

One Hundred Third Congress
of the
United States of America
AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

To provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.

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

TITLE I--YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the 'Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994'.

SEC. 102. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) FINDINGS- The Congress finds that--

- (1) it is the policy of the United States, in fulfillment of its trust responsibility to the Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;
- (2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;
- (3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;
- (4) on June 7, 1935, and by actions subsequent thereto, the United States established a reservation for the Yavapai-Prescott Indian Tribe in Arizona adjacent to the city of Prescott;
- (5) proceedings to determine the full extent of Yavapai-Prescott Tribe's water rights are currently pending before the Superior Court of the State of Arizona in and for Maricopa County, as part of the general adjudication of the Gila River system and source;
- (6) recognizing that final resolution of the general adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the full extent of the Yavapai-Prescott Tribe's entitlement to water and the availability of water supplies to fulfill that entitlement, and impair orderly planning and development by the Tribe and the city of Prescott; the Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have sought to settle all claims to water between and among them;

(7) representatives of the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have negotiated a Settlement Agreement to resolve all water rights claims between and among them, and to provide the Tribe with long term, reliable water supplies for the orderly development and maintenance of the Tribe's reservation;

(8) pursuant to the Settlement Agreement and the Water Service Agreement, the quantity of water made available to the Yavapai-Prescott Tribe by the city of Prescott and the Chino Valley Irrigation District will be secured, such Agreements will be continued in perpetuity, and the Tribe's continued on-reservation use of water for municipal and industrial, recreational and agricultural purposes will be provided for;

(9) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and assist in firming up the long-term water supplies of the city of Prescott and the Yavapai-Prescott Tribe so as to enable the Tribe to utilize fully its water entitlements in developing a diverse, efficient reservation economy; and

(10) the assignment of the CAP contract of the Yavapai-Prescott Tribe and the CAP subcontract of the city of Prescott is a cost-effective means to ensure reliable, long-term water supplies for the Yavapai-Prescott Tribe and to promote efficient, environmentally sound use of available water supplies in the Verde River basin.

(b) DECLARATION OF PURPOSES- The Congress declares that the purposes of this title are--

(1) to approve, ratify and confirm the Settlement Agreement among the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement;

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Yavapai-Prescott Tribe as provided in the Settlement Agreement and this title;

(4) to require that expenditures of funds obtained through the assignment of CAP contract entitlements by the Yavapai-Prescott Tribe and Prescott for the acquisition or development of replacement water supplies in the Verde River basin shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of riparian habitat, flows and biota of the Verde River and its tributaries; and

(5) to repeal section 406(k) of Public Law 101-628 which authorizes \$30,000,000 in appropriations for the acquisition of land and water resources in the Verde River basin and for the development thereof as an alternative source of water for the Fort McDowell Indian Community.

SEC. 103. DEFINITIONS.

For purposes of this title:

(1) The term `CAP' means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(2) The term `CAWCD' means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 1, 1988, for the delivery of water and repayment of costs of the Central Arizona Project.

(3) The term `CVID' means the Chino Valley Irrigation District, an irrigation district organized

under the laws of the State of Arizona.

(4) The term 'Prescott AMA' means the Active Management Area, established pursuant to Arizona law and encompassing the Prescott ground water basin, wherein the primary goal is to achieve balance between annual ground water withdrawals and natural and artificial recharge by the year 2025.

(5) The term 'Prescott' means the city of Prescott, an Arizona municipal corporation.

(6) The term 'Reservation' means the reservation established by the Act of June 7, 1935 (49 Stat. 332) and the Act of May 18, 1956 (70 Stat. 157) for the Yavapai-Prescott Tribe of Indians.

(7) The term 'Secretary' means the Secretary of the United States Department of the Interior.

(8) The term 'Settlement Agreement' means that agreement entered into by the city of Prescott, the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona, and the United States, providing for the settlement of all water claims between and among them.

(9) The term 'Tribe' means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

(10) The term 'Water Service Agreement' means that agreement between the Yavapai-Prescott Indian Tribe and the city of Prescott, as approved by the Secretary, providing for water, sewer, and effluent service from the city of Prescott to the Yavapai-Prescott Tribe.

SEC. 104. RATIFICATION OF SETTLEMENT AGREEMENT.

(a) APPROVAL OF SETTLEMENT AGREEMENT- To the extent the Settlement Agreement does not conflict with the provisions of this title, such Agreement is approved, ratified and confirmed. The Secretary shall execute and perform such Agreement, and shall execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(b) PERPETUITY- The Settlement Agreement and Water Service Agreement shall include provisions which will ensure that the benefits to the Tribe thereunder shall be secure in perpetuity. Notwithstanding the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81) relating to the term of the Agreement, the Secretary is authorized and directed to approve the Water Service Agreement with a perpetual term.

SEC. 105. ASSIGNMENT OF CAP WATER.

The Secretary is authorized and directed to arrange for the assignment of, or to purchase, the CAP contract of the Tribe and the CAP subcontract of the city of Prescott to provide funds for deposit into the Verde River Basin Water Fund established pursuant to section 106.

SEC. 106. REPLACEMENT WATER FUND; CONTRACTS.

(a) FUND- The Secretary shall establish a fund to be known as the 'Verde River Basin Water Fund' (hereinafter called the 'Fund') to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations.

(b) CONTENT OF FUND- The Fund shall consist of moneys obtained through the assignment or purchase of the contract and subcontract referenced in section 105, appropriations as authorized in section 109, and any moneys returned to the Fund pursuant to subsection (d) of this section.

(c) PAYMENTS FROM FUND- The Secretary shall, subsequent to the publication of a statement of findings as provided in section 112(a), promptly cause to be paid from the Fund to the Tribe the amounts deposited to the Fund from the assignment or purchase of the Tribe's CAP contract, and, to the city of Prescott, the amounts deposited to the Fund from the assignment or purchase of the city's CAP subcontract.

(d) **CONTRACTS-** The Secretary shall require, as a condition precedent to the payment of any moneys pursuant to subsection (c), that the Tribe and Prescott agree, by contract with the Secretary, to establish trust accounts into which the payments would be deposited and administered, to use such moneys consistent with the purpose and intent of section 107, to provide for audits of such accounts, and for the repayment to the Fund, with interest, any amount determined by the Secretary not to have been used within the purpose and intent of section 107.

SEC. 107. EXPENDITURES OF FUNDS.

(a) **BY THE CITY-** All moneys paid to Prescott for relinquishing its CAP subcontract and deposited into a trust account pursuant to section 106(d), shall be used for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under this title. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated water rights, development of ground water resources outside the Prescott Active Management Area established pursuant to the laws of the State of Arizona, and artificial recharge; except that none of the moneys paid to Prescott may be used for construction or renovation of the city's existing waterworks or water delivery system.

(b) **BY THE TRIBE-** All funds paid to the Tribe for relinquishing its CAP contract and deposited into a trust account pursuant to section 106(d), shall be used to defray its water service costs under the Water Service Agreement or to develop and maintain facilities for on-reservation water or effluent use.

(c) **NO PER CAPITA PAYMENTS-** No amount of the Tribe's portion of the Fund may be used to make per capita payments to any member of the Tribe, nor may any amount of any payment made pursuant to section 106(c) be distributed as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.

(d) **DISCLAIMER-** Effective with the payment of funds pursuant to section 106(c), the United States shall not be liable for any claim or cause of action arising from the use of such funds by the Tribe or by Prescott.

SEC. 108. ENVIRONMENTAL COMPLIANCE.

The Secretary, the Tribe and Prescott shall comply with all applicable Federal environmental and State environmental and water laws in developing alternative water sources pursuant to section 107(a). Development of such alternative water sources shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

SEC. 109. APPROPRIATIONS AUTHORIZATION AND REPEAL.

(a) **AUTHORIZATION-** There are authorized to be appropriated to the Fund established pursuant to section 106(a):

(1) Such sums as may be necessary, but not to exceed \$200,000, to the Secretary for the Tribe's costs associated with judicial confirmation of the settlement.

(2) Such sums as may be necessary to establish, maintain and operate the gauging station required under section 111(e).

(b) **STATE CONTRIBUTION-** The State of Arizona shall contribute \$200,000 to the trust account established by the Tribe pursuant to the Settlement Agreement and section 106(d) for uses consistent with section 107(b).

(c) **REPEAL-** Subsection 406(k) of the Act of November 28, 1990 (Public Law 101-628; 104 Stat. 4487) is repealed.

SEC. 110. SATISFACTION OF CLAIMS.

(a) **WAIVER-** The benefits realized by the Tribe or any of its members under the Settlement Agreement and this title shall constitute full and complete satisfaction of all claims by the Tribe and all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water and effluent) from time immemorial to the effective date of this title, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this title. Nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's reservation.

(b) **WAIVER AND RELEASE-** The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized and required, as a condition to the implementation of this title, to execute a waiver and release, except as provided in subsection (d) and the Settlement Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or 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.

(c) **WAIVER BY UNITED STATES-** Except as provided in subsection (d) and the Settlement Agreement, the United States, in its own right or on behalf of the Tribe, shall not assert any claim against the State of Arizona or any political subdivision thereof, or against any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona based upon water rights or injuries to water rights of the Tribe and its members or based upon water rights or injuries to water rights held by the United States on behalf of the Tribe and its members.

(d) **RIGHTS RETAINED-** In the event the waivers of claims authorized in subsection (b) of this section do not become effective pursuant to section 112(a), the Tribe, and the United States on behalf of the Tribe, shall retain the right to assert past and future water rights claims as to all reservation lands.

(e) **JURISDICTION-** The United States District Court for the District of Arizona shall have original jurisdiction of all actions arising under this title, the Settlement Agreement and the Water Service Agreement, including review pursuant to title 9, United States Code, of any arbitration and award under the Water Service Agreement.

(f) **CLAIMS-** Nothing in this title shall be deemed to prohibit the Tribe, or the United States on behalf of the Tribe, from asserting or maintaining any claims for the breach or enforcement of the Settlement Agreement or the Water Service Agreement.

(g) **DISCLAIMER-** Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation of any member of the Tribe.

(h) **FULL SATISFACTION OF CLAIMS-** Payments made to Prescott under this title shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation, relinquishment or delivery of CAP water.

SEC. 111. MISCELLANEOUS PROVISIONS.

(a) **JOINING OF PARTIES-** In the event any party to the Settlement Agreement should file a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, naming the United States of America or the Tribe as parties, authorization is hereby granted to join the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived. In the event Prescott submits a dispute under the Water Service Agreement to arbitration or seeks review by the United States District Court for the District of Arizona of an arbitration award under the Water Service Agreement, any claim by the Tribe to sovereign immunity from such arbitration or review is hereby waived.

(b) **NO REIMBURSEMENT-** The United States of America shall make no claims for reimbursement of costs arising out of the implementation of the Settlement Agreement or this title against any lands within the Yavapai-Prescott Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) **WATER MANAGEMENT-** The Tribe shall establish a ground water management plan for the Reservation which, except to be consistent with the Water Service Agreement, the Settlement Agreement and this title, will be compatible with the ground water management plan in effect for the Prescott Active Management Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a ground water management plan pursuant to this section, the Tribe may enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. Notwithstanding any other law, the Tribe may establish a tribal water code, consistent with the above-described water management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Settlement Act, the Settlement Agreement, and the Water Service Agreement, except that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

(d) **GAUGING STATION-** The Secretary, acting through the Geological Survey, shall establish, maintain and operate a gauging station at the State Highway 89 bridge across Granite Creek adjacent to the reservation to assist the Tribe and the CVID in allocating the surface flows from Granite Creek as provided in the Settlement Agreement.

SEC. 112. EFFECTIVE DATE.

(a) **WAIVERS AND RELEASES-** The waivers and releases required by section 110(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that--

(1)(A) the Secretary has determined that an acceptable party, or parties, have executed contracts for the assignments of the Tribe's CAP contract and the city of Prescott's CAP subcontract, and the proceeds from the assignments have been deposited into the Fund as provided in section 106(d); or

(B) the Secretary has executed contracts for the acquisition of the Tribe's CAP contract and the city of Prescott's CAP subcontract as provided in section 106(d);

(2) the stipulation which is attached to the Settlement Agreement as exhibit 9.5, has been approved in substantially the form of such exhibit no later than December 31, 1995;

(3) the Settlement Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary; and

(4) the State of Arizona has appropriated and deposited into the Tribe's trust account \$200,000 as required by the Settlement Agreement.

(b) **DEADLINE-** If the actions described in paragraphs (1), (2), (3), and (4) of subsection (a) have not occurred by December 31, 1995, any contract between Prescott and the United States entered into pursuant to section 106(d) shall not thereafter be effective, and any funds appropriated by the State of Arizona pursuant to the Settlement Agreement shall be returned by the Tribe to the State of Arizona.

SEC. 113. OTHER CLAIMS.

(a) **OTHER TRIBES-** Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Tribe.

(b) **FEDERAL AGENCIES-** Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency, other than the Bureau of Indian Affairs on behalf of the Tribe.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

