

107TH CONGRESS
2D SESSION

H. R. 5163

To approve the settlement of the water rights claims of the Zuni Indian
Tribe in Apache County, Arizona, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2002

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

A BILL

To approve the settlement of the water rights claims of
the Zuni Indian Tribe in Apache County, Arizona, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Zuni Indian Tribe
5 Water Rights Settlement Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

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

1 to promote Indian self-determination, religious free-
2 dom, political and cultural integrity, and economic
3 self-sufficiency, and to settle, wherever possible, the
4 water rights claims of Indian tribes without lengthy
5 and costly litigation.

6 (2) Quantification of rights to water and devel-
7 opment of facilities needed to use tribal water sup-
8 plies effectively is essential to the development of
9 viable Indian reservation communities, particularly
10 in arid western States.

11 (3) On August 28, 1984, and by actions subse-
12 quent thereto, the United States established a res-
13 ervation for the Zuni Indian Tribe in Apache Coun-
14 ty, Arizona, upstream from the confluence of the
15 Little Colorado and Zuni Rivers for long-standing
16 religious and sustenance activities.

17 (4) The water rights of all water users in the
18 Little Colorado River basin in Arizona have been in
19 litigation since 1979, in the Superior Court of the
20 State of Arizona in and for the County of Apache
21 in Civil No. 6417, In re The General Adjudication
22 of All Rights to Use Water in the Little Colorado
23 River System and Source.

24 (5) Recognizing that the final resolution of the
25 Zuni Indian Tribe's water claims through litigation

1 will take many years and entail great expense to all
2 parties, continue to limit the Tribe's access to water
3 with economic, social, and cultural consequences to
4 the Tribe, prolong uncertainty as to the availability
5 of water supplies, and seriously impair the long-term
6 economic planning and development of all parties,
7 the Tribe and neighboring non-Indians have sought
8 to settle their disputes to water and reduce the bur-
9 dens of litigation.

10 (6) After more than 4 years of negotiations,
11 which included participation by representatives of
12 the United States, the Zuni Indian Tribe, the State
13 of Arizona, and neighboring non-Indian communities
14 in the Little Colorado River basin, the parties have
15 entered into a Settlement Agreement to resolve all of
16 the Zuni Indian Tribe's water rights claims and to
17 assist the Tribe in acquiring surface water rights, to
18 provide for the Tribe's use of groundwater, and to
19 provide for the wetland restoration of the Tribe's
20 lands in Arizona.

21 (7) To facilitate the wetland restoration project
22 contemplated under the Settlement Agreement, the
23 Zuni Indian Tribe acquired certain lands along the
24 Little Colorado River near or adjacent to its Res-
25 ervation that are important for the success of the

1 project and will likely acquire a small amount of
2 similarly situated additional lands. The parties have
3 agreed not to object to the United States taking title
4 to certain of these lands into trust status; other
5 lands shall remain in tribal fee status. The parties
6 have worked extensively to resolve various govern-
7 mental concerns regarding use of and control over
8 those lands, and to provide a successful model for
9 these types of situations, the State, local, and tribal
10 governments intend to enter into an Intergovern-
11 mental Agreement that addresses the parties' gov-
12 ernmental concerns.

13 (8) Pursuant to the Settlement Agreement, the
14 neighboring non-Indian entities will assist in the
15 Tribe's acquisition of surface water rights and devel-
16 opment of groundwater, store surface water supplies
17 for the Zuni Indian Tribe, and make substantial ad-
18 ditional contributions to carry out the Settlement
19 Agreement's provisions.

20 (9) To advance the goals of Federal Indian pol-
21 icy and consistent with the trust responsibility of the
22 United States to the Tribe, it is appropriate that the
23 United States participate in the implementation of
24 the Settlement Agreement and contribute funds for
25 the rehabilitation of religious riparian areas and

1 other purposes to enable the Tribe to use its water
2 entitlement in developing its Reservation.

3 (b) PURPOSES.—The purposes of this Act are—

4 (1) to approve, ratify, and confirm the Settle-
5 ment Agreement entered into by the Tribe and
6 neighboring non-Indians;

7 (2) to authorize and direct the Secretary of the
8 Interior to execute and perform the Settlement
9 Agreement and related waivers;

10 (3) to authorize and direct the United States to
11 take legal title and hold such title to certain lands
12 in trust for the benefit of the Zuni Indian Tribe; and

13 (4) to authorize the actions, agreements, and
14 appropriations as provided for in the Settlement
15 Agreement and this Act.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) EASTERN LCR BASIN.—The term “Eastern
19 LCR basin” means the portion of the Little Colo-
20 rado River basin in Arizona upstream of the con-
21 fluence of Silver Creek and the Little Colorado
22 River, as identified on Exhibit 2.10 of the Settle-
23 ment Agreement.

1 (2) FUND.—The term “Fund” means the Zuni
2 Indian Tribe Water Rights Development Fund es-
3 tablished by section 6(a).

4 (3) INTERGOVERNMENTAL AGREEMENT.—The
5 term “Intergovernmental Agreement” means the
6 intergovernmental agreement among the Zuni Indian
7 Tribe, Apache County, Arizona, and the State of Ar-
8 izona, described in Article 6 of the Settlement
9 Agreement.

10 (4) PUMPING PROTECTION AGREEMENT.—The
11 term “Pumping Protection Agreement” means an
12 agreement, described in Article 5 of the Settlement
13 Agreement, among the Zuni Tribe, the United
14 States on behalf of the Tribe, and a local landowner
15 under which the landowner agrees to limit pumping
16 of groundwater on his lands in exchange for a waiv-
17 er of certain claims by the Zuni Tribe and the
18 United States on behalf of the Tribe.

19 (5) RESERVATION; ZUNI HEAVEN RESERVA-
20 TION.—The term “Reservation” or “Zuni Heaven
21 Reservation”, also referred to as “Kolhu:wala:wa”,
22 means the following property in Apache County, Ari-
23 zona: Sections 26, 27, 28, 33, 34, and 35, Township
24 15 North, Range 26 East, Gila and Salt River Base
25 and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13,

1 14, 15, 16, 23, 26, and 27, Township 14 North,
2 Range 26 East, Gila and Salt River Base and Me-
3 ridian.

4 (6) SECRETARY.—The term “Secretary” means
5 the Secretary of the Interior.

6 (7) SETTLEMENT AGREEMENT.—The term
7 “Settlement Agreement” means that agreement
8 dated June 7, 2002, together with all exhibits there-
9 to. The parties to the Settlement Agreement include
10 the Zuni Indian Tribe and its members, the United
11 States on behalf of the Tribe and its members, the
12 State of Arizona, the Arizona Game and Fish Com-
13 mission, the Arizona State Land Department, the
14 Arizona State Parks Board, the St. Johns Irrigation
15 and Ditch Co., the Lyman Water Co., the Round
16 Valley Water Users’ Association, the Salt River
17 Project Agricultural Improvement and Power Dis-
18 trict, the Tucson Electric Power Company, the City
19 of St. Johns, the Town of Eagar, and the Town of
20 Springerville.

21 (8) SRP.—The term “SRP” means the Salt
22 River Project Agricultural Improvement and Power
23 District, a political subdivision of the State of Ari-
24 zona.

1 Agreement and any amendments to the Settlement Agree-
2 ment that may be mutually agreed upon by the parties
3 to the Settlement Agreement.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Zuni Indian Tribe
6 Water Rights Development Fund established in section
7 6(a), \$19,250,000, to be allocated by the Secretary as fol-
8 lows:

9 (1) \$3,500,000 for fiscal year 2004, to be used
10 for the acquisition of water rights and associated
11 lands and other activities carried out by the Zuni
12 Tribe to facilitate the enforceability of the Settle-
13 ment Agreement, including the acquisition of at
14 least 2,350 acre-feet per year of water rights before
15 the deadline described in section 9(b).

16 (2) \$15,750,000, of which \$5,250,000 shall be
17 made available for each of fiscal years 2004, 2005,
18 and 2006, to take actions necessary to restore, reha-
19 bilitate, and maintain the Zuni Heaven Reservation,
20 including the Sacred Lake, wetlands, and riparian
21 areas as provided for in the Settlement Agreement
22 and under this Act.

23 (c) OTHER AGREEMENTS.—Except as provided in
24 section 9, the following 3 separate agreements, together

1 with all amendments thereto, are approved, ratified, con-
 2 firmed, and declared to be valid:

3 (1) The agreement among SRP, the Zuni Tribe,
 4 and the United States on behalf of the Tribe, dated
 5 June 7, 2002.

6 (2) The agreement among TEP, the Zuni
 7 Tribe, and the United States on behalf of the Tribe,
 8 dated June 7, 2002.

9 (3) The agreement among the Arizona State
 10 Land Department, the Zuni Tribe, and the United
 11 States on behalf of the Tribe, dated June 7, 2002.

12 **SEC. 5. TRUST LANDS.**

13 (a) NEW TRUST LANDS.—Upon satisfaction of the
 14 conditions in paragraph 6.2 of the Settlement Agreement,
 15 and after the requirements of section 9(a) have been met,
 16 the Secretary shall take the legal title of the following
 17 lands into trust for the benefit of the Zuni Tribe:

18 (1) In T. 14 N., R. 27 E., Gila and Salt River
 19 Base and Meridian:

20 (A) Section 13: SW¹/₄, S¹/₂NE¹/₄SE¹/₄,
 21 W¹/₂SE¹/₄, SE¹/₄SE¹/₄;

22 (B) Section 23: N¹/₂, N¹/₂SW¹/₄,
 23 N¹/₂SE¹/₄, SE¹/₄SE¹/₄, N¹/₂SW¹/₄SE¹/₄,
 24 SE¹/₄SW¹/₄SE¹/₄;

1 (C) Section 24: NW¹/₄, SW¹/₄, S¹/₂NE¹/₄,
 2 N¹/₂SE¹/₄; and

3 (D) Section 25: N¹/₂NE¹/₄, SE¹/₄NE¹/₄,
 4 NE¹/₄SE¹/₄.

5 (2) In T. 14 N., R. 28 E., Gila and Salt River
 6 Base and Meridian:

7 (A) Section 19: W¹/₂E¹/₂NW¹/₄,
 8 W¹/₂NW¹/₄, W¹/₂NE¹/₄SW¹/₄, NW¹/₄SW¹/₄,
 9 S¹/₂SW¹/₄;

10 (B) Section 29: SW¹/₄SW¹/₄NW¹/₄,
 11 NW¹/₄NW¹/₄SW¹/₄, S¹/₂N¹/₂SW¹/₄, S¹/₂SW¹/₄,
 12 S¹/₂NW¹/₄SE¹/₄, SW¹/₄SE¹/₄;

13 (C) Section 30: W¹/₂, SE¹/₄; and

14 (D) Section 31: N¹/₂NE¹/₄, N¹/₂S¹/₂NE¹/₄,
 15 S¹/₂SE¹/₄NE¹/₄, NW¹/₄, E¹/₂SW¹/₄,
 16 N¹/₂NW¹/₄SW¹/₄, SE¹/₄NW¹/₄SW¹/₄,
 17 E¹/₂SW¹/₄SW¹/₄, SW¹/₄SW¹/₄SW¹/₄.

18 (b) FUTURE TRUST LANDS.—Upon satisfaction of
 19 the conditions in paragraph 6.2 of the Settlement Agree-
 20 ment, after the requirements of section 9(a) have been
 21 met, and upon acquisition by the Zuni Tribe, the Sec-
 22 retary shall take the legal title of the following lands into
 23 trust for the benefit of the Zuni Tribe:

24 (1) In T. 14 N., R. 26E., Gila and Salt River
 25 Base and Meridian: Section 25: N¹/₂NE¹/₄,

1 $N^{1/2}S^{1/2}NE^{1/4}$, $NW^{1/4}$, $N^{1/2}NE^{1/4}SW^{1/4}$,
 2 $NE^{1/4}NW^{1/4}SW^{1/4}$.

3 (2) In T. 14 N., R. 27 E., Gila and Salt River
 4 Base and Meridian:

5 (A) Section 14: $SE^{1/4}SW^{1/4}$, $SE^{1/4}$;

6 (B) Section 16: $S^{1/2}SW^{1/4}SE^{1/4}$;

7 (C) Section 19: $S^{1/2}SE^{1/4}SE^{1/4}$;

8 (D) Section 20: $S^{1/2}SW^{1/4}SW^{1/4}$,
 9 $E^{1/2}SE^{1/4}SE^{1/4}$;

10 (E) Section 21: $N^{1/2}NE^{1/4}$,
 11 $E^{1/2}NE^{1/4}NW^{1/4}$, $SE^{1/4}NW^{1/4}$, $W^{1/2}SW^{1/4}NE^{1/4}$,
 12 $N^{1/2}NE^{1/4}SW^{1/4}$, $SW^{1/4}NE^{1/4}SW^{1/4}$,
 13 $E^{1/2}NW^{1/4}SW^{1/4}$, $SW^{1/4}NW^{1/4}SW^{1/4}$,
 14 $W^{1/2}SW^{1/4}SW^{1/4}$;

15 (F) Section 22: $SW^{1/4}NE^{1/4}NE^{1/4}$,
 16 $NW^{1/4}NE^{1/4}$, $S^{1/2}NE^{1/4}$, $N^{1/2}NW^{1/4}$,
 17 $SE^{1/4}NW^{1/4}$, $N^{1/2}SW^{1/4}NW^{1/4}$,
 18 $SE^{1/4}SW^{1/4}NW^{1/4}$, $N^{1/2}N^{1/2}SE^{1/4}$,
 19 $N^{1/2}NE^{1/4}SW^{1/4}$;

20 (G) Section 24: $N^{1/2}NE^{1/4}$, $S^{1/2}SE^{1/4}$;

21 (H) Section 29: $N^{1/2}N^{1/2}$;

22 (I) Section 30: $N^{1/2}N^{1/2}$, $N^{1/2}S^{1/2}NW^{1/4}$,
 23 $N^{1/2}SW^{1/4}NE^{1/4}$; and

24 (J) Section 36: $SE^{1/4}SE^{1/4}NE^{1/4}$,
 25 $NE^{1/4}NE^{1/4}SE^{1/4}$.

1 (3) In T. 14 N., R. 28 E., Gila and Salt River
2 Base and Meridian:

3 (A) Section 18: S¹/₂NE¹/₄, NE¹/₄SW¹/₄,
4 NE¹/₄NW¹/₄SW¹/₄, S¹/₂NW¹/₄SW¹/₄, S¹/₂SW¹/₄,
5 N¹/₂SE¹/₄, N¹/₂SW¹/₄SE¹/₄, SE¹/₄SE¹/₄;

6 (B) Section 30: S¹/₂NE¹/₄,
7 W¹/₂NW¹/₄NE¹/₄; and

8 (C) Section 32: N¹/₂NW¹/₄NE¹/₄,
9 SW¹/₄NE¹/₄, S¹/₂SE¹/₄NE¹/₄, NW¹/₄, SW¹/₄,
10 N¹/₂SE¹/₄, SW¹/₄SE¹/₄, N¹/₂SE¹/₄SE¹/₄,
11 SW¹/₄SE¹/₄SE¹/₄.

12 (c) NEW RESERVATION LANDS.—Upon satisfaction
13 of the conditions in paragraph 6.2 of the Settlement
14 Agreement, after the requirements of section 9(a) have
15 been met, and upon acquisition by the Zuni Tribe, the Sec-
16 retary shall take the legal title of the following lands in
17 Arizona into trust for the benefit of the Zuni Tribe and
18 make such lands part of the Zuni Indian Tribe Reserva-
19 tion in Arizona: Section 34, T. 14 N., R. 26 E., Gila and
20 Salt River Base and Meridian.

21 (d) LIMITATION ON SECRETARIAL DISCRETION.—
22 The Secretary shall have no discretion regarding the ac-
23 quisitions described in subsections (a), (b), and (c).

24 (e) LANDS REMAINING IN FEE STATUS.—The Zuni
25 Tribe may seek to have the legal title to additional lands

1 in Arizona, other than the lands described in subsection
2 (a), (b), or (c), taken into trust by the United States for
3 the benefit of the Zuni Indian Tribe pursuant only to an
4 Act of Congress enacted after the date of enactment of
5 this Act specifically authorizing the transfer for the ben-
6 efit of the Zuni Tribe.

7 (f) FINAL AGENCY ACTION.—Any written certifi-
8 cation by the Secretary under subparagraph 6.2.B of the
9 Settlement Agreement constitutes final agency action
10 under the Administrative Procedure Act and is reviewable
11 as provided for under chapter 7 of title 5, United States
12 Code.

13 (g) NO FEDERAL WATER RIGHTS.—Lands taken
14 into trust pursuant to subsection (a), (b), or (c) shall not
15 have Federal reserved rights to surface water or ground-
16 water.

17 (h) STATE WATER RIGHTS.—The water rights and
18 uses for the lands taken into trust pursuant to subsection
19 (a) or (c) must be determined under subparagraph 4.1.A
20 and Article 5 of the Settlement Agreement. With respect
21 to the lands taken into trust pursuant to subsection (b),
22 the Zuni Tribe retains any rights or claims to water asso-
23 ciated with these lands under State law, subject to the
24 terms of the Settlement Agreement.

1 (i) FORFEITURE AND ABANDONMENT.—Water rights
2 that are appurtenant to lands taken into trust pursuant
3 to subsection (a), (b), or (c) shall not be subject to for-
4 feiture and abandonment.

5 (j) AD VALOREM TAXES.—With respect to lands that
6 are taken into trust pursuant to subsection (a) or (b)—

7 (1) such lands shall not be considered lands
8 within an Indian reservation or lands owned or held
9 by any Indian for the purposes of Article 20, para-
10 graph 5 of the Arizona Constitution, for the purpose
11 of paying in lieu taxes pursuant to this subsection
12 and the Intergovernmental Agreement between the
13 Zuni Tribe, Apache County, Arizona and the State
14 of Arizona; and

15 (2) the Zuni Tribe shall make payments in lieu
16 of all current and future State, county, and local ad
17 valorem property taxes that would otherwise be ap-
18 plicable to those lands if they were not in trust.

19 (k) AUTHORITY OF TRIBE.—For purposes of com-
20 plying with this section and Article 6 of the Settlement
21 Agreement, the Tribe is authorized to enter into—

22 (1) the Intergovernmental Agreement among
23 the Zuni Tribe, Apache County, Arizona, and the
24 State of Arizona; and

1 (2) any intergovernmental agreement required
2 to be entered into by the Tribe under the terms of
3 the Intergovernmental Agreement.

4 (1) FEDERAL ACKNOWLEDGEMENT OF INTERGOV-
5 ERNMENTAL AGREEMENTS.—

6 (1) IN GENERAL.—The Secretary shall acknowl-
7 edge the terms of any intergovernmental agreement
8 entered into by the Tribe under this section.

9 (2) NO ABROGATION.—The Secretary shall not
10 seek to abrogate, in any administrative or judicial
11 action, the terms of any intergovernmental agree-
12 ment that are consistent with subparagraph 6.2.A of
13 the Settlement Agreement and this Act.

14 (3) NO REMOVAL.—If a judicial action is com-
15 menced during a dispute over any intergovernmental
16 agreement entered into under this section, and the
17 United States is allowed to intervene in such action,
18 the United States shall not remove such action to
19 the Federal courts.

20 (m) RULE OF CONSTRUCTION.—Notwithstanding
21 any other provision of this Act, nothing in this Act alters
22 the continued application of the Act of May 25, 1918 (25
23 U.S.C. 211), within the State of Arizona.

24 (n) DISCLAIMER.—Nothing in this section repeals,
25 modifies, amends, changes, or otherwise affects the Sec-

1 retary’s obligations to the Zuni Tribe pursuant to the Act
2 entitled “An Act to convey certain lands to the Zuni In-
3 dian Tribe for religious purposes” approved August 28,
4 1984 (Public Law 98–408; 98 Stat. 1533) (and as amend-
5 ed by the Zuni Land Conservation Act of 1990 (Public
6 Law 101–486; 104 Stat. 1174)).

7 **SEC. 6. DEVELOPMENT FUND.**

8 (a) ESTABLISHMENT OF THE FUND.—

9 (1) IN GENERAL.—There is established in the
10 Treasury of the United States a fund to be known
11 as the “Zuni Indian Tribe Water Rights Develop-
12 ment Fund”, to be managed and invested by the
13 Secretary, consisting of—

14 (A) the amounts authorized to be appro-
15 priated in section 4(b); and

16 (B) the appropriation to be contributed by
17 the State of Arizona pursuant to paragraph 7.6
18 of the Settlement Agreement.

19 (2) ADDITIONAL DEPOSITS.—The Secretary
20 shall deposit in the Fund any other monies paid to
21 the Secretary on behalf of the Zuni Tribe pursuant
22 to the Settlement Agreement.

23 (b) MANAGEMENT OF THE FUND.—The Secretary
24 shall manage the Fund, make investments from the Fund,
25 and make monies available from the Fund for distribution

1 to the Zuni Tribe consistent with the American Indian
2 Trust Fund Management Reform Act of 1994 (25 U.S.C.
3 4001 et seq.) (referred to in this section as the “Trust
4 Fund Reform Act”), this Act, and the Settlement Agree-
5 ment.

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

8 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
9 41, 25 U.S.C. 161);

10 (2) the first section of the Act of June 24,
11 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

12 (3) subsection (b).

13 (d) AVAILABILITY OF AMOUNTS FROM THE FUND.—

14 The funds authorized to be appropriated pursuant to sec-
15 tion 4(b)(2) and funds contributed by the State of Arizona
16 pursuant to paragraph 7.6 of the Settlement Agreement
17 shall be available for expenditure or withdrawal only after
18 the requirements of section 9(a) have been met.

19 (e) EXPENDITURES AND WITHDRAWAL.—

20 (1) TRIBAL MANAGEMENT PLAN.—

21 (A) IN GENERAL.—The Zuni Tribe may
22 withdraw all or part of the Fund on approval
23 by the Secretary of a tribal management plan
24 as described in the Trust Fund Reform Act.

1 (B) REQUIREMENTS.—In addition to the
2 requirements under the Trust Fund Reform
3 Act, the tribal management plan shall require
4 that the Zuni Tribe spend any funds in accord-
5 ance with the purposes described in section
6 4(b).

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

12 (3) LIABILITY.—If the Zuni Tribe exercises the
13 right to withdraw monies from the Fund, neither the
14 Secretary nor the Secretary of the Treasury shall re-
15 tain any liability for the expenditure or investment
16 of the monies withdrawn.

17 (4) EXPENDITURE PLAN.—

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

23 (B) DESCRIPTION.—The expenditure plan
24 shall describe the manner in which, and the

1 purposes for which, funds of the Zuni Tribe re-
2 maining in the Fund will be 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 Zuni Tribe shall
9 submit to the Secretary an annual report that de-
10 scribes all expenditures from the Fund during the
11 year covered by the report.

12 (f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

13 (1) WATER RIGHTS ACQUISITIONS.—Notwith-
14 standing subsection (e), the funds authorized to be
15 appropriated pursuant to section 4(b)(1)—

16 (A) shall be available upon appropriation
17 for use in accordance with section 4(b)(1); and

18 (B) shall be distributed by the Secretary to
19 the Zuni Tribe on receipt by the Secretary from
20 the Zuni Tribe of a written notice and a tribal
21 council resolution that describe the purposes for
22 which the funds will be used.

23 (2) RIGHT TO SET OFF.—In the event the re-
24 quirements of section 9(a) have not been met and
25 the Settlement Agreement has become null and void

1 under section 9(b), the United States shall be enti-
2 tled to set off any funds expended or withdrawn
3 from the amount appropriated pursuant to section
4 4(b)(1), together with any interest accrued, against
5 any claims asserted by the Zuni Tribe against the
6 United States relating to water rights at the Zuni
7 Heaven Reservation.

8 (3) WATER RIGHTS.—Any water rights ac-
9 quired with funds described in paragraph (1) shall
10 be credited against any water rights secured by the
11 Zuni Tribe, or the United States on behalf of the
12 Zuni Tribe, for the Zuni Heaven Reservation in the
13 Little Colorado River General Stream Adjudication
14 or in any future settlement of claims for those water
15 rights.

16 (g) NO PER CAPITA DISTRIBUTIONS.—No part of the
17 Fund shall be distributed on a per capita basis to members
18 of the Zuni Tribe.

19 **SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RE-**
20 **LEASES.**

21 (a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

22 (1) IN GENERAL.—The benefits realized by the
23 Tribe and its members under this Act shall con-
24 stitute full and complete satisfaction of all members'
25 claims for water rights or injuries to water rights

1 under Federal, State, and other laws (including
2 claims for water rights in groundwater, surface
3 water, and effluent) for Zuni Lands from time im-
4 memorial to the effective date described in section
5 9(a).

6 (2) NO RECOGNITION OR ESTABLISHMENT OF
7 INDIVIDUAL WATER RIGHT.—Nothing in this Act
8 recognizes or establishes any right of a member of
9 the Tribe to water on the Reservation.

10 (b) TRIBE AND UNITED STATES AUTHORIZATION
11 AND WAIVER.—The Tribe, on behalf of itself and its mem-
12 bers and the Secretary on behalf of the United States in
13 its capacity as trustee for the Zuni Tribe and its members,
14 are authorized, as part of the performance of their obliga-
15 tions under the Settlement Agreement, to execute a waiver
16 and release, subject to paragraphs 11.4 and 11.7 of the
17 Settlement Agreement, for claims against the State of Ari-
18 zona, or any agency or political subdivision thereof, or any
19 other person, entity, corporation, or municipal corpora-
20 tion, under Federal, State, or other law for any and all—

21 (1) past, present, and future claims to water
22 rights (including water rights in groundwater, sur-
23 face water, and effluent) for Zuni Lands from time
24 immemorial through the effective date described in
25 section 9(a) and any time thereafter, except for

1 claims within the Zuni Protection Area as provided
2 in Article 5 of the Settlement Agreement;

3 (2) past and present claims for injuries to
4 water rights (including water rights in groundwater,
5 surface water, and effluent and including claims for
6 damages for deprivation of water rights and any
7 claims for changes to groundwater table levels) for
8 Zuni Lands from time immemorial through the ef-
9 fective date described in section 9(a);

10 (3) past, present, and future claims for water
11 rights and injuries to water rights (including water
12 rights in groundwater, surface water, and effluent
13 and including any claims for damages for depriva-
14 tion of water rights and any claims for changes to
15 groundwater table levels) from time immemorial
16 through the effective date described in section 9(a),
17 and any time thereafter, for lands outside of Zuni
18 lands but located within the Little Colorado River
19 basin in Arizona, based upon aboriginal occupancy
20 of lands by the Zuni Tribe or its predecessors;

21 (4) past and present claims for injuries to
22 water quality accruing from time immemorial
23 through the effective date described in section 9(a)
24 for lands within the Little Colorado River basin in
25 Arizona;

1 (5) future claims for injuries to water quality
2 accruing after the effective date described in section
3 9(a) on any lands within the Eastern LCR basin
4 caused by—

5 (A) the lawful diversion or use of surface
6 water;

7 (B) the lawful withdrawal or use of
8 groundwater, except within the Zuni Protection
9 Area as provided in Article 5 of the Settlement
10 Agreement;

11 (C) the Parties' performance of their obli-
12 gations under this Settlement Agreement;

13 (D) the discharge of oil associated with
14 routine physical or mechanical maintenance of
15 wells or diversion structures;

16 (E) the discharge of oil associated with
17 routine start-up and operation of well pumps;
18 or

19 (F) any combination thereof; and

20 (6) claims for interference with the trust re-
21 sponsibility of the United States to the Zuni Tribe
22 arising out of the negotiation of the Settlement
23 Agreement or this Act.

24 (c) TRIBAL WAIVER AGAINST THE UNITED
25 STATES.—The Tribe is authorized, as part of the perform-

1 ance of its obligations under the Settlement Agreement,
2 to execute a waiver and release, subject to paragraphs
3 11.4 and 11.6 of the Settlement Agreement, for claims
4 against the United States (acting in its capacity as trustee
5 for the Zuni Tribe or its members, or otherwise acting
6 on behalf of the Zuni Tribe or its members), including
7 any agencies, officials, or employees thereof, for any and
8 all—

9 (1) past, present, and future claims to water
10 rights (including water rights in groundwater, sur-
11 face water, and effluent) for Zuni Lands, from time
12 immemorial through the effective date described in
13 section 9(a) and any time thereafter;

14 (2) past and present claims for injuries to
15 water rights (including water rights in groundwater,
16 surface water, and effluent and any claims for dam-
17 ages for deprivation of water rights) for Zuni Lands
18 from time immemorial through the effective date de-
19 scribed in section 9(a);

20 (3) past, present, and future claims for water
21 rights and injuries to water rights (including water
22 rights in groundwater, surface water, and effluent
23 and any claims for damages for deprivation of water
24 rights) from time immemorial through the effective
25 date described in section 9(a), and any time there-

1 after, for lands outside of Zuni Lands but located
2 within the Little Colorado River basin in Arizona,
3 based upon aboriginal occupancy of lands by the
4 Zuni Tribe or its predecessors;

5 (4) past and present claims for failure to pro-
6 tect, acquire, or develop water rights of, or failure
7 to protect water quality for, the Zuni Tribe within
8 the Little Colorado River basin in Arizona from time
9 immemorial through the effective date described in
10 section 9(a); and

11 (5) claims for breach of the trust responsibility
12 of the United States to the Zuni Tribe arising out
13 of the negotiation of the Settlement Agreement or
14 this Act.

15 **SEC. 8. MISCELLANEOUS PROVISIONS.**

16 (a) WAIVER OF SOVEREIGN IMMUNITY.—If any party
17 to the Settlement Agreement, an agreement described in
18 paragraph (1), (2), or (3) of section 4(c), a Pumping Pro-
19 tection Agreement, or a landowner or water user in the
20 Little Colorado River basin in Arizona, files a lawsuit only
21 relating directly to the interpretation or enforcement of
22 this Act, the Settlement Agreement, an agreement de-
23 scribed in paragraph (1), (2), or (3) of section 4(c), or
24 a Pumping Protection Agreement, naming the United
25 States or the Tribe as a party—

1 (1) the United States, the Tribe, or both may
2 be added as a party to any such litigation, and any
3 claim by the United States or the Tribe to sovereign
4 immunity from such suit is hereby waived, other
5 than with respect to claims for monetary awards ex-
6 cept as specifically provided for in the Settlement
7 Agreement; and

8 (2) the Tribe may waive its sovereign immunity
9 from suit in the Superior Court of Apache County,
10 Arizona for the limited purposes of enforcing the
11 terms of the Intergovernmental Agreement, and any
12 intergovernmental agreement required to be entered
13 into by the Tribe under the terms of the Intergov-
14 ernmental Agreement, other than with respect to
15 claims for monetary awards except as specifically
16 provided in the Intergovernmental Agreement.

17 (b) TRIBAL USE OF WATER.—

18 (1) IN GENERAL.—With respect to water rights
19 made available under the Settlement Agreement and
20 used on the Zuni Heaven Reservation—

21 (A) such water rights shall be held in trust
22 by the United States in perpetuity, and shall
23 not be subject to forfeiture or abandonment;

24 (B) State law shall not apply to water uses
25 on the Reservation;

1 (C) the State of Arizona may not regulate
2 or tax such water rights or uses (except that
3 the court with jurisdiction over the decree en-
4 tered pursuant to the Settlement Agreement or
5 the Norviel Decree Court may assess adminis-
6 trative fees for delivery of this water);

7 (D) subject to paragraph 7.7 of the Settle-
8 ment Agreement, the Zuni Tribe shall use
9 water made available to the Zuni Tribe under
10 the Settlement Agreement on the Zuni Heaven
11 Reservation for any use it deems advisable;

12 (E) water use by the Zuni Tribe or the
13 United States on behalf of the Zuni Tribe for
14 wildlife or instream flow use, or for irrigation to
15 establish or maintain wetland on the Reserva-
16 tion, shall be considered to be consistent with
17 the purposes of the Reservation; and

18 (F)(i) not later than 3 years after the
19 deadline described in section 9(b), the Zuni
20 Tribe shall adopt a water code for regulation of
21 water use on the lands identified in subsections
22 (a) and (b) of section 5 that is reasonably
23 equivalent to State water law (including stat-
24 utes relating to dam safety and groundwater
25 management); and

1 (ii) until such date as the Zuni Tribe
2 adopts a water code described in clause (i), the
3 Secretary, in consultation with the State of Ari-
4 zona, shall administer water use and water reg-
5 ulation on lands described in that clause in a
6 manner that is reasonably equivalent to State
7 law.

8 (2) LIMITATION.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), the Zuni Tribe or the United
11 States shall not sell, lease, transfer, or trans-
12 port water made available for use on the Zuni
13 Heaven Reservation to any other place.

14 (B) EXCEPTION.—Water made available to
15 the Zuni Tribe or the United States for use on
16 the Zuni Heaven Reservation may be severed
17 and transferred from the Reservation to other
18 Zuni Lands if the severance and transfer is ac-
19 complished in accordance with State law (and
20 once transferred to any lands held in fee, such
21 water shall be subject to State law).

22 (c) RIGHTS-OF-WAY.—Federal laws (including regu-
23 lations) concerning the granting of easements and rights-
24 of-way shall apply to the lands identified in subsections
25 (a) and (b) of section 5, but the United States and the

1 Zuni Tribe shall not unreasonably withhold consent for
2 easements and rights-of-way for roads, utilities, and other
3 necessary accommodations for adjoining landowners
4 across the lands identified in subsection (a) or (b) of sec-
5 tion 5 unless such easements and rights-of-way will cause
6 significant and substantial harm to the Tribe's wetland
7 restoration project or religious practices. If such harm is
8 anticipated, the Zuni Tribe shall negotiate in good faith
9 with the entity seeking the easements or rights-of-way for
10 a reasonable accommodation of their mutual interests.

11 (d) CERTAIN CLAIMS PROHIBITED.—The United
12 States shall make no claims for reimbursement of costs
13 arising out of the implementation of this Act or the Settle-
14 ment Agreement against any Indian-owned land within the
15 Tribe's Reservation, and no assessment shall be made in
16 regard to such costs against such lands.

17 (e) VESTED RIGHTS.—Except as described in para-
18 graph 5.3 of the Settlement Agreement (recognizing the
19 Zuni Tribe's use of 1,500 acre-feet per annum of ground-
20 water) this Act and the Settlement Agreement do not cre-
21 ate any vested right to groundwater under Federal or
22 State law, or any priority to the use of groundwater that
23 would be superior to any other right or use of groundwater
24 under Federal or State law, whether through this Act, the
25 Settlement Agreement, or by incorporation of any ab-

1 tract, agreement, or stipulation prepared under the Set-
2 tlement Agreement. Notwithstanding the preceding sen-
3 tence, the rights of parties to the agreements referred to
4 in paragraph (1), (2), or (3) of section 4(c) and paragraph
5 5.8 of the Settlement Agreement, as among themselves,
6 shall be as stated in those agreements.

7 (f) OTHER CLAIMS.—Nothing in the Settlement
8 Agreement or this Act quantifies or otherwise affects the
9 water rights, claims, or entitlements to water of any In-
10 dian tribe, band, or community, other than the Zuni In-
11 dian Tribe.

12 (g) NO MAJOR FEDERAL ACTION.—Execution of the
13 Settlement Agreement by the Secretary as provided for in
14 section 4(a) shall not constitute major Federal action
15 under the National Environmental Policy Act (42 U.S.C.
16 4321 et seq.). The Secretary shall comply with that Act
17 and shall carry out any other necessary environmental
18 compliance during the implementation phase of this settle-
19 ment.

20 **SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AU-**
21 **THORIZATIONS.**

22 (a) IN GENERAL.—The waiver and release authoriza-
23 tions contained in subsections (b) and (c) of section 7 shall
24 become effective as of the date the Secretary causes to

1 be published in the Federal Register a statement of all
2 the following findings:

3 (1) This Act has been enacted in a form ap-
4 proved by the parties in paragraph 3.1.A of the Set-
5 tlement Agreement.

6 (2) The funds authorized by section 4(b) have
7 been appropriated and deposited into the Fund.

8 (3) The State of Arizona has appropriated and
9 deposited into the Fund the amount required by
10 paragraph 7.6 of the Settlement Agreement.

11 (4) The Zuni Indian Tribe has either purchased
12 or acquired the right to purchase at least 2,350
13 acre-feet per annum of surface water rights, or
14 waived this condition as provided in paragraph 3.2
15 of the Settlement Agreement.

16 (5) Pursuant to subparagraph 3.1.D of the Set-
17 tlement Agreement, the severance and transfer of
18 surface water rights that the Tribe owns or has the
19 right to purchase have been conditionally approved,
20 or the Tribe has waived this condition as provided
21 in paragraph 3.2 of the Settlement Agreement.

22 (6) Pursuant to subparagraph 3.1.E of the Set-
23 tlement Agreement, the Tribe and Lyman Water
24 Company have executed an agreement relating to
25 the process of the severance and transfer of surface

1 water rights acquired by the Zuni Tribe or the
2 United States, the pass-through, use, or storage of
3 the Tribe's surface water rights in Lyman Lake, and
4 the operation of Lyman Dam.

5 (7) Pursuant to subparagraph 3.1.F of the Set-
6 tlement Agreement, all the parties to the Settlement
7 Agreement have agreed and stipulated to certain Ar-
8 izona Game and Fish abstracts of water uses.

9 (8) Pursuant to subparagraph 3.1.G of the Set-
10 tlement Agreement, all parties to the Settlement
11 Agreement have agreed to the location of an obser-
12 vation well and that well has been installed.

13 (9) Pursuant to subparagraph 3.1.H of the Set-
14 tlement Agreement, the Zuni Tribe, Apache County,
15 Arizona and the State of Arizona have executed an
16 Intergovernmental Agreement that satisfies all of
17 the conditions in paragraph 6.2 of the Settlement
18 Agreement.

19 (10) The Zuni Tribe has acquired title to the
20 section of land adjacent to the Zuni Heaven Res-
21 ervation described as Section 34, Township 14
22 North, Range 26 East, Gila and Salt River Base
23 and Meridian.

24 (11) The Settlement Agreement has been modi-
25 fied if and to the extent it is in conflict with this Act

1 and such modification has been agreed to by all the
2 parties to the Settlement Agreement.

3 (12) A court of competent jurisdiction has ap-
4 proved the Settlement Agreement by a final judg-
5 ment and decree.

6 (b) DEADLINE FOR EFFECTIVE DATE.—If the publi-
7 cation in the Federal Register required under subsection
8 (a) has not occurred by December 31, 2005, sections 4
9 and 5, and any agreements entered into pursuant to sec-
10 tions 4 and 5 (including the Settlement Agreement and
11 the Intergovernmental Agreement) shall not thereafter be
12 effective and shall be null and void. Any funds and the
13 interest accrued thereon appropriated pursuant to section
14 4(b)(2) shall revert to the Treasury, and any funds and
15 the interest accrued thereon appropriated pursuant to
16 paragraph 7.6 of the Settlement Agreement shall revert
17 to the State of Arizona.

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