Survey of Recent Developments in Indian Water Law: Litigation and Negotiations

Jeanne S. Whiteing

Follow this and additional works at: https://scholar.law.colorado.edu/natural-resource-development-in-indian-country

Part of the Aquaculture and Fisheries Commons, Courts Commons, Environmental Law Commons, Government Contracts Commons, Indian and Aboriginal Law Commons, Legislation Commons, Natural Resource Economics Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Property Law and Real Estate Commons, State and Local Government Law Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
Survey of Recent Developments
In Indian Water Law: Litigation and Negotiations

NATURAL RESOURCE DEVELOPMENT IN
INDIAN COUNTRY

Jeanne S. Whiteing
Whiteing, Thompson & White
6684 Gunpark Drive
Boulder, Colorado 80302
Summary of Adjudications and Negotiations of Indian Water Rights

I. Arizona

In Re the General Adjudication to All Rights To Use Water in the Gila River System, No. W-1 (Arizona Superior Ct., Maricopa County)

This is a state adjudication of water rights in the Gila River Basin. The case involves ten Indian tribes - White Mountain Apache, Tonto Apache, Camp Verde Apache, Yavapai Apache, Ft. McDowell, San Carlos Apache, Salt River Pima-Maricopa, Gila River Pima-Maricopa, Tohono O'odham Nation and Yaqui. The focus of the litigation at present is on:

1) Resolving preliminary procedural and substantive issues through an issue resolution process;

2) A search for a special master to be appointed by the Arizona Supreme Court;

3) Resolution of treatment of groundwater. A week long hearing and briefing have taken place, and a decision is expected.

Congress is considering a settlement of the Salt River Reservation rights in the case. Fort McDowell is also considering settlement.

Salt River Settlement

The Salt River settlement bill is a complicated piece of legislation which essentially provides for approximately 122,000 acre-feet of water for Salt River, a compromise from a potential 200,000 acre-feet claim by the Tribe in the Salt River and Verde River, two drainages in the Gila River System. The bill also provides for a $63-65 million trust fund for: 1) later O&M costs; 2) rehabilitation of existing irrigation systems; 3) expansion of irrigation systems; and 4) a farming system in connection with Central Arizona Project water.

In Re the General Adjudication of All Rights to Use Water in the Little Colorado River System, No. 6417 (Arizona Superior Ct., Apache County)

State adjudication of water rights. Involves the Navajo Tribe and the Hopi Tribe. The case has little activity pending completion of technical studies and the report of the Arizona Department of Water Resources, which serves as the technical arm of the court.
II. California

San Luis Rey Settlement Agreement

A bill is pending in Congress to settle the water rights of the Rincon, LaJolla, San Pasqual, Pala and Pauma Bands of Mission Indians in Southern California, and to resolve various conflicts with the communities of Escondido and Vista. The settlement provides for the delivery of 22,700 acre-feet of water to the Tribes by the Secretary. Water not used by the Tribes is to be delivered to local communities. The settlement requires construction of some delivery systems and specifies liability for construction costs and O&M costs. Use of water and power from the Central Valley Project is contemplated, and this aspect of the settlement is probably the most controversial.

III. Colorado

Southern Ute/Ute Mountain Settlement

A negotiated settlement among the State of Colorado and Ute Mountain Ute and Southern Ute Tribes and various water conservation districts was entered into in 1986. The settlement resolves the use of water by the Tribes and includes storage water from the Dolores Project and the Animas-LaPlata Project. The settlement contemplates construction of the Animas-LaPlata Project. In some instances the tribes subordinated their direct flow rights in exchange for stored water and other benefits. Groundwater use for domestic and livestock purposes is included. Cooperative administration of the tribal water rights is provided for. The settlement also provides for a tribal development fund in the amount of approximately $60.5 million. A bill encompassing the terms of the settlement is pending in Congress. Provisions concerning water leasing under the overall cost of settlement has been controversial.

IV. Idaho

In Re the General Adjudication of Rights to Use of Water from the Snake River Basin System, Cir. No. 39576 (5th Judicial Dist., Twin Falls, filed June 17, 1987)

State court general adjudication of all water rights of users in the Snake River basin. The Shoshone-Bannock Tribes of the Fort Hall Reservation have accepted the State's offer to enter into negotiations with the State in lieu of a court action, and negotiations are in process. The adjudication also affects the Nez Perce Tribe and the Duck Valley Paiutes.
V. Montana

Montana Statewide Adjudication under Senate Bill 76

Adjudication of Indian water rights is suspended pending negotiations between the seven Montana Indian tribes and the Montana Reserved Water Rights Compact Commission. A compact settling the water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation has been completed (see below). In 1987, SB92 extended the authority of the Commission to negotiate with Indian tribes until July 1, 1993. No Indian claims need to be filed while negotiations are proceeding. The legislature also established basins which are to receive priority adjudication efforts. The primary focus is on the Milk River and the rights of the Fort Belknap Reservation. No reservations appear to be near settlement.

Fort Peck - Montana Compact

This Compact resolves the water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The Tribe's water right is over 1 million acre-feet of water, or the amount necessary to supply a consumptive use of 525,000+ acre-feet per year. The tribal water right includes groundwater, and allows the right to be used for any purpose. The right also may be transferred within or without the Reservation provided the State is given the opportunity to participate in the transfer as an equal partner. The tribal right is administered by the Tribe, except that water from the Fort Peck Dam is administered by the federal government. Non-Indian rights are administered under state law. A Fort Peck-Montana Compact Board is established to resolve conflicts under the Compact.

Board of Control of Flathead Irrigation District v. United States, 832 F.2d 1127 (9th Cir. 1987)

The Ninth Circuit recently decided a suit by the Board of Control of three irrigation districts against the Bureau of Indian Affairs seeking to enjoin the 1986 operating criteria for the Flathead Irrigation Project. The case resolved a conflict between tribal fishery demands and irrigated agriculture demands. The court held that water for tribal fishing rights need not be shared with junior appropriators where the tribal water right had an earlier priority date, and that a "just and equal distribution" standard need not be applied. Only after the fishery waters are protected does the BIA have a duty to distribute the remaining water fairly and equitably.

VI. New Mexico

In the mid-70's a number of water cases involving Indian rights were filed by the State of New Mexico in federal court because of uncertainty about the proper forum.
The cases have been relatively inactive during litigation of the forum question in other cases, but are becoming more active since determination of the forum issue in San Carlos Apache Tribe v. Arizona. The United States has filed one action, United States v. Abousleman, in 1983 and won a removal action in 1984. The case involves the Rio Jemez stream system, and the rights of Jemez, Zia and Santa Ana Pueblos. All rights have been adjudicated except the Indian rights which are expected to be completed in October, 1988.

State Court Cases:

State v. Lewis - filed in 1954. Adjudication of a tributary of the Pecos. Involves the Mescalero Apache Tribe's rights. The rights of the Tribe are expected to be decided soon after briefing is completed. The non-Indian rights will be put off until later because of a procedural error.

State v. Aamodt - filed in 1966. Involves the Rio Pojoaque and Rio Nambe, and the rights of Nambe, Tesuque, San Idelfonso and Pojoaque Pueblos. A new master is expected to be appointed soon. Several issues have been tried already.


State v. Aragon, State v. Abbott - Involves the Chama drainage, and the rights of San Juan and Santa Clara Pueblos and the Jicarilla Apache Tribe. Claims will be filed this year.


City of Gallup v. United States - filed in 1984. Involves the Zuni River System and the rights of the Zuni Pueblo and Navajo interests. Claims will be filed this year.

New Mexico v. United States - Involves the San Juan drainage and the rights of the Ute Mountain Ute, Navajo and Jicarilla Apache Tribes. A statement of claims for Jicarilla has been filed.


VII Nevada

Pyramid Lake Paiute

A number of cases which affect the Pyramid Lake Paiute
Tribe's water rights are still pending after the U.S. Supreme Court's decision in *Nevada v. United States*. The cases involve rights to surplus waters, operation of irrigation projects and other projects, water quality issues, endangered species act issues and other issues. Negotiations under the auspices of Senator Reid are in progress.


The Walker River Paiute Tribe has recently intervened in this case in order to ensure compliance with the decree issue in the 1930's. The Tribe may also assert additional claims to water.

VIII South Dakota

The statewide general water adjudication filed in 1980 involving all water users in the state, including the six Indian tribes in the state, was dismissed without prejudice in 1983. No adjudications or negotiations regarding Indian water rights are pending.

IX Washington


This is a general adjudication of the Yakima River basin and involves the water rights of the Yakima Tribe. A pre-trial order in the case was issued in April, 1986. Claims have been divided into four categories: 1) major claimants (irrigation districts and federal claims, but not federal reserved claims); 2) federal reserved claims; 3) Indian claims; 4) individual claimants. Indian claims must be filed by August, 1988 along with written direct testimony. The Basin has been divided in 31 sub-basins and adjudications are proceeding in the various sub-basins on individual claims. Discovery will commence in September, 1988 and proceed for one year. The earliest possible trial date is September, 1989. The Yakima River Basin Water Enhancement Project, Senate Bill 2322, purports to settle water rights in the Yakima Basin, but the bill is primarily the effort of the Washington congressional delegation. The Tribe does not oppose it but has not actively participated in its formulation.

X. Wyoming

*In Re the General Adjudication of All Rights to Use Water in the Big Horn River System and All Other Sources*, State of Wyoming 750 P.2d 681 (Wyo. 1988)
On February 24, 1988, the Wyoming Supreme Court handed down its decision in the Big Horn River System Adjudication. The adjudication was filed in 1977, and the Supreme Court's decision reviewed the District Court's decision in the case. The District Court's ruling was based on recommendations of a Special Master after a lengthy trial and briefing. Below is a summary of the most important parts of the Supreme Court's decision.

1. The Court upheld state court jurisdiction to determine the water rights of the Wind River Reservation.

2. The Court upheld a "Winters Right" to approximately 500,000 acre feet of water for agricultural purposes. Water for other purposes (including instream fish flows, mineral and industrial uses, and avidlife and aesthetic purposes) was denied on the ground that the purpose of the Reservation was solely agricultural.

3. An 1868 priority date was upheld for all lands including those portions which the State of Wyoming had argued were no longer a part of the Reservation.

4. The Court held there was no reserved right to groundwater.

5. The Court upheld the state engineer's authority to enforce and decree, but held that the authority was limited, and that enforcement of the decree could be accomplished only through the Court and not by any physical actions such as turning off headgates.

Petitions for rehearing on various issues were filed by the State, the federal government and the Tribe. Those petitions were denied in April. All parties are in the process of deciding whether to seek U.S. Supreme Court review.
Indian Water Rights
Reported Decisions Since 1980

Supreme Court Decisions


Courts of Appeals Decisions

Joint Bd. of Control of Flathead, Mission and Jocko Irrigation Districts v. United States, 832 F.2d 1127 (9th Cir. 1987)

White Mountain Apache Tribe v. Hodel, 784 F.2d 921 (9th Cir. 1986) cert. denied 93 L.Ed. 2d 700 (1986)

United States v. White Mountain Apache Tribe, 784 F.2d 917 (9th Cir. 1986)

Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist., 763 F.2d 1032 (9th Cir. 1985)

Colville Confederated Tribes v. Walton, 752 F.2d 397 (9th Cir. 1985)

Truckee-Carson Irrigation Dist. v. Secretary Dept. of the Interior, 742 F.2d 527 (9th Cir. 1984)

Carson-Truckee Conservancy Dist. v. Clark, 741 F.2d 257 (9th Cir. 1984)

United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984)

Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187 (9th Cir. 1983)


Gila River Pima - Maricopa Indian Community v. United States, 695 F.2d 559 (Fed. Cir. 1982)

Escondido Mutual Water Co. v. F.E.R.C., 692 F.2d 1223 (9th Cir. 1983)
Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (Ct. Cl. 1982)

Navajo Nation v. United States, 668 F.2d 1100 (9th Cir. 1982)

San Carlos Apache Tribe of Arizona et al. v. Arizona, 668 F.2d 1093 (9th Cir. 1982)

Northern Cheyenne Tribe v. Adsit, 668 F.2d 1080 (9th Cir. 1982)

Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981)

United States v. Truckee-Carson Irrigation District, 649 F.2d 1286 (9th Cir. 1981), amended 666 F.2d 351 (9th Cir. 1982)

Colville Confederated Tribes v. Walton, 642 F.2d 42 (9th Cir. 1981)

**District Court Decisions**


Joint Bd. of Control of Flathead, Mission and Jocko Irrigation Districts v. United States, 646 F.Supp. 410 (D.Mont. 1986)


State Court Decisions

In re the General Adjudication of All Rights to Use Water in the Big Horn River System and All Other Sources, State of Wyoming, 750 P.2d 681 (Wyo. 1988)


United States v. Superior Court in and for Maricopa County, 697 P.2d 658 (Ariz. 1985)
Materials

A. Annotated Index of Pending Litigation Affecting Indian Water Rights Prepared by Department of Justice (This Index is out-of-date in some instances, but provides the most comprehensive list of pending litigation).

B. S.795 - Settlement of Claims of LaJolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians

C. S.1415 - Colorado Ute Indian Water Rights Settlement Act of 1987


E. 92 Stat. 409 - Ak-Chin Settlement 98 Stat. 2698-Revision of Ak-Chin Settlement
ANOTED INDEX OF PENDING LITIGATION AFFECTING INDIAN WATER RIGHTS

ARIZONA


State court proceedings to determine the water rights of all users of the Gila River system, including the watersheds of the Salt, Verde, Upper Gila and San Pedro Rivers. The reserved water rights of several Indian tribes are involved, including those of the Navajo Tribe, Hopi Tribe, San Carlos Apache Tribe and the Gila River and Fort McDowell Mohave-Apache Indian Communities, as well as the water rights of federal lands. Currently, the parties are attempting to negotiate a comprehensive settlement of the Gila River Indian Community water rights as to the Gila River system. The Secretary of the Interior has appointed a negotiating team to help resolve the issue.

In Re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, No. 6417 (Ariz. Super. Ct., Apache C'ty, filed May 19, 1980)

State court adjudication of the water rights of all Little Colorado River users in Arizona, involving Indian tribes and federal lands.

These cases went to the United States Supreme Court on the issue of whether determination of Indian reserved rights requires a federal forum. The Court made its decision in *Arizona v. San Carlos Apache Tribe of Arizona*, 103 S. Ct. 3201 (1983) (consolidating Arizona and Montana cases seeking federal adjudication of Indian water rights in several systems). The Court ruled that the federal district courts were correct in deferring to state proceedings. Most of the Arizona and Montana federal cases have been stayed pending outcome of the state proceedings. The issue to be resolved in this action concerns determination of the quantity of available surface and groundwater.


Adjudication of the main stem of the Gila River involving rights of the San Carlos Apache Tribe and the Gila River Indian Community. In December 1982, the Gila River Pima-Maricopa Indian Community petitioned the court to intervene in this suit against non-Indian water users, on grounds that it has been inadequately represented by the United States. The motion to intervene was granted upon the condition that all future participation of the Community be to enforce or modify the 1935 decree, not to vacate it. Present issues include the *res judicata* effect of the decree and the equity power of the court to adjust the decree management. This action is within the scope of the negotiations concerning settlement of the Gila River Indian Community’s water rights issues.


Suit brought by the Gila River Indian Community against a mineral company for a determination in federal court of its water rights, including groundwater, in the San Pedro River watershed. The Community contends that Gila River
tributaries were not adjudicated by the Gila Decree on 1935. This action is
within the scope of the negotiations concerning settlement of the Gila River
Indian Community's water rights issues.

United States v. City of Tucson, No. CIV-75-39-TUC-R03 (D. Ariz., filed Feb. 2,
1975); NILL No. 002798

General adjudication to determine the Tohono O'odham Nation's reserved
rights in the Upper Santa Cruz River basin, including rights to the aquifer
underlying the San Xavier portion of its reservation. Major defendants include
the City of Tucson, mining companies and large agricultural interests. The
issues in this case were resolved by agreement in the Southern Arizona Water
Rights Settlement Act on 1982, Title III, P.L. 97-293, 96 Stat. 1274. The
district court case remains pending until implementation of the settlement,
which currently is proceeding.

Tohono O'odham Nation v. Pima Mining Company, No. CIV-75-51-TUC-RCEI (D. Ariz.,
filed Mar. 6, 1975); NILL No. 002801

The Tribe seeks a declaratory judgment as to its rights in surface and
groundwaters of the Upper Santa Cruz River basin and damages for wrongful use.
The issues were settled by agreement in the Southern Arizona Water Rights
Settlement Act of 1982, Title III, P.L. 97-293, 96 Stat. 1274. This case
remains pending until implementation of the Act, which currently is proceeding.

29, 1982)

Suit for a federal court determination of the reserved rights of the Salt
River Indian Community in the aquifer underlying its reservation. This case has
been the subject of on-going negotiations involving the Salt River Indian
Community, the Department of the Interior, the City of Phoenix and the State of
Arizona. Legislation needs be enacted to implement the settlement reached by
the parties.

Suit for determination of the reserved rights of the Gila River Indian Community in the aquifer underlying its reservation. This action is within the scope of the negotiations concerning settlement of the Gila River Indian Community's water rights issues.


Suit to determine the measure of compensation for trespass owed by the Roosevelt Water Conservation District for directing flood waters onto the lands of the Gila River Indian Community. This case is not currently within the scope of the comprehensive Gila River Indian Community's water rights settlement negotiations.


Action by the Gila River Indian Community to determine whether the Secretary of the Interior's 1976 Central Arizona Project ("CAP") allocation to the Gila River Indian Community was unduly restrictive and violative of existing law. The Community has refused to enter into a contract with the Secretary of the Interior for a CAP allocation. Presently, there is a possibility that the Community could accept a CAP allocation in a comprehensive settlement of the water rights issues. CAP is the distribution system for Colorado River water.


Suit by the White Mountain Apache Tribe involving the res judicata effect of a 1969 boundary decision by the Indian Claims Commission denying restoration of 14,000 acres to its reservation that the Tribe contends was excluded erroneously in a 1887 survey. The suit also contains tribal allegations of
trespass and mismanagement and a request for an accounting. In addition, the Tribe seeks to enjoin the consolidated state court adjudications from asserting jurisdiction over water rights of the Tribe, and to enjoin the United States from representing the Tribes in those actions. On March 3, 1986, the Ninth Circuit Court of Appeals held, inter alia, that under the U.S. Supreme Court's decision in Arizona v. San Carlos Apache Tribe, 463 U.S. 45 (1983), the McClarran Amendment removed any limitation that statehood enabling acts or general federal Indian policy may have placed on state court adjudication of Indian water rights. The United States Supreme Court has denied review of this holding.


The Tribe seeks a federal court hearing of its claim under the Administrative Procedure Act to review the Secretary of the Interior's decision to exclude tribal lands from the Salt River Project. The Tribe asserts that the project benefits only non-Indian residents of the area, denying the Pima-Maricopa Indians water guaranteed them in their treaty, and that the Secretary never complied with the 1916 federal act directing him to designate 631 10-acre plots and to provide for water rights to irrigate them in perpetuity. The district court ruled on January 25, 1985 [12 Indian L. Rep. 3009], that the determination of which Indian lands are entitled to water rights is a matter of federal agency action that should be decided by a federal court.


The Community filed suit against 228 individually named defendants who pump groundwater in the east Salt River sub-basin of the Phoenix Active Management Area. The Indians allege an entitlement to water, principally groundwater,
sufficient to irrigate an additional 23,000 acres of reservation land. The suit also seeks a determination of the safe annual yield of the basin to prohibit pumping in excess of that yield, and to prohibit pumping by any non-Indians until the Indians' prior rights are satisfied. All proceedings in this case were stayed on February 4, 1985, until further order of the court.
ANOTATED INDEX OF PENDING LITIGATION
AFFECTING INDIAN WATER RIGHTS

CALIFORNIA


Consolidated cases challenging the validity of contracts giving the communities of Escondido and Vista rights to the San Luis Rey River and a right-of-way across Indian land for the Escondido Canal to carry water to Lake Wohlford. The Indian bands seek control of the canal to prevent further diversion and appropriation of river water in violation of the Indians' paramount water rights, and damages. This case remains inactive pending ratification of the negotiated San Luis Rey Settlement Agreement. This Agreement was considered for ratification by both the 99th and 100th Congresses, but has not been approved yet. Part of the Settlement concerns diverting water from Northern California over the Tahachipi Mountains.

United States v. Escondido Mutual Water Company, No. CIV-75-2718 (S.D. Cal., filed Sept. 18, 1975)

Suit to determine the reserved rights of the Rincon, La Jolla, San Pasqual, Pala and Pauma Bands of Mission Indians, and to determine the validity of contracts limiting the water rights, and for money damages. This action is within the scope of the San Luis Rey Settlement Agreement.

Escondido Mutual Water Company v. Federal Energy Regulatory Commission, Nos. 76-7625, 80-7012, 80-7110 (9th Cir., filed Fed. 3, 1979); NILL No. 001261

Suit brought by a water company and the City of Escondido to renew a license for a water canal crossing the Reservations of the La Jolla, Rincon and San Pasqual Bands of Mission Indians. The case involves a dispute among the
Federal Energy Regulatory Commission, the Secretary of the Interior, and the La Jolla, Rincon, Pala, Pauma, Yuima and San Pasqual Bands of Mission Indians as to the role of each in determining the conditions for obtaining a license to use hydroelectric facilities on or near the Bands' reservations. On May 18, 1984, the Supreme Court upheld the decision of the Ninth Circuit, 692 F.2d 1223 (1982), that the Commission, in issuing licenses concerning hydroelectric projects, must accept without modification conditions set by the Interior Secretary for the protection and utilization of the reservations, but reversed the appellate ruling that such compliance is required for reservations that have no licensed facilities within their boundaries. Escondido Mutual Water Company v. La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, 104 S. Ct. 2105 (1984). On remand.

General stream adjudications involving determination of the reserved rights of the United States and Indian tribes in the San Jose River basin, and of the Ute Mountain Ute and Southern Ute Indian Tribes. This case remains inactive pending ratification of the 1986 negotiated settlement among the State of Colorado, the Ute Mountain Ute and the Southern Ute Indian Tribes. Congress needs to appropriate funds for the Animas La Plata Projects, which projects involve delivering and distributing water in the area. In addition, funds are needed to construct the projects and approved is needed—in order to authorize the marketing of tribal water.
Idaho ex rel. Higginson v United States, No. 39676 (Idaho Dist. Ct., Twin Falls City).

State court general adjudication of all water rights of users in the Snake River basin. The Shoshone-Bannock Tribes of the Fort Hall Reservation have accepted the State's offer to enter into negotiations with the State in lieu of a court action. The Tribe will present a formal claim to the State of Idaho shortly.
Montana Water Rights Adjudication — Senate Bill 76 (Mont. Water Ct., filed June 8, 1983)

General adjudication of all water rights held in the State of Montana, including federal and Indian reserved rights. The authority of the Montana Water Rights Adjudication Commission has been extended until 1991 to negotiate water rights within the State. Private landowners, the State, and the United States, on behalf of itself and of the Montana tribes, are required to file all claims with the Commission.


Petition by the Montana Attorney General for the Montana Supreme Court to assume supervisory control over the state water court to decide whether, as a matter of state law, the water court has jurisdiction to adjudicate federal reserved water rights of Indians in Montana, and whether the water adjudication process provided for under Montana law is legally adequate to adjudicate those rights. The Montana Supreme Court accepted jurisdiction to decide these issues in a ruling on December 18, 1984 (12 Indian L. Rep. 5007).

United States v. Tonque River Water Users Association, No. CIV-75-20-BLG (D. Mont., filed Mar. 7, 1975); NILL No. 003611

General stream adjudication of all rights in the Tonque River system, including the reserved rights of the Northern Cheyenne Reservation and some water rights of the Crow Reservation. In 1979, the district court consolidated this case with other similar suits and dismissed each one, 484 F. Supp. 31. The Ninth Circuit Court of Appeals reversed the district court's dismissal of the federal cases on the ground that the Montana courts lacked jurisdiction over Indian water rights, Northern Cheyenne Tribe v. Adsit, 668 F.2d 1080 (9th Cir. 1982). The United States Supreme Court reversed the Ninth Circuit, Arizona v. San Carlos Apache Tribe, 103 S. Ct. 3201 (1983), deferring to state court
adjudication. On remand, the appellate court stayed all proceedings in this and the other consolidated cases pending the outcome of state court proceedings, 721 F.2d 1187 (9th Cir. 1983).


General adjudication of all water rights in the Milk and St. Mary River systems, including the reserved rights of the Blackfeet, Fort Peck, Rocky Boy's and Fort Belknap Reservations. Also involved are water rights of Glacier National Park, BLM lands and several wildlife refuges and waterfowl production areas. Proceedings in this case are stayed pending state court adjudication of these rights, 721 F.2d 1187 (9th Cir. 1983). The parties reached a negotiated settlement in July 1986 and congressional ratification remains pending.


General adjudication of all water rights on the Poplar, Big Muddy Creek and Missouri Rivers and their tributaries that originate in or flow through the Fort Peck Reservation. This case also involves water rights of the Medicine Lake National Wildlife Refuge. Stayed pending state court adjudication, 721 F.2d 1187 (9th Cir. 1983).


General adjudication of all water rights within the Flathead River basin, including the rights of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Flathead Irrigation Project, the National Bison Range, wild and scenic rivers, national forests and several wildlife refuges. All proceedings in this case are stayed pending state water adjudication, 721 F.2d 1187 (9th Cir. 1983).


General adjudication of all water rights on the Marias River system,
including reserved water rights for the Blackfeet Reservation, Glacier National Park, Lewis and Clark National Forest and BLM lands. All proceedings are stayed pending the outcome of state adjudication of these rights.

United States v. Big Horn Low Line Canal, No. CV-75-34-BLG (D. Mont., filed Apr. 17, 1975)

General adjudication of all water rights in the Big Horn and Little Big Horn Rivers and in Pryer, Sage, Tullock and Sarpy Creeks, and their tributaries, within Montana. Reserved water rights for the Crow Indian Reservation are involved, as well as for Custer National Forest, Pryer Mountain Wild Horse Range and Big Horn Canyon National Recreation Area. All proceedings are stayed pending state court adjudication of these rights.

Blackfeet Indian Nation v. Clark, No. CV-83-151-GF (D. Mont., filed Sept. 9, 1983)

Action by the Blackfeet Tribe against the Secretary of the Interior, the Attorney General of the United States, subordinate Interior Department officials and four officers of the State of Montana with responsibilities for administration of the Tribe's water rights within the Blackfeet Reservation. The Tribe alleges that it is being deprived of its water rights because federal officials have a conflict of interest between their trust responsibility to the Tribe and their responsibility to other federal agencies. The Tribe further contends that because the conflict of interest causes it to be represented inadequately, the state courts lack jurisdiction over tribal water rights.
Suit brought by the United States to determine the reserved water rights of the Acoma and Laguna Pueblos in the San Jose River system. Pueblo water rights under Spanish and Mexican law are involved, as well as the application of the Winters doctrine to pueblos. The plaintiffs also seek a permanent injunction and damages for trespass against individual and corporate defendants, which include United Nuclear Corporation, Gulf Oil, Kerr-McGee Corporation, Atlantic Richfield, Exxon, Sohio and El Paso Natural Gas. After this case was filed, two groups of defendants sought a general stream adjudication in state court (Kerr-McGee Corporation v. United States, Civ. No. CB-83-190, and City of Grants v. United States, Civ. No. CB-83-220). Both state cases were removed to federal court by the United States within a month after filing, and the corporations and individuals involved sought to have the adjudication returned to state court. The district court disallowed the removal to federal court on technical grounds of federal question removal and dismissed the trespass action, 580 F. Supp. 1434 (1984). Dismissal of the trespass action is currently on appeal to the Tenth Circuit Court of Appeals, and a separate action seeking an injunction pending appeal of the trespass action was filed by the United States on March 22, 1985 (No. CIV-82-44-66-BD).


Consolidated cases seeking a general adjudication of all water rights in
the San Jose River basin, involving the reserved rights of the Laguna and Acoma Pueblos, as well as water rights of several international energy development corporations. This action has been delayed because of a protest filed by one of the bidders in connection with bid awards for preparation of an engineering study.

New Mexico v. Aamodt. No. CIV-6639-M (D.N.M., filed Apr. 22, 1966); NTIL No. 002706

General adjudication of all water rights in the Nambe-Pojaque River system in the Rio Grande basin, including the reserved rights of the Tesuque, San Ildefonso, Nambe and Pojaque Pueblos. Two significant aspects of this case are that the State Engineer of New Mexico brought this suit in federal court, and that the Pueblos claim the right to participate separately and independently of Justice Department attorneys. A Special Master was appointed, who completed the trial process concerning Indian acreages and priorities in 1982. The district court held that the Indians have a senior priority right for all water of the stream system necessary to irrigate their lands and for their domestic uses. Such priority applies to all acreage irrigated by the Pueblos between 1846 and 1924, and was established pursuant to the 1846 Treaty of Guadalupe Hidalgo and the 1851 Trade and Intercourse Act. The court ruled that Winters rights apply only to Pueblo lands set aside by Executive Order for the Nambe Pueblo in 1902 and to other executive orders or congressional reservation that may exist. Water rights of the Pueblos, under the district court decision, include surface water of streams and groundwater physically interrelated to and an integral part of the hydrologic cycle. In addition, the court ruled that the Pueblos had a right to intervene in the lawsuit, in their own right. The parties currently are attempting to quantify Pueblo water rights pursuant to the district court
United States of America in its own Behalf and on Behalf of the Pueblos of
Jemez, Santa Ana and Zia v. Abousleman, No. CIV-83-1041-BB (D.N.M., filed June
27, 1983)

Suit seeking general adjudication of all water rights in the Jemez River basin in New Mexico, including water rights of the United States and reserved rights of the Jemez, Zia and Santa Ana Pueblos. At issue are water rights held by the pueblos under Spanish and Mexican law before the area was ceded to the United States, as well as Winters rights. The suit is also a damage action based on trespass against upstream diverters in the Jemez River basin.

New Mexico ex rel. Reynolds and Pecos Valley Artesian Conservancy District v. Lewis, Civ. No. 20294 (5th Jud. Dist., Chavez C'ty, filed 1956) and New Mexico ex rel. Reynolds and Pecos Valley Artesian Conservancy District v. Hagerman Canal Company, et al., Civ. No. 22600 (5th Jud. Dist., Chavez C'ty, filed 1956); NILL No. 002439

State court general stream adjudication of all water rights in the Roswell basin and Hondo section of the Pecos River watershed in New Mexico, including water rights of the United States and the Mescalero Apache Indian Reservation (United States joined as a defendant in 1963; Mescalero Apache portion added in 1973).

New Mexico ex rel. Reynolds, v. United States, Civ. No. 75-184 (11th Jud. Dist., San Juan C'ty, filed Mar. 13, 1975); NILL No. 002804

State court general stream adjudication of all water rights in the San Juan River system in New Mexico, including both surface and interconnected groundwater (originally filed in federal court but dismissed, State of New Mexico ex rel. v. United States, 408 F. Supp. 1029 (D.N.M. 1975)). Affected are reserved rights of the Navajo, Jicarilla Apache and Ute Mountain Indian Tribes,
as well as federal lands. Issues in this case include the extent to which surface or underground water rights can be claimed for federal lands not appurtenant to surface waters, and the extent to which the Navajo Tribe has waived water rights it would otherwise be entitled to in exchange for specific reclamation projects and other legislation. This case is not expected to go to trial until 1993 or 1994.


Consolidated cases filed by the State Engineer of New Mexico in federal court seeking a general adjudication of all water rights in the Rio Grande del Rancho, the Rio Pueblo de Taos and the Rio Hondo water basins in New Mexico, affecting, among other, the water rights of the United States and the Taos Pueblo. The extent and nature of the water rights of the Pueblo under Spanish and Mexican law is an issue, as well as the applicability of the Winters doctrine to Indian pueblos. The trial date should begin in 1989.

New Mexico v. Aragon, No. CIV-7941 (D.N.M., filed Mar. 5, 1969)

General stream adjudication of the Chama River basin in New Mexico filed by the New Mexico State Engineer in federal court. At issue are the water rights of the San Juan Pueblo and the Jicarilla Apache Tribe, including the extent of the San Juan Pueblo's water rights under Spanish and Mexican law and the applicability of the Winters doctrine to pueblos. This case probably will go to trial in 1989.

Consolidated cases filed by the New Mexico State Engineer seeking general adjudication of all water rights in the Rio de Truchas basin tributary of the Rio Grande in New Mexico. Rights of the Santa Clara and San Juan Pueblos are affected, as well as rights of the United States. The extent of the water rights of these pueblos under Spanish and Mexican law and the applicability of the Winters doctrine to Indian pueblos are issues. This case is scheduled to go to trial in early 1990.

Anaya v. Public Service Company of New Mexico, Civ. No. 43347 (Santa Fe C'ty Dist. Ct., filed June 28, 1971); NILL No. 004236

Suit to enjoin Public Service Company from interfering with Indian water rights in the Santa Fe River basin tributary to the Rio Grande in New Mexico. The case involves general adjudication of all water rights in that basin, including the rights of the United States (joined as defendant in 1978) and the Cochiti Pueblo. Pueblo water rights under Spanish and Mexican law and the applicability of the Winters doctrine to pueblos are issues.

New Mexico v. Santa Cruz Irrigation District, et al., Civ. No. 35139 (Santa Fe C'ty Dist. Ct., filed June 12, 1964)

General adjudication of all water rights in the Santa Cruz basin tributary to the Rio Grande in New Mexico, including water rights of the United States and the Santa Clara and San Juan Pueblos. Application of Spanish and Mexican law and the Winters doctrine to these Pueblos is to be considered.

Zuni Tribe of New Mexico v. City of Gallup, et al., CTV-82-1135-M (D.N.M., filed Oct. 5, 1982)

Action to determine the aboriginal and reserved water rights of the Zuni Pueblo and for declaratory and injunctive relief (no general adjudication is
sought). The water rights involve surface and groundwater of the Zuni River, the Rio Nutria, the Rio Pescado, their tributaries, and the aquifers within the Gallup Sag. The Zuni Pueblo alleges that the available water in, on and around the Zuni Reservation is inadequate to supply present needs of the Pueblo and seeks to enjoin the City of Gallup from taking water from the Gallup Sag aquifers, which would result in depleting the Pueblo's water supply. In September 1984, the City of Gallup filed an action in state court for a general adjudication of the involved waters, as well as a motion to dismiss the federal court action, which has not yet been decided.

Jicarilla Apache Tribe v. United States, No. CIV-82-1327-C (D.N.M., filed Nov. 12, 1982)

The Tribe seeks a declaratory judgment that a contract entered into in August 1982, between the United States and Utah International Corporation is void because of the Tribe's reserved rights in the Navajo River with a priority date of 1877. The Tribe also claims rights to 26,000 acre-feet of water under a commitment by the Secretary of the Interior to reserve that water for the Tribe.


The Pueblos seek injunctive relief and damages, alleging that a sewage treatment plant in Grants, New Mexico, is unlawfully polluting the Rio San Jose, which flows through the Pueblos. The Pueblos claim that state and federal water quality standards are being violated, and that their reserved water right contains an implied right to clean water. The parties have reached a settlement on these matters; if the defendants substantially perform in accordance with the settlement agreement, the settlement will become final.
This action was brought by the United States against approximately 600 individual owners of land within the former Klamath Indian Reservation to determine the water rights of the Klamath Tribe, the United States, the State of Oregon and private property owners within that area. The Klamath Tribe intervened as a plaintiff and the State of Oregon as a defendant. The district court decided only federal issues, specifying the method for measuring the reserved water rights originally attached to the reservation, but left the actual quantification of the water rights to state administrative proceedings. United States v. Adair, 478 F. Supp. 336 (D. Or. 1978). The district court ruled that the Tribe and its members have water rights sufficient to maintain their rights to hunt and fish on the former reservation, as well as for agriculture, although the Tribe no longer owns any reservation lands. The priority date of the right is time immemorial. The court also ruled that individual Indian landowners have reserved water rights, with a date-of-the-reservation priority, sufficient to maintain agriculture on their lands, subject to the paramount rights of the Tribe. Non-Indian landowners could acquire water rights transferred by their Indian predecessors, subject to loss by nonuse. The Ninth Circuit Court of Appeals upheld the district court on these points, 723 F.2d 1394 (9th Cir. 1983), and the Supreme Court has denied certiorari, 104 S. Ct. 3536 (1984). The case has been remanded to state administrative proceedings for determination of the water rights of all other water users in the Klamath basin.

The State court action had remained virtually dormant since 1976 when the
Oregon State Water Resources Director issued a notice that he would begin an investigation concerning the flow and water use of the Klamath River. Finally, on July 7, 1987, the State of Oregon served notice that it would begin taking formal claims, and was planning to move rapidly in this adjudication. The United States Fish and Wildlife Service is in the process of determining the flows needed to maintain the tribal fishery.

The State of South Dakota commenced a general water adjudication in state court to determine all water rights in the Missouri River and its major tributaries in South Dakota. The United States, in its own capacity and as trustee for the Standing Rock Sioux, Cheyenne River Sioux, Lower Brule Sioux, Crow Creek Sioux, Oglala Sioux and the Rosebud Sioux Tribes, was joined in the state proceeding. Soon after, the United States removed the case to federal court, and the State of South Dakota moved to remand. The district court granted the remand petition on January 19, 1982, 531 F. Supp. 449 (D.S.D. 1982), and the case now is proceeding in state court.
United States v. Anderson, No. CIV-72-3643-JLQ (E.D. Wash., filed May 5, 1972);
NILL No. 003224

Action filed by the United States acting in its own behalf and as trustee for the Spokane Tribe of Indians against the State of Washington, individuals and corporations, seeking adjudication of water rights in the Chamokane Creek basin. The case involves the priority dates of water rights on a reservation containing lands that have been homesteaded by non-Indians, allotted to individual Indians, some of whom sold or transferred their lands to non-Indians, and lands that have been reacquired by the Tribe and returned to trust status. On appeal, the Ninth Circuit Court of Appeals ruled that former reservation lands that had been homesteaded and subsequently reacquired by the Tribe have a priority date of the date of reacquisition if the land's water right was not perfected or was lost. Perfected water rights appurtenant to homesteaded lands carry a priority date to which they are entitled under state law, and former reservation lands that were allotted and sold to non-Indians carry a priority date of the creation of the reservation if the water rights have been used continuously. 736 F.2d 1358 (9th Cir. 1984). In addition, the appellate court held that the State, rather than Tribe, has the authority to regulate use of excess water on fee lands owned by non-Indians within the reservation boundaries. This case has been remanded to the district court, where a water master currently is quantifying water rights in the Chamokane basin in accordance with the appellate decision. The Tribe has been granted water rights for irrigation and to protect a tribal fishery. Currently, the Tribe is dedicating unused irrigation water to supplement the fishery flows to minimize damage to the fishery. The State of Washington contends that such water is surplus water for which the State can issue temporary use permits. In fact, the
State has issued several permits for water withdrawal from the Chamokane basin. The Tribe has opposed this action.

Confederated Tribes and Bands of the Yakima Indian Nation v. United States, No. CIV-77-129 (E.D. Wash., filed Apr. 28, 1977)

An action brought by the Yakima Indian Nation against the United States and individual water users as a "class" to determine the quantum and priority of the Tribe's water rights in the Yakima River basin. The Yakima Nation contends that its right extends to the entire flow of the river. This case has been temporarily stayed since 1979 because of a concurrent state court general adjudication of the rights to the surface water of the Yakima River (Washington v. Acquavella).


General adjudication of water of the Yakima River basin situated in Benton, Kittitas, Klickitat and Yakima Counties in Washington. Involved are the reserved water rights of the Yakima Indian Reservation and national forest lands. The trial date is scheduled for late 1988.

Colville Confederated Tribes v. Walton, No. CIV-70-4297 (E.D. Wash., filed Sept. 15, 1970); MILI No. 001153

General stream adjudication of No Name Creek, located entirely within the boundaries of the Colville Indian Reservation, for the purpose of apportioning the Tribe's reserved water rights between the tribal fishery, Indian allottees and Walton, a non-Indian allotment purchaser. At issue are the extent to which undeveloped reserved water rights are transferred in conveyances to non-Indians, the application of the reasonable diligence and continuous use standard, and the
ratable shares concept in allocating available water. Also, because the State of Washington had granted Walton a water permit under its laws, the question of state jurisdiction over water entirely within a reservation is raised. The original decision of the district court was rendered in 1978, 460 F. Supp. 1320 (Walton I), and the case has been appealed to the Ninth Circuit twice, 647 F.2d 42 (9th Cir.) cert. denied, 454 U.S. 1092 (1981) (Walton II), and 752 F.2d 397 (9th cir. 1985) (Walton III). The U.S. Supreme Court has denied review of this decision. The case has been remanded to the district court.


General adjudication of all water rights in Omak Creek, which lied entirely within the boundaries of the Colville Reservation. At issue is the State's jurisdiction to adjudicate Indian reserved water rights on a water source located entirely within a reservation. This case has been reactivated in accordance with the Walton decision of June 25, 1987.


At issue in this case, brought by the State of Washington in state court, is whether Indians may exercise their reserved water rights only when other potential sources have been exhausted, and the extent to which reserved water rights are limited by water availability.

Kittitas Reclamation District v. Sunnyside Valley Irrigation District, Civ. No. 21 (E.D. Wash., filed 1939)

Suit by several irrigation districts in eastern Washington under the
district court's continuing jurisdiction to interpret and administer a 1945 consent decree between the United States and the irrigation districts specifying the amounts of water to be delivered to the districts during the irrigation season. The irrigation districts appealed a 1980 district court order releasing water from a water project reservoir behind Cle Elum Dam to preserve nests of salmon eggs threatened by low post-irrigation season water flows in order to protect treaty fishing rights of the Yakima Indian Nation. On June 14, 1985, the Ninth Circuit Court of Appeals, 763 F.2d 1032, ruled that the district judge properly assumed jurisdiction to interpret the 1945 consent decree and that he was not required to dismiss this action in favor of the pending state adjudication of all Yakima River basin water rights, Washington v. Acquavella. The appellate court also ruled that the district court did not abuse its discretion in ordering the release of water to preserve the nests of salmon eggs because governmental operation of the water project in a manner that fails to protect an already low chinook salmon run would violate its prior duties under its treaty with the Yakima Nation. The U.S. Supreme Court denied review of this decision. The district judge has ordered measures for further study of the problem and has continued the water master's authority to release water as necessary in accordance with these rulings.

Holly v. Totus and Confederated Tribes and Bands of the Yakima Indian Nation (E.D.Wash., filed Jan. 6, 1978)

Suit brought by the State of Washington Departments of Ecology, Game and Natural Resources and individual plaintiffs residing in the Glenwood, Washington area and in the cities of Wapato and Toppenish against the Yakima Indian Nation. At issue is the authority of the Tribe to adopt a comprehensive water code that regulates excess waters on non-Indian land within its reservation boundaries.
State general adjudication of all water rights in the Big Horn River System in Wyoming. The United States is a party with respect to all federal reserved and appropriative rights claimed for federal users, including the Shoshone and Arapaho Tribes of the Wind River Reservation, and national forests, wildlife refuges, parks and public lands. On February 24, 1988, the Wyoming Supreme Court affirmed the trial court's granting the United States, as trustee for the Shoshone and Arapaho Tribes, the right to divert annually approximately 477,000 acre-feet of water. The court held that the Tribes have a reserved right to historic and future "practically irrigable acreage" on the Wind River Reservation with a priority date of 1868, the date the United States signed the Treaty establishing the Reservation. The 1868 priority date attached to all practically irrigable acres on the reservation that: (i) are tribally owned and which were subject to the 1868 Treaty, including those parcels that were transferred to non-Indians and reacquired by the Tribes, (ii) are fee lands held by individual Indians within the Reservation that never left Indian ownership, and (iii) were sold by individual Indian allottees to non-Indians, provided that the land was irrigated by the Indian predecessor or put under irrigation within a reasonable time after purchase by the non-Indian allottee. The court ruled that the Tribes do not have reserved water rights (i) to protect minimum stream flows for wildlife, fisheries or aesthetics, (ii) for industrial or mineral development, (iii) or for groundwater, finding that the Reservation was established solely for agricultural purposes. Some of the court's rulings may be appealed to the U.S. Supreme Court. The rights of all others claiming
water rights on the Big Horn System under state law are yet to be adjudicated.
AN ACT
To provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
SECTION 1. SHORT TITLE.
4 This Act may be cited as the "San Luis Rey Indian
5 Water Rights Settlement Act".
6
SEC. 2. DEFINITIONS.
7 For purposes of this Act—
(1) BANDS.—The term "Bands" means the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians which are recognized by the Secretary of the Interior as the governing bodies of their respective Reservations in San Diego County, California.

(2) CENTRAL VALLEY PROJECT.—The term "Central Valley Project" means the Federal reclamation project located in California which was reauthorized by section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 850) and the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1199) as amended and supplemented.

(3) FIRM PROJECT WATER.—The term "firm project water" means water developed by the Central Valley Project, the availability of which is subject to proportionately shared shortages.

(4) INDIAN WATER AUTHORITY.—The term "Indian Water Authority" means the San Luis Rey River Indian Water Authority, an inter-tribal Indian entity established by the Bands.

(5) LOCAL ENTITIES.—The term "local entities" means the City of Escondido, California; the Escondido Mutual Water Company; and the Vista Irrigation District.
(6) Project Use Power.—For the purpose of this Act only, the term "project use power" means Central Valley Project hydroelectric power and power from other sources used in the operation of the Central Valley Project irrigation facilities and for other purposes specifically authorized by Congress.

(7) San Diego Aqueduct.—The term "San Diego Aqueduct" means the water conveyance facilities operated and maintained by the San Diego County Water Authority and used to convey imported water into San Diego County.

(8) Settlement Agreement.—The term "settlement agreement" means the agreement to be entered into by the United States, the Bands, and the local entities which will resolve all claims, controversies, and issues involved in all the pending proceedings among the parties.

SEC. 3. CONGRESSIONAL FINDINGS; LOCAL CONTRIBUTIONS; PURPOSE.

(a) Congressional Findings.—The Congress finds the following:

(1) The Reservations established by the United States for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians on or near the San
Luis Rey River in San Diego County, California, need a reliable source of water.

(2) Diversions of water from the San Luis Rey River for the benefit of the local entities commenced in the early 1890s and continue to be an important source of supply to those communities.

(3) The inadequacy of the San Luis Rey River to supply the needs of both the Bands and the local entities has given rise to litigation to determine the rights of various parties to water from the San Luis Rey River.

(4) The pendency of the litigation has—

(A) severely impaired the Bands' efforts to achieve economic development on their respective Reservations,

(B) contributed to the continuation of high rates of unemployment among the members of the Bands,

(C) increased the extent to which the Bands are financially dependent on the Federal Government, and

(D) impeded the Bands and the local entities from taking effective action to develop and conserve scarce water resources and to preserve those resources for their highest and best uses.
(5) In the absence of a negotiated settlement—

(A) the litigation, which was initiated almost 20 years ago, is likely to continue for many more years,

(B) the economy of the region and the development of the Reservations will continue to be adversely affected by the water rights dispute, and

(C) the implementation of a plan for improved water management and conservation will continue to be delayed.

(6) An agreement in principle has been reached under which a comprehensive settlement of the litigation would be achieved, the Bands' claims would be fairly and justly resolved, the Federal Government's trust responsibility to the Bands would be fulfilled, and the local entities and the Bands would make fair and reasonable contributions.

(7) The Bands and the local entities have agreed that the settlement agreement shall include the following provisions:

(A) The right to the use of the waters of the San Luis Rey River Basin which originate above the intake to the Escondido Canal and which are now or in the future developed by the Bands or
the local entities shall be shared equally between the local entities and the Bands.

(B) The local entities shall guarantee that a minimum of 7,000 acre-feet of such developed water shall be available to the Bands annually to the extent needed for use on their Reservations.

(C) In satisfying the provisions of subparagraphs (A) and (B)—

(i) the local entities shall contribute the water development, conveyance, and storage benefits made possible by the following facilities, all of which they have developed, financed, and constructed and shall maintain and, if necessary, replace—

(I) the Henshaw Dam and Reservoir,

(II) the Escondido Canal, and

(III) the Wohlford Dam and Reservoir;

(ii) the local entities shall also contribute the water development benefits of the existing Warner Ranch wellfield and related facilities, which are wholly owned and have been developed, financed, and constructed by the local entities; and
(iii) the Bands and the local entities shall share the costs of operating, maintaining, and, if necessary, replacing and further developing the Warner Ranch wellfield and related facilities.

(D) In partial settlement of the claims of the Bands in the pending litigation and in consideration of the use of the lands of the Bands for project facilities, the local entities shall make payments to the Indian Water Authority based on the local entities' diversions of the Bands' share of local water that is surplus to the needs of the Bands. The local entities shall be obligated to pay the equivalent of 90 percent of the local entities' cost of purchasing water from their alternative source for the first 7,000 acre-feet per year and 80 percent of such cost for the remainder. The local entities shall pay to the Indian Water Authority all economic benefits derived by obtaining more than 6,000 acre-feet per year of firm project water as compared to the cost of their alternative source of supply.

(E) The Bands shall be responsible for providing the funding for covering the Escondido Canal where it traverses portions of the San Pas-
(b) PURPOSE.—It is the purpose of this Act to provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, in a fair and just manner which—

1. provides the Bands with a reliable water supply sufficient to meet their present and future needs;
2. promotes conservation and the wise use of scarce water resources in the upper San Luis Rey River System;
3. establishes the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the local entities to replace the adversary relationships that have existed for several decades; and
4. fosters the development of an independent economic base for the Bands.

SEC. 4. SETTLEMENT OF WATER RIGHTS DISPUTE.

Sections 5, 6, 7, 8, and 10 of this Act shall take effect only when—

1. the United States; the City of Escondido, California; the Escondido Mutual Water Company; the Vista Irrigation District; and the La Jolla, Rincon,
San Pasqual, Pauma, and Pala Bands of Mission Indians have entered into a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties;

(2) the Secretary of the Interior determines that all legal requirements necessary to implement or fulfill the provisions of the settlement agreement have been satisfied, including—

(A) the enactment of any legislation which is required in order for any party to fulfill its obligations under the settlement agreement or this Act, and

(B) the execution of any contracts necessary to fulfill the provisions of the settlement agreement or this Act; and

(3) stipulated judgments or other appropriate final dispositions have been entered in all pending proceedings by all parties.

SEC. 5. DUTIES OF THE UNITED STATES, THE INDIAN WATER AUTHORITY, AND THE LOCAL ENTITIES WITH RESPECT TO DELIVERY OF WATER.

(a) Delivery of Water.—

(1) In general.—Notwithstanding any other provision of law, subject to the provisions of the settle-
ment agreement, the Secretary of the Interior shall de-
liver to the Indian Water Authority and the local enti-
ties, through Federal and non-Federal facilities, annu-
ally and in perpetuity, 22,700 acre-feet of firm project
water. The Secretary of the Interior shall deliver
16,700 acre-feet per year of such water to the Indian
Water Authority in the San Diego Aqueduct in the vi-
cinity of the Bands' Reservations, except for so much
of such water as the Bands may not require for use on
their reservations. The remainder shall be delivered to
the local entities in the San Diego Aqueduct in the vi-
cinity of their service areas. Such water shall be deliv-
ered on a schedule to be agreed upon by the Secretary
of the Interior, the Indian Water Authority, and the
local entities, and may be rejected by the Indian Water
Authority or the local entities in whole or in part. The
use of such water shall be subject to State law pursu-
ant to the provisions of section 8 of the Act approved
on June 18, 1902 (43 U.S.C. 383) (commonly known
as the "Reclamation Act of 1902"), except that noth-
ing in this Act or any other law shall require compli-
ance with the State laws governing changes in the
places of use, purposes of use, or points of diversion of
the water described in this subsection in the water
rights permits for the Central Valley Project.
(2) Obligations of the Indian Water Authority and the Local Entities.—

(A) Costs.—

(i) 6,000 Acre-Feet per Year.—The local entities shall reimburse the United States at the rate charged for Central Valley Project irrigation water for all costs incurred in the delivery to them of 6,000 acre-feet per year which they receive of the water referred to in paragraph (1).

(ii) Remaining Water.—The Indian Water Authority and the local entities shall reimburse the United States for the operation and maintenance costs incurred in the delivery of all the remaining water referred to in paragraph (1). The construction costs associated with providing such water shall be a nonreimbursable cost of the Central Valley Project. Such operation and maintenance costs shall be based on the project use rate for irrigation water.

(B) Conveyance.—The Indian Water Authority and the local entities shall pay all costs associated with conveying the water described in paragraph (1) to them through non-Federal facili-
ties, and all costs, including construction costs, associated with conveying the water from the point of delivery in the San Diego Aqueduct to the Bands' Reservations and the local entities' service areas.

(3) Limitations on Water Delivery Obligation.—The Secretary of the Interior shall not be obligated to deliver the water described in paragraph (1) or water from any alternative sources provided pursuant to sections 6 or 7 if—

(A) such delivery would require the construction of new Federal facilities,

(B) consent to the use of non-Federal facilities cannot be obtained from the owners and operators of such facilities, or

(C) necessary contracts have not been executed or amended.

(4) Limitation on Additional Water Costs.—The Secretary of the Interior shall take such steps as may be necessary to ensure that the delivery of water under subsection (a)(1) will not result in any added water costs for any Central Valley Project contractors.

(b) Use of Project Use Power for Pumping.—
(1) In general.—Notwithstanding any other provision of law, the Secretary of the Interior shall use project use power from the Central Valley Project to deliver the water referred to in subsection (a)(1) from the Sacramento-San Joaquin Delta to the Indian Water Authority and to the local entities. If the Central Valley Project hydroelectric resources are inadequate to meet this obligation, the Secretary of Energy is authorized to obtain or acquire such additional power as may be needed to accomplish the delivery of the water referred to in subsection (a)(1) until such time as adequate amounts of project use power can be made available from the Central Valley Project.

(2) Obligations of the Indian Water Authority and the local entities.—

(A) Cost of power used for delivery of 6,000 acre-feet per year of water.—The local entities shall reimburse the United States at the irrigation project use rate for the costs incurred in providing that portion of the power referred to in paragraph (1) that is used for the delivery of 6,000 acre-feet per year of the water referred to in paragraph (a)(1).

(B) Cost of power used for delivery of remaining water.—The Indian Water Au-
authority and the local entities shall reimburse the
United States for the operation and maintenance
costs incurred in providing the power referred to in paragraph (1) that is used for the delivery to them of all of the remaining water referred to in paragraph (a)(1). The construction costs associated with providing such power shall be a nonreimbursable cost of the Central Valley Project. Such operation and maintenance costs shall be based on the project use rate for irrigation water pumping.

(3) LIMITATION ON USE OF CERTAIN POWER.—

In fulfilling the requirements of paragraph (1), the Secretary of Energy shall—

(A) make such power available for pumping only at State or Federal facilities;

(B) not utilize any power that is needed for other project use purposes or for Federal installations; and

(C) take such steps as necessary to ensure that, until December 31, 2004, or for such additional period as may be covered by any contract or obligation for Central Valley Project preference power in existence on the date of the enactment of this Act, the quantity of power made available for sale to preference customers under such con-
tracts or obligations shall be the same as it would have been without this Act.

(4) LIMITATION ON ADDITIONAL POWER COSTS.—The Secretary of the Interior and the Secretary of Energy shall take such steps as may be necessary to ensure that the provision of power under paragraph (1) will not result in any added power costs—

(A) for project use purposes, or

(B) until after December 31, 2004, to Central Valley Project preference power customers to the extent of any contract or obligation in existence on the date of the enactment of this Act or for such additional period as may be covered by any such existing contract or obligation, nor shall any added power costs incurred during the term of any existing contract or obligation be accrued or passed on to Central Valley Project firm power customers following the expiration of such contract or obligation.

(c) DELEGATION OF AUTHORITY.—The Secretary of the Interior and the Secretary of Energy are authorized to enter into such agreements and to take such measures as each Secretary may deem necessary and appropriate to fulfill any obligation of each Secretary under this Act.
SEC. 6. PROTECTION OF WATER USERS WITHIN THE CENTRAL VALLEY PROJECT.

(a) Obligation of the United States.—Nothing in this Act shall diminish the amount of firm project water that is available for eventual contracting within the service area of the Central Valley Project as it existed on January 1, 1987. In the event that the full amount of firm project water becomes, or is about to become, fully contracted for, the Secretary of the Interior is authorized and directed to take and implement measures that are deemed necessary and appropriate to insure that the implementation of this Act does not result in the diminishment of the amount of firm project water that is available for contracting within the service area of the Central Valley Project as it existed on January 1, 1987. These measures may include augmenting the amount of firm project water through conservation measures, financial participation in projects undertaken by the State of California or the United States Army Corps of Engineers to increase the firm project water yield of the Central Valley Project, or providing an alternative supply of water from another source through conservation measures, purchase or exchange in lieu of the firm project water described in section 5(a). The measures undertaken by the Secretary of the Interior pursuant to this section shall only utilize water to which the State of California is entitled, shall not diminish the benefits provided to the Bands, the Indian Water Authority and...
(b) **Duty to Prepare Report.**—The Secretary of the Interior is prohibited from implementing any measures under the authority of subsection (a) until a report describing the proposed measures, estimated costs and possible alternatives has been submitted to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate, ninety calendar days have elapsed, and appropriations have been authorized and made available.

(c) **Enforcement of the United States' Obligations.**—Notwithstanding any other provision of law, any aggrieved person may enforce the obligations described in subsection (a) in an action filed in an appropriate United States District Court. In any such action, the Court may grant declaratory or injunctive relief or may order specific performance of the obligation described in subsection (a). As a last resort, if all other remedies fail to achieve the purposes of subsection (a), the Court may award damages in an amount sufficient to acquire an alternative supply of water from another source in order to insure that the implementation of this Act does not result in the diminishment of the amount of firm project water that is available for contracting within the serv-
ice area of the Central Valley Project as it existed on January 1, 1987.

(d) LIMITATION OF THE AUTHORITY OF THE SECRETARY OF THE INTERIOR.—Nothing in this section or in any other provision of this Act shall authorize the construction of any new dams, reservoirs or water storage facilities.

SEC. 7. ALTERNATIVE SOURCES OF WATER AND POWER.

(a) IDENTIFICATION OF SOURCES.—Notwithstanding any other provision of this Act, the Secretary of the Interior and the Secretary of Energy may obtain water and power for the Bands, the Indian Water Authority, and the local entities from any authorized alternative source or sources other than those referred to in subsections (a)(1) and (b)(1) of section 5. Such alternative sources shall only utilize water to which the State of California is entitled, shall not diminish the benefits provided to the Bands, the Indian Water Authority and the local entities under section 5 of this Act, and shall not adversely affect the rights or interests of other water or power users.

(b) DUTY TO PREPARE REPORT.—The Secretary of the Interior and the Secretary of Energy are prohibited from implementing any measures under the authority of subsection (a) until a report describing the proposed measures, estimated costs and possible alternatives has been submitted to the Committee on Interior and Insular Affairs of the House of
Representatives and to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate, ninety calendar days have elapsed, and appropriations have been authorized and made available.

SEC. 8. ESTABLISHMENT, STATUS, AND GENERAL POWERS OF SAN LUIS REY RIVER INDIAN WATER AUTHORITY.

(a) Establishment of Indian Water Authority Approved and Recognized.—

(1) In general.—The establishment by the Bands of the San Luis Rey River Indian Water Authority as a permanent inter-tribal entity pursuant to duly adopted ordinances and the power of the Indian Water Authority to act for the Bands are hereby recognized and approved.

(2) Limitation on power to repeal or revoke ordinances.—The ordinances referred to in paragraph (1) may not be revoked or repealed, and the power described in such paragraph may not be surrendered, except by Act of Congress.

(3) Limitation on power to amend or modify ordinances.—Any proposed modification of any ordinance referred to in paragraph (1) must be approved by the Secretary of the Interior and no such approval may be granted unless the Secretary finds
that the proposed modification will not interfere with or impair the ability of the Indian Water Authority to carry out its responsibilities and obligations pursuant to this Act and the settlement agreement.

(b) **Status and General Powers of Indian Water Authority.**—

(1) **Status as Indian Organization.**—To the extent provided in the ordinances of the Bands which established the Indian Water Authority, such Authority shall be treated as an Indian entity under Federal law with which the United States has a trust relationship.

(2) **Power to Enter into Agreements.**—The Indian Water Authority may enter into such agreements as it may deem necessary to implement the provisions of this Act and the settlement agreement.

(3) **Investment Power.**—Notwithstanding paragraph (1) or any other provision of law, the Indian Water Authority shall have complete discretion to invest and manage its own funds.

(4) **Limitation on Spending Authority.**—All funds of the Indian Water Authority which are not required for administrative or operational expenses of the Authority or to fulfill obligations of the Authority under this Act, the settlement agreement, or any other agreement entered into by the Indian Water Authority...
shall be invested or used for economic development of the Bands, the Bands’ Reservation lands, and their members. Such funds may not be used for per capita payments to members of any Band.

(c) **INDIAN WATER AUTHORITY TREATED AS TRIBAL GOVERNMENT FOR CERTAIN PURPOSES.**—The Indian Water Authority shall be considered to be an Indian tribal government for purposes of section 7871(a)(4) of the Internal Revenue Code of 1986.

**SEC. 9. AUTHORITY TO EXECUTE SETTLEMENT AGREEMENT.**

Notwithstanding any other provision of law, the Secretary of the Interior and the Attorney General of the United States, acting on behalf of the United States, and the Bands, acting through their duly authorized governing bodies, are authorized to enter into the settlement agreement to implement the terms and conditions described in section 3(a)(7) and the provisions of this Act. The execution of the settlement agreement and other necessary contracts shall not be subject to consideration by the Secretary of the Interior or the Secretary of Energy pursuant to section 7 regarding the availability of alternative sources of water or power.

(a) Power Facilities.—Any license issued under the Act of June 10, 1920 (16 U.S.C. 791a et seq.) (commonly referred to as Part I of the Federal Power Act) for any part of the system that diverts the waters of the San Luis Rey River originating above the intake to the Escondido Canal—

(1) shall be subject to all of the terms, conditions, and provisions of the settlement agreement; and

(2) shall not in any way interfere with, impair or affect the ability of the Bands, the local entities and the United States to implement, perform and comply fully with all of the terms, conditions and provisions of the settlement agreement.

(b) Indian and Government Lands.—Notwithstanding any other provision of law, the Secretary of the Interior is exclusively authorized, subject to subsection (c), to lease, grant rights-of-way across, or transfer title to, any Indian tribal or allotted land, or any other land subject to the authority of such Secretary, which is used, or may be useful, in connection with the operation, maintenance, repair or replacement of the system to divert, convey and store the waters of the San Luis Rey River originating above the intake to the Escondido Canal.
(c) Approval by Indian Bands; Compensation to Indian Owners.—Any disposition of Indian tribal or allotted land by the Secretary of the Interior under subsection (a) shall be subject to the approval of the governing Indian Band. Any individual Indian owner or allottee whose land is disposed of by any action of the Secretary of the Interior under subsection (b) shall be entitled to receive just compensation.

SEC. 11. RULES OF CONSTRUCTION.

(a) Reserved Water Rights.—No provision of this Act shall be construed as altering or affecting the determination of the question of whether reserved water may be put to use, or sold for use, off of any Indian Reservation to which reserved water rights may attach.

(b) Limitation on Sales or Dispositions of Power.—No provision of this Act shall be construed as authorizing the Indian Water Authority or any other entity to sell electric power to any retail customer or to dispose of any electric power provided pursuant to this Act separately from the water described in section 5(a)(1).

(c) Eminent Domain and Application of Federal Laws.—No provision of this Act shall be construed as authorizing the acquisition by the Federal Government of any water or power supply or any water conveyance or power transmission facility through the power of eminent domain or
any other nonconsensual arrangement, nor shall the transportation of the water provided pursuant to this Act through non-Federal facilities subject those facilities or other water transported through those facilities to any Federal law to which they would not otherwise be subject.

(d) **Status and Authority of Indian Water Authority.**—No provision of this Act shall be construed as creating any implication with respect to the status or authority which the Indian Water Authority would have under any other law or rule of law in the absence of this Act or if section 8 does not take effect.

**SEC. 12. COMPLIANCE WITH BUDGET ACT.**

To the extent any provision of this Act provides new spending authority described in section 401(c)(2)(A) of the Congressional Budget Act of 1974, such authority shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

Passed the Senate December 19 (legislative day, December 15), 1987.

Attest: WALTER J. STEWART,

Secretary.
S. 1415
[Report No. 100—____]

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 1987

Mr. ARMSTRONG (for himself, Mr. WIRTH, Mr. DOMENICI, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

JULY 9 (legislative day, JUNE 23), 1987

Ordered, referred jointly to the Select Committee on Indian Affairs and the Committee on Energy and Natural Resources

_______ (legislative day, __________), 1988

Reported by Mr. INOUYE, from the Select Committee on Indian Affairs, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assem-
3 bled,
SECTION 1. SHORT TITLE.

That this Act may be cited as the “Colorado Ute Indian Water Rights Settlement Act of 1987”.

SEC. 2. FINDINGS.

The Congress finds that—

(1) The Federal reserved water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe are the subject of existing and prospective lawsuits involving the United States, the State of Colorado, and numerous parties in southwestern Colorado.

(2) These lawsuits will prove expensive and time consuming to the Indian and non-Indian communities of southwestern Colorado.

(3) The major parties to the lawsuits and others interested in the settlement of the water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have worked diligently to settle these claims, resulting in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing which was executed in compliance with the cost sharing requirements of chapter IV of Public Law 99–88 (99 Stat. 293), and the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.
(4) The Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe, by resolution of their respective tribal councils, which are the duly recognized governing bodies of each Tribe, have approved the December 10, 1986, Agreement and sought Federal implementation of its terms.

(5) This Act is required to implement portions of the above two agreements.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Agreement" means the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, among the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States, and other participating parties.

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.).

(3) The term "Dolores Project" means the Dolores Project, Colorado, a participating project under

(4) The term “final consent decree” means the consent decree contemplated to be entered after the date of enactment of this Act in the District Court, Water Division No. 7, State of Colorado, which will implement certain provisions of the Agreement.

(5) The term “Secretary” means the Secretary of the Interior.

(6) The terms “Tribe” and “Tribes” mean the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, or both Tribes, as the context may require.

(7) The term “water year” means a year commencing on October 1 each year and running through the following September 30.

SEC. 4. PROJECT RESERVED WATERS:

(a) WATER FROM ANIMAS-LA PLATA AND DOLORES PROJECTS.—The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to
supply the project reserved water rights of the Tribes in accordance with the Agreement:

(b) **APPLICATION OF FEDERAL RECLAMATION LAWS.**

With respect to the project reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata projects, Federal reclamation laws shall not apply to those project reserved waters except to the extent that those laws may also apply to the other reserved waters of the Tribes. Federal reclamation laws shall not be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in Article III, section A, subsection 1 and 2; and Article III, section B, subsection 1 of the Agreement.

SEC. 4. **TRIBAL RESERVED WATERS.**

(a) **WATER FROM ANIMAS-LA PLATA DOLORES PROJECTS.**—The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes in accordance with the Agreement.

(b) **APPLICATION OF FEDERAL RECLAMATION LAWS.**—The reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata Projects shall be treated in all respects in the same manner, except as provided in the Agreement, as the Tribes' other reserved waters.
Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration.

The Secretary shall not permanently alienate any water right. The Secretary may ensure the provisions of this subsection pursuant to section 1361 of Title 28, United States Code.

In determining whether to approve or disapprove a water use contract, the Secretary shall determine if it is in the best interests of the Tribe and, in this process, the potential economic return to the Tribe and the potential environmental, social, and cultural effects on the Tribe. The Secretary shall not be required under this paragraph to prepare any potential environmental, social, or cultural effects of the contract.
implementation of a water use contract apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(3) Where the Secretary has approved a water use contract, the United States shall not thereafter be directly or indirectly liable for losses sustained by either Tribe under such water use contract.

(c) Scope of Authorization.—The authorization provided for in subsection (a) shall not amend; construe; supersede; or preempt any State law; Federal law; interstate compact; or international treaty that pertains to the Colorado River or its tributaries; including the appropriation; use; development; storage; regulation; allocation; conservation; exportation; or quality of those waters.

(d) Per Capita Payments.—The proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

SEC. 5. NONAPPLICABILITY OF THE INDIAN INTERCOURSE ACT.

The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree.

Nothing in this section shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to
the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

SEC. 6. REPAYMENT OF PROJECT COSTS.

(a) MUNICIPAL AND INDUSTRIAL WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe’s municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe’s municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment’s pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment’s pro rata share of the allocable annual operation, maintenance, and replacement costs.
(b) Agricultural Irrigation Water.—(1) The Secretary shall defer, without interest, the repayment of the construction costs within the capability of the land to repay, which are allocable to each Tribe’s agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25 U.S.C. 386a; commonly referred to as the “Leavitt Act”), and section 4 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620c; commonly referred to as the “Colorado River Storage Project Act”). Such allocated construction costs which are beyond the capability of the land to repay shall be repaid as provided in subsection (g) of this section. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe’s agricultural irrigation allocation from the Animas-La Plata Project, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment’s pro rata share of the allocable annual operation, maintenance, and replacement costs. During any period in which water is used by a tribal lessee on land owned by non-Indians, the Tribe shall bear that incre-
meat’s pro rata share of the allocated agricultural irrigation construction costs within the capability of the land to repay as established in subsection (b)(1).

(c) ANNUAL COSTS WITH RESPECT TO RIDGES BASIN PUMPING PLANT.—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article III, section A, subsection 2.i and Article III, section B, subsection 1.i of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

(2) As an increment of its water from the Animas-La Plata Project is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment’s pro rata share of such increased annual operation, maintenance, and replacement costs, if any.

(d) TRIBAL SECRETARIAL DEFERRAL.—The Secretary may further defer all or a part of the tribal construction cost obligations and bear all or a part of the tribal operation, maintenance, and replacement obligations described
in this section in the event a Tribe demonstrates that it is unable to satisfy those obligations in whole or in part from the gross revenues which could be generated from a water use contract for the use of its water either from the Dolores or the Animas-La Plata Projects or from the Tribe’s own use of such water.

(e) USE OF WATER.—For the purpose of this section, use of water shall be deemed to occur in any water year in which a Tribe actually uses water or during the term of any water use contract. A water use contract pursuant to which the only income to a Tribe is in the nature of a standby charge is deemed not to be a use of water for the purposes of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated such funds as may be necessary for the Secretary to pay the annual operation, maintenance, and replacement costs as provided in this section.

(g) COSTS IN EXCESS OF ABILITY OF THE IRRIGATORS TO REPAY.—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay shall which are to be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act
shall be repaid in 30 equal annual installments from the
date that the water is first available for use.

SEC. 7. TRIBAL DEVELOPMENT FUNDS.
(a) ESTABLISHMENT.—There is hereby authorized to
be appropriated the total amount of $49,500,000 for three
annual installment payments to the Tribal Development
Funds which the Secretary is authorized and directed to
establish for each Tribe. Subject to appropriation, and
within 60 days of availability of the appropriation to the
Secretary, the Secretary shall allocate and make payment
to the Tribal Development Funds as follows:

(1) To the Southern Ute Tribal Development
Fund, in the first year, $7,500,000; in the two suc-
ceeding years, $5,000,000 and $5,000,000, respec-
tively.

(2) To the Ute Mountain Ute Tribal Develop-
ment Fund, in the first year, $12,000,000; in the two
succeeding years, $10,000,000 and $10,000,000, re-
spectively.

(b) ADJUSTMENT.—To the extent that any portion of
such amount is contributed after the period described
above or in amounts less than described above, the Tribes
shall, subject to appropriation Acts, receive, in addition to
the full contribution to the Tribal Development Funds, an
adjustment representing the interest income as determined
by the Secretary in his sole discretion that would have been earned on any unpaid amount had that amount been placed in the fund as set forth in section 7(a).

(c) **TRIBAL DEVELOPMENT.**—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within 60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the ap-
proved investment plan. The Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The principal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

(3) Each Tribe shall submit an economic development plan for all or any portion of its Tribal Development Fund to the Secretary. The Secretary shall approve such plan within 60 days of its submission if the Secretary finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, the Secretary shall, at the time of decision, set forth in writing and with particularity the reasons for such disapproval. Each Tribe may alter the economic development plan, subject to the approval of the Secretary as set forth in this subsection. The Secretary shall not be directly or indirectly liable for any claim or cause of action arising from the approval of an economic development plan or from the use and ex-
penditure by the Tribe of the principal of the funds and
income accruing to the funds, or any portion thereof, fol-
lowing the approval by the Secretary of an economic de-
velopment plan.
(d) PER CAPITA DISTRIBUTIONS.—Under no circum-
stances shall any part of the principal of the funds, or of
the income accruing to such funds, or the revenue from
any water use contract, be distributed to any member of
either Tribe on a per capita basis.
(e) LIMITATION ON SETTING ASIDE FINAL CONSENT
DECREE.—Neither the Tribes nor the United States shall
have the right to set aside the final consent decree solely
because subsection (c) is not satisfied or implemented.
SEC. 8. WAIVER OF CLAIMS.
(a) GENERAL AUTHORITY.—The Tribes are authorized
to waive and release claims concerning or related to water
rights as described in the Agreement.
(b) CONDITION ON PERFORMANCE BY SECRETARY.—
Performance by the Secretary of his obligations under this
Act and payment of the moneys authorized to be paid to
the Tribes by this Act shall be required only when the
Tribes execute a waiver and release as provided in the
Agreement.
SEC. 9. ADMINISTRATION.

In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

SEC. 10. INDIAN SELF-DETERMINATION ACT.

(a) IN GENERAL.—The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs. Any preference provided the Tribes shall not detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

(b) APPLICATION.—This section shall not apply if the application of this section would detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

SEC. 11. RULE OF CONSTRUCTION.

(a) IN GENERAL.—This Act shall be construed in a manner consistent with the Agreement.
(b) INDIVIDUAL MEMBERS OF TRIBES.—Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

SEC. 12. INDIVIDUAL MEMBERS OF TRIBES.

Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

SEC. 13. EFFECTIVE DATE.

Sections 4(b), 5, and 6 of this Act shall take effect on the date on which the final consent decree contemplated by the Agreement is entered by the District Court, Water Division No. 7, State of Colorado. Any moneys appropriated under section 7 of this Act shall be placed into the Ute Mountain Ute and Southern Ute Tribal Development Funds in the Treasury of the United States together with other parties' contributions to the Tribal Development Funds, but shall not be available for disbursement pursuant to section 7 until such time as the final consent decree is entered. If the final consent decree is not entered by December 31, 1991, the moneys so deposited shall be returned, together with a ratable share of accrued interest, to the respective contributors and the Ute Mountain Ute and Southern Ute Tribal Development Funds shall be terminated and the Agreement may be voided by any party to
the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.
REPORTING

Sec. 228. Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

COMMISSIONER OF RECLAMATION

Sec. 229. The Act of May 26, 1926 (44 Stat. 657), is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

SEVERABILITY

Sec. 230. If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE III

CONGRESSIONAL FINDINGS

Sec. 301. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—
(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

Sec. 302. For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).


(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

Sec. 303. (a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and
(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

(4) There are authorized to be appropriated up to $3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 806(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

Sec. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided
in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1) and section 303(a)(2), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

1. agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;
2. any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and
3. water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:
   A. private lands or interests therein having rights in surface or ground water recognized under State law; or
   B. reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

1. the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or
2. the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(2)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(2)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—
Appropriation authorization.

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

Sec. 305. (a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(aX1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(bX1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.
(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

Sec. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Pupugo Tribe agrees to—

96 STAT. 1279
(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(3) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.
OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OR CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

Sec. 307. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Poma Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1XB) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 76-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation,

96 STAT. 1281
or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph ("1XC") is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)1XA) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

STUDY OF LANDS WITHIN THE QUA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

SEC. 308. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed
by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 309. (a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of $15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 310. The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

SEC. 311. Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 312. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

(1) price guarantees, loan guarantees, or purchase agreements,
(2) loans, and
(3) joint venture projects,
at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.

96 STAT. 1283
SEC. 313. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;
(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and
(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;
(B) $5,250,000 to be contributed as follows:
   (i) $2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;
   (ii) $1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson;
   (iii) $1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and
(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and
(B) Such sums up to $16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and
(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or
(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).
(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title—

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

COMPLIANCE WITH BUDGET ACT

Sec. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

SHORT TITLE

Sec. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 1409 (H.R. 5118):

HOUSE REPORTS: N◦ 97-422 accompanying H.R. 5118 (Comm. on Interior and Insular Affairs), N◦ 97-855 (Comm. of Conference).

SENATE REPORTS: N◦ 97-375 accompanying H.R. 5118 (Comm. on Indian Affairs), 97-420 (Comm. on Energy and Natural Resources), N◦ 97-568 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 129 (1985):
Mar. 4, H.R. 5118 considered and passed House, amended.
May 11, H.R. 5118 considered and passed Senate, amended.
May 12, H.R. 5118 House concurred in Senate amendment with amendments.
May 18, Senate concurred in House amendments.
June 1, H.R. 5118 vetoed by President.
June 22, considered and passed Senate.
Aug. 17, considered and passed House, amended.
Aug. 20, Senate concurred in House amendments with amendments.
Sept. 24, Senate agreed to conference report.
Sept. 25, House agreed to conference report.

96 STAT. 1285
Public Law 95–328
95th Congress

An Act

Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress hereby declares that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Ak-Chin Indian community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached.

(b) The Congress hereby finds and declares that—

(1) the Ak-Chin Indian community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;

(2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered;

(5) this Act is proposed to settle the Ak-Chin Indian community’s claim for water by meeting the emergency needs of the Ak-Chin community through construction of a well field and water delivery system from nearby Federal lands and by obligating the United States to meet the Ak-Chin community’s needs for a permanent supply of water in a fixed amount to be available upon a date certain, in exchange for a release of all claims such community has against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the community; and

(6) it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian community.

Sec. 2. (a) For the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the “Secretary”) shall undertake engineering and hydrological studies as may be necessary to determine whether there exists, on Federal lands near the Ak-Chin Indian Reservation, a source of ground water which could be taken, on an annual basis, for use in connection with any contract entered into pursuant to subsection (b) of this section, subject to the provisions in (c) (2).
Such studies shall be completed and a report with respect thereto submitted to the Congress within twelve months after the date of the enactment of this Act.

(b) Within one hundred and eighty days following the submission to the Congress of the report referred to in subsection (a), the Secretary, if he determines that there exists a source of ground water which can be so taken on an annual basis, shall enter into a contract or other agreement with the Ak-Chin Indian community pursuant to which the Secretary shall agree, on behalf of the United States, to—

(1) furnish, subject to the provisions of clause (2) of subsection (c) of this section, to the Ak-Chin Indian community, commencing within sixty days following the completion of the necessary facilities under clause (2) of this subsection but in no event later than four years from the date of said contract, the delivery to the southeast corner of the lands comprising the Ak-Chin Indian Reservation, on an annual basis, of eighty-five thousand acre-feet of ground water from nearby Federal lands covered by such studies;  

(2) take such action as may be necessary to begin within sixty days following the date of such contract, to drill, construct, equip, maintain, repair, reconstruct, and operate a well field on such Federal lands, and to construct and maintain a delivery system, including canals, pumping stations and other appurtenant works, sufficient to provide for the delivery of such ground water from such Federal lands to the southeast corner of the lands comprising the Ak-Chin Indian Reservation.

(c) (1) The delivery of ground water under clause (1) of subsection (b) shall continue until augmented or replaced by the permanent water supply required under section 3 to be delivered to the Ak-Chin Indian Reservation, except that the obligation to deliver ground water during any year shall be reduced for that year by an amount equal to the amount of surface water delivered to such community pursuant to such contract during that year.

(2) Notwithstanding the provisions of clause (1) of subsection (b) of this section, the Secretary, if he determines that pumping eighty-five thousand acre-feet of ground water annually from nearby Federal lands to the Ak-Chin community would (A) not be hydrologically feasible or (B) diminish the ground water supply in the basin and thereby cause severe damage to other water users; may deliver a lesser amount.

(d) The Secretary is authorized to receive and consider any claims arising under this Act from water users other than the Ak-Chin Indian community for compensation for any losses or other expenses incurred by such users by reason of the enactment of this Act or actions taken thereunder.

(e) Notwithstanding any other provision of this Act, if the Secretary determines on the basis of studies conducted pursuant to subsection (a) of this section, that the pumping on an annual basis of any such ground water pursuant to clause (1) of subsection (b) of this section in excess of sixty thousand acre-feet is not possible by reason of clause (2) of subsection (c), and the Ak-Chin Indian community does not agree to contract for a lesser amount, the Secretary shall report to the Congress an alternative plan for meeting the emergency needs of the Ak-Chin Indian community. Such alternative plan shall be submitted to the Congress within one hundred and eighty days following the submission of the report referred to in subsection (a).
Public Law 98-530
98th Congress

An Act

Relating to the water rights of the Ak-Chin Indian Community.

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

SEC. 1. The Congress hereby finds and declares that—

(1) the Department of the Interior and the Ak-Chin Indian Community executed on September 23, 1983, an agreement entitled "Agreement in Principle for Revised Ak-Chin Water Settlement", wherein the parties agreed to revisions of the Act of July 28, 1978 (Public Law 95-328; 92 Stat. 409);

(2) the main purpose of the Agreement in Principle is to accomplish a prompt and economical fulfillment of the intent of that Act;

(3) section 3 of that Act requires that the Secretary of the Interior (hereinafter referred to as the "Secretary") as soon as possible but not later than twenty-five years after the date of the enactment of that Act, deliver to the Ak-Chin Indian Reservation a permanent supply of water to fulfill the Ak-Chin Indian Community's entitlement to eighty-five thousand acre-feet of water;

(4) section 2 of that Act requires that the Secretary deliver an interim supply of water until the permanent supply is acquired and delivered to the Reservation;

(5) the Secretary proposed to the Community, subject to the approval of Congress, to deliver the permanent supply not later than January 1, 1988, except that the Community, as a consideration, agree to certain modifications in the quantities of water to be delivered as the permanent supply and to release him from his obligation to deliver an interim supply;

(6) in order to establish January 1, 1988, as the date certain for the delivery of a permanent supply, the Community agreed to—

(A) the reduced deliveries of the permanent supply under certain conditions;
(B) the Secretary's proposals regarding the interim supply; and
(C) certain other proposals of the Secretary;

and executed the Agreement in Principle; and

(7) the provisions contained in this Act conform to the purposes of that Agreement and the consideration embodied in it.

SEC. 2. (a) As soon as possible but not later than January 1, 1988, the Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of not less than seventy-five thousand acre-feet of surface water suitable for agricultural use except as otherwise provided under subsections (b) and (c).

(b) In any year in which sufficient surface water is available, the Secretary shall deliver such additional quantity of water as is
requested by the Community not to exceed ten thousand acre-feet. The Secretary shall be required to carry out the obligation referred to in this subsection only if he determines that there is sufficient capacity available in the main project works of the Central Arizona Project to deliver such additional quantity.

(c) In time of shortage, if the aggregate supply of water referred to in subsection (f) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet. For the purposes of this Act, the term “time of shortage” means a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred nine thousand eight hundred and twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses.

(d) The Secretary shall be deemed to have satisfied his obligation to deliver water under this section only if such water is delivered at flow rates which meet the seasonal requirements for agricultural use on the Reservation. Such rates shall not exceed three hundred cubic feet per second.

(e) To meet the obligations of the Secretary to deliver water under this Act, the Secretary shall design, construct, operate, maintain, and replace, at no cost to the Community, such facilities, including any aqueduct and appurtenant pumping facilities, powerplants and electric power transmission facilities, which may be necessary.

(f) The water supply referred to in subsections (a) and (c) shall consist of the aggregate of the following—

(1) First, a permanent supply of no more or less than fifty thousand acre-feet of surface water per annum to be diverted from the Colorado River of the three hundred thousand acre-feet of water heretofore authorized by the Act of July 30, 1947 (61 Stat. 628), for beneficial consumptive use on lands of the Yuma Mesa Division of the Gila Project. Water referred to in this paragraph and in subsection (g)(1) shall have equal priority. Furthermore, these provisions shall not affect the relative priorities among themselves of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project as fully set out in section 301(b) of Public Law 90-537.

(2) Such Central Arizona Project water allocated to the Community and referred to in the “Notice of Final Water Allocations to Indians and non-Indian Water Users and Related Decisions” (48 Fed. Reg. 12446, March 24, 1983) as is necessary to fulfill the Secretary’s water delivery obligations. Delivery of such Central Arizona Project water shall be as provided in the December 11, 1980, Central Arizona Project water delivery contract between the United States and the Ak-Chin Indian Community, except as otherwise provided by this Act and any contract executed pursuant to this Act.

Notwithstanding any other provision of this Act, nothing in paragraph (1) of this subsection shall enlarge or diminish the authority of the Secretary under existing law. Nothing in section 4 or any other provision of this Act shall reduce the Secretary’s obligation to deliver to the Ak-Chin Reservation a permanent supply of fifty
thousand acre-feet of surface water per annum as well as the water referred to in paragraph (2) of this subsection.

(g)(1) The limitation in the first section of the Act of July 30, 1947 (61 Stat. 628) on the annual beneficial consumptive use in the Yuma Mesa Division of the Gila Project of no more than three hundred thousand acre-feet of Colorado River water shall be deemed to be a limitation of no more than two hundred and fifty thousand acre-feet, effective as provided in section 4 of this Act.

(2) Such two hundred and fifty thousand acre-feet of water shall not be used to irrigate more than thirty-seven thousand one hundred and eighty-seven acres of land in the Yuma Mesa Division, specifically: six thousand five hundred and eighty-seven acres in the North Gila Valley Irrigation District; ten thousand six hundred acres in the Yuma Irrigation District; and twenty thousand acres in the Yuma Mesa Irrigation and Drainage District. Additional land in the Yuma Mesa Irrigation and Drainage District may be irrigated if there is a corresponding reduction in the irrigated acreage in the other districts so that at no time are more than thirty-seven thousand one hundred and eighty-seven acres being irrigated in the Yuma Mesa Division.

(3) Pursuant to appropriations, the Secretary shall pay—

(A) $5,400,000 to the Yuma Mesa Irrigation and Drainage District for the purpose of replacement, rehabilitation, and repair of the water delivery system within the Yuma Mesa Irrigation and Drainage District, including water pumping facilities; and

(B) $2,000,000 to the Yuma Mesa Irrigation and Drainage District, $1,000,000 to the Yuma Irrigation District, and $1,000,000 to the North Gila Valley Irrigation District, for the purpose of on-farm and district water conservation and drainage measures.

Such funds shall not be used as non-Federal contributions in connection with any other Federal programs requiring cost-sharing. None of the payments to be made by the Secretary to said districts under this subsection shall be treated as supplemental or additional benefits or reimbursable to the United States.

(4) The Secretary is authorized and directed to amend the repayment contracts, as amended, between the United States and said districts to conform to the provisions of this Act and to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged. The Secretary is authorized at the request of the districts or any one of them to issue a certificate acknowledging that the lands in the requesting district are free of the ownership and full cost pricing provisions of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of Yuma County, Arizona. Amendments to the districts' contracts relating to items other than those covered by this Act shall not be made without the consent of the irrigation districts.

(5) The Secretary shall be required to carry out his obligations in paragraphs (3) and (4) only if the Yuma Mesa Irrigation and Drainage District, the North Gila Valley Irrigation District, and the Yuma Irrigation District execute amendatory contracts necessary to carry out the provisions of this subsection, including specifically a waiver and release of any and all claims to the annual beneficial consumptive use of Colorado River water in excess of two hundred
five thousand acre-feet as provided in paragraph (1) of this subsection.

(h) If the facilities required to deliver water to the Ak-Chin Reservation as provided in this section are not completed by January 1, 1988, the Secretary shall pay damages measured by the replacement cost of water not delivered in that calendar year up to a limit of thirty-five thousand acre-feet. In addition and to mitigate the effects occasioned by the failure to deliver said water, the Secretary shall pay all operation, maintenance and replacement costs of on-reservation wells to produce up to forty thousand acre-feet of water in that year for use by the Community.

(2) Commencing January 1, 1989, the Secretary shall pay damages measured by the replacement cost of water not delivered under subsection (a) or (c) as appropriate, up to a limit of seventy-five thousand or seventy-two thousand acre-feet of water, irrespective of whether the facilities to deliver water to the Ak-Chin Reservation have been completed.

(i) In any year in which the Ak-Chin Indian Community requests additional water under subsection (b) and such water and associated canal capacity are available, if the Secretary fails to deliver that quantity of additional water, in addition to any damages which he is required to pay under subsection (h), he shall pay damages in an amount measured by the agricultural water service operation, maintenance, and replacement costs for the Central Arizona Project in effect during that year, plus 20 per centum, of such additional quantity of water as is not delivered.

(j) The Ak-Chin Indian Community shall have the right to devote the permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal, industrial, commercial, mining or recreational use.

(k) The water referred to in subsection (f)(1) shall be for the exclusive use and benefit of the Ak-Chin Indian Community, except that whenever the aggregate water supply referred to in subsection (f) exceeds the quantity necessary to meet the obligations of the Secretary under this Act, the Secretary shall allocate on an interim basis to the Central Arizona Project any of the water referred to in subsection (f) which is not required for delivery to the Ak-Chin Indian Reservation under this Act.

Sec. 3. (a) The obligation of the Secretary to acquire and deliver to the Community an interim water supply from 1984 through 1987 under section 2 of the Act of July 28, 1978 (Public Law 95-328) shall be deemed to be fully discharged once—

(1) within sixty days of enactment of appropriations, the Secretary pays to the Community $1,400,000 in a lump sum grant for economic development in fiscal year 1986;

(2) the Secretary of the Treasury, within thirty days after the date of enactment of this Act, has paid to the Community $15,000,000 for general community purposes as provided in Public Law 98-396;

(3) within sixty days after the date of enactment of this Act the Secretary has provided to the Community grants for economic development purposes of $2,000,000 from funds provided in Public Law 98-396 for the permanent water supply; and

(4) the Secretary has amended those repayment contracts between the United States and the Community to provide that all repayment obligations owing to the United States are discharged.
The Secretary is hereby authorized and directed to take such actions needed to amend the contracts referred to in paragraph (4).

(b) To carry out the purposes of this section the Ak-Chin Indian Community shall have the complete discretion to use and expend the funds referred to in this section.

Sec. 4. The provisions of sections 2(f)(1) and (g) of this Act shall not take effect until—

1. the amendatory contracts authorized by section 2(g) of this Act have been duly ratified and approved by each of the districts and executed by the United States; and

2. the funds authorized to be paid to the districts by section 2(g)(3) of this Act have been appropriated and transferred to the districts.

Sec. 5. (a) The obligations of the Secretary under section 3 of the Act of July 28, 1978 (92 Stat. 409; Public Law 95-328), shall terminate upon the enactment of this Act. If the Secretary fails to acquire the water supply referred to in section 2(f)(1) of this Act by January 1, 1988, the Secretary shall be obligated—

1. to deliver annually to the southeast corner of the Ak-Chin Indian Reservation eighty-five thousand acre-feet of water suitable for irrigation beginning January 1, 1988; and

2. to provide as soon as possible, but not later than January 1, 2003, for the permanent delivery of such water.

(b) Failure to deliver water as specified in this section shall render the United States liable for damages measured by the replacement cost of water not delivered.

Sec. 6. The Secretary shall establish a water management plan for the Ak-Chin Indian Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

Sec. 7. (a) There is hereby authorized to be appropriated the sum of $1,000,000 for payment to the fund referred to in subsection (b). Subject to appropriations, the Secretary shall pay a sum of $1,000,000 to such fund.

(b) No portion of the sum referred to in subsection (a) shall be paid unless—

1. the Central Arizona Water Conservation District establishes a fund to be administered by the District for voluntary acquisition or conservation of water from sources within the State of Arizona for use in central Arizona in years when water supplies are reduced; and

2. the Central Arizona Water Conservation District has contributed the sum of not less than $1,000,000 to such fund: Provided, That if the contribution of not less than $1,000,000 by the District to such fund has not been fully paid as provided in this section within two years of the date of enactment of this Act, the authorization for appropriation and payment of the sum referred to in subsection (a) shall terminate.

(c) If the provisions of this section are for any reason not implemented as herein provided, the other sections of this Act shall remain unaffected thereby.

Sec. 8. Nothing in this Act shall be construed to enlarge or diminish the authority of the Secretary with regard to the Colorado River.

Sec. 9. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provi-
tion of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

Sec. 10. (a) Section 311 of the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1283) is amended to read as follows:

"Sec. 311. The provisions of section 2415 of title 28, United States Code, shall apply to any action relating to water rights of the Papago Indian Tribe or of any member of such Tribe which is brought—

"(1) by the United States for, or on behalf of, such Tribe or member of such Tribe, or

"(2) by such Tribe."

(b) The amendment made by this section shall not apply with respect to any action filed prior to the date of enactment of this Act.