12-10-2004

AZ Water Rights Settlement of 2004

United States 108th Congress

PUBLIC LAW 108–451—DEC. 10, 2004

ARIZONA WATER SETTLEMENTS ACT

Public Law 108–451
108th Congress

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.

Dec. 10, 2004
[S. 437]

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

Arizona Water Settlements Act.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

43 USC 1501 note.

(a) SHORT TITLE.—This Act may be cited as the "Arizona Water Settlements Act".

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

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 2. DEFINITIONS.

In titles I and II:

(1) ACRE-FEET.—The term "acre-feet" means acre-feet per year.

(2) AFTER-ACQUIRED TRUST LAND.—The term "after-acquired trust land" means land that—

(A) is located—

(i) within the State; but

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

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

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

(4) ALLOTTEE.—The term "allottee" means a person who holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Reservation; and

(B) held in trust by the United States.

(5) ARIZONA INDIAN TRIBE.—The term "Arizona Indian tribe" means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

(6) ASARCO.—The term "Asarco" means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

(7) CAP CONTRACTOR.—The term "CAP contractor" means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(8) CAP OPERATING AGENCY.—The term "CAP operating agency" means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(9) CAP REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term "CAP repayment contract" means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

(B) INCLUSIONS.—The term "CAP repayment contract" includes all amendments to and revisions of that contract.

(10) CAP SUBCONTRACTOR.—The term "CAP subcontractor" means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

(11) CAP SYSTEM.—The term "CAP system" means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

(12) CENTRAL ARIZONA PROJECT.—The term "Central Arizona Project" means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term "Central Arizona Water Conservation District" means the political subdivision of the State that is the contractor under the CAP repayment contract.

(14) CITIES.—The term "Cities" means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

(15) COMMUNITY.—The term "Community" means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

(16) COMMUNITY CAP WATER.—The term "Community CAP water" means water to which the Community is entitled under the Community water delivery contract.

(17) COMMUNITY REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term "Community repayment contract" means Contract No. 6–0907–0903–09W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation.

(B) INCLUSIONS.—The term "Community repayment contract" includes any amendments to the contract described in subparagraph (A).

(18) COMMUNITY WATER DELIVERY CONTRACT.—

(A) IN GENERAL.—The term "Community water delivery contract" means Contract No. 3–0907–0930–09W0284 between the Community and the United States dated October 22, 1992.

(B) INCLUSIONS.—The term "Community water delivery contract" includes any amendments to the contract described in subparagraph (A).

(19) CRR PROJECT WORKS.—

(A) IN GENERAL.—The term "CRR project works" means the portions of the San Carlos Irrigation Project located on the Reservation.

(B) INCLUSION.—The term "CRR Project works" includes the portion of the San Carlos Irrigation Project known as the "Southside Canal", from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

(20) DIRECTOR.—The term "Director" means—

(A) the Director of the Arizona Department of Water Resources; or

(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

(21) ENFORCEABILITY DATE.—The term "enforceability date" means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c).

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

(23) FIXED OM&R CHARGE.—The term "fixed OM&R charge" has the meaning given the term in the repayment stipulation.

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

(25) GILA RIVER ADJUDICATION PROCEEDINGS.—The term "Gila River adjudication proceedings" means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled "In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source" W–091 (Salt), W–092 (Verde), W–093 (Upper Gila), W–094 (San Pedro) (Consolidated).

(26) GILA RIVER AGREEMENT.—

(A) IN GENERAL.—The term "Gila River agreement" means the agreement entitled the "Gila River Indian Community Water Rights Settlement Agreement", dated February 4, 2003.

(B) INCLUSIONS.—The term "Gila River agreement" includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation Agreement, which is also an exhibit to the UVD Agreement); and

(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement consistent with section 203(a) or as approved by the Secretary.

(27) GILA VALLEY IRRIGATION DISTRICT.—The term "Gila Valley Irrigation District" means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(28) GLOBE EQUITY DECREE.—

(A) IN GENERAL.—The term "Globe Equity Decree" means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

(B) INCLUSIONS.—The term "Globe Equity Decree" includes all court orders and decisions supplemental to that decree.

(29) HAGGARD DECREE.—

(A) IN GENERAL.—The term "Haggard Decree" means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa

Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

(B) INCLUSIONS.—The term "Haggard Decree" includes all court orders and decisions supplemental to that decree.

(30) INCLUDING.—The term "including" has the same meaning as the term "including, but not limited to".

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

(32) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term "injury to water rights" means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

(B) INCLUSION.—The term "injury to water rights" includes a change in the underground water table and any effect of such a change.

(C) EXCLUSION.—The term "injury to water rights" does not include subsidence damage or injury to water quality.

(33) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term "Lower Colorado River Basin Development Fund" means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(34) MASTER AGREEMENT.—The term "master agreement" means the agreement entitled "Arizona Water Settlement Agreement" among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004.

(35) NM CAP ENTITY.—The term "NM CAP entity" means the entity or entities that the State of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.

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

(A) IN GENERAL.—The term "New Mexico Consumptive Use and Forbearance Agreement" means that agreement entitled the "New Mexico Consumptive Use and Forbearance Agreement," entered into by and among the United States, the Community, the San Carlos Irrigation and Drainage District, and all of the signatories to the UVD Agreement, and approved by the State of New Mexico, and authorized, ratified, and approved by section 212(b).

(B) INCLUSIONS.—The "New Mexico Consumptive Use and Forbearance Agreement" includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation agreement, which is also an exhibit to the UVD agreement); and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(37) NEW MEXICO UNIT.—The term "New Mexico Unit" means that unit or units of the Central Arizona Project authorized by sections 301(a)(4) and 304 of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4), 1524) (as amended by section 212).

(38) NEW MEXICO UNIT AGREEMENT.—

(A) IN GENERAL.—The term "New Mexico Unit Agreement" means that agreement entitled the "New Mexico Unit Agreement," to be entered into by and between the United States and the NM CAP entity upon notice to the Secretary from the State of New Mexico that the State of New Mexico intends to have the New Mexico Unit constructed or developed.

(B) INCLUSIONS.—The "New Mexico Unit Agreement" includes—

(i) all exhibits to that agreement; and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(39) OFF-RESERVATION TRUST LAND.—The term "off-Reservation trust land" means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the enforceability date.

(40) PHELPS DODGE.—The term "Phelps Dodge" means the Phelps Dodge Corporation, a New York corporation of that name, and Phelps Dodge's subsidiaries (including Phelps Dodge Morenci, Inc., a Delaware corporation of that name), and Phelps Dodge's successors or assigns.

(41) REPAYMENT STIPULATION.—The term "repayment stipulation" means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95–09625–09TUC–09WDB(EHC), No. CIV 95–091720–09PHX–09EHC (Consolidated Action), and that court's order dated April 28, 2003, and any amendments or revisions thereto.

(42) RESERVATION.—

(A) IN GENERAL.—Except as provided in sections 207(d) and 210(d), the term "Reservation" means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

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

(43) ROOSEVELT HABITAT CONSERVATION PLAN.—The term "Roosevelt Habitat Conservation Plan" means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

(44) ROOSEVELT WATER CONSERVATION DISTRICT.—The term "Roosevelt Water Conservation District" means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

(45) SAFFORD.—The term "Safford" means the city of Safford, Arizona.

(46) SALT RIVER PROJECT.—The term "Salt River Project" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial corporation.

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

(48) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term "San Carlos Irrigation and Drainage District" means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

(49) SAN CARLOS IRRIGATION PROJECT.—

(A) IN GENERAL.—The term "San Carlos Irrigation Project" means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

(B) INCLUSIONS.—The term "San Carlos Irrigation Project" includes any amendments and supplements to the Act described in subparagraph (A).

(50) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(51) SPECIAL HOT LANDS.—The term "special hot lands" has the meaning given the term in subparagraph 2.34 of the UVD agreement.

(52) STATE.—The term "State" means the State of Arizona.

(53) SUBCONTRACT.—

(A) IN GENERAL.—The term "subcontract" means a Central Arizona Project water delivery subcontract.

(B) INCLUSION.—The term "subcontract" includes an amendment to a subcontract.

(54) SUBSIDENCE DAMAGE.—The term "subsidence damage" means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

(55) TBI ELIGIBLE ACRES.—The term "TBI eligible acres" has the meaning given the term in subparagraph 2.37 of the UVD agreement.

(56) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term "uncontracted municipal and industrial water" means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

(57) UV DECREED ACRES.—

(A) IN GENERAL.—The term "UV decreed acres" means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

(B) EXCLUSION.—The term "UV decreed acres" does not include the reservation of the San Carlos Apache Tribe.

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

(59) UV IMPACT ZONE.—The term "UV impact zone" has the meaning given the term in subparagraph 2.47 of the UVD agreement.

(60) UV SUBJUGATED LAND.—The term "UV subjugated land" has the meaning given the term in subparagraph 2.50 of the UVD agreement.

(61) UVD AGREEMENT.—The term "UVD agreement" means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge, and other parties located in the upper valley of the Gila River, dated September 2, 2004.

(62) UV SIGNATORIES PARTIES.—The term "UV signatories" means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

(63) WATER OM&R FUND.—The term "Water OM&R Fund" means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

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

(65) WATER RIGHTS APPURTENANT TO NEW MEXICO 381 ACRES.—The term "water rights appurtenant to New Mexico 381 acres" means the water rights—

(A) appurtenant to the 380.81 acres described in the decree in Arizona v. California, 376 U.S. 340, 349 (1964); and

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

(66) WATER RIGHTS FOR NEW MEXICO DOMESTIC PURPOSES.—The term "water rights for New Mexico domestic purposes" means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in Arizona v. California, 376 U.S. 340, 350 (1964).

(67) 1994 BIOLOGICAL OPINION.—The term "1994 biological opinion" means the biological opinion, numbered 2–21–90–F–119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

(68) 1996 BIOLOGICAL OPINION.—The term "1996 biological opinion" means the biological opinion, numbered 2–21–95–F–462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

(69) 1999 BIOLOGICAL OPINION.—The term "1999 biological opinion" means the draft biological opinion numbered 2–21–91–F–706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of nonnative aquatic species.

SEC. 3. ARBITRATION.

(a) NO PARTICIPATION BY THE UNITED STATES.—

(1) IN GENERAL.—No arbitration decision rendered pursuant to subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River agreement (including the joint control board agreement attached to exhibit 20.1) shall be considered invalid solely because the United States failed or refused to participate in such arbitration proceedings that resulted in such arbitration decision, so long as the matters in arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement concern aspects of the water rights of the Community, the San Carlos Irrigation Project, or the Miscellaneous Flow Lands (as defined in subparagraph 2.18A of the UVD agreement) and not the water rights of the United States in its own right, any other rights of the United States, or the water rights or any other rights of the United States acting on behalf of or for the benefit of another tribe.

(2) ARBITRATION INEFFECTIVE.—If an issue otherwise subject to arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement cannot be arbitrated or if an arbitration decision will not be effective because the United States cannot or will not participate in the arbitration, then the issue shall be submitted for decision to a court of competent jurisdiction, but not a court of the Community.

(b) PARTICIPATION BY THE SECRETARY.—Notwithstanding any provision of any agreement, exhibit, attachment, or other document ratified by this Act, if the Secretary is required to enter arbitration pursuant to this Act or any such document, the Secretary shall follow the procedures for arbitration established by chapter 5 of title 5, United States Code.

SEC. 4. ANTIDEFICIENCY.

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

(1) the Lower Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), if there are not enough monies in that fund to fulfill those obligations or carry out those activities; or

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

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

Central Arizona Project Settlement Act of 2004.

43 USC 1501 note.

SEC. 101. SHORT TITLE.

This title may be cited as the "Central Arizona Project Settlement Act of 2004".

SEC. 102. FINDINGS.

Congress finds that—

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

(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State.

SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

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

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

SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

(1) REALLOCATION TO ARIZONA INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

(ii) 28,200 acre-feet shall be reallocated to the Tohono O'odham Nation; and

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

(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

(i) such water shall be used to resolve Indian water claims in Arizona, and may be allocated by the Secretary to Arizona Indian Tribes in fulfillment of future Arizona Indian water rights settlement agreements approved by an Act of Congress. In the absence of an Arizona Indian water rights settlement that is approved by an Act of Congress after the date of enactment of this Act, the Secretary shall not allocate any such water until December 31, 2030. Any allocations made by the Secretary after such date shall be accompanied by a certification that the Secretary is making the allocation in order to assist in the resolution of an Arizona Indian water right claim. Any such water allocated to an Arizona Indian Tribe pursuant to a water delivery contract with the Secretary under this clause shall be counted on an acre-foot per acre-foot basis against any claim to water for that Tribe's reservation;

Effective date.

(ii) notwithstanding clause (i), the Secretary shall retain 6,411 acre-feet of water for use for a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation's claims to water in Arizona. If Congress does not approve

this settlement before December 31, 2030, the 6,411 acre-feet of CAP water shall be available to the Secretary under clause (i); and

(iii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

(C) REPORT.—The Secretary, in consultation with Arizona Indian tribes and the State, shall prepare a report for Congress by December 31, 2016, that assesses whether the potential benefits of subparagraph (A) are being conveyed to Arizona Indian tribes pursuant to water rights settlements enacted subsequent to this Act. For those Arizona Indian tribes that have not yet settled water rights claims, the Secretary shall describe whether any active negotiations are taking place, and identify any critical water needs that exist on the reservation of each such Arizona Indian tribe. The Secretary shall also identify and report on the use of unused quantities of agricultural priority water made available to Arizona Indian tribes under subparagraph (A).

(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

(A) IN GENERAL.—Subject to subparagraph (B) and subparagraph 9.3 of the master agreement, the Secretary shall reallocate up to 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

(i) an allocation decision; and

(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

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

(i) before that water may be further allocated—

(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

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

(III) if the recommendation is rejected by the Secretary, the Secretary shall—

(aa) request a revised recommendation from the Director; and

(bb) proceed with any reviews required under subclause (II); and

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

(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

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

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

(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) SUBCONTRACTS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, and in accordance with paragraphs (1) and (2) of subsection (d) and any other applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).

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

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

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

(c) LIMITATIONS.—

(1) AMOUNT.—

(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—

(i) 650,724 acre-feet shall be—

(I) under contract to Arizona Indian tribes; or

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

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

(I) non-Indian municipal and industrial entities;

(II) the Arizona Department of Water Resources; and

(III) non-Indian agricultural entities.

(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(2) TRANSFER.—

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

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

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

(B) EXCEPTIONS.—

(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not

be considered to be a transfer for purposes of subparagraph (A).

(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).

(iii) Notwithstanding subparagraph (A), up to 17,000 acre-feet of CAP municipal and industrial water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, subcontract No. 3–07–30–W0307, dated November 7, 1993, may be reallocated to the Community on execution of an exchange and lease agreement among the Community, the United States, and Asarco.

(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—

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

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

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

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

(i) 100 years; or

(ii) a term—

(I) authorized by Congress; or

(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;

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

(D) shall include the prohibition and exception described in subsection (e); and

(E) shall not require—

(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or

(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.

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

(A) a subcontract for non-Indian agricultural use; or

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

(e) PROHIBITION ON TRANSFER.—

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

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

(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations; and

(B) delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

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

SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) FIRMING PROGRAM.—The Secretary and the State shall develop a firming program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) DUTIES.—

(1) SECRETARY.—The Secretary shall—

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

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

(2) STATE.—The State shall—

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

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

(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

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

SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

(a) APPROVAL OF AGREEMENT.—

(1) IN GENERAL.—Except to the extent that any provision of the master agreement conflicts with any provision of this title, the master agreement is authorized, ratified, and confirmed. To the extent that amendments are executed to make the master agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

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

(3) DEBT COLLECTION.—For any agricultural priority water that is not relinquished under the master agreement, the subcontractor shall continue to pay, consistent with the master agreement, the portion of the debt associated with any retained water under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and the Secretary shall apply such revenues toward the reimbursable section 9(d) debt of that subcontractor.

(4) EFFECTIVE DATE.—The provisions of subsections (b) and (c) shall take effect on the date of enactment of this Act.

(b) NONREIMBURSABLE DEBT.—

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

(2) EXTENSION.—In accordance with the master agreement, the Secretary may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

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

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

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

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

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

(B) served by Central Arizona Project water; or

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

(A) receipt of any benefits under this Act;

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

(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

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

"(f) ADDITIONAL USES OF REVENUE FUNDS.—

"(1) CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection

(d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

"(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

"(A) to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act) in accordance with clause 8(d)(i)(1)(i) of the Repayment Stipulation (as defined in section 2 of the Arizona Water Settlements Act);

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

"(C) to pay $147,000,000 for the rehabilitation of the San Carlos Irrigation Project, of which not more than $25,000,000 shall be available annually consistent with attachment 6.5.1 of exhibit 20.1 of the Gila River agreement, except that the total amount of $147,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

"(D) in addition to amounts made available for the purpose through annual appropriations, as reasonably allocated by the Secretary without regard to any trust obligation on the part of the Secretary to allocate the funding under any particular priority and without regard to priority (except that payments required by clause (i) shall be made first)—

"(i) to make deposits totaling $66,000,000, adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, into the New Mexico Unit Fund as provided by section 212(i) of the Arizona Water Settlements Act in 10 equal annual payments beginning in 2012;

"(ii) upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212, to pay certain of the costs associated with construction of the New Mexico Unit, in addition to any amounts that may be expended from the New Mexico Unit Fund, in a minimum amount of $34,000,000 and a maximum amount of $62,000,000, as provided in section 212 of the Arizona Water Settlements Act, as adjusted to

reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit;

"(iii) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

"(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6–07–03–W0345, and dated July 20, 1998;

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

"(III) section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2004;

"(iv) to pay $52,396,000 for the rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4) of the Arizona Water Settlements Act, of which not more than $9,000,000 shall be available annually, except that the total amount of $52,396,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

"(v) to pay other costs specifically identified under—

"(I) sections 213(g)(1) and 214 of the Arizona Water Settlements Act; and

"(II) the Southern Arizona Water Rights Settlement Amendments Act of 2004;

"(vi) to pay a total of not more than $250,000,000 to the credit of the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development Fund, for use for Indian water rights settlements in Arizona approved by Congress after the date of enactment of this Act, subject to the requirement that, notwithstanding any other provision of this Act, any funds credited to the Future Indian Water Settlement Subaccount that are not used in furtherance of a congressionally approved Indian water rights settlement in Arizona by December 31, 2030, shall be returned to the main Lower Colorado Basin Development Fund for expenditure on authorized uses pursuant to this Act, provided that any interest earned on funds held in the Future Indian Water Settlement Subaccount shall remain in such subaccount until disbursed or returned in accordance with this section;

"(vii) to pay costs associated with the installation of gages on the Gila River and its tributaries to measure the water level of the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement in an amount not to exceed $500,000; and

"(viii) to pay the Secretary's costs of implementing the Central Arizona Project Settlement Act of 2004;

"(E) in addition to amounts made available for the purpose through annual appropriations—

"(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O'odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

"(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, payments to those tribes shall be made from funds in the Future Indian Water Settlement Subaccount; and

"(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

"(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

"(A) to pay annually the fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

"(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

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

"(D) to reimburse the general fund of the Treasury for costs previously paid under subparagraphs (B) through (E) of paragraph (2);

"(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), made nonreimbursable under section 106(b) of the Arizona Water Settlements Act;

"(F) to pay to the general fund of the Treasury the difference between—

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

"(ii) any costs allocated to reimbursable functions under any Central Arizona Project cost allocation undertaken by the United States; and

"(G) for deposit in the general fund of the Treasury.

"(4) INVESTMENT OF AMOUNTS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not,

in the judgment of the Secretary of the Interior, required to meet current needs of the development fund.

"(B) PERMITTED INVESTMENTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, including any provision requiring the consent or concurrence of any party, the investments referred to in subparagraph (A) shall include 1 or more of the following:

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

"(II) Investments in obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds.

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

"(ii) LAWFUL INVESTMENTS.—For purposes of clause (i), obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds includes any of the following securities or securities with comparable language concerning the investment of federally managed funds:

"(I) Obligations of the United States Postal Service as authorized by section 2005 of title 39, United States Code.

"(II) Bonds and other obligations of the Tennessee Valley Authority as authorized by section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4).

"(III) Mortgages, obligations, or other securities of the Federal Home Loan Mortgage Corporation as authorized by section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452).

"(IV) Bonds, notes, or debentures of the Commodity Credit Corporation as authorized by section 4 of the Act of March 4, 1939 (15 U.S.C. 713a–4).

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

"(i) on original issue at the issue price; or

"(ii) by purchase of outstanding obligations at the market price.

"(D) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

"(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.

"(5) AMOUNTS NOT AVAILABLE FOR CERTAIN FEDERAL OBLIGATIONS.—None of the provisions of this section, including paragraphs (2)(A) and (3)(A), shall be construed to make any

of the funds referred to in this section available for the fulfillment of any Federal obligation relating to the payment of OM&R charges if such obligation is undertaken pursuant to Public Law 95–328, Public Law 98–530, or any settlement agreement with the United States (or amendments thereto) approved by or pursuant to either of those acts.".

43 USC 1543 note.

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

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

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

Federal Register, publication.

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

Deadline.

(B) January 1, 2010.

43 USC 1543.

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

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

(2) in section 403(e), by deleting the first word and inserting "Except as provided in subsection (f), revenues".

SEC. 108. EFFECT.

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

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

(2) any rights to use Colorado River water existing on the date of enactment of this Act.

SEC. 109. REPEAL.

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

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to comply with—

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

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

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

(b) CONSTRUCTION COSTS.—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

(c) AGREEMENTS.—

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

(2) REQUIREMENTS.—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision

requiring that the contractor manage the funds through interest-bearing investments.

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

43 USC 1501 note.

(a) IN GENERAL.—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

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

Effective date.

(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

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

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

Gila River Indian Community Water Rights Settlement Act of 2004.
43 USC 1501 note.

SEC. 201. SHORT TITLE.

This title may be cited as the "Gila River Indian Community Water Rights Settlement Act of 2004".

SEC. 202. PURPOSES.

The purposes of this title are—

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

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

(3) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement;

(4) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title; and

(5) to authorize and direct the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement to allow the Secretary to exercise the rights authorized by subsections (d) and (f) of section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

(a) IN GENERAL.—Except to the extent that any provision of the Gila River agreement conflicts with any provision of this title, the Gila River agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the Gila River agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) EXECUTION OF AGREEMENT.—To the extent that the Gila River agreement does not conflict with this title, the Secretary

is directed to and shall execute the Gila River agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Gila River agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE GILA RIVER AGREEMENT.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the Gila River agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

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

(1) IN GENERAL.—In addition to any obligations of the Secretary with respect to the San Carlos Irrigation Project, including any operation or maintenance responsibility existing on the date of enactment of this Act, the Secretary shall—

(A) in accordance with exhibit 20.1 to the Gila River agreement, provide for the rehabilitation of the San Carlos Irrigation Project water diversion and delivery works with the funds provided for under section 403(f)(2) of the Colorado River Basin Project Act; and

(B) provide electric power for San Carlos Irrigation Project wells and irrigation pumps at the Secretary's direct cost of transmission, distribution, and administration, using the least expensive source of power available.

(2) JOINT CONTROL BOARD AGREEMENT.—

(A) IN GENERAL.—Except to the extent that it is in conflict with this title, the Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement, including all exhibits to the joint control board agreement requiring the signature of the Secretary and any amendments necessary to the joint control board agreement consistent with this title.

(B) CONTROLS.—The joint control board agreement shall contain the following provisions, among others:

(i) The Secretary, acting through the Bureau of Indian Affairs, shall continue to be responsible for the operation and maintenance of Picacho Dam and Coolidge Dam and Reservoir, and for scheduling and delivering water to the Community and the District through the San Carlos Irrigation Project joint works.

Deadlines.

(ii) The actions and decisions of the joint control board that pertain to construction and maintenance of those San Carlos Irrigation Project joint works that are the subject of the joint control board agreement

shall be subject to the approval of the Secretary, acting through the Bureau of Indian Affairs within 30 days thereof, or sooner in emergency situations, which approval shall not be unreasonably withheld. Should a required decision of the Bureau of Indian Affairs not be received by the joint control board within 60 days following an action or decision of the joint control board, the joint control board action or decision shall be deemed to have been approved by the Secretary.

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

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

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

(B) SUPPLEMENTARY REPAYMENT CONTRACT.—Prior to the advance of any funds made available to the San Carlos Irrigation and Drainage District pursuant to the provisions of this Act, the Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

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

(I) the San Carlos Irrigation and Drainage District—

(aa) may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law; and

(bb) shall be subject to the value engineering program of the Bureau of Reclamation established pursuant to OMB Circular A–131; and

(II) in accordance with FAR Part 48.101(b), the incentive returned to the contractor through this "Incentive Clause" shall be 55 percent after the Contractor is reimbursed for the allowable costs of developing and implementing the proposal and the Government shall retain 45 percent of such savings in the form of reduced expenditures;

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

(iii) a portion of the San Carlos Irrigation and Drainage District's share of the rehabilitation costs

specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

(5) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

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

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

(B) any other financial responsibility of the Secretary relating to operation and maintenance of the San Carlos Irrigation Project existing on the date of enactment of this Act.

SEC. 204. WATER RIGHTS.

(a) RIGHTS HELD IN TRUST; ALLOTTEES.—

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

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

(B) the availability of funding under title I for the rehabilitation of the San Carlos Irrigation Project and for other benefits;

(C) the availability of water from the CAP system and other sources after the enforceability date, which will supplement less secure existing water supplies; and

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

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

(3) ALLOTTED LAND.—As specified in and provided for under this Act—

(A) agricultural allottees, other than allottees with rights under the Globe Equity Decree, shall be entitled to a just and equitable allocation of water from the Community for irrigation purposes from the water resources described in the Gila River agreement;

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

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

(ii) the benefit of the rehabilitation of the San Carlos Irrigation Project as provided in this Act, a more secure source of water, and other benefits under this Act;

(C) the water rights and resources and other benefits provided by this Act are a complete substitution of any

rights that may have been held by, or any claims that may have been asserted by, the allottees before the date of enactment of this Act for land within the exterior boundaries of the Reservation;

(D) any entitlement to water of allottees for land located within the exterior boundaries of the Reservation shall be satisfied by the Community using the water resources described in subparagraph 4.1 in the Gila River agreement;

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

(F) following exhaustion of remedies on claims relating to section 7 of the Act of February 8, 1887 (25 U.S.C. 381), a claimant may petition the Secretary for relief.

(4) ACTIONS, CLAIMS, AND LAWSUITS.—

(A) IN GENERAL.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, under Federal, State, or other law.

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

(b) REALLOCATION.—

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

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

(B) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3–0907–0930–09W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

(C) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement of up to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3–07–30–W0307, dated November 7, 1993; and

(D) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

(2) SOLE AUTHORITY.—In accordance with this section, the Community shall have the sole authority, subject to the Secretary's approval pursuant to section 205(a)(2), to lease, distribute, exchange, or allocate the CAP water described in this subsection, except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land. Nothing in this paragraph shall affect the validity of any lease or exchange ratified in section 205(c) or 205(d).

(c) WATER SERVICE CAPITAL CHARGES.—The Community shall not be responsible for water service capital charges for CAP water.

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the date of enactment of this Act, the costs associated with the delivery of water described in subsection (b), whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

(1) shall be nonreimbursable; and

(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

(e) APPLICATION OF PROVISIONS.—

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

(2) WATER CODE.—

Deadline.

(A) IN GENERAL.—Not later than 18 months after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law (including subsection (a)(3)), that—

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

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

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

(I) the Community shall manage, regulate, and control the water resources described in the Gila River agreement and allocate water to all water users on the Reservation pursuant to the water code;

(II) the Community shall establish conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in the Gila River agreement;

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

(IV) charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without

regard to the status of the Reservation land on which the water is used;

(V) there is a process by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with this title;

(VI) there is a due process system for the consideration and determination by the Community of any request by any water user on the Reservation (including water users on allotted land), for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions; and

(VII) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (a)(3)(F).

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

(C) INCLUSION OF REQUIREMENT IN WATER CODE.—The Community is authorized to and shall include in the water code the requirement in subparagraph (A)(VII) that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States.

(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community and allottees by the Gila River agreement and this Act until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described in the Gila River agreement, subject to paragraph (2), except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land.

SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

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

(1) the contract shall be—

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

(B) without limit as to term;

(2) the Community may, with the approval of the Secretary, including approval as to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381)—

(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

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

(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Community as consideration under any such leases or options to lease and exchanges or options to exchange; or

(ii) the expenditure of such funds;

(4)(A) all Community CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

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

(A) shall be nonreimbursable; and

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

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

(b) AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.—To the extent it is not in conflict with the provisions of this Act, the Amended and Restated Community CAP Water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the contract. To the extent amendments are executed to make the Amended and Restated Community CAP Water Delivery Contract consistent with this title, such amendments are also authorized, ratified, and confirmed.

(c) LEASES.—To the extent they are not in conflict with the provisions of this Act, the leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the leases. To the extent amendments are executed to make such leases consistent with this title, such amendments are also authorized, ratified, and confirmed.

(d) RECLAIMED WATER EXCHANGE AGREEMENT.—To the extent it is not in conflict with the provisions of this Act, the Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement. To the extent amendments are executed to make the Reclaimed Water Exchange Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

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

(f) PROHIBITIONS.—

(1) USE OUTSIDE THE STATE.—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

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

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

SEC. 206. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to land

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

(b) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in section 204(a), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

SEC. 207. WAIVER AND RELEASE OF CLAIMS.

(a) IN GENERAL.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE COMMUNITY AND THE UNITED STATES ON BEHALF OF THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of their obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

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

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

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

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

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee

land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

(B) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES AS TRUSTEE FOR THE ALLOTTEES.—Except as provided in subparagraph 25.12 of the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever; and

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

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date;

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

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date.

(C) CLAIMS FOR INJURY TO WATER QUALITY BY THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims, and to agree to waive its right to request the United States to bring any claims, against the State (or any agency

or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i) past and present claims for injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq. as amended) arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land;

(ii) past, present, and future claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.), arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(iii) claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–9281 et seq.), that result from—

(I) the delivery of water to the Community;

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

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

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation,

except that the waiver provided in this clause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this clause.

(D) PAST AND PRESENT CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for injury to water quality where all of the following conditions are met:

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

(ii) The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation.

(iii) The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.).

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

(E) FUTURE CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, in its own right and as trustee for the Community, its members and allottees, as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of the following claims for injury or threat of injury to water quality arising after December 31, 2002, against the State (or any agency or political subdivision of the State) or any

other person, entity, corporation, or municipal corporation under Federal, State, or other law:

(i) All common law claims for injury or threat of injury to water quality where the injury or threat of injury asserted is to the Community's, Community members' or allottees' interests in trust land, water, or natural resources located within the exterior boundaries of the Reservation or within off-Reservation trust lands caused by—

(I) the delivery of water to the Community;

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

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

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(ii) All natural resource damage claims for injury or threat of injury to water quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, its members or allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or off-Reservation trust lands, caused by—

(I) the delivery of water to the Community;

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

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

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

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

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the Community, on behalf of the Community and Community members (but not

members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

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

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

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

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

(ii) EFFECT OF WAIVER.—The waiver provided for in this subparagraph is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier. Effective date.

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

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community, members, or allottees.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

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

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water

quality, or injury to trust property located within the exterior boundaries of the Reservation.

Effective date.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subsection is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(H) UNITED STATES ENFORCEMENT AUTHORITY.—Except as provided in subparagraphs (D), (E), and (G), nothing in this Act or the Gila River agreement affects any right of the United States, or the State, to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(2) CLAIMS FOR SUBSIDENCE BY THE COMMUNITY, ALLOTTEES, AND THE UNITED STATES ON BEHALF OF THE COMMUNITY AND ALLOTTEES.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

(3) CLAIMS AGAINST THE COMMUNITY.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this Act, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

(i) past and present claims for subsidence damage to trust land within the exterior boundaries of the Reservation, off-Reservation trust lands, and fee land arising from time immemorial through the enforceability date; and

(ii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II.

(4) CLAIMS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of

any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

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

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

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

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

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law;

(v) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002; and

(vi) past, present, and future claims relating to failure to assert any claims expressly waived pursuant to section 207(a)(1) (C) through (E).

(B) EXHAUSTION OF REMEDIES.—To the extent that members in their capacity as allottees assert that this title impairs or alters their present or future claims to water or constitutes an injury to present or future water rights, the members shall be required to exhaust their

remedies pursuant to the tribal water code prior to asserting claims against the United States.

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

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

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever; and

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

(ii)(I) past, present, and future claims for injuries to water rights for land within the exterior boundaries of the Reservation or the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project, resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement; and

(IV) claims for injury to water rights arising after the enforceability date for water rights transferred to the Project pursuant to section 211 resulting from the diversion, pumping or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

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

on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of and relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

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

(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Except as provided in the UVD agreement, to the extent consistent with this section, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release of the following claims under Federal, State, or other law against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial, and thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors;

(ii)(I) past and present claims for injury to water rights for lands within the exterior boundaries of the Reservation arising from time immemorial, through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement; and

(III) claims for injury to water rights for land within the exterior boundaries of the Reservation arising after the enforceability date resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary

to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

Records.

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

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

(C) ADDITIONAL WAIVER OF CERTAIN CLAIMS BY THE UNITED STATES.—Except as provided in the UVD Agreement, the United States (to the extent the waiver and release authorized by this subparagraph is not duplicative of the waiver and release provided in subparagraph (B) and to the extent the United States holds legal title to (but not the beneficial interest in) the water rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands) shall execute a waiver and release of the following claims under Federal, State or other law against the UV signatories and the UV Non-signatories (and the predecessors of each) for—

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

(ii)(I) past and present claims for injury to water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) claims for injury to water rights arising after the enforceability date for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands resulting from the diversion, pumping, or use of water in a manner that is consistent with

and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and Records.

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

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

(6) TRIBAL WATER QUALITY STANDARDS.—The Community, on behalf of the Community and Community members, as part of the performance of its obligations under the Gila River agreement, is authorized to agree never to adopt any water quality standards, or ask the United States to promulgate such standards, that are more stringent than water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State or the United States of more stringent water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on—

(A) any water delivery system used to deliver water to the Community; or

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

(b) EFFECTIVENESS OF WAIVER AND RELEASES.—

(1) IN GENERAL.—The waivers under paragraphs (1) and (3) through (5) of subsection (a) shall become effective on the enforceability date. Effective date.

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

(A) the Community, a Community member, or an allottee; and

(B) the United States, on behalf of the Community, a Community member, or an allottee.

(c) ENFORCEABILITY DATE.—

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

(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the

Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

(B) the Secretary has fulfilled the requirements of—

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

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

(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

(D) $53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

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

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

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

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

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

(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

(ii) authorize the firming program required by section 105; and

(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

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

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

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

(1) the term "land within the exterior boundaries of the Reservation" includes—

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

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

(2) the term "off-Reservation" refers to land located outside the exterior boundaries of the Reservation (as defined in paragraph (1)).

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

(1) all land held by the United States in trust for the Community, Community members, and allottees and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to water other than those specifically granted to the Community and the United States for the Reservation pursuant to paragraph 4.0 of the Gila River agreement; and

(2) all water usage on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in determining compliance by the Community and the United States with the limitations on total diversions specified in subparagraph 4.2 of the Gila River agreement.

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

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

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

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

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

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

(3) subsection (b).

(d) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Community only spend any funds, as provided in the Gila River agreement, to assist in paying operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

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

(3) LIABILITY.—If the Community exercises the right to withdraw monies from the Water OM&R Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Community shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this section that the Community does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Community remaining in the Water OM&R Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Community shall submit to the Secretary an annual report that describes all expenditures from the Water OM&R Fund during the year covered by the report.

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

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

SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

(a) IN GENERAL.—Subject to the availability of funds and consistent with the provisions of section 107(a), the Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

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

(1) subsidence damage; and

(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any

length or depth, which settling or cracking is caused by pumping of underground water.

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

(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

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

SEC. 210. AFTER-ACQUIRED TRUST LAND.

(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

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

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

(d) ACCEPTANCE OF LAND IN TRUST STATUS.—

(1) IN GENERAL.—If the Community acquires legal fee title to land that is located within the exterior boundaries of the Reservation (as defined in section 207(d)), the Secretary shall accept the land in trust status for the benefit of the Community upon receipt by the Secretary of a submission from the Community that provides evidence that—

(A) the land meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of the Community's submission; and

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

(2) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (1) shall be deemed part of the Community's reservation.

SEC. 211. REDUCTION OF WATER RIGHTS.

(a) REDUCTION OF TBI ELIGIBLE ACRES.—

(1) IN GENERAL.—Consistent with this title and as provided in the UVD agreement to assist in reducing the total water demand for irrigation use in the upper valley of the Gila River, the Secretary shall provide funds to the Gila Valley Irrigation District and the Franklin Irrigation District (hereafter in this section referred to as "the Districts") for the acquisition of UV decreed water rights and the extinguishment of those rights to decrease demands on the Gila River, or severance and transfer of those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law.

Deadlines.

(2) ACQUISITIONS.—

(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the third calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands).

(B) REQUIRED PHASE II ACQUISITION.—Not later than December 31 of the sixth calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands). The reduction of TBI eligible acres under this subparagraph shall be in addition to that accomplished under subparagraph (A).

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

(D) METHODS OF ACQUISITION FOR RIGHTS ACQUIRED PURSUANT TO SUBPARAGRAPHS (A) AND (B).—

(i) DETERMINATION OF VALUE.—

(I) APPRAISALS.—Not later than December 31 of the first calendar year that begins after the enforceability date in the case of the phase I acquisition, and not later than December 31 of the fourth calendar year that begins after the enforceability date in the case of the phase II acquisition, the Districts shall submit to the Secretary an appraisal of the average value of water rights appurtenant to 1,000 TBI eligible acres.

Notification.

(II) REVIEW.—The Secretary shall review the appraisal submitted to ensure its consistency with the Uniform Appraisal Standards for Federal Land Acquisition and notify the Districts of the results of the review within 30 days of submission of the appraisal. In the event that the Secretary finds that the appraisal is not consistent with such standards, the Secretary shall so notify the Districts with a full explanation of the reasons for

that finding. Within 60 days of being notified by the Secretary that the appraisal is not consistent with such Standards, the Districts shall resubmit an appraisal to the Secretary that is consistent with such standards. The Secretary shall review the resubmitted appraisal to ensure its consistency with nationally approved standards and notify the Districts of the results of the review within 30 days of resubmission. Notification.

(III) PETITION.—In the event that the Secretary finds that such resubmitted appraisal is not consistent with those Standards, either the Districts or the Secretary may petition a Federal court in the District of Arizona for a determination of whether the appraisal is consistent with nationally approved Standards. If such court finds the appraisal is so consistent, the value stated in the appraisal shall be final for all purposes. If such court finds the appraisal is not so consistent, the court shall determine the average value of water rights appurtenant to 1,000 TBI eligible acres.

(IV) NO OBJECTION.—If the Secretary does not object to an appraisal within the time periods provided in this clause (i), the value determined in the appraisal shall be final for all purposes.

(ii) APPRAISAL.—In determining the value of water rights pursuant to this paragraph, any court, the Districts, the Secretary, and any appraiser shall take into account the obligations the owner of the land (to which the rights are appurtenant) will have after acquisition for phreatophyle control as provided in the UVD agreement and to comply with environmental laws because of the acquisition and severance and transfer or extinguishment of the water rights.

(iii) PAYMENT.—No more than 30 days after the average value of water rights appurtenant to 1,000 acres of land has been determined in accordance with clauses (i) and (ii), the Secretary shall pay 125 percent of such values to the Districts.

(iv) REDUCTION OF ACREAGE.—No later than December 31 of the first calendar year that begins after each such payment, the Districts shall acquire the UV decreed water rights appurtenant to one thousand (1,000) acres of lands that would have been included in the calculation of TBI eligible acres (other than special hot lands), if the calculation of TBI eligible acres had been undertaken at the time of acquisition. To the extent possible, the Districts shall select the rights to be acquired in compliance with subsection 5.3.7 of the UVD agreement.

(3) REDUCTION OF TBI ELIGIBLE ACRES.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

(4) ALTERNATIVES TO ACQUISITION.—

(A) SPECIAL HOT LANDS.—After the payments provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

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

(B) FALLOWING AGREEMENT.—After the payment provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

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

(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a fallowing agreement authorized under the UVD agreement.

(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

(A) IN GENERAL.—Of the UV decreed water rights acquired by the Districts pursuant to subparagraphs (A) and (B) of paragraph (2), the Districts shall, in accordance with all applicable law and the UVD agreement—

(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a fallowing agreement authorized under paragraph (4)(B)).

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

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

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

(iii) cause to be transferred the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

(6) MITIGATION.—To the extent the Districts, after the payments provided by paragraph (2)(D)(iii), do not comply with

the acquisition requirements of paragraph (2) or otherwise comply with the alternatives to acquisition provided by paragraph (4), the Districts shall provide mitigation to the San Carlos Irrigation Project as provided by the UVD agreement.

(b) ADDITIONAL REDUCTIONS.—

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

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

(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD signatories other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT.

(a) REQUIRED APPROVALS.—The Secretary shall not execute the Gila River agreement pursuant to section 203(b), and the agreement shall not become effective, unless and until the New Mexico Consumptive Use and Forbearance Agreement has been executed by all signatory parties and approved by the State of New Mexico.

(b) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(1) IN GENERAL.—Except to the extent a provision of the New Mexico Consumptive Use and Forbearance Agreement conflicts with a provision of this title, the New Mexico Consumptive Use and Forbearance Agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the New Mexico Consumptive Use and Forbearance Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXECUTION.—To the extent the New Mexico Consumptive Use and Forbearance Agreement does not conflict with this title, the Secretary shall execute the New Mexico Consumptive Use and Forbearance Agreement, including all exhibits to which the Secretary is a party to the New Mexico Consumptive Use and Forbearance Agreement and any amendments to the New Mexico Consumptive Use and Forbearance necessary to make it consistent with this title.

Deadlines.
Notice.

(c) NEW MEXICO UNIT AGREEMENT.—The Secretary is authorized to execute the New Mexico Unit Agreement, which agreement shall be executed within 1 year of receipt by the Secretary of written notice from the State of New Mexico that the State of New Mexico intends to build the New Mexico Unit, which notice must be received not later than December 31, 2014. The New Mexico Unit Agreement shall, among other things, provide that—

(1) all funds from the Lower Colorado River Basin Development Fund disbursed in accordance with section 403(f)(2)(D)(i) and (ii) of the Colorado River Basin Project Act (as amended by section 107(a)) shall be nonreimbursable (and such costs

shall be excluded from the repayment obligation, if any, of the NM CAP entity under the New Mexico Unit Agreement);

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

(3) upon request by the NM CAP entity, the Secretary shall transfer to the NM CAP entity the responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those responsibilities, provided that the Secretary shall not transfer the authority to divert water pursuant to the New Mexico Consumptive Use and Forbearance Agreement, provided further that the Secretary, shall remain responsible to the parties to the New Mexico Consumptive Use and Forbearance Agreement for the NM CAP entity's compliance with the terms and conditions of that agreement;

(4) the Secretary shall divert water and otherwise exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement solely for the benefit of the NM CAP entity and for no other purpose;

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

(6) the Secretary shall provide a waiver of sovereign immunity for the sole and exclusive purpose of resolving a dispute in Federal court of any claim, dispute, or disagreement arising under the New Mexico Unit Agreement.

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

(1) by striking paragraph (1) and inserting the following:

Contracts.

"(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in Arizona v. California (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.";

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) COST LIMITATION.—In determining payment for CAP water under the New Mexico Consumptive Use and Forbearance Agreement, the NM CAP entity shall be responsible only for its share

of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the NM CAP entity.

(f) EXCLUSION OF COSTS.—For the purpose of determining the allocation and repayment of costs of the Central Arizona Project under the CAP Repayment Contract, the costs associated with the New Mexico Unit and the delivery of Central Arizona Project water pursuant to the New Mexico Consumptive Use and Forbearance Agreement shall be nonreimbursable, and such costs shall be excluded from the Central Arizona Water Conservation District's repayment obligation.

(g) NEW MEXICO UNIT CONSTRUCTION AND OPERATIONS.—The Secretary is authorized to design, build, and operate and maintain the New Mexico Unit. Upon request by the State of New Mexico, the Secretary shall transfer to the NM CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

(h) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—Upon execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT AND THE NEW MEXICO UNIT AGREEMENT.—Execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance. Upon request by the State of New Mexico to the Secretary, the State of New Mexico shall be designated as joint lead agency with respect to environmental compliance.

(i) NEW MEXICO UNIT FUND.—The Secretary shall deposit the amounts made available under paragraph (2)(D)(i) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.

(j) ADDITIONAL FUNDING FOR NEW MEXICO UNIT.—The Secretary shall pay for an additional portion of the costs of constructing the New Mexico Unit from funds made available under paragraph Deadlines.

(2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) on a construction schedule basis, up to a maximum amount under this subparagraph (j) of $34,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, upon satisfaction of the conditions that—

Notices.

(1) the State of New Mexico must provide notice to the Secretary in writing not later than December 31, 2014, that the State of New Mexico intends to have constructed or developed the New Mexico Unit; and

Federal Register, publication.

(2) the Secretary must have issued in the Federal Register not later than December 31, 2019, a Record of Decision approving the project based on an environmental analysis required pursuant to applicable Federal law and on a demonstration that construction of a project for the New Mexico Unit that would deliver an average annual safe yield, based on a 50-year planning period, greater than 10,000 acre feet per year, would not cost more per acre foot of water diverted than a project sized to produce an average annual safe yield of 10,000 acre feet per year. If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.

(k) RATE OF RETURN EXCEEDING 4 PERCENT.—If the rate of return on carryover funds held in the Lower Colorado Basin Development Fund on the date that construction of the New Mexico Unit is initiated exceeds an average effective annual rate of 4 percent for the period beginning on the date of enactment of this Act through the date of initiation of construction of the New Mexico Unit, the Secretary shall pay an additional portion of the costs of the construction costs associated with the New Mexico Unit, on a construction schedule basis, using funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)). The amount of such additional payments shall be equal to 25 percent of the total return on the carryover funds earned during the period in question that is in excess of a return on such funds at an annual average effective return of 4 percent, up to a maximum total of not more than $28,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit.

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

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

SEC. 213. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Gila River agreement or signatory to an exhibit executed pursuant to section 203(b) or to the New Mexico Consumptive Use and Forbearance Agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement) or the New Mexico Consumptive Use and Forbearance Agreement, and names the United States or the Community as a party, or if any other landowner or water user in the Gila River basin in Arizona (except any party referred to in subparagraph 28.1.4 of the Gila River agreement) files a lawsuit relating only and directly to the interpretation or enforcement of subparagraph 6.2, subparagraph 6.3, paragraph 25, subparagraph 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the Gila River agreement, naming the United States or the Community as a party—

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

(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement).

(b) EFFECT OF ACT.—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

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

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

(e) COMMUNITY REPAYMENT CONTRACT.—To the extent it is not in conflict with this Act, the Secretary is directed to and shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community. To the extent amendments are executed to make Amendment No. 1 consistent with this title, such amendments are also authorized, ratified, and confirmed.

(f) SALT RIVER PROJECT RIGHTS AND CONTRACTS.—

(1) IN GENERAL.—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, as amended, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to

the Community under the Gila River agreement, are authorized, ratified, and confirmed.

(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights described in paragraph (1) shall be determined in an appropriate proceeding in State court.

(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain authority and responsibility existing on the date of enactment of this Act for decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the 1917 agreement, as amended, described in paragraph (1).

(g) UV IRRIGATION DISTRICTS.—

(1) IN GENERAL.—As partial consideration for obligations the UV irrigation districts shall be undertaking, the obligation to comply with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) to the New Mexico Consumptive Use and Forbearance Agreement, the Gila Valley Irrigation District, in 2010, shall receive funds from the Secretary in an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of this Act in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(2) RESTRICTION.—The funds to be received by the Gila Valley Irrigation District shall be used solely for the purpose of developing programs or constructing facilities to assist with mitigating the risks and costs associated with compliance with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) of the New Mexico Consumptive and Forbearance Agreement, and for no other purpose.

(h) LIMITATION ON LIABILITY OF UNITED STATES.—

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

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

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

(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(i) BLUE RIDGE PROJECT TRANSFER AUTHORIZATION.—

(1) DEFINITIONS.—In this subsection:

(A) BLUE RIDGE PROJECT.—The term "Blue Ridge Project" means the water storage reservoir known as "Blue Ridge Reservoir" situated in Coconino and Gila Counties, Arizona, consisting generally of—

(i) Blue Ridge Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and

fiber optic lines, pumps, machinery, tools, and appliances; and

(ii) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with Blue Ridge Reservoir.

(B) SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.—The term "Salt River Project Agricultural Improvement and Power District" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(2) TRANSFER OF TITLE.—The United States, acting through the Secretary of the Interior, shall accept from the Salt River Project Agricultural Improvement and Power District the transfer of title to the Blue Ridge Project. The transfer of title to the Blue Ridge Project from the Salt River Project Agricultural Improvement and Power District to the United States shall be without cost to the United States. The transfer, change of use or change of place of use of any water rights associated with the Blue Ridge Project shall be made in accordance with Arizona law.

(3) USE AND BENEFIT OF SALT RIVER FEDERAL RECLAMATION PROJECT.—

(A) IN GENERAL.—Subject to subparagraph (B), the United States shall hold title to the Blue Ridge Project for the exclusive use and benefit of the Salt River Federal Reclamation Project.

(B) AVAILABILITY OF WATER.—Up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in Northern Gila County, Arizona, without cost to the Salt River Federal Reclamation Project.

(4) TERMINATION OF JURISDICTION.—

(A) LICENSING AND REGULATORY AUTHORITY.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Federal Energy Regulatory Commission shall have no further licensing and regulatory authority over Project Number 2304, the Blue Ridge Project, located within the State.

(B) ENVIRONMENTAL LAWS.—All other applicable Federal environmental laws shall continue to apply to the Blue Ridge Project, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) CARE, OPERATION, AND MAINTENANCE.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the United States and the Salt River Valley Water Users' Association, dated September 6, 1917, as amended.

(6) C.C. CRAGIN DAM & RESERVOIR.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), Blue Ridge Dam and Reservoir shall thereafter be known as the "C.C. Cragin Dam and Reservoir".

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

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

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

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) REHABILITATION OF IRRIGATION WORKS.—

(A) IN GENERAL.—There is authorized to be appropriated $52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

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

(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed $4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

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

(A) retire $13,900,000, minus any amounts appropriated for this purpose, of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

(B) pay the interest accrued on that amount.

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

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

(i) all necessary environmental compliance activities undertaken by the Secretary associated with the Gila River agreement and this title;

(ii) any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the construction of the diversion and delivery facilities of the water referred to in section 204 for use on the reservation; and

(iii) no more than 50 percent of the cost of any mitigation measures adopted by the Secretary that are the responsibility of the Community associated

with the diversion or delivery of the water referred to in section 204 for use on the Reservation, other than any responsibility related to water delivered to any other person by lease or exchange; and

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

(7) UV IRRIGATION DISTRICTS.—There are authorized to be appropriated such sums as are necessary to pay the Gila Valley Irrigation District an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of the Arizona Water Settlements Act of 2004 in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(b) IDENTIFIED COSTS.—

(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be identified costs for purposes of paragraph (2)(D)(v)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

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

SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

43 USC 1501 note.

If the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) except for section 213(i), this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

(2) any amounts appropriated under paragraphs (1) through (7) of section 214(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

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

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

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

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

Southern Arizona Water Rights Settlement Amendments Act of 2004.

"TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

"SEC. 301. SHORT TITLE.

"This title may be cited as the 'Southern Arizona Water Rights Settlement Amendments Act of 2004'.

"SEC. 302. PURPOSES.

"The purposes of this title are—

"(1) to authorize, ratify, and confirm the agreements referred to in section 309(h);

"(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

"(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under those agreements and this title.

"SEC. 303. DEFINITIONS.

"In this title:

"(1) ACRE-FOOT.—The term 'acre-foot' means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

"(2) AFTER-ACQUIRED TRUST LAND.—The term 'after-acquired trust land' means land that—

"(A) is located—

"(i) within the State; but

"(ii) outside the exterior boundaries of the Nation's Reservation; and

"(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

"(3) AGREEMENT OF DECEMBER 11, 1980.—The term 'agreement of December 11, 1980' means the contract entered into by the United States and the Nation on December 11, 1980.

"(4) AGREEMENT OF OCTOBER 11, 1983.—The term 'agreement of October 11, 1983' means the contract entered into by the United States and the Nation on October 11, 1983.

"(5) ALLOTTEE.—The term 'allottee' means a person that holds a beneficial real property interest in an Indian allotment that is—

"(A) located within the Reservation; and

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

"(6) ALLOTTEE CLASS.—The term 'allottee class' means an applicable plaintiff class certified by the court of jurisdiction in—

"(A) the Alvarez case; or

"(B) the Tucson case.

"(7) ALVAREZ CASE.—The term 'Alvarez case' means the first through third causes of action of the third amended complaint in Alvarez v. City of Tucson (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed April 21, 1993)).

"(8) APPLICABLE LAW.—The term 'applicable law' means any applicable Federal, State, tribal, or local law.

"(9) ASARCO.—The term 'Asarco' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

"(10) ASARCO AGREEMENT.—The term 'Asarco agreement' means the agreement by that name attached to the Tohono O'odham settlement agreement as exhibit 13.1.

"(11) CAP REPAYMENT CONTRACT.—

"(A) IN GENERAL.—The term 'CAP repayment contract' means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

"(B) INCLUSIONS.—The term 'CAP repayment contract' includes all amendments to and revisions of that contract.

"(12) CENTRAL ARIZONA PROJECT.—The term 'Central Arizona Project' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

"(13) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term 'Central Arizona Project link pipeline' means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to Station 293+36.

"(14) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term 'Central Arizona Project service area' means—

"(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central Arizona Project water; and

"(B) any expansion of that area under applicable law.

"(15) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term 'Central Arizona Water Conservation District' means the political subdivision of the State that is the contractor under the CAP repayment contract.

"(16) COOPERATIVE FARM.—The term 'cooperative farm' means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

"(17) COOPERATIVE FUND.—The term 'cooperative fund' means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

"(18) DELIVERY AND DISTRIBUTION SYSTEM.—

"(A) IN GENERAL.—The term 'delivery and distribution system' means—

"(i) the Central Arizona Project aqueduct;

"(ii) the Central Arizona Project link pipeline; and

"(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

"(B) INCLUSIONS.—The term 'delivery and distribution system' includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

"(19) EASTERN SCHUK TOAK DISTRICT.—The term 'eastern Schuk Toak District' means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

"(20) ENFORCEABILITY DATE.—The term 'enforceability date' means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

"(21) EXEMPT WELL.—The term 'exempt well' means a water well—

"(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

"(B) the water from which is used for—

"(i) the supply, service, or activities of households or private residences;

"(ii) landscaping;

"(iii) livestock watering; or

"(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

"(I) sale;

"(II) human consumption; or

"(III) use as feed for livestock or poultry.

"(22) FEE OWNER OF ALLOTTED LAND.—The term 'fee owner of allotted land' means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

"(23) FICO.—The term 'FICO' means collectively the Farmers Investment Co., an Arizona corporation of that name, and the Farmers Water Co., an Arizona corporation of that name.

"(24) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(25) INJURY TO WATER QUALITY.—The term 'injury to water quality' means any contamination, diminution, or deprivation of water quality under applicable law.

"(26) INJURY TO WATER RIGHTS.—

"(A) IN GENERAL.—The term 'injury to water rights' means an interference with, diminution of, or deprivation of water rights under applicable law.

"(B) INCLUSION.—The term 'injury to water rights' includes a change in the underground water table and any effect of such a change.

"(C) EXCLUSION.—The term 'injury to water rights' does not include subsidence damage or injury to water quality.

"(27) IRRIGATION SYSTEM.—

"(A) IN GENERAL.—The term 'irrigation system' means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

"(B) INCLUSIONS.—The term 'irrigation system', with respect to the cooperative farm, includes activities, procedures, works, and devices for—

"(i) rehabilitation of fields;

"(ii) remediation of sinkholes, sinks, depressions, and fissures; and

"(iii) stabilization of the banks of the Santa Cruz River.

"(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term 'Lower Colorado River Basin Development Fund' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

"(29) M&I PRIORITY WATER.—The term 'M&I priority water' means Central Arizona Project water that has municipal and industrial priority.

"(30) NATION.—The term 'Nation' means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

"(31) NATION'S RESERVATION.—The term 'Nation's Reservation' means all land within the exterior boundaries of—

"(A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

"(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

"(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909;

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

"(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

"(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

"(32) NET IRRIGABLE ACRES.—The term 'net irrigable acres' means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

"(33) NIA PRIORITY WATER.—The term 'NIA priority water' means Central Arizona Project water that has non-Indian agricultural priority.

"(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term 'San Xavier Allottees Association' means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

"(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term 'San Xavier Cooperative Association' means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

"(36) SAN XAVIER DISTRICT.—The term 'San Xavier District' means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

"(37) SAN XAVIER DISTRICT COUNCIL.—The term 'San Xavier District Council' means the governing body of the San Xavier District, as established under the constitution of the Nation.

"(38) SAN XAVIER RESERVATION.—The term 'San Xavier Reservation' means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

"(39) SCHUK TOAK FARM.—The term 'Schuk Toak Farm' means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

"(40) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(41) STATE.—The term 'State' means the State of Arizona.

"(42) SUBJUGATE.—The term 'subjugate' means to prepare land for agricultural use through irrigation.

"(43) SUBSIDENCE DAMAGE.—The term 'subsidence damage' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

"(44) SURFACE WATER.—The term 'surface water' means all water that is appropriable under State law.

"(45) TOHONO O'ODHAM SETTLEMENT AGREEMENT.—The term 'Tohono O'odham settlement agreement' means the agreement dated April 30, 2003 (including all exhibits of and attachments to the agreement).

"(46) TUCSON CASE.—The term 'Tucson case' means United States et al. v. City of Tucson, et al. (Civ. No. 75–0939 TUC consol. with Civ. No. 75–0951 TUC FRZ (D. Ariz., filed February 20, 1975)).

"(47) TUCSON INTERIM WATER LEASE.—The term 'Tucson interim water lease' means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

"(48) TUCSON MANAGEMENT AREA.—The term 'Tucson management area' means the area in the State comprised of—

"(A) the area—

"(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

"(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

"(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

"(49) TURNOUT.—The term 'turnout' means a point of water delivery on the Central Arizona Project aqueduct.

"(50) UNDERGROUND STORAGE.—The term 'underground storage' means storage of water accomplished under a project authorized under section 308(e).

"(51) UNITED STATES AS TRUSTEE.—The term 'United States as Trustee' means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

"(52) VALUE.—The term 'value' means the value attributed to water based on the greater of—

"(A) the anticipated or actual use of the water; or

"(B) the fair market value of the water.

"(53) WATER RIGHT.—The term 'water right' means any right in or to groundwater, surface water, or effluent under applicable law.

"(54) 1982 ACT.—The term '1982 Act' means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

"SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

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

"(1) 27,000 acre-feet shall—

"(A) be deliverable for use to the San Xavier Reservation; or

"(B) otherwise be used in accordance with section 309; and

"(2) 10,800 acre-feet shall—

"(A) be deliverable for use to the eastern Schuk Toak District; or

"(B) otherwise be used in accordance with section 309.

"(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

"(c) DUTIES OF THE SECRETARY.— Deadlines.

"(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

"(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

"(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

"(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

"(3) CONSTRUCTION OF NEW FARM.—

"(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

"(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for

the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

"(ii) in lieu of the actions described in clause (i), pay to the San Xavier District $18,300,000 (adjusted as provided in section 317(a)(2)) in full satisfaction of the obligations of the United States described in clause (i).

"(B) ELECTION.—

Notification.

"(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under clause (i) or (ii) of subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council.

"(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay $18,300,000 (adjusted as provided in section 317(a)(2)) to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

"(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

"(i) IN GENERAL.—Payment of $18,300,000 (adjusted as provided in section 317(a)(2)) under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

"(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made), but in no event earlier than the enforceability date or January 1, 2010, whichever is later; or

"(II) not later than 240 days after the enforceability date or January 1, 2010, whichever is later, if no timely election is made.

"(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

"(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

"(d) EXTENSION OF DEADLINES.—

"(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

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

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

"(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

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

"(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

"(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

"(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

"(A) publish a notice of the extension in the Federal Register; and

Federal Register, publication.

"(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

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

"(e) AUTHORITY OF SECRETARY.—

"(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the eastern Schuk Toak District.

"(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

"(f) USE OF FUNDS.—

"(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

"(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

"(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

"(i) authorized by the San Xavier District Council; and

"(ii) approved by resolution of the Legislative Council of the Nation; and

"(C) shall expend the funds—

"(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

"(ii) to provide governmental services, including—

"(I) programs for senior citizens;

"(II) health care services;
"(III) education;
"(IV) economic development loans and assistance; and
"(V) legal assistance programs;
"(iii) to provide benefits to allottees;
"(iv) to pay the costs of activities of the San Xavier Allottees Association; or
"(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).

"(2) NO LIABILITY OF SECRETARY; LIMITATION.—
"(A) IN GENERAL.—The Secretary shall not—
"(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or
"(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.
"(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

"SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

"(a) DELIVERY OF WATER.—
"(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, the agreement of October 11, 1983, and the Tohono O'odham settlement agreement (to the extent that the settlement agreement does not conflict with this Act), to 1 or more of—
"(A) the cooperative farm;
"(B) the eastern Schuk Toak District;
"(C) turnouts existing on the enforceability date; and
"(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—
"(i) the Secretary;
"(ii) the operator of the Central Arizona Project; and
"(iii) the Nation.

"(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—
"(A) any declaration by the Secretary of a water shortage on the Colorado River; or
"(B) any other occurrence affecting water delivery caused by an act or omission of—
"(i) the Secretary;
"(ii) the United States; or
"(iii) any officer, employee, contractor, or agent of the Secretary or United States.

"(b) ACQUISITION OF LAND AND WATER.—

"(1) DELIVERY.—

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

"(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

"(2) PRIVATE LAND AND INTERESTS.—

"(A) ACQUISITION.—

"(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire, for not more than market value, such private land, or interests in private land, that include rights in surface or groundwater recognized under State law, as are necessary for the acquisition and delivery of water under this subsection.

"(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

"(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

"(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

"(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

"(4) DELIVERY OF EFFLUENT.—

"(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

"(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

"(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

"(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

"(1) for—

"(A) the exchange of water; or

"(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

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

"(d) COMPENSATION AND DISBURSEMENTS.—

"(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

"(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

"(ii) the value of such quantities of water as—

"(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the irrigation system; but

"(II) are not delivered in any calendar year;

"(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

"(ii) the value of such quantities of water as—

"(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the extension to the irrigation system; but

"(II) are not delivered in any calendar year; and

"(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

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

"(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the San Xavier Cooperative Association); but

"(II) are not delivered in any calendar year.

"(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

"(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the San Xavier Cooperative Association; and

"(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

"(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

"SEC. 306. ADDITIONAL WATER DELIVERY.

"(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the

main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

"(1) 23,000 acre-feet shall—

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

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

"(2) 5,200 acre-feet shall—

"(A) be delivered to, and used by, the eastern Schuk Toak District; or

"(B) otherwise be used by the Nation in accordance with section 309.

"(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute $3,000,000—

"(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

"(2) in the form of cash or in-kind goods and services.

"SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

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

"(1) the Nation agrees—

"(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

"(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

"(C) to comply with water management plans established by the Secretary under section 308(d);

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

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

"(i)(I) the plaintiffs in the Alvarez case and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

"(II) those cases have been dismissed with prejudice;

"(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery

of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

"(iii) with respect to the consent of the Nation to contracting—

"(I) the consent is limited solely to contracts for—

"(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

"(bb) the extension of the irrigation system for the cooperative farm;

"(cc) the subjugation of land to be served by the extension of the irrigation system;

"(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

"(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

"(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

"(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

"(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

"(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

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

Deadlines.
Notice.
Certification.

"(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date

on which the San Xavier District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

"(G) subject to business lease No. H54–16–72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972, that the Nation—

"(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

"(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

"(aa) to fulfill the obligations prescribed in the Asarco agreement; and

"(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

"(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

"(III) the groundwater withdrawn from exempt wells;

"(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

"(V) the storage credits resulting from a project authorized in section 308(e) that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

"(ii) subject to section 309(b)(2), has the right—

"(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

"(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation's Reservation; and

"(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

"(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

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

"(I) the Secretary; or

"(II) the operating agency for the Central Arizona Project;

"(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

"(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

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

"(I) the Secretary; or

"(II) the operating agency for the Central Arizona Project; and

"(2) the Alvarez case and Tucson case have been dismissed with prejudice.

"(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

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

"SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

"(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

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

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

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

"(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

"(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation's Reservation;

"(3) enact and maintain—

"(A) an interim allottee water rights code that—

"(i) is consistent with subsection (a);

"(ii) prescribes the rights of allottees identified in paragraph (4); and

"(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

"(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title; Deadline.

"(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—

"(A) an acknowledgement of the rights described in subsection (a);

"(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;

"(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation's first right of use under section 307(a)(1)(G)(ii)(II);

"(D) provisions for the protection of due process, including—

"(i) a fair procedure for consideration and determination of any request by—

"(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and

"(II) an allottee, for a permit for use of—

"(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or

"(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);

"(ii) provisions for—

"(I) appeals and adjudications of denied or disputed permits; and

"(II) resolution of contested administrative decisions; and

"(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and

"(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and

"(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).

"(c) WATER CODE APPROVAL.—

"(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—

"(A) issue a written approval of the water code; or

"(B) provide a written notification to the Nation that— Notification.

"(i) identifies such provisions of the water code that do not conform to subsection (b) or other applicable Federal law; and

"(ii) recommends specific corrective language for each nonconforming provision.

"(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

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

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

"(d) WATER MANAGEMENT PLANS.—

"(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

"(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

Contracts.

"(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San Xavier Reservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

"(i) with respect to a contract between the Secretary and the San Xavier District, $891,200; and

"(ii) with respect to a contract between the Secretary and the Nation, $237,200;

"(B) shall, at a minimum—

"(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

"(ii) provide for—

Records.

"(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

"(II) a system for the reporting of withdrawals from each well that is not an exempt well;

"(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

"(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

"(I) between the Nation and the Arizona Department of Water Resources; and

"(II) between the Nation and the city of Tucson, Arizona;

"(v) provide for—

"(I) the efficient use of water; and

"(II) the prevention of waste;

"(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

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

"(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

"(i) the San Xavier Reservation; or

"(ii) the eastern Schuk Toak District; and

"(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

"(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham settlement agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

"(f) GROUNDWATER.—

"(1) SAN XAVIER RESERVATION.—

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

"(B) DEFERRED PUMPING.—

"(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

"(I) may be withdrawn in a subsequent year; and

"(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

"(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

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

"(II) 10,000 acre-feet in any year.

"(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

"(2) EASTERN SCHUK TOAK DISTRICT.—

"(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

"(B) DEFERRED PUMPING.—

"(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

"(I) may be withdrawn in a subsequent year; and

"(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

"(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

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

"(II) 3,200 acre-feet in any year.

"(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

"(3) INABILITY TO RECOVER GROUNDWATER.—

"(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

"(i) physically exists; or

"(ii) is recoverable.

"(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

"(i) subject to paragraph 8.8 of the Tohono O'odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

"(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

"(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

"(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O'odham settlement agreement.

"(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

"SEC. 309. USES OF WATER.

"(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial,

mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

"(b) USE AREA.—

"(1) USE WITHIN NATION'S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation's Reservation—

"(A) the water supplies acquired under sections 304(a) and 306(a);

"(B) groundwater supplies; and

"(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

"(2) USE OUTSIDE THE NATION'S RESERVATION.—

"(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation's Reservation only in accordance with this title.

"(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

"(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation's Reservation, but within the State, only in accordance with State law.

"(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation's Reservation.

"(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

"(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES.—

"(1) IN GENERAL.—With respect to users outside the Nation's Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

"(A) this subsection; and

"(B) subsection (b)(2).

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

"(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

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

"(A) is accepted by the Nation;

"(B) is ratified under a resolution of the Legislative Council of the Nation;

"(C) is approved by the United States as Trustee; and

"(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

Applicability.

"(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O'odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

"(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

"(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

"(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

"(1) any water right of the Nation, as established under this title or any other applicable law; or

"(2) any water use right recognized under this title, including—

"(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

"(B) the allottee use rights referred to in section 308(a).

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

"(1) the contract shall be—

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

"(B) without limit as to term;

"(2) the Nation may, with the approval of the Secretary—

"(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

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

"(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease

or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

"(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

"(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

"(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

"(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

"(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

"(7) the allocated costs associated with the construction of the delivery and distribution system—

"(A) shall be nonreimbursable; and

"(B) shall be excluded from any repayment obligation of the Nation;

"(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

"(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

"(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980, for the Sif Oidak District.

"(h) RATIFICATION OF AGREEMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, each agreement described in paragraph (2), to the extent that the agreement is not in conflict with this Act—

"(A) is authorized, ratified, and confirmed; and

"(B) shall be executed by the Secretary.

"(2) AGREEMENTS.—The agreements described in this paragraph are—

"(A) the Tohono O'odham settlement agreement, to the extent that—

"(i) the Tohono O'odham settlement agreement is consistent with this title; and

"(ii) parties to the Tohono O'odham settlement agreement other than the Secretary have executed that agreement;

"(B) the Tucson agreement (attached to the Tohono O'odham settlement agreement as exhibit 12.1); and

"(C)(i) the Asarco agreement (attached to the Tohono O'odham settlement agreement as exhibit 13.1 to the Tohono O'odham settlement agreement);

"(ii) lease No. H54–0916–0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and

"(iii) any new well site lease as provided for in the Asarco agreement; and

"(D) the FICO agreement (attached to the Tohono O'odham settlement agreement as Exhibit 14.1).

"(3) RELATION TO OTHER LAW.—

"(A) ENVIRONMENTAL COMPLIANCE.—In implementing an agreement described in paragraph (2), the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

"(B) EXECUTION OF AGREEMENT.—Execution of an agreement described in paragraph (2) by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing an agreement described in paragraph (2).

"(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

"(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

"(j) USE OF GROSS PROCEEDS.—

"(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term 'gross proceeds' means all proceeds, without reduction, received by the Nation from—

"(A) the Tucson interim water lease;

"(B) the Asarco agreement; and

"(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation; provided, however, that gross proceeds shall not include proceeds from the transfer of Central Arizona Project water in excess of 20,000 acre feet annually pursuant to any agreement under this

subparagraph or under the Asarco agreement referenced in subparagraph (B).

"(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

"(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

"SEC. 310. COOPERATIVE FUND.

"(a) REAUTHORIZATION.—

"(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

"(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

"(A)(i) $5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

"(ii) such amount, not to exceed $32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

"(B) any additional Federal funds deposited to the cooperative fund under Federal law;

"(C) $5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

"(i) $2,750,000 was contributed by the State;

"(ii) $1,500,000 was contributed by the city of Tucson; and

"(iii) $1,000,000 was contributed by—

"(I) the Anamax Mining Company;

"(II) the Cyprus-Pima Mining Company;

"(III) the American Smelting and Refining Company;

"(IV) the Duval Corporation; and

"(V) the Farmers Investment Company;

"(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

"(E) all revenues received from—

"(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

"(ii) the sale or lease of storage credits derived from the storage of that effluent.

"(b) EXPENDITURES FROM FUND.—

"(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

"(A) the variable costs relating to the delivery of water under sections 304 through 306;

"(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the

Lower Colorado River Basin Development Fund to pay those costs;

"(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

"(D) any compensation provided by the Secretary under section 305(d).

"(2) EXPENDITURE OF INTEREST.—Except as provided in paragraph (3), the Secretary may expend only interest income accruing to the cooperative fund, and that interest income may be expended by the Secretary, without further appropriation.

"(3) EXPENDITURE OF REVENUES.—Revenues described in subsection (a)(2)(E) shall be available for expenditure under paragraph (1).

"(c) INVESTMENT OF AMOUNTS.—

"(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

"(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

"(d) TRANSFERS OF AMOUNTS.—

"(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

"(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(e) DAMAGES.—Damages arising under this title or any contract for the delivery of water recognized by this title shall not exceed, in any given year, the amounts available for expenditure in that year from the cooperative fund.

"SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

"(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

"(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

"(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

"(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying

out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(c) GROUNDWATER MONITORING PROGRAMS.— Deadlines.

"(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

"(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

"(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $215,000.

"(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

"(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

"(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $175,000.

"(3) DUTIES OF SECRETARY.—

"(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

"(i) the Nation;

"(ii) the San Xavier District and Schuk Toak District, respectively; and

"(iii) appropriate State and local entities.

"(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

"(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

"(1) within the Nation's Reservation; but

"(2) outside the Tucson management area.

"(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

"(1) give first priority to the needs of the Nation in providing that assistance; and

"(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements,

and joint venture projects at a level that the entity determines will—

"(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

"(B) contribute significantly to the economy of the Nation.

"(f) ASARCO LAND EXCHANGE STUDY.—

Deadline.

"(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees' Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

"(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

"(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

"(2) COMPONENTS.—The study under paragraph (1) shall include—

"(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

"(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

"(3) LIMITATION ON EXPENDITURES.—In carrying out this subsection, the Secretary shall expend not more than $250,000.

"SEC. 312. WAIVER AND RELEASE OF CLAIMS.

"(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the Nation waives and releases—

"(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

"(A) the State (or any agency or political subdivision of the State);

"(B) any municipal corporation; and

"(C) any other person or entity;

"(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

"(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner

not in violation of the Tohono O'odham settlement agreement or State law against—

"(A) the United States;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity; and

"(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

"(A) the United States;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity.

"(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

"(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

"(A) the State (or any agency or political subdivision of the State);

"(B) any municipal corporation; and

"(C) any other person or entity (other than the Nation);

"(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

"(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

"(A) the United States;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity;

"(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

"(A) the United States;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity; and

"(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation).

"(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the United States as Trustee waives and releases—

"(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area against—

"(A) the Nation;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity;

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

"(A) the Nation;

"(B) the State (or any agency or political subdivision of the State);

"(C) any municipal corporation; and

"(D) any other person or entity;

"(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation); and

"(4) claims against Asarco on behalf of the allottee class for the fourth cause of action in Alvarez v. City of Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz., filed April 21, 1993)), in accordance with the terms and conditions of the Asarco agreement.

"(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

"(1) shall have the right to assert any claims granted by a State law implementing the groundwater protection program described in paragraph 8.8 of the Tohono O'odham settlement agreement; and

"(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction

over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

"(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O'odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

"(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

"(1) IN GENERAL.—As of the enforceability date—

"(A) the water rights and other benefits granted or confirmed by this title and the Tohono O'odham settlement agreement shall be in full satisfaction of—

"(i) all claims for water rights and claims for injuries to water rights of the Nation; and

"(ii) all claims for water rights and injuries to water rights of the allottees;

"(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement; and

"(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement.

"(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

"(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

"(i) the United States;

"(ii) the State (or any agency or political subdivision of the State);

"(iii) any municipal corporation; or

"(iv) any other person or entity; or

"(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

"(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

"(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

"(i) the claim has been waived and released in the Tohono O'odham settlement agreement; and

"(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

"(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall

be offset by benefits received by that fee owner of allotted land under this title.

"(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

"(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement.

"(g) CONSENT.—

"(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

"(2) REMEDY.—

"(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

"(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

"(i) made available by any Act of Congress; and

"(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

"(3) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

"(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

"(1) JURISDICTION.—

"(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

"(i) civil actions relating to the interpretation and enforcement of—

"(I) this title;

"(II) the Tohono O'odham settlement agreement; and

"(III) agreements referred to in section 309(h)(2); and

"(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O'odham settlement agreement.

"(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

"(2) WAIVER.—

"(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

"(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

"(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

"(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

"(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

"(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

"(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys' fees, or other monetary relief.

"(3) NATION AS A PARTY.—

"(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation. Deadline. Notice.

"(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

"(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

"(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement—

"(A) with respect to the use of those resources by—

"(i) the Nation;

"(ii) individual members of the Nation;

"(iii) districts of the Nation; and

"(iv) allottees; and

"(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

"(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

"(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

"(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

"SEC. 313. AFTER-ACQUIRED TRUST LAND.

"(a) IN GENERAL.—Except as provided in subsection (b)—

"(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation's Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

"(2) lands taken into trust under paragraph (1) shall include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

"(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

"(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

"SEC. 314. NONREIMBURSABLE COSTS.

"(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

"(1) shall be nonreimbursable; and

"(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

"(b) CLAIMS BY UNITED STATES.—The United States shall—

"(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

"(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

"(B) the delivery of Central Arizona Project water for any use authorized under this title; or

"(C) the implementation of this title;

"(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

"(A) is known as the 'San Lucy Farm'; and

"(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

"(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

"(A) trust or allotted land within the Nation's Reservation; or

"(B) the land described in paragraph (2).

"SEC. 315. TRUST FUND.

"(a) REAUTHORIZATION.—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of $15,000,000 made under that section, for use in carrying out this title.

"(b) EXPENDITURE AND INVESTMENT.—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

"(1) expended by the Nation for any governmental purpose; and

"(2) invested by the Nation in accordance with such policies as the Nation may adopt.

"(c) RESPONSIBILITY OF SECRETARY.—The Secretary shall not—

"(1) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

"(2) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

"(d) CONDITIONS OF TRUST.—

"(1) RESERVE FOR THE COST OF SUBJUGATION.—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

"(A) the principal amount of at least $3,000,000; and

"(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

"(i) the date on which full payment of such costs has been made; or

"(ii) the date that is 10 years after the enforceability date.

"(2) PAYMENT.—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

"(3) LIMITATION ON RESTRICTIONS.—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

"(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

"(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

"SEC. 316. MISCELLANEOUS PROVISIONS.

"(a) IN GENERAL.—Nothing in this title—

"(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

"(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

"(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement;

"(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

"(5) affects the obligations of the parties under the Agreement of December 11, 1980, with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

"(6)(A) applies to any exempt well;

"(B) prohibits or limits the drilling of any exempt well within—

"(i) the San Xavier Reservation; or

"(ii) the eastern Schuk Toak District; or

"(C) subjects water from any exempt well to any pumping limitation under this title; or

"(7) diminishes or abrogates rights to use water under—

"(A) contracts of the Nation in existence before the enforceability date; or

"(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

"(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

"(c) LIMITATION ON LIABILITY OF UNITED STATES.—

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

"(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act; or

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

"(2) INDEMNIFICATION.—The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

"SEC. 317. AUTHORIZED COSTS.

"(a) IN GENERAL.—There are authorized to be appropriated—

"(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

"(A) $3,500,000; and

"(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

"(2) $18,300,000 in lieu of construction to implement section 304(c)(3)(B), including an adjustment representing interest that would have been earned if this amount had been deposited in the cooperative fund during the period beginning on January 1, 2008, and ending on the date the amount is actually paid to the San Xavier District;

"(3) $891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d);

"(4) $237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d);

"(5) $4,000,000 to complete the water resources study under section 311(d);

"(6) $215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

"(7) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

"(8) $250,000 to complete the Asarco land exchange study under section 311(f); and

"(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

"(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).".

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) shall apply to this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that— Federal Register, publication.

(1)(A) to the extent that the Tohono O'odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O'odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

(B) the Tohono O'odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) have executed those agreements;

(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(4) final dismissal with prejudice has been entered in each of the Alvarez case and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila

River adjudication proceedings, and that judgment and decree have become final and nonappealable;

(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

(A) $18,300,000 to implement section 304(c)(3);

(B) $891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(C) $237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(D) $4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(E) $215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(F) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301); and

(G) $250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(7) the State has enacted legislation that—

(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

(C) enables the State to carry out section 306(b); and

(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

(9) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

Deadline.

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

(1) the 1982 Act shall remain in full force and effect;
(2) this title shall not take effect; and
(3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 401. EFFECT OF TITLES I, II, AND III.

None of the provisions of title I, II, or III or the agreements, attachments, exhibits, or stipulations referenced in those titles shall be construed to—

(1) amend, alter, or limit the authority of—

(A) the United States to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its capacity as trustee for the San Carlos Apache Tribe, its members and allottees, or in any other capacity on behalf of the San Carlos Apache Tribe, its members, and allottees, in any judicial, administrative, or legislative proceeding; or

(B) the San Carlos Apache Tribe to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its own behalf or on behalf of its members and allottees in any judicial, administrative, or legislative proceeding consistent with title XXXVII of Public Law 102–575 (106 Stat. 4600, 4740); or

(2) amend or alter the CAP Contract for the San Carlos Apache Tribe dated December 11, 1980, as amended April 29, 1999.

SEC. 402. ANNUAL REPORT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of efforts to reach a negotiated agreement covering the Gila River water rights claims of the San Carlos Apache Tribe.

(b) TERMINATION.—This section shall be of no effect after the later of—

(1) the date that is 3 years after the date of enactment of this Act; or

(2) the date on which the Secretary submits a third annual report under this section.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

(a) SAN CARLOS APACHE TRIBE.—There is authorized to be appropriated to assist the San Carlos Apache Tribe in completing comprehensive water resources negotiations leading to a comprehensive Gila River water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, $150,000 for fiscal year 2006.

(b) WHITE MOUNTAIN APACHE TRIBE.—There is authorized to be appropriated to assist the White Mountain Apache Tribe in

completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, $150,000 for fiscal year 2006.

(c) OTHER ARIZONA INDIAN TRIBES.—There is authorized to be appropriated to the Secretary to assist Arizona Indian tribes (other than those specified in subsections (a) and (b)) in completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Arizona Indian tribes, including soil and water technical analyses, legal, paralegal, and other related efforts, $300,000 for fiscal year 2006.

(d) NO LIMITATION ON OTHER FUNDING.—Amounts made available under subsections (a), (b), and (c) shall not limit, and shall be in addition to, other amounts available for Arizona tribal water rights negotiations leading to comprehensive water settlements.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 437 (H.R. 885):

HOUSE REPORTS: No. 108–793 (Comm. on Resources).
SENATE REPORTS: No. 108–360 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 150 (2004):
Oct. 10, considered and passed Senate.
Nov. 17, considered and passed House.

○