directors,
14 employees, agents, or shareholders), where
15 all of the following conditions are met:

16 (I) The claims are brought solely
17 on behalf of the Community, mem-
18 bers, or allottees.

19 (II) The claims arise from the
20 discharge, transportation, seepage, or
21 other movement of water in, through,
22 or from drains, canals, or other facili-
23 ties or land in the Salt River Res-
24 ervoir District to trust land located

1 within the exterior boundaries of the
2 Reservation.

3 (III) The claims arise from time
4 immemorial through the enforceability
5 date.

6 (IV) The claims assert a past or
7 present injury to water rights, injury
8 on the Reservation to water quality,
9 or injury to trust property located
10 within the exterior boundaries of the
11 Reservation.

12 (ii) EFFECT OF WAIVER.—The waiver
13 provided for in this subsection is effective
14 as of December 31, 2002, and shall con-
15 tinue to preclude claims as they may arise
16 until the enforceability date, or until such
17 time as the Salt River Project alters its
18 historical operations of the drains, canals,
19 or other facilities within the Salt River
20 Reservoir District in a manner that would
21 cause significant harm to trust lands with-
22 in the exterior boundaries of the Reserva-
23 tion, whichever occurs earlier.

24 (H) UNITED STATES ENFORCEMENT AU-
25 THORITY.—Except as provided in subpara-

1 graphs (D), (E), and (G), nothing in this Act
2 or the Gila River agreement affects any right of
3 the United States, or the State, to take any ac-
4 tion, including environmental actions, under
5 any laws (including regulations and the com-
6 mon law) relating to human health, safety, or
7 the environment.

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

22 (3) CLAIMS AGAINST THE COMMUNITY.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph 25.12 of the Gila River agree-
25 ment, to the extent consistent with this Act, the

1 United States, in all its capacities (except as
2 trustee for an Indian tribe other than the Com-
3 munity), as part of the performance of obliga-
4 tions under the Gila River agreement, is au-
5 thorized to execute a waiver and release of any
6 and all claims against the Community, or any
7 agency, official, or employee of the Community,
8 under Federal, State, or any other law for—

9 (i) past and present claims for subsid-
10 ence damage to trust land within the exte-
11 rior boundaries of the Reservation, off-Res-
12 ervation trust lands, and fee land arising
13 from time immemorial through the en-
14 forceability date; and

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

20 (4) CLAIMS AGAINST THE UNITED STATES.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph 25.12 of the Gila River agree-
23 ment, the Community, on behalf of the Commu-
24 nity and Community members (but not mem-
25 bers in their capacities as allottees), as part of

1 the performance of obligations under the Gila
2 River agreement, is authorized to execute a
3 waiver and release of any claim against the
4 United States (or agencies, officials, or employ-
5 ees of the United States) under Federal, State,
6 or other law for—

7 (i)(I) past, present, and future claims
8 for water rights for land within the exte-
9 rior boundaries of the Reservation, off-Res-
10 ervation trust land, and fee land arising
11 from time immemorial and, thereafter, for-
12 ever; and

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

19 (ii)(I) past and present claims for in-
20 jury to water rights for land within the ex-
21 terior boundaries of the Reservation, off-
22 Reservation trust land, and fee land aris-
23 ing from time immemorial through the en-
24 forceability date;

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

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

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

20 (iv)(I) past and present claims for
21 subsidence damage occurring to land with-
22 in the exterior boundaries of the Reserva-
23 tion, off-Reservation trust land, or fee land
24 arising from time immemorial through the
25 enforceability date; and

1 (II) claims for subsidence damage
2 arising after the enforceability date occur-
3 ring to land within the exterior boundaries
4 of the Reservation, off-Reservation trust
5 land or fee land resulting from the diver-
6 sion of underground water in a manner not
7 in violation of the Gila River agreement or
8 applicable law;

9 (v) past and present claims for failure
10 to protect, acquire, or develop water rights
11 for or on behalf of the Community and
12 Community members arising before De-
13 cember 31, 2002; and

14 (vi) past, present, and future claims
15 relating to failure to assert any claims ex-
16 pressly waived pursuant to section
17 207(a)(1) (C) through (E).

18 (B) EXHAUSTION OF REMEDIES.—To the
19 extent that members in their capacity as
20 allottees assert that this title impairs or alters
21 their present or future claims to water or con-
22 stitutes an injury to present or future water
23 rights, the members shall be required to ex-
24 haust their remedies pursuant to the tribal

1 water code prior to asserting claims against the
 2 United States.

3 (5) CLAIMS AGAINST CERTAIN PERSONS AND
 4 ENTITIES IN THE UPPER GILA VALLEY.—

5 (A) BY THE COMMUNITY AND THE UNITED
 6 STATES.—Except as provided in the UVD
 7 agreement, the Community, on behalf of the
 8 Community and Community members (but not
 9 members in their capacities as allottees), and
 10 the United States on behalf of the Community
 11 and Community members (but not members in
 12 their capacities as allottees), are authorized, as
 13 part of the performance of obligations under
 14 the UVD agreement, to execute a waiver and
 15 release of the following claims against the UV
 16 signatories and the UV Non-signatories (and
 17 the predecessors in interest of each) for—

18 (i)(I) past, present, and future claims
 19 for water rights for land within the exte-
 20 rior boundaries of the Reservation and the
 21 San Carlos Irrigation Project arising from
 22 time immemorial and, thereafter, forever;
 23 and

24 (II) past, present, and future claims
 25 for water rights arising from time imme-

1 memorial and, thereafter, forever, that are
2 based on aboriginal occupancy of land by
3 the Community, Community members, or
4 predecessors of the Community or Commu-
5 nity members;

6 (ii)(I) past, present, and future claims
7 for injuries to water rights for land within
8 the exterior boundaries of the Reservation
9 or the San Carlos Irrigation Project aris-
10 ing from time immemorial and, thereafter,
11 forever;

12 (II) past, present, and future claims
13 for injury to water rights arising from time
14 immemorial and, thereafter, forever, that
15 are based on aboriginal occupancy of land
16 by the Community, Community members,
17 or predecessors of Community members,
18 for so long as and to the extent that any
19 individual beneficiary of such waiver is act-
20 ing in a manner that is consistent with and
21 not in violation of or contrary to the terms,
22 conditions, requirements, limitations, or
23 other provisions of the UVD agreement;

24 (III) claims for injury to water rights
25 arising after the enforceability date for

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

9 (IV) claims for injury to water rights
10 arising after the enforceability date for
11 water rights transferred to the Project
12 pursuant to section 211 resulting from the
13 diversion, pumping or use of water in a
14 manner that is consistent with and not in
15 violation of or contrary to the terms, condi-
16 tions, limitations, requirements, or provi-
17 sions of the UVD agreement;

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

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

20 (B) BY THE UNITED STATES ON BEHALF
21 OF ALLOTTEES.—Except as provided in the
22 UVD agreement, to the extent consistent with
23 this section, the United States as trustee for
24 the allottees, as part of the performance under
25 the UVD agreement, is authorized to execute a

1 waiver and release of the following claims under
2 Federal, State, or other law against the UV sig-
3 natories and the UV Non-signatories (and the
4 predecessors in interest of each) for—

5 (i)(I) past, present, and future claims
6 for water rights for land within the exte-
7 rior boundaries of the Reservation arising
8 from time immemorial, and thereafter, for-
9 ever; and

10 (II) past, present, and future claims
11 for water rights arising from time imme-
12 morial and, thereafter, forever, that are
13 based on aboriginal occupancy of lands by
14 allottees or their predecessors;

15 (ii)(I) past and present claims for in-
16 jury to water rights for lands within the
17 exterior boundaries of the Reservation aris-
18 ing from time immemorial, through the en-
19 forceability date, for so long as and to the
20 extent that any individual beneficiary of
21 such waiver is acting in a manner that is
22 consistent with and not in violation of or
23 contrary to the terms, conditions, require-
24 ments, limitations, or other provisions of
25 the UVD agreement;

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

13 (III) claims for injury to water rights
14 for land within the exterior boundaries of
15 the Reservation arising after the enforce-
16 ability date resulting from the diversion,
17 pumping, or use of water in a manner that
18 is consistent with and not in violation of or
19 contrary to the terms, conditions, limita-
20 tions, requirements, or provisions of the
21 UVD agreement;

22 (iii)(I) past, present, and future
23 claims for injuries to water rights arising
24 out of or relating to the use of water rights
25 appurtenant to New Mexico 381 acres, on

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

9 (II) past, present, and future claims
10 arising out of or relating to the use of
11 water rights for New Mexico domestic pur-
12 poses, on the conditions that such water
13 rights remain subject to the oversight and
14 reporting requirements set forth in the de-
15 cree in Arizona v. California, 376 U.S. 340
16 (1964), as supplemented, and that the
17 State of New Mexico shall make available
18 on request a copy of any records prepared
19 pursuant to that decree; and

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

24 (C) ADDITIONAL WAIVER OF CERTAIN
25 CLAIMS BY THE UNITED STATES.—Except as

1 provided in the UVD Agreement, the United
2 States (to the extent the waiver and release au-
3 thorized by this subparagraph is not duplicative
4 of the waiver and release provided in subpara-
5 graph (B) and to the extent the United States
6 holds legal title to (but not the beneficial inter-
7 est in) the water rights as described in article
8 V or VI of the Globe Equity Decree (but not on
9 behalf of the San Carlos Apache Tribe pursuant
10 to article VI(2) of the Globe Equity Decree) on
11 behalf of lands within the San Carlos Irrigation
12 and Drainage District and the Miscellaneous
13 Flow Lands) shall execute a waiver and release
14 of the following claims under Federal, State or
15 other law against the UV signatories and the
16 UV Non-signatories (and the predecessors of
17 each) for—

18 (i) past, present, and future claims for
19 water rights for land within the San Carlos
20 Irrigation and Drainage District and the
21 Miscellaneous Flow Lands arising from
22 time immemorial, and thereafter, forever;

23 (ii)(I) past and present claims for in-
24 jury to water rights for land within the
25 San Carlos Irrigation and Drainage Dis-

1 trict and the Miscellaneous Flow Lands
2 arising from time immemorial through the
3 enforceability date, for so long as and to
4 the extent that any individual beneficiary
5 of such waiver is acting in a manner that
6 is consistent with and not in violation of or
7 contrary to the terms, conditions, require-
8 ments, limitations, or other provisions of
9 the UVD agreement;

10 (II) claims for injury to water rights
11 arising after the enforceability date for
12 land within the San Carlos Irrigation and
13 Drainage District and the Miscellaneous
14 Flow Lands resulting from the diversion,
15 pumping, or use of water in a manner that
16 is consistent with and not in violation of or
17 contrary to the terms, conditions, limita-
18 tions, requirements, or provisions of the
19 UVD agreement;

20 (iii)(I) past, present, and future
21 claims for injuries to water rights arising
22 out of or relating to the use of water rights
23 appurtenant to New Mexico 381 acres, on
24 the conditions that such water rights re-
25 main subject to the oversight and reporting

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

7 (II) past, present, and future claims
8 arising out of or relating to the use of
9 water rights for New Mexico domestic pur-
10 poses, on the conditions that such water
11 rights remain subject to the oversight and
12 reporting requirements set forth in the de-
13 cree in Arizona v. California, 376 U.S. 340
14 (1964), as supplemented, and that the
15 State of New Mexico shall make available
16 on request a copy of any records prepared
17 pursuant to that decree; and

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

22 (6) TRIBAL WATER QUALITY STANDARDS.—The
23 Community, on behalf of the Community and Com-
24 munity members, as part of the performance of its
25 obligations under the Gila River agreement, is au-

1 thorized to agree never to adopt any water quality
2 standards, or ask the United States to promulgate
3 such standards, that are more stringent than water
4 quality standards adopted by the State if the Com-
5 munity's adoption of such standards could result in
6 the imposition by the State or the United States of
7 more stringent water quality limitations or require-
8 ments than those that would otherwise be imposed
9 by the State or the United States on—

10 (A) any water delivery system used to de-
11 liver water to the Community; or

12 (B) the discharge of water into any such
13 system.

14 (b) EFFECTIVENESS OF WAIVER AND RELEASES.—

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

18 (2) CLAIMS FOR SUBSIDENCE DAMAGE.—The
19 waiver under subsection (a)(2) shall become effective
20 on execution of the waiver by—

21 (A) the Community, a Community mem-
22 ber, or an allottee; and

23 (B) the United States, on behalf of the
24 Community, a Community member, or an allot-
25 tee.

1 (c) ENFORCEABILITY DATE.—

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

5 (A) to the extent the Gila River agreement
6 conflicts with this title, the Gila River agree-
7 ment has been revised through an amendment
8 to eliminate the conflict and the Gila River
9 agreement, so revised, has been executed by the
10 Secretary and the Governor of the State;

11 (B) the Secretary has fulfilled the require-
12 ments of—

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

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

17 (C) the master agreement authorized, rati-
18 fied, and confirmed by section 106(a) has been
19 executed by the parties to the master agree-
20 ment, and all conditions to the enforceability of
21 the master agreement have been satisfied;

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

1 (E) the State has appropriated and paid to
2 the Community any amount to be paid under
3 paragraph 27.4 of the Gila River agreement;

4 (F) the Salt River Project has paid to the
5 Community \$500,000 under subparagraph 16.9
6 of the Gila River agreement;

7 (G) the judgments and decrees attached to
8 the Gila River agreement as exhibits 25.18A
9 (Gila River adjudication proceedings) and
10 25.18B (Globe Equity Decree proceedings) have
11 been approved by the respective courts;

12 (H) the dismissals attached to the Gila
13 River agreement as exhibits 25.17.1A and B,
14 25.17.2, and 25.17.3A and B have been filed
15 with the respective courts and any necessary
16 dismissal orders entered;

17 (I) legislation has been enacted by the
18 State to—

19 (i) implement the Southside Replen-
20 ishment Program in accordance with sub-
21 paragraph 5.3 of the Gila River agreement;

22 (ii) authorize the firming program re-
23 quired by section 105; and

24 (iii) establish the Upper Gila River
25 Watershed Maintenance Program in ac-

1 cordance with subparagraph 26.8.1 of the
2 Gila River agreement;

3 (J) the State has entered into an agree-
4 ment with the Secretary to carry out the obliga-
5 tion of the State under section 105(b)(2)(A);
6 and

7 (K) a final judgment has been entered in
8 Central Arizona Water Conservation District v.
9 United States (No. CIV 95-625-TUC-
10 WDB(EHC), No. CIV 95-1720PHX-EHC)
11 (Consolidated Action) in accordance with the
12 repayment stipulation.

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

1 Reservation, off-Reservation trust land, and fee
2 land.

3 (d) ALL LAND WITHIN EXTERIOR BOUNDARIES OF
4 THE RESERVATION.—Notwithstanding section 2(42), for
5 purposes of this section, section 206, and section 210(d)—

6 (1) the term “land within the exterior bound-
7 aries of the Reservation” includes—

8 (A) land within the Reservation created
9 pursuant to the Act of February 28, 1859, and
10 modified by the executive orders of August 31,
11 1876, June 14, 1879, May 5, 1882, November
12 15, 1883, July 31, 1911, June 2, 1913, August
13 27, 1914, and July 19, 1915; and

14 (B) land located in sections 16 and 36, T.
15 4 S., R. 4 E., Salt and Gila River Baseline and
16 Meridian; and

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

20 (e) NO RIGHTS TO WATER.—Upon the occurrence of
21 the enforceability date—

22 (1) all land held by the United States in trust
23 for the Community, Community members, and
24 allottees and all land held by the Community within
25 the exterior boundaries of the Reservation shall have

1 no rights to water other than those specifically
2 granted to the Community and the United States for
3 the Reservation pursuant to paragraph 4.0 of the
4 Gila River agreement; and

5 (2) all water usage on land within the exterior
6 boundaries of the Reservation, including the land lo-
7 cated in sections 16 and 36, T. 4 S., R. 4 E., Salt
8 and Gila River Baseline and Meridian, upon acquisi-
9 tion by the Community or the United States on be-
10 half of the Community, shall be taken into account
11 in determining compliance by the Community and
12 the United States with the limitations on total diver-
13 sions specified in subparagraph 4.2 of the Gila River
14 agreement.

15 **SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R**
16 **TRUST FUND.**

17 (a) ESTABLISHMENT.—There is established in the
18 Treasury of the United States a fund to be known as the
19 “Gila River Indian Community Water OM&R Fund”, to
20 be managed and invested by the Secretary, consisting of
21 \$53,000,000, the amount made available for this purpose
22 under paragraph (2)(B) of section 403(f) of the Colorado
23 River Basin Project Act (43 U.S.C. 1543(f)) (as amended
24 by section 107(a)).

1 (b) MANAGEMENT.—The Secretary shall manage the
2 Water OM&R Fund, make investments from the Fund,
3 and make monies available from the Fund for distribution
4 to the Community consistent with the American Indian
5 Trust Fund Management Reform Act of 1994 (25 U.S.C.
6 4001 et seq.), hereafter referred to in this section as the
7 “Trust Fund Reform Act”.

8 (c) INVESTMENT OF THE FUND.—The Secretary
9 shall invest amounts in the Fund in accordance with—

10 (1) the Act of April 1, 1880 (21 Stat. 70, chap-
11 ter 41; 25 U.S.C. 161);

12 (2) the first section of the Act of June 24,
13 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a);
14 and

15 (3) subsection (b).

16 (d) EXPENDITURES AND WITHDRAWALS.—

17 (1) TRIBAL MANAGEMENT PLAN.—

18 (A) IN GENERAL.—The Community may
19 withdraw all or part of the Water OM&R Fund
20 on approval by the Secretary of a tribal man-
21 agement plan as described in the Trust Fund
22 Reform Act.

23 (B) REQUIREMENTS.—In addition to the
24 requirements under the Trust Fund Reform
25 Act, the tribal management plan shall require

1 that the Community only spend any funds, as
2 provided in the Gila River agreement, to assist
3 in paying operation, maintenance, and replace-
4 ment costs associated with the delivery of CAP
5 water for Community purposes.

6 (2) ENFORCEMENT.—The Secretary may take
7 judicial or administrative action to enforce the provi-
8 sions of any tribal management plan to ensure that
9 the monies withdrawn from the Water OM&R Fund
10 are used in accordance with this Act.

11 (3) LIABILITY.—If the Community exercises the
12 right to withdraw monies from the Water OM&R
13 Fund, neither the Secretary nor the Secretary of the
14 Treasury shall retain any liability for the expendi-
15 ture or investment of the monies withdrawn.

16 (4) EXPENDITURE PLAN.—

17 (A) IN GENERAL.—The Community shall
18 submit to the Secretary for approval an expend-
19 iture plan for any portion of the funds made
20 available under this section that the Community
21 does not withdraw under this subsection.

22 (B) DESCRIPTION.—The expenditure plan
23 shall describe the manner in which, and the
24 purposes for which, funds of the Community re-

1 maintaining in the Water OM&R Fund will be
2 used.

3 (C) APPROVAL.—On receipt of an expendi-
4 ture plan under subparagraph (A), the Sec-
5 retary shall approve the plan if the Secretary
6 determines that the plan is reasonable and con-
7 sistent with this Act.

8 (5) ANNUAL REPORT.—The Community shall
9 submit to the Secretary an annual report that de-
10 scribes all expenditures from the Water OM&R
11 Fund during the year covered by the report.

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

16 (f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY
17 DATE.—Amounts in the Water OM&R Fund shall not be
18 available for expenditure or withdrawal by the Community
19 until the enforceability date, or until January 1, 2010,
20 whichever is later.

21 **SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.**

22 (a) IN GENERAL.—Subject to the availability of
23 funds and consistent with the provisions of section 107(a),
24 the Secretary shall establish a program under which the
25 Bureau of Reclamation shall repair and remediate subsid-

1 ence damage and related damage that occurs after the en-
2 forceability date.

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

6 (1) subsidence damage; and

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

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

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

17 (2) the Community, Community member, or al-
18 lottee, and the Secretary as trustee for the Commu-
19 nity, Community member, or allottee, execute a
20 waiver and release of claim in the form specified in
21 exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River
22 agreement, as applicable, to become effective on sat-
23 isfactory completion of the requested repair or reme-
24 diation, as determined under the Gila River agree-
25 ment.

1 (d) SPECIFIC SUBSIDENCE DAMAGE.—Subject to the
2 availability of funds, the Secretary, acting through the
3 Commissioner of Reclamation, shall repair, remediate, and
4 rehabilitate the subsidence damage that has occurred to
5 land before the enforceability date within the Reservation,
6 as specified in exhibit 30.21 to the Gila River agreement.

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

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

16 (b) WATER RIGHTS.—After-acquired trust land shall
17 not include federally reserved rights to surface water or
18 groundwater.

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

25 (d) ACCEPTANCE OF LAND IN TRUST STATUS.—

1 (1) IN GENERAL.—If the Community acquires
2 legal fee title to land that is located within the exte-
3 rior boundaries of the Reservation (as defined in sec-
4 tion 207(d)), the Secretary shall accept the land in
5 trust status for the benefit of the Community upon
6 receipt by the Secretary of a submission from the
7 Community that provides evidence that—

8 (A) the land meets the Department of the
9 Interior’s minimum environmental standards
10 and requirements for real estate acquisitions set
11 forth in 602 DM 2.6, or any similar successor
12 standards or requirements for real estate acqui-
13 sitions in effect on the date of the Community’s
14 submission; and

15 (B) the title to the land meets applicable
16 Federal title standards in effect on the date of
17 the Community’s submission.

18 (2) RESERVATION STATUS.—Land taken or
19 held in trust by the Secretary under paragraph (1)
20 shall be deemed part of the Community’s reserva-
21 tion.

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

23 (a) REDUCTION OF TBI ELIGIBLE ACRES.—

24 (1) IN GENERAL.—Consistent with this title
25 and as provided in the UVD agreement to assist in

1 reducing the total water demand for irrigation use
2 in the upper valley of the Gila River, the Secretary
3 shall provide funds to the Gila Valley Irrigation Dis-
4 trict and the Franklin Irrigation District (hereafter
5 in this section referred to as “the Districts”) for the
6 acquisition of UV decreed water rights and the ex-
7 tinguishment of those rights to decrease demands on
8 the Gila River, or severance and transfer of those
9 rights to the San Carlos Irrigation Project for the
10 benefit of the Community and the San Carlos Irriga-
11 tion and Drainage District in accordance with appli-
12 cable law.

13 (2) ACQUISITIONS.—

14 (A) REQUIRED PHASE I ACQUISITION.—

15 Not later than December 31 of the third cal-
16 endar year that begins after the enforceability
17 date (or December 31 of the first calendar year
18 that begins after the payment provided by sub-
19 paragraph (D)(iii), if later), the Districts shall
20 acquire the UV decreed water rights appur-
21 tenant to 1,000 acres of land (other than spe-
22 cial hot lands).

23 (B) REQUIRED PHASE II ACQUISITION.—

24 Not later than December 31 of the sixth cal-
25 endar year that begins after the enforceability

1 date (or December 31 of the first calendar year
2 that begins after the payment provided by sub-
3 paragraph (D)(iii), if later), the Districts shall
4 acquire the UV decreed water rights appur-
5 tenant to 1,000 acres of land (other than spe-
6 cial hot lands). The reduction of TBI eligible
7 acres under this subparagraph shall be in addi-
8 tion to that accomplished under subparagraph
9 (A).

10 (C) ADDITIONAL ACQUISITION IN CASE OF
11 SETTLEMENT.—If the San Carlos Apache Tribe
12 reaches a comprehensive settlement that is ap-
13 proved by Congress and finally approved by all
14 courts the approval of which is required, the
15 Secretary shall offer to acquire for fair market
16 value the UV decreed water rights associated
17 with not less than 500 nor more than 3,000
18 TBI eligible acres of land (other than special
19 hot lands).

20 (D) METHODS OF ACQUISITION FOR
21 RIGHTS ACQUIRED PURSUANT TO SUBPARA-
22 GRAPHS (A) AND (B).—

23 (i) DETERMINATION OF VALUE.—

24 (I) APPRAISALS.—Not later than
25 December 31 of the first calendar

1 year that begins after the enforce-
2 ability date in the case of the phase I
3 acquisition, and not later than Decem-
4 ber 31 of the fourth calendar year
5 that begins after the enforceability
6 date in the case of the phase II acqui-
7 sition, the Districts shall submit to
8 the Secretary an appraisal of the av-
9 erage value of water rights appur-
10 tenant to 1,000 TBI eligible acres.

11 (II) REVIEW.—The Secretary
12 shall review the appraisal submitted
13 to ensure its consistency with the Uni-
14 form Appraisal Standards for Federal
15 Land Acquisition and notify the Dis-
16 tricts of the results of the review with-
17 in 30 days of submission of the ap-
18 praisal. In the event that the Sec-
19 retary finds that the appraisal is not
20 consistent with such standards, the
21 Secretary shall so notify the Districts
22 with a full explanation of the reasons
23 for that finding. Within 60 days of
24 being notified by the Secretary that
25 the appraisal is not consistent with

1 such Standards, the Districts shall re-
2 submit an appraisal to the Secretary
3 that is consistent with such standards.
4 The Secretary shall review the resub-
5 mitted appraisal to ensure its consist-
6 ency with nationally approved stand-
7 ards and notify the Districts of the re-
8 sults of the review within 30 days of
9 resubmission.

10 (III) PETITION.—In the event
11 that the Secretary finds that such re-
12 submitted appraisal is not consistent
13 with those Standards, either the Dis-
14 tricts or the Secretary may petition a
15 Federal court in the District of Ari-
16 zona for a determination of whether
17 the appraisal is consistent with na-
18 tionally approved Standards. If such
19 court finds the appraisal is so con-
20 sistent, the value stated in the ap-
21 praisal shall be final for all purposes.
22 If such court finds the appraisal is
23 not so consistent, the court shall de-
24 termine the average value of water

1 rights appurtenant to 1,000 TBI eligi-
2 ble acres.

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

9 (ii) APPRAISAL.—In determining the
10 value of water rights pursuant to this
11 paragraph, any court, the Districts, the
12 Secretary, and any appraiser shall take
13 into account the obligations the owner of
14 the land (to which the rights are appur-
15 tenant) will have after acquisition for
16 phreatophyte control as provided in the
17 UVD agreement and to comply with envi-
18 ronmental laws because of the acquisition
19 and severance and transfer or extinguish-
20 ment of the water rights.

21 (iii) PAYMENT.—No more than 30
22 days after the average value of water
23 rights appurtenant to 1,000 acres of land
24 has been determined in accordance with

1 clauses (i) and (ii), the Secretary shall pay
2 125 percent of such values to the Districts.

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

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

24 (4) ALTERNATIVES TO ACQUISITION.—

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

9 (i) acquire UV decreed water rights
10 associated with a like number of UV de-
11 creed acres that are not TBI eligible acres;
12 and

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

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

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

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

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

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

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

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

1 (B) SAN CARLOS APACHE SETTLEMENT.—

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

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

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

15 (iii) cause to be transferred the bal-
16 ance of those acquired water rights to the
17 San Carlos Apache Tribe pursuant to the
18 terms of the settlement described in para-
19 graph (2)(C).

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

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

3 (b) ADDITIONAL REDUCTIONS.—

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

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

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

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

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

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

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

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

17 (2) EXECUTION.—To the extent the New Mex-
18 ico Consumptive Use and Forbearance Agreement
19 does not conflict with this title, the Secretary shall
20 execute the New Mexico Consumptive Use and For-
21 bearance Agreement, including all exhibits to which
22 the Secretary is a party to the New Mexico Con-
23 sumptive Use and Forbearance Agreement and any
24 amendments to the New Mexico Consumptive Use

1 and Forbearance necessary to make it consistent
2 with this title.

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

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

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

1 (3) upon request by the NM CAP entity, the
2 Secretary shall transfer to the NM CAP entity the
3 responsibility to design, build, or operate and main-
4 tain the New Mexico Unit, or all or any combination
5 of those responsibilities, provided that the Secretary
6 shall not transfer the authority to divert water pur-
7 suant to the New Mexico Consumptive Use and For-
8 bearance Agreement, provided further that the Sec-
9 retary, shall remain responsible to the parties to the
10 New Mexico Consumptive Use and Forbearance
11 Agreement for the NM CAP entity's compliance with
12 the terms and conditions of that agreement;

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

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

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

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

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

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

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

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

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

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

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

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

5 (h) NATIONAL ENVIRONMENTAL POLICY ACT.—

6 (1) ENVIRONMENTAL COMPLIANCE.—Upon exe-
7 cution of the New Mexico Consumptive Use and
8 Forbearance Agreement and the New Mexico Unit
9 Agreement, the Secretary shall promptly comply
10 with all aspects of the National Environmental Pol-
11 icy Act of 1969 (42 U.S.C. 4321 et seq.), the En-
12 dangered Species Act of 1973 (16 U.S.C. 1531 et
13 seq.), and all other applicable environmental Acts
14 and regulations.

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

1 Forbearance Agreement and the New Mexico Unit
2 Agreement.

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

9 (i) NEW MEXICO UNIT FUND.—The Secretary shall
10 deposit the amounts made available under paragraph
11 (2)(D)(i) of section 403(f) of the Colorado River Basin
12 Project Act (43 U.S.C. 1543(f)) (as amended by section
13 107(a)) into the New Mexico Unit Fund, a State of New
14 Mexico Fund established and administered by the New
15 Mexico Interstate Stream Commission. Withdrawals from
16 the New Mexico Unit Fund shall be for the purpose of
17 paying costs of the New Mexico Unit or other water utili-
18 zation alternatives to meet water supply demands in the
19 Southwest Water Planning Region of New Mexico, as de-
20 termined by the New Mexico Interstate Stream Commis-
21 sion in consultation with the Southwest New Mexico
22 Water Study Group or its successor, including costs asso-
23 ciated with planning and environmental compliance activi-
24 ties and environmental mitigation and restoration.

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

13 (1) the State of New Mexico must provide no-
14 tice to the Secretary in writing not later than De-
15 cember 31, 2014, that the State of New Mexico in-
16 tends to have constructed or developed the New
17 Mexico Unit; and

18 (2) the Secretary must have issued in the Fed-
19 eral Register not later than December 31, 2019, a
20 Record of Decision approving the project based on
21 an environmental analysis required pursuant to ap-
22 plicable Federal law and on a demonstration that
23 construction of a project for the New Mexico Unit
24 that would deliver an average annual safe yield,
25 based on a 50-year planning period, greater than

1 10,000 acre feet per year, would not cost more per
2 acre foot of water diverted than a project sized to
3 produce an average annual safe yield of 10,000 acre
4 feet per year. If New Mexico exercises all reasonable
5 efforts to obtain the issuance of such Record of De-
6 cision, but the Secretary is not able to issue such
7 Record of Decision by December 31, 2019, for rea-
8 sons outside the control of the State of New Mexico,
9 the Secretary may extend the deadline for a reason-
10 able period of time, not to extend beyond December
11 31, 2030.

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

1 the total return on the carryover funds earned during the
2 period in question that is in excess of a return on such
3 funds at an annual average effective return of 4 percent,
4 up to a maximum total of not more than \$28,000,000,
5 as adjusted to reflect changes since January 1, 2004, in
6 the construction cost indices applicable to the types of con-
7 struction involved in construction of the New Mexico Unit.

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

15 (m) **PRIORITY OF OTHER EXCHANGES.**—The Sec-
16 retary shall not approve any exchange of Gila River water
17 for water supplied by the CAP that would amend, alter,
18 or conflict with the exchanges authorized by section 304(f)
19 of the Colorado River Basin Project Act (43 U.S.C.
20 1524(f)).

21 **SEC. 213. MISCELLANEOUS PROVISIONS.**

22 (a) **WAIVER OF SOVEREIGN IMMUNITY.**—If any party
23 to the Gila River agreement or signatory to an exhibit exe-
24 cuted pursuant to section 203(b) or to the New Mexico
25 Consumptive Use and Forbearance Agreement brings an

1 action in any court of the United States or any State court
2 relating only and directly to the interpretation or enforce-
3 ment of this title or the Gila River agreement (including
4 enforcement of any indemnity provisions contained in the
5 Gila River agreement) or the New Mexico Consumptive
6 Use and Forbearance Agreement, and names the United
7 States or the Community as a party, or if any other land-
8 owner or water user in the Gila River basin in Arizona
9 (except any party referred to in subparagraph 28.1.4 of
10 the Gila River agreement) files a lawsuit relating only and
11 directly to the interpretation or enforcement of subpara-
12 graph 6.2, subparagraph 6.3, paragraph 25, subparagraph
13 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the
14 Gila River agreement, naming the United States or the
15 Community as a party—

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

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

24 (b) EFFECT OF ACT.—Nothing in this title quantifies
25 or otherwise affects the water rights, or claims or entitle-

1 ments to water, of any Indian tribe, band, or community,
2 other than the Community.

3 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—

4 The United States shall not make a claim for reimburse-
5 ment of costs arising out of the implementation of this
6 title or the Gila River agreement against any Indian-
7 owned land within the Reservation, and no assessment
8 shall be made in regard to those costs against that land.

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

13 (e) COMMUNITY REPAYMENT CONTRACT.—To the
14 extent it is not in conflict with this Act, the Secretary is
15 directed to and shall execute Amendment No. 1 to the
16 Community repayment contract, attached as exhibit 8.1
17 to the Gila River agreement, to provide, among other
18 things, that the costs incurred under that contract shall
19 be nonreimbursable by the Community. To the extent
20 amendments are executed to make Amendment No. 1 con-
21 sistent with this title, such amendments are also author-
22 ized, ratified, and confirmed.

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

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

14 (2) PRIORITY DATE; QUANTIFICATION.—The
15 priority date and quantification of rights described
16 in paragraph (1) shall be determined in an appro-
17 priate proceeding in State court.

18 (3) CARE, OPERATION, AND MAINTENANCE.—
19 The Salt River Project shall retain authority and re-
20 sponsibility existing on the date of enactment of this
21 Act for decisions relating to the care, operation, and
22 maintenance of the Salt River Project water delivery
23 system, including the Salt River Project reservoirs
24 on the Salt River and Verde River, vested in Salt

1 River Project under the 1917 agreement, as amend-
2 ed, described in paragraph (1).

3 (g) UV IRRIGATION DISTRICTS.—

4 (1) IN GENERAL.—As partial consideration for
5 obligations the UV irrigation districts shall be un-
6 dertaking, the obligation to comply with the terms
7 and conditions of term 5 of exhibit 2.30 (New Mex-
8 ico Risk Allocation Terms) to the New Mexico Con-
9 sumptive Use and Forbearance Agreement, the Gila
10 Valley Irrigation District, in 2010, shall receive
11 funds from the Secretary in an amount of
12 \$15,000,000 (adjusted to reflect changes since the
13 date of enactment of this Act in the cost indices ap-
14 plicable to the type of design and construction in-
15 volved in the design and construction of a pipeline
16 at or upstream from the Ft. Thomas Diversion Dam
17 to the lands farmed by the San Carlos Apache
18 Tribe, together with canal connections upstream
19 from the Ft. Thomas Diversion Dam and connection
20 devices appropriate to introduce pumped water into
21 the Pipeline).

22 (2) RESTRICTION.—The funds to be received by
23 the Gila Valley Irrigation District shall be used sole-
24 ly for the purpose of developing programs or con-
25 structing facilities to assist with mitigating the risks

1 and costs associated with compliance with the terms
2 and conditions of term 5 of exhibit 2.30 (New Mex-
3 ico Risk Allocation Terms) of the New Mexico Con-
4 sumptive and Forbearance Agreement, and for no
5 other purpose.

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

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

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

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

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

22 (i) BLUE RIDGE PROJECT TRANSFER AUTHORIZA-
23 TION.—

24 (1) DEFINITIONS.—In this subsection:

1 (A) BLUE RIDGE PROJECT.—The term
2 “Blue Ridge Project” means the water storage
3 reservoir known as “Blue Ridge Reservoir” sit-
4 uated in Coconino and Gila Counties, Arizona,
5 consisting generally of—

6 (i) Blue Ridge Dam and all pipelines,
7 tunnels, buildings, hydroelectric generating
8 facilities, and other structures of every
9 kind, transmission, telephone and fiber
10 optic lines, pumps, machinery, tools, and
11 appliances; and

12 (ii) all real or personal property, ap-
13 purtenant to or used, or constructed or
14 otherwise acquired to be used, in connec-
15 tion with Blue Ridge Reservoir.

16 (B) SALT RIVER PROJECT AGRICULTURAL
17 IMPROVEMENT AND POWER DISTRICT.—The
18 term “Salt River Project Agricultural Improve-
19 ment and Power District” means the Salt River
20 Project Agricultural Improvement and Power
21 District, a political subdivision of the State of
22 Arizona.

23 (2) TRANSFER OF TITLE.—The United States,
24 acting through the Secretary of the Interior, shall
25 accept from the Salt River Project Agricultural Im-

1 provement and Power District the transfer of title to
 2 the Blue Ridge Project. The transfer of title to the
 3 Blue Ridge Project from the Salt River Project Ag-
 4 ricultural Improvement and Power District to the
 5 United States shall be without cost to the United
 6 States. The transfer, change of use or change of
 7 place of use of any water rights associated with the
 8 Blue Ridge Project shall be made in accordance with
 9 Arizona law.

10 (3) USE AND BENEFIT OF SALT RIVER FED-
 11 ERAL RECLAMATION PROJECT.—

12 (A) IN GENERAL.—Subject to subpara-
 13 graph (B), the United States shall hold title to
 14 the Blue Ridge Project for the exclusive use
 15 and benefit of the Salt River Federal Reclama-
 16 tion Project.

17 (B) AVAILABILITY OF WATER.—Up to
 18 3,500 acre-feet of water per year may be made
 19 available from Blue Ridge Reservoir for munic-
 20 ipal and domestic uses in Northern Gila Coun-
 21 ty, Arizona, without cost to the Salt River Fed-
 22 eral Reclamation Project.

23 (4) TERMINATION OF JURISDICTION.—

24 (A) LICENSING AND REGULATORY AU-
 25 THORITY.—Upon the transfer of title of the

1 Blue Ridge Project to the United States under
2 paragraph (2), the Federal Energy Regulatory
3 Commission shall have no further licensing and
4 regulatory authority over Project Number 2304,
5 the Blue Ridge Project, located within the
6 State.

7 (B) ENVIRONMENTAL LAWS.—All other
8 applicable Federal environmental laws shall
9 continue to apply to the Blue Ridge Project, in-
10 cluding the Endangered Species Act of 1973
11 (16 U.S.C. 1531 et seq.) and the National En-
12 vironmental Policy Act of 1969 (42 U.S.C.
13 4321 et seq.).

14 (5) CARE, OPERATION, AND MAINTENANCE.—
15 Upon the transfer of title of the Blue Ridge Project
16 to the United States under paragraph (2), the Salt
17 River Valley Water Users' Association and the Salt
18 River Project Agricultural Improvement and Power
19 District shall be responsible for the care, operation,
20 and maintenance of the project pursuant to the con-
21 tract between the United States and the Salt River
22 Valley Water Users' Association, dated September 6,
23 1917, as amended.

24 (6) C.C. CRAGIN DAM & RESERVOIR.—Upon the
25 transfer of title of the Blue Ridge Project to the

1 United States under paragraph (2), Blue Ridge
2 Dam and Reservoir shall thereafter be known as the
3 “C.C. Cragin Dam and Reservoir”.

4 (j) EFFECT ON CURRENT LAW; JURISDICTION OF
5 COURTS.—Nothing in this section—

6 (1) alters law in effect on the day before the
7 date of enactment of this Act with respect to pre-
8 enforcement review of Federal environmental en-
9 forcement actions; or

10 (2) confers jurisdiction on any State court to
11 interpret subparagraphs (D), (E), and (G) of section
12 207(a)(1) where such jurisdiction does not otherwise
13 exist.

14 **SEC. 214. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) AUTHORIZATION OF APPROPRIATIONS.—

16 (1) REHABILITATION OF IRRIGATION WORKS.—

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

22 (B) ADJUSTMENT.—The amount under
23 subparagraph (A) shall be adjusted by such
24 amounts, if any, as may be required by reason
25 of changes in construction costs as indicated by

1 engineering cost indices applicable to the types
2 of construction required by the rehabilitation.

3 (2) BUREAU OF RECLAMATION CONSTRUCTION
4 OVERSIGHT.—There are authorized to be appro-
5 priated such sums as are necessary for the Bureau
6 of Reclamation to undertake the oversight of the
7 construction projects authorized under section 203.

8 (3) SUBSIDENCE REMEDIATION PROGRAM.—
9 There are authorized to be appropriated such sums
10 as are necessary to carry out the subsidence remedi-
11 ation program under section 209 (including such
12 sums as are necessary, not to exceed \$4,000,000, to
13 carry out the subsidence remediation and repair re-
14 quired under section 209(d)).

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

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

21 (A) retire \$13,900,000, minus any
22 amounts appropriated for this purpose, of the
23 debt incurred by Safford to pay costs associated
24 with the construction of the Safford facility as

1 identified in exhibit 26.1 to the Gila River
2 agreement; and

3 (B) pay the interest accrued on that
4 amount.

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

7 (A) such sums as are necessary to carry
8 out—

9 (i) all necessary environmental compli-
10 ance activities undertaken by the Secretary
11 associated with the Gila River agreement
12 and this title;

13 (ii) any mitigation measures adopted
14 by the Secretary that are the responsibility
15 of the Community associated with the con-
16 struction of the diversion and delivery fa-
17 cilities of the water referred to in section
18 204 for use on the reservation; and

19 (iii) no more than 50 percent of the
20 cost of any mitigation measures adopted by
21 the Secretary that are the responsibility of
22 the Community associated with the diver-
23 sion or delivery of the water referred to in
24 section 204 for use on the Reservation,
25 other than any responsibility related to

1 water delivered to any other person by
2 lease or exchange; and

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

6 (7) UV IRRIGATION DISTRICTS.—There are au-
7 thorized to be appropriated such sums as are nec-
8 essary to pay the Gila Valley Irrigation District an
9 amount of \$15,000,000 (adjusted to reflect changes
10 since the date of enactment of the Arizona Water
11 Settlements Act of 2004 in the cost indices applica-
12 ble to the type of design and construction involved
13 in the design and construction of a pipeline at or up-
14 stream from the Ft. Thomas Diversion Dam to the
15 lands farmed by the San Carlos Apache Tribe, to-
16 gether with canal connections upstream from the Ft.
17 Thomas Diversion Dam and connection devices ap-
18 propriate to introduce pumped water into the Pipe-
19 line).

20 (b) IDENTIFIED COSTS.—

21 (1) IN GENERAL.—Amounts made available
22 under subsection (a) shall be considered to be identi-
23 fied costs for purposes of paragraph (2)(D)(v)(I) of
24 section 403(f) of the Colorado River Basin Project

1 Act (43 U.S.C. 1543(f)) (as amended by section
2 107(a)).

3 (2) EXCEPTION.—Amounts made available
4 under subsection (a)(4) to carry out section 211(b)
5 shall not be considered to be identified costs for pur-
6 poses of section 403(f)(2)(D)(v)(I) of the Colorado
7 River Basin Project Act (43 U.S.C.
8 1543(f)(2)(D)(v)(I)) (as amended by section
9 107(a)).

10 **SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

11 If the Secretary does not publish a statement of find-
12 ings under section 207(c) by December 31, 2007—

13 (1) except for section 213(i), this title is re-
14 pealed effective January 1, 2008, and any action
15 taken by the Secretary and any contract entered
16 under any provision of this title shall be void;

17 (2) any amounts appropriated under para-
18 graphs (1) through (7) of section 214(a), together
19 with any interest on those amounts, shall imme-
20 diately revert to the general fund of the Treasury;

21 (3) any amounts made available under section
22 214(b) that remain unexpended shall immediately
23 revert to the general fund of the Treasury; and

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

4 **TITLE III—SOUTHERN ARIZONA**
 5 **WATER RIGHTS SETTLEMENT**

6 **SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLE-**
 7 **MENT.**

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

10 **“TITLE III—SOUTHERN ARIZONA**
 11 **WATER RIGHTS SETTLEMENT**

12 **“SEC. 301. SHORT TITLE.**

13 “‘This title may be cited as the ‘Southern Arizona
 14 Water Rights Settlement Amendments Act of 2004’.

15 **“SEC. 302. PURPOSES.**

16 “‘The purposes of this title are—

17 “(1) to authorize, ratify, and confirm the agree-
 18 ments referred to in section 309(h);

19 “(2) to authorize and direct the Secretary to
 20 execute and perform all obligations of the Secretary
 21 under those agreements; and

22 “(3) to authorize the actions and appropriations
 23 necessary for the United States to meet obligations
 24 of the United States under those agreements and
 25 this title.

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

8 “(A) is located—

9 “(i) within the State; but

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

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

15 “(3) AGREEMENT OF DECEMBER 11, 1980.—The
16 term ‘agreement of December 11, 1980’ means the
17 contract entered into by the United States and the
18 Nation on December 11, 1980.

19 “(4) AGREEMENT OF OCTOBER 11, 1983.—The
20 term ‘agreement of October 11, 1983’ means the
21 contract entered into by the United States and the
22 Nation on October 11, 1983.

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

26 “(A) located within the Reservation; and

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

2 “(6) ALLOTTEE CLASS.—The term ‘allottee
3 class’ means an applicable plaintiff class certified by
4 the court of jurisdiction in—

5 “(A) the Alvarez case; or

6 “(B) the Tucson case.

7 “(7) ALVAREZ CASE.—The term ‘Alvarez case’
8 means the first through third causes of action of the
9 third amended complaint in Alvarez v. City of Tuc-
10 son (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed
11 April 21, 1993)).

12 “(8) APPLICABLE LAW.—The term ‘applicable
13 law’ means any applicable Federal, State, tribal, or
14 local law.

15 “(9) ASARCO.—The term ‘Asarco’ means
16 Asarco Incorporated, a New Jersey corporation of
17 that name, and its subsidiaries operating mining op-
18 erations in the State.

19 “(10) ASARCO AGREEMENT.—The term ‘Asarco
20 agreement’ means the agreement by that name at-
21 tached to the Tohono O’odham settlement agreement
22 as exhibit 13.1.

23 “(11) CAP REPAYMENT CONTRACT.—

24 “(A) IN GENERAL.—The term ‘CAP repay-
25 ment contract’ means the contract dated De-

1 cember 1, 1988 (Contract No. 14–0906–09W–
2 09245, Amendment No. 1) between the United
3 States and the Central Arizona Water Con-
4 servation District for the delivery of water and
5 the repayment of costs of the Central Arizona
6 Project.

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

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

15 “(13) CENTRAL ARIZONA PROJECT LINK PIPE-
16 LINE.—The term ‘Central Arizona Project link pipe-
17 line’ means the pipeline extending from the Tucson
18 Aqueduct of the Central Arizona Project to Station
19 293+36.

20 “(14) CENTRAL ARIZONA PROJECT SERVICE
21 AREA.—The term ‘Central Arizona Project service
22 area’ means—

23 “(A) the geographical area comprised of
24 Maricopa, Pinal, and Pima Counties, Arizona,
25 in which the Central Arizona Water Conserva-

1 tion District delivers Central Arizona Project
2 water; and

3 “(B) any expansion of that area under ap-
4 plicable law.

5 “(15) CENTRAL ARIZONA WATER CONSERVA-
6 TION DISTRICT.—The term ‘Central Arizona Water
7 Conservation District’ means the political subdivi-
8 sion of the State that is the contractor under the
9 CAP repayment contract.

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

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

19 “(18) DELIVERY AND DISTRIBUTION SYSTEM.—

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

22 “(i) the Central Arizona Project aque-
23 duct;

24 “(ii) the Central Arizona Project link
25 pipeline; and

1 “(iii) the pipelines, canals, aqueducts,
2 conduits, and other necessary facilities for
3 the delivery of water under the Central Ar-
4 izona Project.

5 “(B) INCLUSIONS.—The term ‘delivery and
6 distribution system’ includes pumping facilities,
7 power plants, and electric power transmission
8 facilities external to the boundaries of any farm
9 to which the water is distributed.

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

16 “(20) ENFORCEABILITY DATE.—The term ‘en-
17 forceability date’ means the date on which title III
18 of the Arizona Water Settlements Act takes effect
19 (as described in section 302(b) of the Arizona Water
20 Settlements Act).

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

23 “(A) the maximum pumping capacity of
24 which is not more than 35 gallons per minute;
25 and

- 1 “(B) the water from which is used for—
- 2 “(i) the supply, service, or activities of
- 3 households or private residences;
- 4 “(ii) landscaping;
- 5 “(iii) livestock watering; or
- 6 “(iv) the irrigation of not more than
- 7 2 acres of land for the production of 1 or
- 8 more agricultural or other commodities
- 9 for—
- 10 “(I) sale;
- 11 “(II) human consumption; or
- 12 “(III) use as feed for livestock or
- 13 poultry.

14 “(22) FEE OWNER OF ALLOTTED LAND.—The

15 term ‘fee owner of allotted land’ means a person

16 that holds fee simple title in real property on the

17 Reservation that, at any time before the date on

18 which the person acquired fee simple title, was held

19 in trust by the United States as an Indian allot-

20 ment.

21 “(23) FICO.—The term ‘FICO’ means collec-

22 tively the Farmers Investment Co., an Arizona cor-

23 poration of that name, and the Farmers Water Co.,

24 an Arizona corporation of that name.

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

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

9 “(26) INJURY TO WATER RIGHTS.—

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

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

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

21 “(27) IRRIGATION SYSTEM.—

22 “(A) IN GENERAL.—The term ‘irrigation
23 system’ means canals, laterals, ditches, sprin-
24 klers, bubblers, and other irrigation works used

1 to distribute water within the boundaries of a
2 farm.

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

7 “(i) rehabilitation of fields;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(45) TOHONO O’ODHAM SETTLEMENT AGREE-
5 MENT.—The term ‘Tohono O’odham settlement
6 agreement’ means the agreement dated April 30,
7 2003 (including all exhibits of and attachments to
8 the agreement).

9 “(46) TUCSON CASE.—The term ‘Tucson case’
10 means United States et al. v. City of Tucson, et al.
11 (Civ. No. 75–0939 TUC consol. with Civ. No. 75–
12 0951 TUC FRZ (D. Ariz., filed February 20,
13 1975)).

14 “(47) TUCSON INTERIM WATER LEASE.—The
15 term ‘Tucson interim water lease’ means the lease,
16 and any pre-2004 amendments and extensions of the
17 lease, approved by the Secretary, between the city of
18 Tucson, Arizona, and the Nation, dated October 24,
19 1992.

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

23 “(A) the area—

24 “(i) designated as the Tucson Active
25 Management Area under the Arizona

1 Groundwater Management Act of 1980
2 (1980 Ariz. Sess. Laws 1); and

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

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

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

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

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

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

23 “(A) the anticipated or actual use of the
24 water; or

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

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

4 “(54) 1982 ACT.—The term ‘1982 Act’ means
5 the Southern Arizona Water Rights Settlement Act
6 of 1982 (96 Stat. 1274; 106 Stat. 3256), as in ef-
7 fect on the day before the enforceability date.

8 **“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGA-**
9 **TIONS.**

10 “(a) WATER DELIVERY.—The Secretary shall deliver
11 annually from the main project works of the Central Ari-
12 zona Project, a total of 37,800 acre-feet of water suitable
13 for agricultural use, of which—

14 “(1) 27,000 acre-feet shall—

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

17 “(B) otherwise be used in accordance with
18 section 309; and

19 “(2) 10,800 acre-feet shall—

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

22 “(B) otherwise be used in accordance with
23 section 309.

24 “(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The
25 Secretary shall (without cost to the Nation, any allottee,

1 the San Xavier Cooperative Association, or the San Xavier
2 Allottees Association), as part of the main project works
3 of the Central Arizona Project, design, construct, operate,
4 maintain, and replace the delivery and distribution sys-
5 tems necessary to deliver the water described in subsection
6 (a).

7 “(c) DUTIES OF THE SECRETARY.—

8 “(1) COMPLETION OF DELIVERY AND DIS-
9 TRIBUTION SYSTEM AND IMPROVEMENT TO EXIST-
10 ING IRRIGATION SYSTEM.—Except as provided in
11 subsection (d), not later than 8 years after the en-
12 forceability date, the Secretary shall complete the
13 design and construction of 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 enforceability date, in addition to the improve-
20 ments described in paragraph (1), 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-

1 tion system shall serve 2,300 net irrigable acres
2 on the San Xavier Reservation, unless the Sec-
3 retary and the San Xavier Cooperative Associa-
4 tion agree on fewer net irrigable acres.

5 “(3) CONSTRUCTION OF NEW FARM.—

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

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

19 “(ii) in lieu of the actions described in
20 clause (i), pay to the San Xavier District
21 \$18,300,000 (adjusted as provided in sec-
22 tion 317(a)(2)) in full satisfaction of the
23 obligations of the United States described
24 in clause (i).

25 “(B) ELECTION.—

1 “(i) IN GENERAL.—The San Xavier
2 District Council may make a nonrevocable
3 election whether to receive the benefits de-
4 scribed under clause (i) or (ii) of subpara-
5 graph (A) by notifying the Secretary by
6 not later than 180 days after the enforce-
7 ability date or January 1, 2010, whichever
8 is later, by written and certified resolution
9 of the San Xavier District Council.

10 “(ii) NO RESOLUTION.—If the Sec-
11 retary does not receive such a resolution by
12 the deadline specified in clause (i), the Sec-
13 retary shall pay \$18,300,000 (adjusted as
14 provided in section 317(a)(2)) to the San
15 Xavier District in lieu of carrying out the
16 obligations of the United States under sub-
17 paragraph (A)(i).

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

20 “(i) IN GENERAL.—Payment of
21 \$18,300,000 (adjusted as provided in sec-
22 tion 317(a)(2)) under this paragraph shall
23 be made by the Secretary from the Lower
24 Colorado River Basin Development
25 Fund—

1 “(I) not later than 60 days after
2 an election described in subparagraph
3 (B) is made (if such an election is
4 made), but in no event earlier than
5 the enforceability date or January 1,
6 2010, whichever is later; or

7 “(II) not later than 240 days
8 after the enforceability date or Janu-
9 ary 1, 2010, whichever is later, if no
10 timely election is made.

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

21 “(4) IRRIGATION AND DELIVERY AND DIS-
22 TRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK
23 DISTRICT.—Except as provided in subsection (d),
24 not later than 1 year after the enforceability date,
25 the Secretary shall complete the design and con-

1 construction of an irrigation system and delivery and
2 distribution system to serve the farm that is con-
3 structed in the eastern Schuk Toak District.

4 “(d) EXTENSION OF DEADLINES.—

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

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

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

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

19 “(i) the Endangered Species Act of
20 1973 (16 U.S.C. 1531 et seq.); and

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

23 or

24 “(D) stoppage in work resulting from the
25 assessment of a tax or fee that is alleged in any

1 court of jurisdiction to be confiscatory or dis-
2 criminatory.

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

6 “(A) publish a notice of the extension in
7 the Federal Register; and

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

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

15 “(e) AUTHORITY OF SECRETARY.—

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

23 “(2) EFFECT ON FEDERAL ACTIVITY.—Nothing
24 in this subsection affects the authority of the United
25 States, or any Federal officer, agent, employee, or

1 contractor, to conduct official Federal business or
2 carry out any Federal duty (including any Federal
3 business or duty under this title) on land within the
4 eastern Schuk Toak District or the San Xavier Dis-
5 trict.

6 “(f) USE OF FUNDS.—

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

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

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

17 “(i) authorized by the San Xavier
18 District Council; and

19 “(ii) approved by resolution of the
20 Legislative Council of the Nation; and

21 “(C) shall expend the funds—

22 “(i) for any subjugation of land, de-
23 velopment of water resources, or construc-
24 tion, operation, maintenance, or replace-
25 ment of facilities within the San Xavier

1 Reservation that is not required to be car-
 2 ried out by the United States under this
 3 title or any other provision of law;

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

6 “(I) programs for senior citizens;

7 “(II) health care services;

8 “(III) education;

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

11 “(V) legal assistance programs;

12 “(iii) to provide benefits to allottees;

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

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

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

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

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

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

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

12 **“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; AL-**
 13 **TERNATIVE WATER SUPPLIES.**

14 “(a) DELIVERY OF WATER.—

15 “(1) IN GENERAL.—The Secretary shall deliver
 16 water from the main project works of the Central
 17 Arizona Project, in such quantities, and in accord-
 18 ance with such terms and conditions, as are con-
 19 tained in the agreement of December 11, 1980, the
 20 1982 Act, the agreement of October 11, 1983, and
 21 the Tohono O’odham settlement agreement (to the
 22 extent that the settlement agreement does not con-
 23 flict with this Act), to 1 or more of—

24 “(A) the cooperative farm;

25 “(B) the eastern Schuk Toak District;

1 “(C) turnouts existing on the enforceability
2 date; and

3 “(D) any other point of delivery on the
4 Central Arizona Project main aqueduct that is
5 agreed to by—

6 “(i) the Secretary;

7 “(ii) the operator of the Central Ari-
8 zona Project; and

9 “(iii) the Nation.

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

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

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

18 “(i) the Secretary;

19 “(ii) the United States; or

20 “(iii) any officer, employee, con-
21 tractor, or agent of the Secretary or
22 United States.

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

24 “(1) DELIVERY.—

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

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

17 “(2) PRIVATE LAND AND INTERESTS.—

18 “(A) ACQUISITION.—

19 “(i) IN GENERAL.—Subject to sub-
20 paragraph (B), the Secretary may acquire,
21 for not more than market value, such pri-
22 vate land, or interests in private land, that
23 include rights in surface or groundwater
24 recognized under State law, as are nec-

1 essary for the acquisition and delivery of
2 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)(1);
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 San Xavier Cooperative Association
19 in the irrigation system; but

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

22 “(B)(i) the value of such quantities of
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)(2); or

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

5 “(I) are ordered by the Nation for use
6 by the San Xavier Cooperative Association
7 in the extension to the irrigation system;
8 but

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

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

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

17 “(I) are ordered by the Nation for use
18 in the irrigation system, or for use by any
19 person or entity (other than the San Xa-
20 vier Cooperative Association); but

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

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

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

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

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

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

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

19 “(1) 23,000 acre-feet shall—

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

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

24 “(2) 5,200 acre-feet shall—

1 withdrawn by nonexempt wells from beneath
2 the eastern Schuk Toak District to not more
3 than 3,200 acre-feet;

4 “(C) to comply with water management
5 plans established by the Secretary under section
6 308(d);

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

16 “(E) subject to compliance by the Nation
17 with other applicable provisions of part 900 of
18 title 25, Code of Federal Regulations (or any
19 successor regulations), to consent to contracting
20 by the San Xavier District under section
21 311(b), on the conditions that—

22 “(i)(I) the plaintiffs in the Alvarez
23 case and Tucson case have stipulated to
24 the dismissal, with prejudice, of claims in
25 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), (2),
7 and (3) of section 304(c) and on the deliv-
8 ery of water to those systems, for the oper-
9 ation, maintenance, and replacement of
10 those systems 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 extension of
3 the irrigation system;

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

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

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

23 “(III) the Nation, on granting
24 consent to such contracting, shall be
25 released from any responsibility, li-

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

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

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

20 “(i) the obligation of the Nation to
21 subjugate the land in the cooperative farm
22 that is to be served by the extension of the
23 irrigation system under section 304(c)(2)
24 shall be determined by the Secretary, in

1 consultation with the Nation and the San
2 Xavier Cooperative Association; and

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

21 “(G) subject to business lease No. H54-
22 16-72 dated April 26, 1972, of San Xavier
23 Reservation land to Asarco and approved by the
24 United States on November 14, 1972, that the
25 Nation—

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

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 subsection
19 (a)(1)(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 storage credits resulting
2 from a project authorized in section
3 308(e) that cannot be lawfully trans-
4 ferred or otherwise disposed of to per-
5 sons for recovery outside the Nation’s
6 Reservation;

7 “(ii) subject to section 309(b)(2), has
8 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 authorized by this title with-
23 in or outside the Nation’s Reserva-
24 tion; and

1 “(III) subject to section 308(e),
2 as an exclusive right, to transfer or
3 otherwise dispose of the storage cred-
4 its that may be lawfully transferred or
5 otherwise disposed of to persons for
6 recovery outside the Nation’s Reserva-
7 tion;

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 Alvarez case and Tucson case have
11 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 paragraph (1) or (2) of section 304(c),
15 or in the case of the irrigation system described in section
16 304(c)(3), if such irrigation system is constructed on indi-
17 vidual Indian trust allotments, neither the United States
18 nor the Nation shall be responsible for the operation,
19 maintenance, or replacement of the system.

20 “(c) PAYMENT OF CHARGES.—The Nation shall not
21 be responsible for payment of any water service capital
22 charge for Central Arizona Project water delivered under
23 section 304, subsection (a) or (b) of section 305, or section
24 306.

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 and the water resources
14 granted or confirmed 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;

20 “(3) enact and maintain—

21 “(A) an interim allottee water rights code
22 that—

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

24 “(ii) prescribes the rights of allottees
25 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 en-
6 forceability date, a comprehensive water code
7 applicable to the water resources granted or
8 confirmed under this title;

9 “(4) include in each of the water codes enacted
10 under subparagraphs (A) and (B) of paragraph
11 (3)—

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

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

19 “(C) a process by which an allottee may
20 request and receive a permit for the use of any
21 water resources referred to in subsection (a),
22 except the water resources referred to in section
23 307(a)(1)(G)(ii)(III) and subject to the Na-
24 tion’s first right of use under section
25 307(a)(1)(G)(ii)(II);

1 “(D) provisions for the protection of due
2 process, including—

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

5 “(I) a member of the Nation, for
6 a permit for use of available water re-
7 sources granted or confirmed by this
8 title; and

9 “(II) an allottee, for a permit for
10 use of—

11 “(aa) the water resources
12 identified in section
13 307(a)(1)(G)(i) that are subject
14 to a first right of beneficial use;
15 or

16 “(bb) subject to the first
17 right of use of the Nation, avail-
18 able water resources identified in
19 section 307(a)(1)(G)(i)(II);

20 “(ii) provisions for—

21 “(I) appeals and adjudications of
22 denied or disputed permits; and

23 “(II) resolution of contested ad-
24 ministrative decisions; and

1 “(iii) a waiver by the Nation of the
2 sovereign immunity of the Nation only
3 with respect to proceedings described in
4 clause (ii) for claims of declaratory and in-
5 junctive relief; and

6 “(E) a process for satisfying any entitle-
7 ment to the water resources referred to in sec-
8 tion 307(a)(1)(G)(i) for which fee owners of al-
9 lotted land have received final determinations
10 under applicable law; and

11 “(5) submit to the Secretary the comprehensive
12 water code, for approval by the Secretary only of the
13 provisions of the water code (and any amendments
14 to the water code), that implement, with respect to
15 the allottees, the standards described in paragraph
16 (4).

17 “(c) WATER CODE APPROVAL.—

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

21 “(A) issue a written approval of the water
22 code; or

23 “(B) provide a written notification to the
24 Nation that—

1 “(i) identifies such provisions of the
2 water code that do not conform to sub-
3 section (b) or other applicable Federal law;
4 and

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

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

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

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

25 “(d) WATER MANAGEMENT PLANS.—

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

5 “(2) REQUIREMENTS.—Water management
6 plans established under paragraph (1)—

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

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

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

21 “(B) shall, at a minimum—

22 “(i) provide for the measurement of
23 all groundwater withdrawals, including
24 withdrawals from each well that is not an
25 exempt well;

1 “(ii) provide for—

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

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

9 “(iii) provide for the direct storage
10 and deferred storage of water, including
11 the implementation of underground storage
12 and recovery projects, in accordance with
13 this section;

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

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

20 “(II) between the Nation and the
21 city of Tucson, Arizona;

22 “(v) provide for—

23 “(I) the efficient use of water;
24 and

25 “(II) the prevention of waste;

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

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

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

17 “(i) the San Xavier Reservation; or

18 “(ii) the eastern Schuk Toak District;

19 and

20 “(D) shall be implemented and maintained
21 by the Nation, with no obligation by the Sec-
22 retary.

23 “(e) UNDERGROUND STORAGE AND RECOVERY
24 PROJECTS.—The Nation is authorized to establish direct
25 storage and recovery projects in accordance with the

1 Tohono O’odham settlement agreement. The Secretary
2 shall have no responsibility to fund or otherwise admin-
3 ister such projects.

4 “(f) GROUNDWATER.—

5 “(1) SAN XAVIER RESERVATION.—

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

10 “(B) DEFERRED PUMPING.—

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

15 “(I) may be withdrawn in a sub-
16 sequent year; and

17 “(II) if any of that water is with-
18 drawn, shall be accounted for in ac-
19 cordance with the Tohono O’odham
20 settlement agreement as a debit to the
21 deferred pumping storage account.

22 “(ii) LIMITATION.—The quantity of
23 water authorized to be recovered as de-
24 ferred pumping storage credits under this
25 subparagraph shall not exceed—

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

3 “(II) 10,000 acre-feet in any
4 year.

5 “(C) RECOVERY OF ADDITIONAL WATER.—

6 In addition to the quantity of groundwater au-
7 thorized to be pumped under subparagraphs
8 (A) and (B), the Nation may annually recover
9 within the San Xavier Reservation all or a por-
10 tion of the credits for water stored under a
11 project described in subsection (e).

12 “(2) EASTERN SCHUK TOAK DISTRICT.—

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

17 “(B) DEFERRED PUMPING.—

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

22 “(I) may be withdrawn in a sub-
23 sequent year; and

24 “(II) if any of that water is with-
25 drawn, shall be accounted for in ac-

1 cordance with the Tohono O’odham
2 settlement agreement as a debit to the
3 deferred pumping storage account.

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

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

10 “(II) 3,200 acre-feet in any year.

11 “(C) RECOVERY OF ADDITIONAL WATER.—

12 In addition to the quantity of groundwater au-
13 thorized to be pumped under subparagraphs
14 (A) and (B), the Nation may annually recover
15 within the eastern Schuk Toak District all or a
16 portion of the credits for water stored under a
17 project described in subsection (e).

18 “(3) INABILITY TO RECOVER GROUNDWATER.—

19 “(A) IN GENERAL.—The authorizations to
20 pump groundwater in paragraphs (1) and (2)
21 neither warrant nor guarantee that the
22 groundwater—

23 “(i) physically exists; or

24 “(ii) is recoverable.

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

3 “(i) subject to paragraph 8.8 of the
4 Tohono O’odham settlement agreement,
5 the inability of any person to pump or re-
6 cover that groundwater shall not be the
7 basis for any claim by the United States or
8 the Nation against any person or entity
9 withdrawing or using the water from any
10 common supply; and

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

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

19 “(h) INABILITY OF SECRETARY TO DELIVER
20 WATER.—The Nation is authorized to pump additional
21 groundwater in any year in which the Secretary is unable
22 to deliver water required to carry out sections 304(a) and
23 306(a) in accordance with the Tohono O’odham settlement
24 agreement.

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

4 **“SEC. 309. USES OF WATER.**

5 “(a) PERMISSIBLE USES.—Subject to other provi-
6 sions of this section and other applicable law, the Nation
7 may devote all water supplies granted or confirmed under
8 this title, whether delivered by the Secretary or pumped
9 by the Nation, to any use (including any agricultural, mu-
10 nicipal, domestic, industrial, commercial, mining, under-
11 ground storage, instream flow, riparian habitat mainte-
12 nance, or recreational use).

13 “(b) USE AREA.—

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

17 “(A) the water supplies acquired under
18 sections 304(a) and 306(a);

19 “(B) groundwater supplies; and

20 “(C) storage credits acquired as a result of
21 projects authorized under section 308(e), or de-
22 ferred storage credits described in section
23 308(f), except to the extent that use of those
24 storage credits causes the withdrawal of

1 groundwater in violation of applicable Federal
2 law.

3 “(2) USE OUTSIDE THE NATION’S RESERVA-
4 TION.—

5 “(A) IN GENERAL.—Water resources
6 granted or confirmed under this title may be
7 sold, leased, transferred, or used by the Nation
8 outside of the Nation’s Reservation only in ac-
9 cordance with this title.

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

15 “(C) STATE LAW.—With the exception of
16 Central Arizona Project water and groundwater
17 withdrawals under the Asarco agreement, the
18 Nation may sell, lease, transfer, or use any
19 water supplies and storage credits acquired as
20 a result of a project authorized under section
21 308(e) at any location outside of the Nation’s
22 Reservation, but within the State, only in ac-
23 cordance with State law.

24 “(D) LIMITATION.—Deferred pumping
25 storage credits provided for in section 308(f)

1 shall not be sold, leased, transferred, or used
2 outside the Nation's Reservation.

3 “(E) PROHIBITION ON USE OUTSIDE THE
4 STATE.—No water acquired under section
5 304(a) or 306(a) shall be leased, exchanged,
6 forborne, or otherwise transferred by the Na-
7 tion for any direct or indirect use outside the
8 State.

9 “(c) EXCHANGES AND LEASES; CONDITIONS ON EX-
10 CHANGES AND LEASES.—

11 “(1) IN GENERAL.—With respect to users out-
12 side the Nation's Reservation, the Nation may, for
13 a term of not to exceed 100 years, assign, exchange,
14 lease, provide an option to lease, or otherwise tempo-
15 rarily dispose of to the users, Central Arizona
16 Project water to which the Nation is entitled under
17 sections 304(a) and 306(a) or storage credits ac-
18 quired under section 308(e), if the assignment, ex-
19 change, lease, option, or temporary disposal is car-
20 ried out in accordance with—

21 “(A) this subsection; and

22 “(B) subsection (b)(2).

23 “(2) LIMITATION ON ALIENATION.—The Nation
24 shall not permanently alienate any water right under
25 paragraph (1).

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

5 “(4) CONTRACT.—An assignment, exchange,
6 lease, option, or temporary disposal described in
7 paragraph (1) shall be executed only in accordance
8 with a contract that—

9 “(A) is accepted by the Nation;

10 “(B) is ratified under a resolution of the
11 Legislative Council of the Nation;

12 “(C) is approved by the United States as
13 Trustee; and

14 “(D) with respect to any contract to which
15 the United States or the Secretary is a party,
16 provides that an action may be maintained by
17 the contracting party against the United States
18 and the Secretary for a breach of the contract
19 by the United States or Secretary, as appro-
20 priate.

21 “(5) TERMS EXCEEDING 25 YEARS.—The terms
22 and conditions established in paragraph 11 of the
23 Tohono O’odham settlement agreement shall apply
24 to any contract under paragraph (4) that has a term
25 of greater than 25 years.

1 “(d) LIMITATIONS ON USE, EXCHANGES, AND
2 LEASES.—The rights of the Nation to use water supplies
3 under subsection (a), and to assign, exchange, lease, pro-
4 vide options to lease, or temporarily dispose of the water
5 supplies under subsection (c), shall be exercised on condi-
6 tions that ensure the availability of water supplies to sat-
7 isfy the first right of beneficial use under section
8 307(a)(1)(G)(i).

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

16 “(f) WATER RIGHTS UNAFFECTED BY USE OR NON-
17 USE.—The failure of the Nation to make use of water pro-
18 vided under this title, or the use of, or failure to make
19 use of, that water by any other person that enters into
20 a contract with the Nation under subsection (c) for the
21 assignment, exchange, lease, option for lease, or tem-
22 porary disposal of water, shall not diminish, reduce, or
23 impair—

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

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

3 “(A) the first right of beneficial use re-
4 ferred to in section 307(a)(1)(G)(i); or

5 “(B) the allottee use rights referred to in
6 section 308(a).

7 “(g) AMENDMENT TO AGREEMENT OF DECEMBER
8 11, 1980.—The Secretary shall amend the agreement of
9 December 11, 1980, to provide that—

10 “(1) the contract shall be—

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

14 “(B) without limit as to term;

15 “(2) the Nation may, with the approval of the
16 Secretary—

17 “(A) in accordance with subsection (c), as-
18 sign, exchange, lease, enter into an option to
19 lease, or otherwise temporarily dispose of water
20 to which the Nation is entitled under sections
21 304(a) and 306(a); and

22 “(B) renegotiate any lease at any time
23 during the term of the lease if the term of the
24 renegotiated lease does not exceed 100 years;

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

6 “(B) the United States shall have no trust obli-
7 gation or other obligation to monitor, administer, or
8 account for any consideration received by the Nation
9 under those leases or options to lease and exchanges
10 or options to exchange;

11 “(4)(A) all of the Nation’s Central Arizona
12 Project water shall be delivered through the Central
13 Arizona Project aqueduct; and

14 “(B) if the delivery capacity of the Central Ari-
15 zona Project aqueduct is significantly reduced or is
16 anticipated to be significantly reduced for an ex-
17 tended period of time, the Nation shall have the
18 same Central Arizona Project delivery rights as
19 other Central Arizona Project contractors and Cen-
20 tral Arizona Project subcontractors, if the Central
21 Arizona Project contractors or Central Arizona
22 Project subcontractors are allowed to take delivery
23 of water other than through the Central Arizona
24 Project aqueduct;

1 “(5) the Nation may use the Nation’s Central
2 Arizona Project water on or off of the Nation’s Res-
3 ervation for the purposes of the Nation consistent
4 with this title;

5 “(6) as authorized by subparagraph (A) of sec-
6 tion 403(f)(2) of the Colorado River Basin Project
7 Act (43 U.S.C. 1543(f)(2)) (as amended by section
8 107(a)) and to the extent that funds are available in
9 the Lower Colorado River Basin Development Fund
10 established by section 403 of that Act (43 U.S.C.
11 1543), the United States shall pay to the Central
12 Arizona Project operating agency the fixed oper-
13 ation, maintenance, and replacement charges associ-
14 ated with the delivery of the Nation’s Central Ari-
15 zona Project water, except for the Nation’s Central
16 Arizona Project water leased by others;

17 “(7) the allocated costs associated with the con-
18 struction of the delivery and distribution system—

19 “(A) shall be nonreimbursable; and

20 “(B) shall be excluded from any repayment
21 obligation of the Nation;

22 “(8) no water service capital charges shall be
23 due or payable for the Nation’s Central Arizona
24 Project water, regardless of whether the Central Ari-
25 zona Project water is delivered for use by the Nation

1 or is delivered pursuant to any leases or options to
2 lease or exchanges or options to exchange the Na-
3 tion's Central Arizona Project water entered into by
4 the Nation;

5 “(9) the agreement of December 11, 1980, con-
6 forms with section 104(d) and section 306(a) of the
7 Arizona Water Settlements Act; and

8 “(10) the amendments required by this sub-
9 section shall not apply to the 8,000 acre feet of Cen-
10 tral Arizona Project water contracted by the Nation
11 in the agreement of December 11, 1980, for the Sif
12 Oidak District.

13 “(h) RATIFICATION OF AGREEMENTS.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of law, each agreement described in para-
16 graph (2), to the extent that the agreement is not
17 in conflict with this Act—

18 “(A) is authorized, ratified, and confirmed;

19 and

20 “(B) shall be executed by the Secretary.

21 “(2) AGREEMENTS.—The agreements described
22 in this paragraph are—

23 “(A) the Tohono O’odham settlement
24 agreement, to the extent that—

1 “(i) the Tohono O’odham settlement
2 agreement is consistent with this title; and

3 “(ii) parties to the Tohono O’odham
4 settlement agreement other than the Sec-
5 retary have executed that agreement;

6 “(B) the Tucson agreement (attached to
7 the Tohono O’odham settlement agreement as
8 exhibit 12.1); and

9 “(C)(i) the Asarco agreement (attached to
10 the Tohono O’odham settlement agreement as
11 exhibit 13.1 to the Tohono O’odham settlement
12 agreement);

13 “(ii) lease No. H54–0916–0972, dated
14 April 26, 1972, and approved by the United
15 States on November 14, 1972; and

16 “(iii) any new well site lease as provided
17 for in the Asarco agreement; and

18 “(D) the FICO agreement (attached to the
19 Tohono O’odham settlement agreement as Ex-
20 hibit 14.1).

21 “(3) RELATION TO OTHER LAW.—

22 “(A) ENVIRONMENTAL COMPLIANCE.—In
23 implementing an agreement described in para-
24 graph (2), the Secretary shall promptly comply
25 with all aspects of the National Environmental

1 Policy Act of 1969 (42 U.S.C. 4321 et seq.),
2 the Endangered Species Act of 1973 (16 U.S.C.
3 1531 et seq.), and all other applicable environ-
4 mental Acts and regulations.

5 “(B) EXECUTION OF AGREEMENT.—Exe-
6 cution of an agreement described in paragraph
7 (2) by the Secretary under this section shall not
8 constitute a major Federal action under the
9 National Environmental Policy Act (42 U.S.C.
10 4321 et seq.). The Secretary is directed to
11 carry out all necessary environmental compli-
12 ance required by Federal law in implementing
13 an agreement described in paragraph (2).

14 “(C) LEAD AGENCY.—The Bureau of Rec-
15 lamation shall be the lead agency with respect
16 to environmental compliance under the agree-
17 ments described in paragraph (2).

18 “(i) DISBURSEMENTS FROM TUCSON INTERIM
19 WATER LEASE.—The Secretary shall disburse to the Na-
20 tion, without condition, all proceeds from the Tucson in-
21 terim water lease.

22 “(j) USE OF GROSS PROCEEDS.—

23 “(1) DEFINITION OF GROSS PROCEEDS.—In
24 this subsection, the term ‘gross proceeds’ means all

1 proceeds, without reduction, received by the Nation
2 from—

3 “(A) the Tucson interim water lease;

4 “(B) the Asarco agreement; and

5 “(C) any agreement similar to the Asarco
6 agreement to store Central Arizona Project
7 water of the Nation, instead of pumping
8 groundwater, for the purpose of protecting
9 water of the Nation; provided, however, that
10 gross proceeds shall not include proceeds from
11 the transfer of Central Arizona Project water in
12 excess of 20,000 acre feet annually pursuant to
13 any agreement under this subparagraph or
14 under the Asarco agreement referenced in sub-
15 paragraph (B).

16 “(2) ENTITLEMENT.—The Nation shall be enti-
17 tled to receive all gross proceeds.

18 “(k) STATUTORY CONSTRUCTION.—Nothing in this
19 title establishes whether reserved water may be put to use,
20 or sold for use, off any reservation to which reserved water
21 rights attach.

22 **“SEC. 310. COOPERATIVE FUND.**

23 “(a) REAUTHORIZATION.—

24 “(1) IN GENERAL.—Congress reauthorizes, for
25 use in carrying out this title, the cooperative fund

1 established in the Treasury of the United States by
2 section 313 of the 1982 Act.

3 “(2) AMOUNTS IN COOPERATIVE FUND.—The
4 cooperative fund shall consist of—

5 “(A)(i) \$5,250,000, as appropriated to the
6 cooperative fund under section 313(b)(3)(A) of
7 the 1982 Act; and

8 “(ii) such amount, not to exceed
9 \$32,000,000, as the Secretary determines, after
10 providing notice to Congress, is necessary to
11 carry out this title;

12 “(B) any additional Federal funds depos-
13 ited to the cooperative fund under Federal law;

14 “(C) \$5,250,000, as deposited in the coop-
15 erative fund under section 313(b)(1)(B) of the
16 1982 Act, of which—

17 “(i) \$2,750,000 was contributed by
18 the State;

19 “(ii) \$1,500,000 was contributed by
20 the city of Tucson; and

21 “(iii) \$1,000,000 was contributed
22 by—

23 “(I) the Anamax Mining Com-
24 pany;

1 “(II) the Cyprus-Pima Mining
2 Company;

3 “(III) the American Smelting
4 and Refining Company;

5 “(IV) the Duval Corporation; and

6 “(V) the Farmers Investment
7 Company;

8 “(D) all interest accrued on all amounts in
9 the cooperative fund beginning on October 12,
10 1982, less any interest expended under sub-
11 section (b)(2); and

12 “(E) all revenues received from—

13 “(i) the sale or lease of effluent re-
14 ceived by the Secretary under the contract
15 between the United States and the city of
16 Tucson to provide for delivery of reclaimed
17 water to the Secretary, dated October 11,
18 1983; and

19 “(ii) the sale or lease of storage cred-
20 its derived from the storage of that efflu-
21 ent.

22 “(b) EXPENDITURES FROM FUND.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 upon request by the Secretary, the Secretary of the
25 Treasury shall transfer from the cooperative fund to

1 the Secretary such amounts as the Secretary deter-
2 mines are necessary to carry out obligations of the
3 Secretary under this title, including to pay—

4 “(A) the variable costs relating to the de-
5 livery of water under sections 304 through 306;

6 “(B) fixed operation maintenance and re-
7 placement costs relating to the delivery of water
8 under sections 304 through 306, to the extent
9 that funds are not available from the Lower
10 Colorado River Basin Development Fund to pay
11 those costs;

12 “(C) the costs of acquisition and delivery
13 of water from alternative sources under section
14 305; and

15 “(D) any compensation provided by the
16 Secretary under section 305(d).

17 “(2) EXPENDITURE OF INTEREST.—Except as
18 provided in paragraph (3), the Secretary may ex-
19 pend only interest income accruing to the coopera-
20 tive fund, and that interest income may be expended
21 by the Secretary, without further appropriation.

22 “(3) EXPENDITURE OF REVENUES.—Revenues
23 described in subsection (a)(2)(E) shall be available
24 for expenditure under paragraph (1).

25 “(c) INVESTMENT OF AMOUNTS.—

1 “(1) IN GENERAL.—The Secretary of the
2 Treasury shall invest such portion of the cooperative
3 fund as is not, in the judgment of the Secretary of
4 the Treasury, required to meet current withdrawals
5 determined by the Secretary. Investments may be
6 made only in interest-bearing obligations of the
7 United States.

8 “(2) CREDITS TO COOPERATIVE FUND.—The
9 interest on, and the proceeds from the sale or re-
10 demption of, any obligations held in the cooperative
11 fund shall be credited to and form a part of the co-
12 operative fund.

13 “(d) TRANSFERS OF AMOUNTS.—

14 “(1) IN GENERAL.—The amounts required to
15 be transferred to the cooperative fund under this
16 section shall be transferred at least monthly from
17 the general fund of the Treasury to the cooperative
18 fund on the basis of estimates made by the Sec-
19 retary of the Treasury.

20 “(2) ADJUSTMENTS.—Proper adjustment shall
21 be made in amounts subsequently transferred to the
22 extent prior estimates were in excess of or less than
23 the amounts required to be transferred.

24 “(e) DAMAGES.—Damages arising under this title or
25 any contract for the delivery of water recognized by this

1 title shall not exceed, in any given year, the amounts avail-
2 able for expenditure in that year from the cooperative
3 fund.

4 **“SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY;**
5 **STUDIES; ARID LAND ASSISTANCE.**

6 “(a) FUNCTIONS OF SECRETARY.—Except as pro-
7 vided in subsection (f), the functions of the Secretary (or
8 the Commissioner of Reclamation, acting on behalf of the
9 Secretary) under this title shall be subject to the Indian
10 Self-Determination and Education Assistance Act (25
11 U.S.C. 450 et seq.) to the same extent as if those func-
12 tions were carried out by the Assistant Secretary for In-
13 dian Affairs.

14 “(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

15 “(1) IN GENERAL.—Subject to the consent of
16 the Nation and other requirements under section
17 307(a)(1)(E), the San Xavier District shall be con-
18 sidered to be an eligible contractor for purposes of
19 this title.

20 “(2) TECHNICAL ASSISTANCE.—The Secretary
21 shall provide to the San Xavier District technical as-
22 sistance in carrying out the contracting require-
23 ments under the Indian Self-Determination and
24 Education Assistance Act (25 U.S.C. 450 et seq.).

25 “(c) GROUNDWATER MONITORING PROGRAMS.—

1 “(1) SAN XAVIER INDIAN RESERVATION PRO-
2 GRAM.—

3 “(A) IN GENERAL.—Not later than 180
4 days after the enforceability date, the Secretary
5 shall develop and initiate a comprehensive
6 groundwater monitoring program (including the
7 drilling of wells and other appropriate actions)
8 to test, assess, and provide for the long-term
9 monitoring of the quality of groundwater with-
10 drawn from exempt wells and other wells within
11 the San Xavier Reservation.

12 “(B) LIMITATION ON EXPENDITURES.—In
13 carrying out this paragraph, the Secretary shall
14 expend not more than \$215,000.

15 “(2) EASTERN SCHUK TOAK DISTRICT PRO-
16 GRAM.—

17 “(A) IN GENERAL.—Not later than 180
18 days after the enforceability date, the Secretary
19 shall develop and initiate a comprehensive
20 groundwater monitoring program (including the
21 drilling of wells and other appropriate actions)
22 to test, assess, and provide for the long-term
23 monitoring of the quality of groundwater with-
24 drawn from exempt wells and other wells within
25 the eastern Schuk Toak District.

1 “(B) LIMITATION ON EXPENDITURES.—In
2 carrying out this paragraph, the Secretary shall
3 expend not more than \$175,000.

4 “(3) DUTIES OF SECRETARY.—

5 “(A) CONSULTATION.—In carrying out
6 paragraphs (1) and (2), the Secretary shall con-
7 sult with representatives of—

8 “(i) the Nation;

9 “(ii) the San Xavier District and
10 Schuk Toak District, respectively; and

11 “(iii) appropriate State and local enti-
12 ties.

13 “(B) LIMITATION ON OBLIGATIONS OF
14 SECRETARY.—With respect to the groundwater
15 monitoring programs described in paragraphs
16 (1) and (2), the Secretary shall have no con-
17 tinuing obligation relating to those programs
18 beyond the obligations described in those para-
19 graphs.

20 “(d) WATER RESOURCES STUDY.—To assist the Na-
21 tion in developing sources of water, the Secretary shall
22 conduct a study to determine the availability and suit-
23 ability of water resources that are located—

24 “(1) within the Nation’s Reservation; but

25 “(2) outside the Tucson management area.

1 “(e) ARID LAND RENEWABLE RESOURCES.—If a
2 Federal entity is established to provide financial assistance
3 to carry out arid land renewable resources projects and
4 to encourage and ensure investment in the development
5 of domestic sources of arid land renewable resources, the
6 entity shall—

7 “(1) give first priority to the needs of the Na-
8 tion in providing that assistance; and

9 “(2) make available to the Nation, San Xavier
10 District, Schuk Toak District, and San Xavier Coop-
11 erative Association price guarantees, loans, loan
12 guarantees, purchase agreements, and joint venture
13 projects at a level that the entity determines will—

14 “(A) facilitate the cultivation of such min-
15 imum number of acres as is determined by the
16 entity to be necessary to ensure economically
17 successful cultivation of arid land crops; and

18 “(B) contribute significantly to the econ-
19 omy of the Nation.

20 “(f) ASARCO LAND EXCHANGE STUDY.—

21 “(1) IN GENERAL.—Not later than 2 years
22 after the enforceability date, the Secretary, in con-
23 sultation with the Nation, the San Xavier District,
24 the San Xavier Allottees’ Association, and Asarco,
25 shall conduct and submit to Congress a study on the

1 feasibility of a land exchange or land exchanges with
2 Asarco to provide land for future use by—

3 “(A) beneficial landowners of the Mission
4 Complex Mining Leases of September 18, 1959;
5 and

6 “(B) beneficial landowners of the Mission
7 Complex Business Leases of May 12, 1959.

8 “(2) COMPONENTS.—The study under para-
9 graph (1) shall include—

10 “(A) an analysis of the manner in which
11 land exchanges could be accomplished to main-
12 tain a contiguous land base for the San Xavier
13 Reservation; and

14 “(B) a description of the legal status ex-
15 changed land should have to maintain the polit-
16 ical integrity of the San Xavier Reservation.

17 “(3) LIMITATION ON EXPENDITURES.—In car-
18 rying out this subsection, the Secretary shall expend
19 not more than \$250,000.

20 **“SEC. 312. WAIVER AND RELEASE OF CLAIMS.**

21 “(a) WAIVER OF CLAIMS BY THE NATION.—Except
22 as provided in subsection (d), the Tohono O’odham settle-
23 ment agreement shall provide that the Nation waives and
24 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 State (or any agency or political
9 subdivision of the State);

10 “(B) any municipal corporation; and

11 “(C) any other person or entity;

12 “(2) any and all claims for water rights arising
13 from time immemorial and, thereafter, forever,
14 claims for injuries to water rights arising from time
15 immemorial through the enforceability date, and
16 claims for failure to protect, acquire, or develop
17 water rights for land within the San Xavier Reserva-
18 tion and the eastern Schuk Toak District from time
19 immemorial through the enforceability date, against
20 the United States (including any agency, officer, and
21 employee of the United States);

22 “(3) any and all claims for injury to water
23 rights arising after the enforceability date for land
24 within the San Xavier Reservation and the eastern
25 Schuk Toak District resulting from the off-Reserva-

1 tion diversion or use of water in a manner not in
 2 violation of the Tohono O’odham settlement agree-
 3 ment or State law against—

4 “(A) the United States;

5 “(B) the State (or any agency or political
 6 subdivision of the State);

7 “(C) any municipal corporation; and

8 “(D) any other person or entity; and

9 “(4) any and all past, present, and future
 10 claims arising out of or relating to the negotiation
 11 or execution of the Tohono O’odham settlement
 12 agreement or the negotiation or enactment of this
 13 title, against—

14 “(A) the United States;

15 “(B) the State (or any agency or political
 16 subdivision of the State);

17 “(C) any municipal corporation; and

18 “(D) 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 for land within the San Xavier Res-
3 ervation, against—

4 “(A) the State (or any agency or political
5 subdivision of the State);

6 “(B) any municipal corporation; and

7 “(C) any other person or entity (other
8 than the Nation);

9 “(2) any and all claims for water rights arising
10 from time immemorial and, thereafter, forever,
11 claims for injuries to water rights arising from time
12 immemorial through the enforceability date, and
13 claims for failure to protect, acquire, or develop
14 water rights for land within the San Xavier Reserva-
15 tion from time immemorial through the enforce-
16 ability date, against the United States (including
17 any agency, officer, and employee of the United
18 States);

19 “(3) any and all claims for injury to water
20 rights arising after the enforceability date for land
21 within the San Xavier Reservation resulting from
22 the off-Reservation diversion or use of water in a
23 manner not in violation of the Tohono O’odham set-
24 tlement agreement or State law against—

25 “(A) the United States;

1 “(B) the State (or any agency or political
2 subdivision of the State);

3 “(C) any municipal corporation; and

4 “(D) any other person or entity;

5 “(4) any and all past, present, and future
6 claims arising out of or relating to the negotiation
7 or execution of the Tohono O’odham settlement
8 agreement or the negotiation or enactment of this
9 title, against—

10 “(A) the United States;

11 “(B) the State (or any agency or political
12 subdivision of the State);

13 “(C) any municipal corporation; and

14 “(D) any other person or entity; and

15 “(5) any and all past, present, and future
16 claims for water rights arising from time immemo-
17 rial and, thereafter, forever, and claims for injuries
18 to water rights arising from time immemorial
19 through the enforceability date, against the Nation
20 (except that under section 307(a)(1)(G) and sub-
21 sections (a) and (b) of section 308, the allottees and
22 fee owners of allotted land shall retain rights to
23 share in the water resources granted or confirmed
24 under this title and the Tohono O’odham settlement

1 agreement with respect to uses within the San Xa-
2 vier Reservation).

3 “(c) WAIVER OF CLAIMS BY THE UNITED STATES.—
4 Except as provided in subsection (d), the Tohono O’odham
5 settlement agreement shall provide that the United States
6 as Trustee waives and releases—

7 “(1) any and all past, present, and future
8 claims for water rights (including claims based on
9 aboriginal occupancy) arising from time immemorial
10 and, thereafter, forever, and claims for injuries to
11 water rights arising from time immemorial through
12 the enforceability date, for land within the Tucson
13 management area against—

14 “(A) the Nation;

15 “(B) the State (or any agency or political
16 subdivision of the State);

17 “(C) any municipal corporation; and

18 “(D) any other person or entity;

19 “(2) any and all claims for injury to water
20 rights arising after the enforceability date for land
21 within the San Xavier Reservation and the eastern
22 Schuk Toak District resulting from the off-Reserva-
23 tion diversion or use of water in a manner not in
24 violation of the Tohono O’odham settlement agree-
25 ment or State law against—

1 “(A) the Nation;

2 “(B) the State (or any agency or political
3 subdivision of the State);

4 “(C) any municipal corporation; and

5 “(D) any other person or entity;

6 “(3) on and after the enforceability date, any
7 and all claims on behalf of the allottees for injuries
8 to water rights against the Nation (except that
9 under section 307(a)(1)(G) and subsections (a) and
10 (b) of section 308, the allottees shall retain rights to
11 share in the water resources granted or confirmed
12 under this title and the Tohono O’odham settlement
13 agreement with respect to uses within the San Xa-
14 vier Reservation); and

15 “(4) claims against Asarco on behalf of the al-
16 lottee class for the fourth cause of action in *Alvarez*
17 *v. City of Tucson* (Civ. No. 93–039 TUC FRZ (D.
18 Ariz., filed April 21, 1993)), in accordance with the
19 terms and conditions of the Asarco agreement.

20 “(d) CLAIMS RELATING TO GROUNDWATER PROTEC-
21 TION PROGRAM.—The Nation and the United States as
22 Trustee—

23 “(1) shall have the right to assert any claims
24 granted by a State law implementing the ground-

1 water protection program described in paragraph 8.8
2 of the Tohono O’odham settlement agreement; and

3 “(2) if, after the enforceability date, the State
4 law is amended so as to have a material adverse ef-
5 fect on the Nation, shall have a right to relief in the
6 State court having jurisdiction over Gila River adju-
7 dication proceedings and decrees, against an owner
8 of any nonexempt well drilled after the effective date
9 of the amendment (if the well actually and substan-
10 tially interferes with groundwater pumping occurring
11 on the San Xavier Reservation), from the incre-
12 mental effect of the groundwater pumping that ex-
13 ceeds that which would have been allowable had the
14 State law not been amended.

15 “(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any
16 party to the Tohono O’odham settlement agreement may
17 waive and release, prohibit the assertion of, or agree not
18 to assert, any claims (including claims for subsidence dam-
19 age or injury to water quality) in addition to claims for
20 water rights and injuries to water rights on such terms
21 and conditions as may be agreed to by the parties.

22 “(f) RIGHTS OF ALLOTTEES; PROHIBITION OF
23 CLAIMS.—

24 “(1) IN GENERAL.—As of the enforceability
25 date—

1 “(A) the water rights and other benefits
2 granted or confirmed by this title and the
3 Tohono O’odham settlement agreement shall be
4 in full satisfaction of—

5 “(i) all claims for water rights and
6 claims for injuries to water rights of the
7 Nation; and

8 “(ii) all claims for water rights and
9 injuries to water rights of the allottees;

10 “(B) any entitlement to water within the
11 Tucson management area of the Nation, or of
12 any allottee, shall be satisfied out of the water
13 resources granted or confirmed under this title
14 and the Tohono O’odham settlement agreement;
15 and

16 “(C) any rights of the allottees to ground-
17 water, surface water, or effluent shall be limited
18 to the water rights granted or confirmed under
19 this title and the Tohono O’odham settlement
20 agreement.

21 “(2) LIMITATION OF CERTAIN CLAIMS BY
22 ALLOTTEES.—No allottee within the San Xavier
23 Reservation may—

24 “(A) assert any past, present, or future
25 claim for water rights arising from time imme-

1 morial and, thereafter, forever, or any claim for
 2 injury to water rights (including future injury
 3 to water rights) arising from time immemorial
 4 and thereafter, forever, against—

5 “(i) the United States;

6 “(ii) the State (or any agency or polit-
 7 ical subdivision of the State);

8 “(iii) any municipal corporation; or

9 “(iv) any other person or entity; or

10 “(B) continue to assert a claim described
 11 in subparagraph (A), if the claim was first as-
 12 serted before the enforceability date.

13 “(3) CLAIMS BY FEE OWNERS OF ALLOTTED
 14 LAND.—

15 “(A) IN GENERAL.—No fee owner of allot-
 16 ted land within the San Xavier Reservation may
 17 assert any claim to the extent that—

18 “(i) the claim has been waived and re-
 19 leased in the Tohono O’odham settlement
 20 agreement; and

21 “(ii) the fee owner of allotted land as-
 22 serting the claim is a member of the appli-
 23 cable allottee class.

24 “(B) OFFSET.—Any benefits awarded to a
 25 fee owner of allotted land as a result of a suc-

1 cessful claim shall be offset by benefits received
2 by that fee owner of allotted land under this
3 title.

4 “(4) LIMITATION OF CLAIMS AGAINST THE NA-
5 TION.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), no allottee may assert
8 against the Nation any claims for water rights
9 arising from time immemorial and, thereafter,
10 forever, claims for injury to water rights arising
11 from time immemorial and thereafter forever.

12 “(B) EXCEPTION.—Under section
13 307(a)(1)(G) and subsections (a) and (b) of
14 section 308, the allottees shall retain rights to
15 share in the water resources granted or con-
16 firmed under this title and the Tohono
17 O’odham settlement agreement.

18 “(g) CONSENT.—

19 “(1) GRANT OF CONSENT.—Congress grants to
20 the Nation and the San Xavier Cooperative Associa-
21 tion under section 305(d) consent to maintain civil
22 actions against the United States in the courts of
23 the United States under section 1346, 1491, or
24 1505 of title 28, United States Code, respectively, to

1 recover damages, if any, for the breach of any obli-
2 gation of the Secretary under those sections.

3 “(2) REMEDY.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), the exclusive remedy for a civil ac-
6 tion maintained under this subsection shall be
7 monetary damages.

8 “(B) OFFSET.—An award for damages for
9 a claim under this subsection shall be offset
10 against the amount of funds—

11 “(i) made available by any Act of
12 Congress; and

13 “(ii) paid to the claimant by the Sec-
14 retary in partial or complete satisfaction of
15 the claim.

16 “(3) NO CLAIMS ESTABLISHED.—Except as
17 provided in paragraph (1), nothing in the subsection
18 establishes any claim against the United States.

19 “(h) JURISDICTION; WAIVER OF IMMUNITY; PAR-
20 TIES.—

21 “(1) JURISDICTION.—

22 “(A) IN GENERAL.—Except as provided in
23 subsection (i), the State court having jurisdic-
24 tion over Gila River adjudication proceedings
25 and decrees, shall have jurisdiction over—

1 “(i) civil actions relating to the inter-
2 pretation and enforcement of—

3 “(I) this title;

4 “(II) the Tohono O’odham settle-
5 ment agreement; and

6 “(III) agreements referred to in
7 section 309(h)(2); and

8 “(ii) civil actions brought by or
9 against the allottees or fee owners of allot-
10 ted land for the interpretation of, or legal
11 or equitable remedies with respect to,
12 claims of the allottees or fee owners of al-
13 lotted land that are not claims for water
14 rights, injuries to water rights or other
15 claims that are barred or waived and re-
16 leased under this title or the Tohono
17 O’odham settlement agreement.

18 “(B) LIMITATION.—Except as provided in
19 subparagraph (A), no State court or court of
20 the Nation shall have jurisdiction over any civil
21 action described in subparagraph (A).

22 “(2) WAIVER.—

23 “(A) IN GENERAL.—The United States
24 and the Nation waive sovereign immunity solely
25 for claims for—

1 “(i) declaratory judgment or injunc-
2 tive relief in any civil action arising under
3 this title; and

4 “(ii) such claims and remedies as may
5 be prescribed in any agreement authorized
6 under this title.

7 “(B) LIMITATION ON STANDING.—If a
8 governmental entity not described in subpara-
9 graph (A) asserts immunity in any civil action
10 that arises under this title (unless the entity
11 waives immunity for declaratory judgment or
12 injunctive relief) or any agreement authorized
13 under this title (unless the entity waives immu-
14 nity for the claims and remedies prescribed in
15 the agreement)—

16 “(i) the governmental entity shall not
17 have standing to initiate or assert any
18 claim, or seek any remedy against the
19 United States or the Nation, in the civil
20 action; and

21 “(ii) the waivers of sovereign immu-
22 nity under subparagraph (A) shall have no
23 effect in the civil action.

24 “(C) MONETARY RELIEF.—A waiver of im-
25 munity under this paragraph shall not extend

1 to any claim for damages, costs, attorneys' fees,
2 or other monetary relief.

3 “(3) NATION AS A PARTY.—

4 “(A) IN GENERAL.—Not later than 60
5 days before the date on which a civil action
6 under paragraph (1)(A)(ii) is filed by an allot-
7 tee or fee owner of allotted land, the allottee or
8 fee owner, as the case may be, shall provide to
9 the Nation a notice of intent to file the civil ac-
10 tion, accompanied by a request for consultation.

11 “(B) JOINDER.—If the Nation is not a
12 party to a civil action as originally commenced
13 under paragraph (1)(A)(ii), the Nation shall be
14 joined as a party.

15 “(i) REGULATION AND JURISDICTION OVER DISPUTE
16 RESOLUTION.—

17 “(1) REGULATION.—The Nation shall have ju-
18 risdiction to manage, control, permit, administer,
19 and otherwise regulate the water resources granted
20 or confirmed under this title and the Tohono
21 O’odham settlement agreement—

22 “(A) with respect to the use of those re-
23 sources by—

24 “(i) the Nation;

1 “(ii) individual members of the Na-
2 tion;

3 “(iii) districts of the Nation; and

4 “(iv) allottees; and

5 “(B) with respect to any entitlement to
6 those resources for which a fee owner of allot-
7 ted land has received a final determination
8 under applicable law.

9 “(2) JURISDICTION.—Subject to a requirement
10 of exhaustion of any administrative or other rem-
11 edies prescribed under the laws of the Nation, juris-
12 diction over any disputes relating to the matters de-
13 scribed in paragraph (1) shall be vested in the
14 courts of the Nation.

15 “(3) APPLICABLE LAW.—The regulatory and
16 remedial procedures referred to in paragraphs (1)
17 and (2) shall be subject to all applicable law.

18 “(j) FEDERAL JURISDICTION.—The Federal Courts
19 shall have concurrent jurisdiction over actions described
20 in subsection 312(h) to the extent otherwise provided in
21 Federal law.

22 **“SEC. 313. AFTER-ACQUIRED TRUST LAND.**

23 “(a) IN GENERAL.—Except as provided in subsection
24 (b)—

1 “(1) the Nation may seek to have taken into
2 trust by the United States, for the benefit of the
3 Nation, legal title to additional land within the State
4 and outside the exterior boundaries of the Nation’s
5 Reservation only in accordance with an Act of Con-
6 gress specifically authorizing the transfer for the
7 benefit of the Nation;

8 “(2) lands taken into trust under paragraph (1)
9 shall include only such water rights and water use
10 privileges as are consistent with State water law and
11 State water management policy; and

12 “(3) after-acquired trust land shall not include
13 Federal reserved rights to surface water or ground-
14 water.

15 “(b) EXCEPTION.—Subsection (a) shall not apply to
16 land acquired by the Nation under the Gila Bend Indian
17 Reservation Lands Replacement Act (100 Stat. 1798).

18 **“SEC. 314. NONREIMBURSABLE COSTS.**

19 “(a) CENTRAL ARIZONA WATER CONSERVATION DIS-
20 TRICT.—For the purpose of determining the allocation
21 and repayment of costs of any stage of the Central Ari-
22 zona Project, the costs associated with the delivery of Cen-
23 tral Arizona Project water acquired under sections 304(a)
24 and 306(a), whether that water is delivered for use by the
25 Nation or in accordance with any assignment, exchange,

1 lease, option to lease, or other agreement for the tem-
2 porary disposition of water entered into by the Nation—

3 “(1) shall be nonreimbursable; and

4 “(2) shall be excluded from the repayment obli-
5 gation of the Central Arizona Water Conservation
6 District.

7 “(b) CLAIMS BY UNITED STATES.—The United
8 States shall—

9 “(1) make no claim against the Nation or any
10 allottee for reimbursement or repayment of any cost
11 associated with—

12 “(A) the construction of facilities under
13 the Colorado River Basin Project Act (43
14 U.S.C. 1501 et seq.);

15 “(B) the delivery of Central Arizona
16 Project water for any use authorized under this
17 title; or

18 “(C) the implementation of this title;

19 “(2) make no claim against the Nation for re-
20 imbursement or repayment of the costs associated
21 with the construction of facilities described in para-
22 graph (1)(A) for the benefit of and use on land
23 that—

24 “(A) is known as the ‘San Lucy Farm’;
25 and

1 “(B) was acquired by the Nation under the
2 Gila Bend Indian Reservation Lands Replace-
3 ment Act (100 Stat. 1798); and

4 “(3) impose no assessment with respect to the
5 costs referred to in paragraphs (1) and (2)
6 against—

7 “(A) trust or allotted land within the Na-
8 tion’s Reservation; or

9 “(B) the land described in paragraph (2).

10 **“SEC. 315. TRUST FUND.**

11 “(a) REAUTHORIZATION.—Congress reauthorizes the
12 trust fund established by section 309 of the 1982 Act, con-
13 taining an initial deposit of \$15,000,000 made under that
14 section, for use in carrying out this title.

15 “(b) EXPENDITURE AND INVESTMENT.—Subject to
16 the limitations of subsection (d), the principal and all ac-
17 crued interest and dividends in the trust fund established
18 under section 309 of the 1982 Act may be—

19 “(1) expended by the Nation for any govern-
20 mental purpose; and

21 “(2) invested by the Nation in accordance with
22 such policies as the Nation may adopt.

23 “(c) RESPONSIBILITY OF SECRETARY.—The Sec-
24 retary shall not—

1 “(1) be responsible for the review, approval, or
2 audit of the use and expenditure of any funds from
3 the trust fund reauthorized by subsection (a); or

4 “(2) be subject to liability for any claim or
5 cause of action arising from the use or expenditure
6 by the Nation of those funds.

7 “(d) CONDITIONS OF TRUST.—

8 “(1) RESERVE FOR THE COST OF SUBJUGA-
9 TION.—The Nation shall reserve in the trust fund
10 reauthorized by subsection (a)—

11 “(A) the principal amount of at least
12 \$3,000,000; and

13 “(B) interest on that amount that accrues
14 during the period beginning on the enforce-
15 ability date and ending on the earlier of—

16 “(i) the date on which full payment of
17 such costs has been made; or

18 “(ii) the date that is 10 years after
19 the enforceability date.

20 “(2) PAYMENT.—The costs described in para-
21 graph (1) shall be paid in the amount, on the terms,
22 and for the purposes prescribed in section
23 307(a)(1)(F).

1 “(3) LIMITATION ON RESTRICTIONS.—On the
2 occurrence of an event described in clause (i) or (ii)
3 of paragraph (1)(B)—

4 “(A) the restrictions imposed on funds
5 from the trust fund described in paragraph (1)
6 shall terminate; and

7 “(B) any of those funds remaining that
8 were reserved under paragraph (1) may be used
9 by the Nation under subsection (b)(1).

10 **“SEC. 316. MISCELLANEOUS PROVISIONS.**

11 “(a) IN GENERAL.—Nothing in this title—

12 “(1) establishes the applicability or inapplica-
13 bility to groundwater of any doctrine of Federal re-
14 served rights;

15 “(2) limits the ability of the Nation to enter
16 into any agreement with the Arizona Water Banking
17 Authority (or a successor agency) in accordance with
18 State law;

19 “(3) prohibits the Nation, any individual mem-
20 ber of the Nation, an allottee, or a fee owner of al-
21 lotted land in the San Xavier Reservation from law-
22 fully acquiring water rights for use in the Tucson
23 management area in addition to the water rights
24 granted or confirmed under this title and the
25 Tohono O’odham settlement agreement;

1 “(4) abrogates any rights or remedies existing
2 under section 1346 or 1491 of title 28, United
3 States Code;

4 “(5) affects the obligations of the parties under
5 the Agreement of December 11, 1980, with respect
6 to the 8,000 acre feet of Central Arizona Project
7 water contracted by the Nation for the Sif Oidak
8 District;

9 “(6)(A) applies to any exempt well;

10 “(B) prohibits or limits the drilling of any ex-
11 empt well within—

12 “(i) the San Xavier Reservation; or

13 “(ii) the eastern Schuk Toak District; or

14 “(C) subjects water from any exempt well to
15 any pumping limitation under this title; or

16 “(7) diminishes or abrogates rights to use water
17 under—

18 “(A) contracts of the Nation in existence
19 before the enforceability date; or

20 “(B) the well site agreement referred to in
21 the Asarco agreement and any well site agree-
22 ment entered into under the Asarco agreement.

23 “(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water
24 received under a lease or exchange of Central Arizona
25 Project water under this title does not affect any future

1 allocation or reallocation of Central Arizona Project water
2 by the Secretary.

3 “(c) LIMITATION ON LIABILITY OF UNITED
4 STATES.—

5 “(1) IN GENERAL.—The United States shall
6 have no trust or other obligation—

7 “(A) to monitor, administer, or account
8 for, in any manner, any of the funds paid to the
9 Nation or the San Xavier District under this
10 Act; or

11 “(B) to review or approve the expenditure
12 of those funds.

13 “(2) INDEMNIFICATION.—The Nation shall in-
14 demnify the United States, and hold the United
15 States harmless, with respect to any and all claims
16 (including claims for takings or breach of trust)
17 arising out of the receipt or expenditure of funds de-
18 scribed in paragraph (1)(A).

19 **“SEC. 317. AUTHORIZED COSTS.**

20 “(a) IN GENERAL.—There are authorized to be
21 appropriated—

22 “(1) to construct features of irrigation systems
23 described in paragraphs (1) through (4) of section
24 304(c) that are not authorized to be constructed

1 under any other provision of law, an amount equal
2 to the sum of—

3 “(A) \$3,500,000; and

4 “(B) such additional amount as the Sec-
5 retary determines to be necessary to adjust the
6 amount under subparagraph (A) to account for
7 ordinary fluctuations in the costs of construc-
8 tion of irrigation features for the period begin-
9 ning on October 12, 1982, and ending on the
10 date on which the construction of the features
11 described in this subparagraph is initiated, as
12 indicated by engineering cost indices applicable
13 to the type of construction involved;

14 “(2) \$18,300,000 in lieu of construction to im-
15 plement section 304(c)(3)(B), including an adjust-
16 ment representing interest that would have been
17 earned if this amount had been deposited in the co-
18 operative fund during the period beginning on Janu-
19 ary 1, 2008, and ending on the date the amount is
20 actually paid to the San Xavier District;

21 “(3) \$891,200 to develop and initiate a water
22 management plan for the San Xavier Reservation
23 under section 308(d);

1 “(4) \$237,200 to develop and initiate a water
2 management plan for the eastern Schuk Toak Dis-
3 trict under section 308(d);

4 “(5) \$4,000,000 to complete the water re-
5 sources study under section 311(d);

6 “(6) \$215,000 to develop and initiate a ground-
7 water monitoring program for the San Xavier Res-
8 ervation under section 311(e)(1);

9 “(7) \$175,000 to develop and implement a
10 groundwater monitoring program for the eastern
11 Schuk Toak District under section 311(e)(2);

12 “(8) \$250,000 to complete the Asarco land ex-
13 change study under section 311(f); and

14 “(9) such additional sums as are necessary to
15 carry out the provisions of this title other than the
16 provisions referred to in paragraphs (1) through (8).

17 “(b) TREATMENT OF APPROPRIATED AMOUNTS.—
18 Amounts made available under subsection (a) shall be con-
19 sidered to be authorized costs for purposes of section
20 403(f)(2)(D)(iii) of the Colorado River Basin Project Act
21 (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section
22 107(a) of the Arizona Water Settlements Act).”.

1 **SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLE-**
2 **MENT EFFECTIVE DATE.**

3 (a) DEFINITIONS.—The definitions under section 301
4 of the Southern Arizona Water Rights Settlement Amend-
5 ments Act of 2004 (as contained in the amendment made
6 by section 301) shall apply to this title.

7 (b) EFFECTIVE DATE.—This title and the amend-
8 ments made by this title take effect as of the enforceability
9 date, which is the date the Secretary publishes in the Fed-
10 eral Register a statement of findings that—

11 (1)(A) to the extent that the Tohono O’odham
12 settlement agreement conflicts with this title or an
13 amendment made by this title, the Tohono O’odham
14 settlement agreement has been revised through an
15 amendment to eliminate those conflicts; and

16 (B) the Tohono O’odham settlement agreement,
17 as so revised, has been executed by the parties and
18 the Secretary;

19 (2) the Secretary and other parties to the
20 agreements described in section 309(h)(2) of the
21 Southern Arizona Water Rights Settlement Amend-
22 ments Act of 2004 (as contained in the amendment
23 made by section 301) have executed those agree-
24 ments;

25 (3) the Secretary has approved the interim al-
26 lottee water rights code described in section

1 308(b)(3)(A) of the Southern Arizona Water Rights
2 Settlement Amendments Act of 2004 (as contained
3 in the amendment made by section 301);

4 (4) final dismissal with prejudice has been en-
5 tered in each of the Alvarez case and the Tucson
6 case on the sole condition that the Secretary pub-
7 lishes the findings specified in this section;

8 (5) the judgment and decree attached to the
9 Tohono O’odham settlement agreement as exhibit
10 17.1 has been approved by the State court having
11 jurisdiction over the Gila River adjudication pro-
12 ceedings, and that judgment and decree have become
13 final and nonappealable;

14 (6) implementation costs have been identified
15 and retained in the Lower Colorado River Basin De-
16 velopment Fund, specifically—

17 (A) \$18,300,000 to implement section
18 304(c)(3);

19 (B) \$891,200 to implement a water man-
20 agement plan for the San Xavier Reservation
21 under section 308(d) of the Southern Arizona
22 Water Rights Settlement Amendments Act of
23 2004 (as contained in the amendment made by
24 section 301);

1 (C) \$237,200 to implement a water man-
2 agement plan for the eastern Schuk Toak Dis-
3 trict under section 308(d) of the Southern Ari-
4 zona Water Rights Settlement Amendments Act
5 of 2004 (as contained in the amendment made
6 by section 301);

7 (D) \$4,000,000 to complete the water re-
8 sources study under section 311(d) of the
9 Southern Arizona Water Rights Settlement
10 Amendments Act of 2004 (as contained in the
11 amendment made by section 301);

12 (E) \$215,000 to develop and implement a
13 groundwater monitoring program for the San
14 Xavier Reservation under section 311(c)(1) of
15 the Southern Arizona Water Rights Settlement
16 Amendments Act of 2004 (as contained in the
17 amendment made by section 301);

18 (F) \$175,000 to develop and implement a
19 groundwater monitoring program for the east-
20 ern Schuk Toak District under section
21 311(c)(2) of the Southern Arizona Water
22 Rights Settlement Amendments Act of 2004 (as
23 contained in the amendment made by section
24 301); and

1 (G) \$250,000 to complete the Asarco land
2 exchange study under section 311(f) of the
3 Southern Arizona Water Rights Settlement
4 Amendments Act of 2004 (as contained in the
5 amendment made by section 301);

6 (7) the State has enacted legislation that—

7 (A) qualifies the Nation to earn long-term
8 storage credits under the Asarco agreement;

9 (B) implements the San Xavier ground-
10 water protection program in accordance with
11 paragraph 8.8 of the Tohono O’odham settle-
12 ment agreement;

13 (C) enables the State to carry out section
14 306(b); and

15 (D) confirms the jurisdiction of the State
16 court having jurisdiction over Gila River adju-
17 dication proceedings and decrees to carry out
18 the provisions of sections 312(d) and 312(h) of
19 the Southern Arizona Water Rights Settlement
20 Amendments Act of 2004 (as contained in the
21 amendment made by section 301);

22 (8) the Secretary and the State have agreed to
23 an acceptable firming schedule referred to in section
24 105(b)(2)(C); and

1 (9) a final judgment has been entered in Cen-
 2 tral Arizona Water Conservation District v. United
 3 States (No. CIV 95–625–TUC–WDB(EHC), No.
 4 CIV 95–1720–PHX–EHC) (Consolidated Action) in
 5 accordance with the repayment stipulation as pro-
 6 vided in section 207.

7 (c) FAILURE TO PUBLISH STATEMENT OF FIND-
 8 INGS.—If the Secretary does not publish a statement of
 9 findings under subsection (a) by December 31, 2007—

10 (1) the 1982 Act shall remain in full force and
 11 effect;

12 (2) this title shall not take effect; and

13 (3) any funds made available by the State
 14 under this title that are not expended, together with
 15 any interest on those funds, shall immediately revert
 16 to the State.

17 **TITLE IV—SAN CARLOS APACHE**
 18 **TRIBE WATER RIGHTS SET-**
 19 **TLEMENT**

20 **SEC. 401. EFFECT OF TITLES I, II, AND III.**

21 None of the provisions of title I, II, or III or the
 22 agreements, attachments, exhibits, or stipulations ref-
 23 erenced in those titles shall be construed to—

24 (1) amend, alter, or limit the authority of—

1 (A) the United States to assert any claim
2 against any party, including any claim for water
3 rights, injury to water rights, or injury to water
4 quality in its capacity as trustee for the San Carlos
5 Apache Tribe, its members and allottees, or in any
6 other capacity on behalf of the San Carlos Apache
7 Tribe, its members, and allottees, in any judicial, ad-
8 ministrative, or legislative proceeding; or

9 (B) the San Carlos Apache Tribe to assert any
10 claim against any party, including any claim for
11 water rights, injury to water rights, or injury to
12 water quality in its own behalf or on behalf of its
13 members and allottees in any judicial, administra-
14 tive, or legislative proceeding consistent with title
15 XXXVII of Public Law 102–575 (106 Stat. 4600,
16 4740); or

17 (2) amend or alter the CAP Contract for the
18 San Carlos Apache Tribe dated December 11, 1980,
19 as amended April 29, 1999.

20 **SEC. 402. ANNUAL REPORT.**

21 (a) IN GENERAL.—Not later than 1 year after the
22 date of enactment of this Act and annually thereafter, the
23 Secretary shall submit to the Committee on Energy and
24 Natural Resources of the Senate and the Committee on
25 Resources of the House of Representatives a report that

1 describes the status of efforts to reach a negotiated agree-
2 ment covering the Gila River water rights claims of the
3 San Carlos Apache Tribe.

4 (b) TERMINATION.—This section shall be of no effect
5 after the later of—

6 (1) the date that is 3 years after the date of en-
7 actment of this Act; or

8 (2) the date on which the Secretary submits a
9 third annual report under this section.

10 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) SAN CARLOS APACHE TRIBE.—There is author-
12 ized to be appropriated to assist the San Carlos Apache
13 Tribe in completing comprehensive water resources nego-
14 tiations leading to a comprehensive Gila River water set-
15 tlement for the Tribe, including soil and water technical
16 analyses, legal, paralegal, and other related efforts,
17 \$150,000 for fiscal year 2006.

18 (b) WHITE MOUNTAIN APACHE TRIBE.—There is au-
19 thorized to be appropriated to assist the White Mountain
20 Apache Tribe in completing comprehensive water re-
21 sources negotiations leading to a comprehensive water set-
22 tlement for the Tribe, including soil and water technical
23 analyses, legal, paralegal, and other related efforts,
24 \$150,000 for fiscal year 2006.

1 (c) OTHER ARIZONA INDIAN TRIBES.—There is au-
2 thORIZED to be appropriated to the Secretary to assist Ari-
3 zona Indian tribes (other than those specified in sub-
4 sections (a) and (b)) in completing comprehensive water
5 resources negotiations leading to a comprehensive water
6 settlement for the Arizona Indian tribes, including soil and
7 water technical analyses, legal, paralegal, and other re-
8 lated efforts, \$300,000 for fiscal year 2006.

9 (d) NO LIMITATION ON OTHER FUNDING.—Amounts
10 made available under subsections (a), (b), and (c) shall
11 not limit, and shall be in addition to, other amounts avail-
12 able for Arizona tribal water rights negotiations leading
13 to comprehensive water settlements.

Passed the Senate October 10, 2004.

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

S. 437

AN ACT

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.