

ARIZONA WATER BANKING AUTHORITY

Wednesday - February 1, 2006

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PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on February 1, 2006 at 10:00 a.m. at the Arizona Department of Water Resources, 3550 North Central Avenue, Phoenix, Arizona 85012, Upper/Middle Verde conference room on the 2nd floor. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 30th day of January, 2006

FINAL AGENDA

Arizona Water Banking Authority Commission Work-Study Session

- I. Welcome/Opening Remarks
- II. Indian Firming
 - Background information
 - Summary of current law
 - Indian Firming Study Commission
 - Firming amounts
 - Water supply
 - Funding
 - Helping to meet Indian firming goals
 - Pre-delivery
 - Current AWBA authority and potential draft legislation
- III. Recovery Planning
 - Recovery schedule
 - Discussion of process
 - Indian firming obligations
- IV. Summary
- V. Call to the Public

Next Meeting Date:

Wednesday, March 22, 2006

Please Note: Visitor parking is located on the south side of Columbus Ave. (one block north of Osborn Ave), west of Central Avenue. Cost of parking is \$1.00/half hr, maximum \$7.00. There is no ticket validation.

Additional parking is available at the following locations:

- Across the street from our visitor parking entrance (under the canopy). Cost is \$0.75 per half hour and \$6.50 per day.
- The parking lot located at the Northeast corner of Columbus and Central. Cost is \$1.00 per day, however there is ongoing construction in the vicinity.

All visitors must use the south elevators; please stop at the 2nd floor to sign-in and receive a visitor's badge. Badges are to be displayed at all times. Visitors are also required to sign out and return their badges. Thank you for your assistance.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Nan Flores at (602) 771-8526. Requests should be made as early as possible to allow time to arrange the accommodation.

APPENDIX I
SECTION 105 - ARIZONA WATER SETTLEMENTS ACT

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

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

(b) **DUTIES** -

(1) **SECRETARY** - The Secretary shall -

- (A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) **STATE** - The state shall -

- (A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).
- (C) assist the Secretary in carrying out obligations of the secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

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

APPENDIX II
SECTION 306 - ARIZONA WATER SETTLEMENTS ACT

SEC . 306. ADDITIONAL WATER DELIVERY.

- (a) IN GENERAL - In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the main project works of the central Arizona project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which -
- (1) 23,000 acre-feet shall -
 - (A) be delivered to, and used by, the San Xavier Reservation; or
 - (B) otherwise be used by the nation in accordance with section 309; and
 - (2) 5,200 acre-feet shall -
 - (A) be delivered to, and used by, the eastern Schuk Toak District; or
 - (B) otherwise be used by the nation in accordance with section 309.
- (b) STATE CONTRIBUTION - To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute \$3,000,000 -
- (1) in accordance with a schedule that is acceptable to the secretary and the State; and
 - (2) in the form of cash or in-kind goods and services.

APPENDIX III HOUSE BILL 2728

Sec. 12. Arizona water firming program study commission

A. The Arizona water firming program study commission is established. The purpose of the commission is to:

1. Study the options for a water firming program that would satisfy the requirements of section 105(b)(2) of the Arizona water settlements act (P.L. 108-451).
2. Identify appropriate mechanisms for the firming of water under the water firming program, including storage and recovery with specification of authorized entities to recover the water and determination of the financial structure for the recovery, as well as forbearance, and other alternative mechanisms.
3. Study the existing powers and duties of the Arizona water banking authority and the general statutory authorities necessary to implement the firming program and to make recommendations regarding appropriate statutory and regulatory provisions that are necessary to fully implement the water firming program.

B. The commission consists of members who are appointed by the director of the department of water resources and who represent at least the following entities:

1. Municipal and industrial priority central Arizona project water users.
2. Agricultural improvement districts established pursuant to title 48, chapter 17, Arizona Revised Statutes.
3. Non-Indian agricultural priority central Arizona project water users.
4. The Gila River Indian community.
5. The Tohono O'odham nation.
6. A multi-county water conservation district established under title 48, chapter 22, Arizona Revised Statutes.
7. The Arizona water banking authority established under title 45, chapter 14, Arizona Revised Statutes.
8. Hardrock mining industries.

C. The director of the department of water resources shall serve as chairperson of the commission. All members appointed by the director shall be knowledgeable in water resource management in this state. The president of the senate and the speaker of the House of Representatives, or their designees, shall serve as nonvoting ex officio members of the commission.

D. The department of water resources shall provide staff support for the commission.

E. The commission shall submit to the legislature an interim report of its activities on or before November 1, 2005 and shall report its final findings and recommendations to the legislature on or before January 6, 2006. The commission

shall provide copies of each report to the secretary of state and the director of the Arizona state library, archives and public records.

Sec. 13. Delayed repeal

Section 12 of this act, establishing the Arizona water firming program study commission, is repealed on June 1, 2006.

Sec. 14. State and tribal cooperation for acquisition of certain land

A. This state recognizes the interest of the Gila River Indian community to acquire and to place into trust status a parcel of land located within the exterior boundaries of the community's reservation. This state, through any of its authorized agencies, in cooperation with the community and on application of the community shall take actions in accordance with Arizona law for the acquisition of the property designated as section 36, township 4 south, range 4 east, Gila and Salt river base and meridian, to include the maximum right, title and interest in that property, including mineral rights as permitted by Arizona law.

B. For purposes of a finding by the secretary of interior or for any other legal requirement, the state and the community agree that this section combined with the enactment of the firming program authorized by this act fully satisfies section 207(c)(1)(E) of the Arizona water settlements act (P.L. 108-451).

Sec. 15. Conditional enactment; written notice

A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment.

Sec. 16. Conditional delayed repeal; conditional enactment

A. Title 45, chapter 15, Arizona Revised Statutes, as added by this act, and section 11 of this act, relating to the establishment of the water firming program for Arizona Indian tribes, are repealed if the condition prescribed in section 15 of this act is not met.

B. Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met.

Arizona Water Settlements Act

Title I – Central Arizona Project Settlement¹

Overview:

Title I resolves a long-standing dispute between the United States and the State of Arizona regarding the allocation of water made available through the Central Arizona Project (CAP). Title I also provides the water supplies and funding source that are necessary to complete the Gila River Indian Community Water Rights Settlement (Title 2) and the Southern Arizona Water Rights Settlement (Title 3), as well as future Indian water rights settlements in Arizona. Because these other settlements cannot be completed without passage of Title I, the three titles of the Arizona Water Settlements Act are inextricably linked.

Under Title I, 47% of the CAP water supply is permanently designated for Indian uses, while 53% is designated for non-Indian municipal and industrial (M&I) or agricultural uses. Title I prohibits the transfer or use of any CAP water outside the State of Arizona, except in the context of the interstate water banking program already established under regulations adopted by the Secretary of the Interior (Secretary). Title I also directs the Secretary to reallocate 65,647 acre-feet of currently uncontracted CAP M&I water to M&I water providers in Arizona.

To provide water for Indian water rights settlements, Title I ratifies the Arizona Water Settlement Agreement among the United States, the Arizona Department of Water Resources and the Central Arizona Water Conservation District (CAWCD).² That agreement provides a framework under which non-Indian agricultural water users with long-term contract entitlements to CAP water will be allowed to relinquish their CAP entitlements in return for relief from certain federal debt and regulatory requirements, among other benefits. Title I then directs the Secretary to reallocate the water relinquished by non-Indian agricultural contractors: Two-thirds of the relinquished water will be reallocated for Indian use to facilitate water rights settlements, and one-third will go to the State of Arizona for future M&I use.

To provide a funding source for Indian water rights settlements, Title I amends section 403(f) of the Colorado River Basin Project Act of 1968 to allow additional uses for certain funds deposited into the Lower Colorado River Basin Development Fund. The funds in question are derived from the sale of power and energy in Arizona and from payments made each year by CAWCD. Under current law and contract, those funds are

¹ This summary was prepared by the Central Arizona Water Conservation District based on the text of S.2992/H.R.5443, as introduced on September 24, 2002.

² CAWCD is a political subdivision of the State of Arizona formed in 1971 for the purpose of contracting with the United States for the delivery of CAP water supplies and the repayment of CAWCD's share of CAP construction costs. CAWCD's service area includes 80 percent of the state's water users and taxpayers, including the Phoenix and Tucson metropolitan areas. CAWCD also operates and maintains the CAP.

credited each year against CAWCD's repayment obligation for the CAP, then the money is returned to the general fund of the U.S. Treasury to repay the costs of constructing the CAP. Title 1 changes that process in one key respect: After the money in the Development Fund has been credited against CAWCD's repayment obligation each year, it will not be returned to the general fund. Instead, Title 1 provides that those funds may be used each year, without further appropriation, to pay the costs of delivering CAP water to Indian tribes, constructing distribution systems to deliver CAP water to Indian tribes, and other costs authorized under Titles 2 and 3 of the Act.

Section-by-section summary:

Section 103

Section 103 is intended to overcome potential problems posed by the Warren Act of 1911 (43 U.S.C. §523). The Warren Act provides that excess capacity in a reclamation project may be used to transport non-project water for irrigation purposes. There is a strong interest within Arizona to use excess capacity in the Central Arizona Project to transport non-project water, primarily to satisfy future municipal and industrial demands. The CAP repayment contract between CAWCD and the United States provides generally for the transportation of non-project water through the CAP, but the Warren Act could be read to limit such transportation to irrigation uses. This section clarifies that the CAP system may be used to transport non-project water for any purpose for which the project was authorized, including municipal and industrial uses.

Section 104

Section 104 provides for the reallocation of CAP water in accordance with the Arizona Water Settlement Agreement among the United States, the Arizona Department of Water Resources and CAWCD.

First, section 104(a) reallocates water relinquished by CAP non-Indian agricultural subcontractors under the agreement ratified in section 106. Approximately two-thirds of the relinquished agricultural water (197,500 acre-feet) is to be reallocated to Arizona Indian tribes in satisfaction of Indian water rights settlements. The remainder (96,295 acre-feet) is reallocated to the Arizona Department of Water Resources to be held in trust for future allocation to non-Indian municipal and industrial water users in Arizona.

Second, section 104(b) reallocates 65,647 acre-feet of currently uncontracted CAP municipal and industrial water to various M&I water providers based on the recommendation of the Arizona Department of Water Resources.

Section 104(c) limits the total amount of CAP water entitlements under long-term contracts to 1.415 million acre-feet.³ Of that total, 47% will be available for use by Arizona Indian tribes or their lessees and 53% will be available for use by non-Indian

³ This does not include up to 18,000 acre-feet of CAP water that may be delivered by the Secretary of the Interior to water users in Arizona in exchange for Gila River water delivered to New Mexico as provided in section 304 of the Colorado River Basin Project Act of 1968.

water users in Arizona. Section 104 makes this division of the CAP water supply between Indian and non-Indian uses permanent.

Section 104(d) directs the Secretary of the Interior to offer amendments to CAP Indian and M&I water service contracts. The contract amendments would effect the following changes:

- Term. The Boulder Canyon Project Act requires that all contracts with the Secretary of the Interior for delivery of Colorado River water be for permanent service. Most current CAP Indian and M&I contracts have a delivery term of 50 years with a right to renew the contract for additional terms. Under section 104, those CAP contracts would be amended to provide that they are for permanent service with an initial delivery term of 100 years (or longer, if a longer term is authorized by Congress or provided by existing agreements).⁴
- Shortage Sharing. Current CAP water service contracts and previously published Secretarial decisions contain conflicting provisions regarding how water is to be shared among Indian and M&I priority water users in time of shortage. The Gila River Indian Community water rights settlement agreement that would be approved under Title 2 contains shortage-sharing criteria that have been agreed to among the United States, the State of Arizona, CAWCD and the other parties to that agreement. Under section 104(d), all CAP Indian and M&I contract amendments would conform to the new criteria.
- Prohibition on Out-of-State Use. The amendments authorized by section 104 would clarify that CAP water may not be leased, exchanged, forborne or otherwise transferred in any way for use directly or indirectly outside the State of Arizona, except pursuant to an agreement with the Arizona Water Banking Authority as part of a recognized interstate water banking program or to effect the exchange with New Mexico that was authorized in section 304 of the Colorado River Basin Project Act of 1968.
- Effluent Exchanges. The amendments authorized by section 104 would remove a provision in current CAP M&I water service subcontracts that provides a disincentive for M&I water users to enter into effluent exchanges with Indian tribes. Effluent exchanges, such as those in the Gila River Indian Community water rights settlement agreement, are beneficial to both M&I and Indian water users.

⁴ By comparison, under section 205(a)(1) of Title 2, the Gila River Indian Community's CAP contract will be amended to provide that it is for permanent service and without limit as to term.

Section 105

Section 105 provides that the Secretary of the Interior and the State of Arizona will jointly develop a program to “firm” 60,648 acre-feet of the CAP non-Indian agricultural priority water that is to be reallocated to Indian tribes under section 104.

Non-Indian agricultural water enjoys a lower delivery priority than CAP water designated as Indian priority or municipal and industrial priority. As a result, when the amount of water available for delivery through the CAP in any year is insufficient to meet all long-term contract entitlements, non-Indian agricultural priority water deliveries are the first to be cut. The purpose of the firming program, then, is to insure that the non-Indian agricultural priority water in question may be delivered with the same degree of reliability as municipal and industrial priority water. Firming is typically accomplished through underground storage of surplus water. The stored water is then recovered in future years when needed to make up for shortages in the CAP supply.

Section 105 directs the Secretary to firm 28,200 acre-feet of CAP non-Indian agricultural priority water that is to be reallocated to the Tohono O’odham Nation and 8,724 acre-feet to be reallocated to other Indian tribes. The State of Arizona is to firm 15,000 acre-feet of CAP non-Indian agricultural priority water that is to be reallocated to the Gila River Indian Community and 8,724 acre-feet to be reallocated to other Indian tribes.

Section 106

Section 106 ratifies the Arizona Water Settlement Agreement, under which non-Indian agricultural water service subcontractors will relinquish their CAP long-term contract entitlements. The water entitlements relinquished under the agreement ratified in section 106 will be reallocated as prescribed in section 104.

In return for and as a condition of the relinquishment, the Arizona Water Settlement Agreement provides that the CAP non-Indian agricultural subcontractors will be relieved of the federal debt they incurred under section 9(d) of the Reclamation Project Act of 1939. Collectively, that 9(d) debt totals more than \$158 million. Under the Arizona Water Settlement Agreement, CAWCD has agreed to pay about \$85 million of that debt and the United States has agreed to forgive \$73.5 million. Section 106 makes the 9(d) debt that the United States has agreed to forgive non-reimbursable and non-returnable.

Section 106 also exempts land within the CAP service area from the Reclamation Reform Act and any other acreage limitation or full cost pricing provision of federal law. Congress intended the Central Arizona Project to provide a renewable water supply to agriculture to alleviate the significant groundwater overdraft in central Arizona. By limiting the agricultural lands that may receive CAP water, the Reclamation Reform Act operates to increase groundwater pumping in central Arizona. Thus, the exemption in section 106 is appropriate to help the CAP achieve its mission. This exemption also satisfies a condition to the relinquishment of the CAP non-Indian agricultural subcontracts.

Section 107

Section 107(a) amends section 403(f) of the Colorado River Basin Project Act of 1968 (Basin Project Act) to authorize new uses for certain funds deposited into the Lower Colorado River Basin Development Fund. The Development Fund is a separate fund within the U.S. Treasury established by Congress in the Basin Project Act, which authorized construction of the Central Arizona Project. Revenues deposited into the Development Fund come from a number of sources, including: the sale of power from the Navajo Generating Station⁵ that is surplus to CAP pumping needs; a surcharge on power sold in Arizona⁶ from Hoover Dam and (beginning in 2005) Parker and Davis Dams; and other miscellaneous revenues from operation of the CAP. Under existing law and contract, these Development Fund revenues are paid each year to the general fund of the Treasury to return the CAP construction costs that are reimbursable by CAWCD. To the extent that Development Fund revenues are insufficient to meet CAWCD's annual repayment obligation, CAWCD makes up the difference with a cash payment to the United States, which is also deposited into the Development Fund.⁷

Section 107(a) does not affect the collection and deposit of revenues to the Development Fund. Nor does it alter CAWCD's obligation to make cash payments sufficient to meet its annual repayment obligation for the CAP. But under section 107(a), those revenues and cash payments would not be returned to the general fund of the Treasury. Instead, after being credited against the annual payment owed by CAWCD, those funds—all of which are paid by water and power users in the State of Arizona—would be made available to pay the costs of delivering CAP water to Indian tribes and to fund Arizona Indian water rights settlements.

As amended by section 107(a), section 403(f) of the Basin Project Act would include four subsections. New subsection 403(f)(1) provides that the Development Fund revenues in question, as well as CAWCD's annual payments, will continue to be credited against the annual payment owed by CAWCD for the CAP. This provision is consistent with the current version of section 403(f) and with the CAP repayment contract between CAWCD and the United States.

New subsection 403(f)(2) provides that the monies credited against CAWCD's annual payment under subsection (1) may subsequently be used by the Bureau of

⁵ The CAP owns 24.3% of the Navajo Generating Station (NGS). Power from NGS is used to lift Colorado River water nearly 2900 vertical feet for delivery to central Arizona.

⁶ There is also a 2.5-mill surcharge on power from Hoover and (in 2005) Parker/Davis that is sold in California and Nevada. See 43 U.S.C. §1543(c)(2). Title 1 does not affect the disposition of these revenues, which continue to be governed by the Basin Project Act. See 43 U.S.C. §1543(g).

⁷ Revenues and cash payments from CAWCD to the Development Fund each year, up to the amount of the payment due from CAWCD in that year, are certain through the CAP repayment period, which ends in 2046. After CAP repayment is complete, it is unknown whether there will be significant annual revenues to the Development Fund.

Reclamation, which administers the Development Fund, for the following purposes, in order of priority:

- (1) Payment of fixed operation, maintenance and replacement (OM&R) charges associated with the delivery of CAP water to Indian tribes. This does not include pumping energy charges, which must also be paid for any CAP water to be delivered. For the most part, Indian tribes will remain responsible for paying the pumping energy charges for CAP water delivered to them.
- (2) Payment of \$53 million to the Gila River Indian Community Water OM&R Trust Fund established under Title 2. This fund will be used by the Gila River Indian Community to pay a portion of the pumping energy charges due for delivery of its CAP water.
- (3) Payment of \$147 million to the Gila River Indian Community to rehabilitate the San Carlos Irrigation Project, a Bureau of Indian Affairs project constructed more than 70 years ago to serve the Community and the San Carlos Irrigation and Drainage District. No more than \$25 million may be spent out of this fund in any single year.
- (4) Payment of the costs of constructing water distribution systems for the Gila River Indian Community, the San Carlos Apache Tribe and the Tohono O'odham Nation, as well as other costs authorized by Congress in Title 2 or Title 3 of this Act or under any other Indian water rights settlement act enacted after May 9, 2000.
- (5) Payment of the costs of constructing CAP distribution systems for the Yavapai Apache, Pasqua Yaqui and Tonto Apache tribes and the Sif Oidak District of the Tohono O'odham Nation. If a CAP distribution system for any of these tribes has not been constructed by 2030 and the tribe does not have a final Indian water rights settlement by that date, then the tribe may receive annual cash payments from the Development Fund.

Any funds not used in the year they become available are carried over to the following fiscal year and are again available for the purposes outlined above.

New subsection 403(f)(3) deals with revenues to the Development Fund that are in excess of the amount required to make CAWCD's annual payment for the CAP. For example, if the annual payment due from CAWCD in a year were \$55 million and Development Fund revenues totaled \$70 million in that year, then \$15 million would be available for use as prescribed in new section 403(f)(3). (The first \$55 million would have been credited against CAWCD's payment under 403(f)(1) and then made available for use as provided in 403(f)(2).) It is not anticipated that there will be any Development Fund revenues available for use under subsection 403(f)(3) before 2012. Development

Fund revenues that fall under new subsection 403(f)(3) may be used by the Bureau of Reclamation for the following purposes, in order of priority:

- (1) Payment of fixed operation, maintenance and replacement (OM&R) charges associated with the delivery of CAP water to Indian tribes.
- (2) Payment of the final outstanding annual payment due from CAWCD under its CAP repayment contract with the United States.
- (3) Payment to the general fund of the Treasury in reimbursement of Indian fixed OM&R charges previously paid from the Development Fund under 403(f)(2).
- (4) Payment to the general fund of the Treasury in reimbursement of Indian water rights settlement costs previously paid from the Development Fund under 403(f)(2).
- (5) Payment to the general fund of the Treasury in reimbursement of any federal 9(d) debt made non-reimbursable under section 106.
- (6) Payment to the general fund of the Treasury to return CAP construction costs, if any, deemed by Reclamation to repayable but not covered under the CAP repayment contract between CAWCD and the United States.

Any funds left over under subsection 403(f)(3) will be deposited in the general fund of the Treasury.

New subsection 403(f)(4) provides for the investment of Development Fund revenues not needed to meet current requirements, which will generate additional interest income that may be used for the purposes described in 403(f)(2) and (3).

Section 107(b) provides that no monies will be expended or withdrawn from the Development Fund pursuant to the amended section 403(f) until the Secretary has published the findings necessary to complete the Gila River Indian Community water rights settlement. The required findings are set forth in section 207(d) of Title 2. Until then, funds will be identified for the purposes described in amended section 403(f), but retained in the Development Fund.

Section 108

Section 108 makes clear that Title 1 is not intended to alter the Law of the Colorado River or affect any existing rights to use Colorado River water except insofar as section 104 reallocates CAP water and section 106(c) amends the Reclamation Reform Act.

Section 109

Section 109 repeals section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988. The repealed section required the Secretary of the Interior to reallocate certain CAP non-Indian agricultural water to non-Indian agricultural water users. That requirement is inconsistent with the Arizona Water Settlement Agreement and the reallocation prescribed in section 104 of Title 1.

Section 110

Section 110 authorizes appropriations needed to comply with various biological opinions issued by the U.S. Fish and Wildlife Service in connection with CAP features and operations. Adherence to these biological opinions is required for the Project to remain in compliance with the Endangered Species Act.

Section 111

Section 111 repeals Title 1 effective January 1, 2008, if the Gila River Indian Community water rights settlement in Title 2 is not fully enforceable by that date. Upon repeal, any actions taken by the Secretary under Title 1—for example, the reallocation of CAP water—are voided.

Arizona Water Settlements Act
Title II – Gila River Indian Community Water Rights Settlement

Briefing Paper
Prepared by Salmon, Lewis & Weldon, P.L.C.
On Behalf of Salt River Project

History of Water Rights Issues Pertaining to the Gila River Indian Reservation.

The Gila River Indian Reservation was created by an Act of Congress in 1859 and was enlarged by seven separate Executive Orders in 1876, 1879, 1882, 1883, 1911, 1913 and 1915. Currently, the Reservation encompasses approximately 377,000 acres of land in central Arizona. Most of these lands are located in the Gila River watershed. A small portion of the 1879 enlargement, however, borders the Salt River near its confluence with the Gila River.

In approximately 1872, upstream settlers in the Safford Valley (presently the Gila Valley Irrigation District), Duncan-Virden Valley (presently the Franklin Irrigation District) and in the Florence-Casa Grande area (presently the San Carlos Irrigation and Drainage District) (“SCIDD”) began settling upstream of the Reservation and diverting water from the Gila River for irrigation. These diversions had the effect of reducing the quantities of Gila River water available to the Indian Community for downstream diversion. In 1924, in an attempt to obtain a more dependable source of water for the Indian Community, the United States Congress authorized the construction of Coolidge Dam as the principle feature of the San Carlos Irrigation Project (“SCIP”). Pursuant to the 1924 Act, and a separate agreement between the government and private landowners within the present boundaries of SCIDD, water stored behind Coolidge Dam, when constructed, would be used for the irrigation of 50,000 acres within the Gila River Indian Reservation and 50,000 acres within SCIDD.

In 1925, the United States, on behalf of the Indian Community, SCIDD landowners and others, sued upstream water users in the Safford and Duncan-Virden Valleys, along with all other users of water from the Gila River from its confluence with the Salt River up to the Duncan-Virden Valley, ending in New Mexico. The suit, which came to be known as the *Globe Equity* litigation, sought among other things to establish the prior rights of the Indians of the Gila River Indian Reservation and the newly created SCIP to the use of Gila River water.

The United States District Court for the District of Arizona appointed a Special Master who heard arguments, listened to testimony, and admitted exhibits. After ten years of negotiations, the parties agreed to settle the suit and a consent decree embodying the settlement was drafted. The court entered the stipulation and consent for entry of the Final Decree on June 29, 1935. Under the Decree, the United States, on behalf of the Indians of the Gila River Indian Reservation, is entitled to divert 300,000 acre-feet of water annually from the Gila River. Historically, however, the Indian Community has

received, on average, only about 100,000 acre-feet annually of its decreed entitlement, due to insufficient flows in the Gila River at the Reservation's diversion point.

Despite the entry of the *Globe Equity* Decree, disputes persisted over the interpretation of certain of its provisions, particularly those concerning the calculation of the upper valley diverters' annual entitlements under the Decree. Additionally, as technology for pumping from wells became more readily available, withdrawals of groundwater in the upper valleys increased. The legality of these uses were not expressly addressed in the Decree; nevertheless, the effect of increased groundwater pumping in the upper valleys was to lessen the flow of the Gila River, thereby decreasing the amounts of water available for use by the Community and SCIDD landowners downstream.

At the time of the entry of the Decree in 1935, the Indian Community's interests were represented in the *Globe Equity* proceeding by the United States. A motion to intervene submitted by the Indian Community just prior to the entry of the Decree was denied by the district court, and this denial was never appealed. In 1982, the United States District Court entered an Order permitting the Indian Community to intervene as party to the *Globe Equity* Decree for the purpose of enforcing the Decree against the upper valley users. The court declined to permit the Community to reopen the issues resolved by the Decree. This decision was recently echoed by the Maricopa County Superior Court in the Gila River Adjudication. The adjudication court held that the *Globe Equity* Decree was *res judicata* as to the Indian Community's claims to additional Gila River which might have been asserted and decided by the court in 1935; the Community accordingly was precluded from asserting these claims to additional Gila River water in the adjudication. This decision, along with the earlier decision of the *Globe Equity* Decree court, enhanced the importance of the Community's enforcement suit as a vehicle for addressing its longstanding grievances with water users in the upper Gila valley.

The *Globe Equity* enforcement litigation, commenced by the Indian Community in 1982, remains ongoing. The court has issued numerous decisions interpreting provisions of the Decree; however, the Community's challenge to the legality of groundwater pumping by the upper Gila valley users has not yet been decided.

While most of the lands within the Gila River Indian Reservation are within the Gila River watershed, a small portion of the Reservation lies within the Salt River watershed, west of the Phoenix metropolitan area. Many of these lands were added to the Reservation in 1879. At that time, a group of Indians, commonly referred to as the Maricopa Colony, was living there. Since some time prior to 1900, these Indians diverted water from the Salt River for the irrigation of approximately 1,000 acres.

In 1901, the federal government, acting on behalf of the Maricopa Indians, brought suit in Arizona territorial court to stop nearby non-Indian irrigators from interfering with the waters of the Salt River used by the Indians. Some of the defendants named in the suit later became shareholders of the Association, after its incorporation in 1903. On June 11, 1903, Judge Kent issued the decree in *United States v. Haggard*, which adjudicated the Maricopa Indians' right to irrigate approximately 1,080 acres of

land with water from the Salt River. In 1917, the *Haggard* Decree was incorporated into the *Benson-Allison* Decree, which also adjudicated water rights for lands not included in the original *Haggard* Decree, located near the confluence of the Salt and Gila Rivers.

Other than the approximately 1,080 acres irrigated by the Maricopa Colony, and included in the *Haggard* and *Benson-Allison* Decrees, no lands on the Gila River Indian Reservation have ever been directly irrigated using Salt River water. Despite this fact, the Indian Community has asserted a claim in the pending Gila River Adjudication to approximately 1.8 million acre-feet of water annually from the Salt and Verde Rivers, as well as the Gila River. These claims, which far exceed the annual flow of all of these rivers, are based on the federal reservation of rights doctrine and largely encompass potential future uses of water by the Indian Community on its Reservation.

Thus far in the Adjudication, the Indian Community's attempts to prosecute its enlarged claims to the Salt River have not met with success. The Superior Court in the adjudication recently concluded that the Indian Community and the United States are estopped by a decision of the United States Court of Claims, entered decades ago, from asserting any claim to the Salt River other than for the 1,490 acres constituting the Maricopa Colony. The Community has appealed this decision of the Superior Court, as well as its earlier decision precluding the Community's assertion of additional claims to the Gila River. At this time, the Arizona Supreme Court has not decided whether to hear the Community's appeal. In the absence of the Settlement that is presently before the Congress, the continued prosecution of these appeals by the Community could delay the ultimate determination of its water right claims by a court for some time. In the interim, the uncertainty associated with the potential magnitude of the Community's rights to water from the Salt and Verde Rivers continues to threaten existing water uses.

In order to alleviate this uncertainty and assure the dependability of water supplies to the more than 3 million residents of Maricopa, Yavapai and Pinal Counties in central Arizona, local parties initiated water settlement negotiations with the Indian Community and the United States in 1989. Thirteen years later, the Indian Community, the United States and local interests have reached a comprehensive settlement of the Community's water rights claims, which is embodied in the Settlement Agreement and legislation presently before the Congress.

Components of the Gila River Indian Community Water Rights Settlement Agreement

I. **Parties.** The Settlement Agreement is entered into among: the United States of America; the Gila River Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; the Arizona Water Company; the Arizona cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale and Tempe; the Arizona towns of Duncan, Florence, Gilbert, Kearny and Mammoth; the Franklin Irrigation District; the Gila Valley Irrigation District; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and

Drainage District; the San Carlos Irrigation and Drainage District; the Hohokam Irrigation and Drainage District; the Arlington Canal Company; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; Phelps Dodge Corporation; and the Arizona Game and Fish Commission.

II. Annual Water Entitlement and Components.

A. Average Annual Entitlement. Under the Settlement Agreement, the Indian Community shall be entitled to an average of 653,500 acre-feet of water annually. This includes, among other things, the Community's existing decreed rights under the *Globe Equity, Benson-Allison and Haggard* Decrees, plus substantial amounts of groundwater pumped from beneath the Reservation. The average shall be calculated over a consecutive ten-year period, reckoned in continuing progressive series, beginning on January 1 of the year after the date that the Settlement Agreement becomes enforceable.

B. Components of Entitlement. The Indian Community's average annual entitlement shall be satisfied from the following sources, subject to their availability in any given year, as specified in the pertinent provisions of the Settlement Agreement.

1. Globe Equity Decree Water. As part of the Settlement, the United States and the Indian Community have agreed not to claim any rights to the waters of the Gila River except those decreed to them as specified in Articles 5 and 6 of the *Globe Equity* Decree. The United States and the Indian Community shall have the right to enforce the provisions of the Decree against other water users, including water users that are not parties to the original Decree. However, the Indian Community has agreed to limit its enforcement rights under the Decree, by refraining to bring enforcement proceedings against existing users in the Upper Gila and San Pedro River watersheds. See Section II.B.10 below.

2. Haggard Decree Water. The Settlement recognizes the right of the United States, the Community, its members and allottees under the *Haggard* Decree, as modified by the *Benson-Allison* Decree, to 540 miners inches of water from the Salt River. The Settlement also confirms that such rights shall be deemed fully satisfied by SRP's performance of its water delivery obligations under the Contract between the United States and the Salt River Valley Water Users' Association dated May 5, 1936, as amended. This Contract, commonly referred to as the Maricopa Contract, provides that SRP shall make available 5,900 acre-feet of water per year for diversion and use on Reservation lands with rights under the *Haggard* Decree, as modified by the *Benson-Allison* Decree.

3. SRP Stored Water. Resolving the additional claims of the Indian Community to water from the Salt River, the Settlement entitles the Indian Community to an annual amount of water from the Salt River Project ("SRP"), ranging from 0 to 35,000 acre-feet, depending upon storage levels in SRP reservoirs on May 1 of each year. The annual variation in the amount of the Community's water entitlement is based on a

program of shared surpluses and shortages, agreed to as a guiding principle by the parties during their negotiations. The Community's stored water entitlement will be transported to the Reservation via SRP's water delivery system, subject to certain delivery system capacity limitations specified in the Agreement. Water that is credited to the Community on May 1 of each year, but is not used by April 30 of the following year, may be carried over in storage for the Community's subsequent use, up to a maximum amount, specified in the Agreement, which may not be exceeded at any time. Moreover, in any single year, the Community will not be entitled to order more than 45,000 acre-feet total from the current year's entitlement and the Community's entitlement to "carry over" water from prior years. The Community shall pay for the delivery of SRP stored water at 100 per cent of the cost per acre-foot of stored water for SRP shareholders. The Community's entitlement to SRP stored water will be phased in over a period of five-years, commencing in the year that the Settlement becomes enforceable.

4. Roosevelt Water Conservation District Surface Water. The Indian Community has reached a separate settlement of its water disputes with the Roosevelt Water Conservation District ("RWCD"), under which the Community is entitled to 4,500 acre-feet of water annually from RWCD. The agreement also provides for the relinquishment of RWCD's allocation of Central Arizona Project water to the United States for the benefit of the Community, also referred to in Section II.B.5 below. The Gila River adjudication court's approval of the Indian Community's settlement agreement with RWCD is proceeding independent of this Settlement.

5. CAP Water. The Settlement entitles the Indian Community to a total of 328,500 acre-feet annually of water, from the Central Arizona Project ("CAP"), subject to the availability of the water and the priorities of the respective allocations comprising the Community's entitlement. In addition to the Community's original CAP entitlement, multiple entities with contractual rights to water from the Central Arizona Project ("CAP") have agreed to assign their CAP allocations to the Indian Community, as a vehicle for settling the Community's objections to appropriative rights also held by these entities. The individual components of the Community's entitlement to CAP water are: (a) the Community's original CAP Indian Priority Water allocation (173,100 acre-feet); (b) Roosevelt Water Conservation District CAP Water (18,600 acre-feet); (c) Harquahala Valley Irrigation District CAP Water (17,800 acre-feet); (d) Asarco CAP Water (17,000 acre-feet) if an agreement is reached between Asarco and the Community; and (e) new CAP non-Indian Agricultural Priority Water (102,000 acre-feet). The Indian Community may lease or exchange all or a portion of its CAP entitlement, but none of its entitlement may be permanently transferred, nor may the Community lease, exchange, forbear or otherwise transfer its CAP entitlement for use outside the State of Arizona.

Subject to certain monthly and annual volume limitations, SRP has agreed to take delivery of CAP water to which the Community is entitled for use by SRP shareholders, in exchange for the storage of the same amount of Salt and Verde River water in SRP reservoirs for eventual use by the Community. This exchange is subject to the ability of SRP to divert and beneficially use the CAP water to which the Community is entitled. SRP will deliver exchange water ordered by the Community via the SRP

water delivery system only after determining that the system capacity is not needed to fulfill water delivery obligations of SRP that predate the Settlement.

SRP also has agreed to accept delivery of CAP water to which the Community is entitled for direct delivery to the Reservation, via SRP's water delivery system. The direct delivery of this water to the Community also will be subject to the limits of SRP's water delivery system capacity, as discussed in the previous paragraph.

6. Reclaimed Water from the Cities of Chandler and Mesa. The Indian Community shall be entitled to receive 40,600 acre-feet annually of reclaimed water, made available to it by the cities of Chandler and Mesa. In exchange, the Indian Community shall cause the delivery to these cities of 32,500 acre-feet of the Community's CAP Indian Priority water. In addition to the exchange of reclaimed water for CAP water, the City of Chandler shall deliver reclaimed water to the Community in the amount of 4,500 acre-feet annually.

7. Underground Water. The Indian Community also shall be permitted to pump underground water from wells on the Reservation to the extent needed to satisfy its annual water entitlement to 653,500 acre-feet. The Settlement Agreement additionally calls for the state legislature's creation of underground water "protection zones" on the south side of the Reservation, in Pinal County. Underground water pumping by non-Indians from these zones will be limited to specific per-acre amounts set forth in the Settlement Agreement. Pumping by non-Indian water users that exceeds these amounts must be replenished by the State or other persons as specified in the Agreement.

8. Blue Ridge Water. Phelps Dodge Corporation has offered to transfer to SRP its right, title and interest in Blue Ridge Reservoir, including all rights to water developed by operation of the reservoir. If SRP accepts Phelps Dodge's offer, and the transfer of water rights to SRP is accomplished under Arizona law, then SRP will provide to the Community a portion of the water stored behind Blue Ridge Reservoir, ranging from zero to 836 acre-feet annually, depending on reservoir storage levels in Blue Ridge on May 1 of each year. Water that is credited to the Community on May 1 of each year, but is not used by the end of April 30 of the next year, will not be available for the Community's use in subsequent years. If SRP accepts Phelps Dodge's offer and obtains the right to water stored in Blue Ridge, there also may be an opportunity for municipalities in water scarce areas of Gila County, Arizona, to enter into agreements with SRP for the use of some of this water. SRP intends to reach a decision to accept or reject Phelps Dodge's offer to transfer Blue Ridge by the end of March, 2003.

9. SRP Drain Water. The Settlement permits the continued use by the Community of water discharged into certain drain ditches by SRP, and provides for the contribution by SRP of \$500,000 toward the cost of easements, construction, rehabilitation, operation and maintenance of these drain ditches on the Reservation.

10. Diversions by Upper Gila Valley and San Pedro River Water Users. As part of the Settlement, the Indian Community will enter into agreements with

municipalities in the upper Gila valley and San Pedro River watershed, resolving objections by the Community to these municipalities' water uses. Agreements with Safford, Duncan, Kearny and Mammoth are attached as exhibits to the Settlement Agreement. Additionally, the Community will enter into a comprehensive agreement with multiple irrigation districts and other water users in the upper Gila valley, which resolves long-held grievances by the Community's with respect to the effects of diversions by these users, who are parties to the Globe Equity Decree, on the Community's downstream water rights.

In addition to the resolution of disputes between the Indian Community and upper valley users with water rights under the Globe Equity Decree, the Settlement also creates a legal framework for resolution of present and future disputes between the Community and upstream water users who do not hold decreed rights. The Settling Parties have agreed to the establishment, by state legislation, of the Upper Gila Watershed Maintenance Program, whose purpose is to limit groundwater pumping in the Upper Gila River watershed and San Pedro River watershed. After the program is established, as long as its provisions are enforced, the Settlement's "Safe Harbor" provisions, described in detail in the Agreement and exhibits, will shield existing water diversions from the upper Gila valley and San Pedro River watersheds from legal challenge by the Community. In general, the Safe Harbor provisions allow the continuation of existing diversions of water for irrigation, municipal and industrial, and domestic purposes within the upper Gila River watershed and the San Pedro River watershed. These Safe Harbor provisions also permit the initiation of new domestic and large industrial uses in these areas, under terms and conditions specified in the Settlement.

III. Waiver and Release of Claims. In exchange for the benefits provided under the Settlement Agreement, the Indian Community, its members and allottees, and the United States on their behalf, shall execute a comprehensive waiver and release of claims for water rights, injuries to water rights and injuries to water quality, among others, as provided in the exhibits to the Settlement Agreement. The other settling parties also shall execute waivers and releases of claims that such parties may have against the Community, its members or allottees, and the United States on their behalf, as specified in the Agreement.

IV. Community Fund.

A. Federal Funds. The Settlement, when confirmed and implemented by an enactment of the United States Congress, will provide the Community with funding for the following purposes:

- I. Rehabilitation of existing facilities and construction of extensions to those facilities--\$147 million.

2. Defray of operation, maintenance and replacement costs associated with the delivery of the Community's CAP water--\$53 million.
3. Rehabilitation of subsidence damages to lands within the Gila River Indian Reservation occurring before the date the Settlement Agreement becomes enforceable--\$4 million.
4. Implementation of a water quality monitoring program—\$3.4 million.

B. State Contribution. The Settlement also calls for the State of Arizona to “firm” the delivery of 15,000 acre-feet of the Community's new entitlement to CAP non-Indian agricultural priority water to the equivalent of municipal and industrial CAP water delivery priority for 100 years.

V. Congressional and Court Approval. Before it can be enforceable, the Agreement must, among other things, be confirmed by the United States Congress and approved by the courts in the Gila River Adjudication and *Globe Equity* proceedings.

VI. Benefits to the State of Arizona Resulting From the Settlement.

A. Greatly increased certainty of the priority and quantity of relative rights to the Salt, Verde, Gila and San Pedro Rivers, and of CAP allocations will benefit all of Arizona in future planning.

B. The waiver of claims to be executed by the Indian Community and the United States under the Settlement Agreement is comprehensive. Specifically, the Community will agree not to assert claims to water in excess of the quantities provided in the Agreement as to all water users in Central Arizona, including individuals and small entities without the resources to defend themselves in litigation. The Community will also agree not to object to the water right claims of all other users in Central Arizona, with the exception of a small number of users whose asserted water rights, if upheld, would impair the exercise of the Community's water rights under the Settlement Agreement. The Community is continuing its efforts to reach a settlement of its disputes with these users.

C. The resolution of disputed issues related to the allocation of CAP water as part of the Congressional legislation approving the Settlement frees up that water for future Indian settlements.

D. Additional water is made available to the valley cities and towns under the Settlement, through leases or exchanges of water with the Indian Community.

E. State agencies, including the Arizona Department of Water Resources and the Arizona Game and Fish Commission would save money that would otherwise be spent in litigation of the Indian Community's claims, as well as the Community's objections to the claims of these state agencies.

F. This settlement will permit the Community, the United States on its behalf and the Community's neighboring non-Indian water users to put behind them contentious and divisive litigation concerning the Community's water rights and to move forward together in planning for the continued prosperous development of Arizona.

Arizona Water Settlements Act

Title III – Southern Arizona Water Rights Settlement

Briefing Paper

Title III of the Arizona Water Settlements Act restates, supplements and modifies the Southern Arizona Water Rights Settlement Act ("SAWRSA" or "the 1982 Act"). Enactment of Title III will be the basis for dismissal of the litigation described below. Attached are Exhibit A: a summary of the 1982 Act, Exhibit B: a summary of Title III, and Exhibit C: a summary of Title III appropriations.

In 1975 the Papago Tribe (now the Tohono O'odham Nation), the United States and two individual Indian allottees, as representatives of a class of Indian trust allotment landowners, sued the City of Tucson and other water users in the Upper Santa Cruz Basin, claiming damages and seeking to enjoin pumping of groundwater (*United States v. Tucson*). There was concern that the litigation would cast a cloud over the future of the Tucson area. Local entities engaged in extensive negotiations with the United States and the lawyers for the Indian parties and finally reached a settlement in 1982. In October 1982, Congress passed the Southern Arizona Water Rights Settlement Act (SAWRSA) embodying the settlement.

The terms of the settlement called for the Nation to receive, without charge, farm improvements, 66,000 acre feet of water annually, the right to pump 10,000 acre feet of groundwater annually at San Xavier and a \$15 million trust fund. (Of the 66,000 acre feet, 37,800 acre feet is the Nation's contracted CAP water for the San Xavier district and the eastern Schuk Toak district. 28,200 acre feet of the water was to be acquired by the Secretary and delivered after *United States v. Tucson* was dismissed.) The City was to transfer 28,200 acre feet of effluent water to the United States and, with the State and other local entities, to contribute a total of \$5.25 million to a cooperative fund. The fund was to help the United States pay the ongoing costs of implementing the settlement. The San Xavier allottees were to satisfy their claims out of water provided to the Nation in the settlement.

The City, State and local interests timely performed all of their obligations under the settlement and the Nation agreed to dismiss the case. The allottee landowners objected to certain aspects of the 1982 Act and opposed dismissal of the litigation.

In 1993, allottees filed a class action lawsuit (*Alvarez v. City of Tucson*) in which they sought to enjoin groundwater pumping by the City and others, and asserted more than \$200 million in damages. Individual San Xavier allottees also filed a lawsuit in 1993 against the United States (*Adams v. United States*) which asserted breaches of trust related to the allottees' land and water resources and sought declaratory and injunctive relief. Dispositive motions in these lawsuits are pending before the Court. Disposition of the motions has been suspended to allow the SAWRSA parties to negotiate amendments which would resolve the outstanding issues among the parties.

For many years, the Nation, the San Xavier District, the Schuk Toak District, the allottees, the City of Tucson, the State, Asarco and Farmers Investment Co. negotiated amendments to SAWRSA that would allow full implementation of the settlement, provide

important clarification in the allocation of existing benefits, and more flexibility for the parties. These amendments constitute Title III which would restate, supplement and modify SAWRSA.

Title III incorporates the elements of the agreement between the Nation and the allottees concerning the division of water and financial resources. It will allow the Nation greater flexibility in putting its water resources to beneficial use, and will assure implementation of the basic elements of the 1982 Act. Title III will resolve asserted ambiguities in the existing law and assure dismissal of the pending lawsuits. It spells out specific financial and water resource benefits for the San Xavier allottees. The obligations of the United States to rehabilitate and extend the existing Cooperative Farm at San Xavier for the allottees are also clarified. Rehabilitation will include bank stabilization on the Santa Cruz River and elimination of sinkholes. The United States obligation to build a new farm in the San Xavier District is clarified, with the District having the option to receive cash in lieu of new farm construction. In addition, CAP water is identified as the source of the 28,200 acre feet the Nation is to receive when the lawsuits have been dismissed. The Nation and the allottees will release claims for future injuries to water rights for water withdrawals outside the Nation's Reservation that comply with state law and the terms of the settlement agreement. The claims, if any, of allottees who opt out of the class will be barred.

SUMMARY OF THE 1982 ACT

The following is a summary of the substantive provisions of SAWRSA as amended by the Southern Arizona Water Rights Technical Amendments Act (96 Stat. 1274).

Nation's Benefits:

1. The United States is to deliver 37,800 acre feet of CAP water without the Nation having to pay any OM&R or capital charges.
 - a. 27,000 acre feet for San Xavier
 - b. 10,800 acre feet for Schuk Toak (Garcia Strip)
2. The United States is to improve and extend the existing farm at San Xavier and to construct irrigation works for a new farm to take the CAP water.
3. The United States is to deliver an additional 28,200 acre feet of water suitable for agriculture (exchange water), after the pending water claims litigation is finally dismissed.
 - a. 23,000 acre feet to San Xavier
 - b. 5,200 acre feet to Schuk Toak
4. If the United States fails to deliver any of the 66,000 acre feet in any year after October 1992, it must pay the Nation damages equal to the value of the undelivered quantity of water (the deadline was extended to June 30, 1993 by technical amendments enacted in 1992).
5. The United States established a \$15,000,000 Trust Fund, the interest from which can be used to develop land and water resources within the Nation.

Nation's Obligations:

1. To agree to stipulate for dismissal of the pending suit against the City of Tucson and others, and to agree to file in court the allottee class representatives' petition to dismiss.
2. To waive and release all past claims of water rights or injuries to water rights, and to waive and release all future claims of water rights.
3. To agree to limit pumping of groundwater:
 - a. To 10,000 acre feet per year in San Xavier
 - b. To 1981 level in Schuk Toak
4. To agree to comply with the water management plan established by the Secretary.

City's Obligations:

1. City agreed to make 28,200 acre feet of effluent available to the Secretary.
2. City contributed \$1,500,000 to a Cooperative Fund, the interest from which is for "carrying out the obligations of the Secretary" under provisions of the settlement.

Other Obligations:

1. Other contributors to the Cooperative Fund were:

State of Arizona	\$2,750,000
Anamax, Cyprus-Pima, AS&R, Duval & FICO	\$1,000,000
United States	\$5,250,000

2. If *United States v. Tucson* was not dismissed by October 1985, the Cooperative Fund was to be terminated and the contributed funds returned to the contributors (this provision was deleted by technical amendments in 1992).

3. The United States is not obligated to deliver the 28,200 acre feet of exchange water to the Nation until *United States v. Tucson* is finally dismissed.

4. The United States is not obligated to pay the Nation damages for failure to deliver any of the 66,000 acre feet of water until *United States v. Tucson* is finally dismissed.

5. The Nation's waiver and release of claims does not take effect until *United States v. Tucson* is finally dismissed.

6. The Nation can only use its settlement water within the Tucson Active Management Area (TAMA).

7. The Nation can sell or lease settlement water, but only within the TAMA.

SUMMARY OF TITLE III

Title III restates, supplements and modifies the provisions of SAWRSA as follows:

1. The Secretary would be obligated to deliver the SAWRSA section 305 water (28,200 acre feet) from the federal share of Central Arizona Project water.

2. The Secretary would be required to rehabilitate and extend the allottees' existing farm by a date certain, or pay specified penalties. The allottees' existing farm would be extended to up to 2,300 acres. Rehabilitation of the existing farm would include bank stabilization on the Santa Cruz River and repair of sinkholes.

3. The San Xavier District would receive the option of taking cash instead of construction of a new farm at San Xavier.

4. Penalties payable by the United States for failure to timely perform its obligations with regard to the Cooperative Farm and its extension would be payable to the Cooperative Farm Association.

5. The San Xavier District and the allottees would be entitled to receive up to 35,000 acre feet of the settlement water for beneficial use, subject to compliance with the Nation's water code.

6. The 1982 Act does not provide for specific releases of claims for future injuries to water rights. In Title III the release of claims for future injuries to water rights would be required, so long as groundwater withdrawals outside the Reservation are in compliance with State law and with the settlement agreement.

7. The Nation would agree not to make a claim of reserved water rights at the San Xavier Reservation or the eastern Schuk Toak District.

8. The waiver and release of the water rights by the Nation and the allottees, other than the rights established in 1982 Act, would be confirmed, clarified and made more explicit. A condition of the enforceability of Title III would be final dismissal of the litigation. As to any allottees who opt out of a class, their water rights, if any, would be barred.

9. The 1982 Act now limits the Nation to pumping no more than 10,000 acre feet of groundwater per year from the San Xavier District, with no provisions for underground storage and recovery. Title III would allow limited in lieu storage of any groundwater not pumped in a given year, with an initial credit to recognize a portion of the groundwater that has not been pumped since 1983. Withdrawals of stored groundwater in San Xavier could not exceed 10,000 acre feet in any year or 50,000 acre-feet over any ten year period. Title III would also allow direct underground storage and recovery of surface water, in a manner similar to that provided for under current state law. Comparable provisions are made for pumping groundwater from the eastern Schuk Toak District. In addition, the Nation could pump additional groundwater during CAP shortage periods and interruptions in CAP deliveries.

10. SAWRSA now requires that all of the Nation's water be used within the boundaries of the Tucson Active Management Area (TAMA). Title III would allow the Nation to lease its water outside the TAMA, after giving a right of first refusal to users within the TAMA. It would also allow the Nation to use a portion of its settlement water within the territorial jurisdiction of the Nation outside of the TAMA.

11. A new comprehensive settlement agreement among the Nation, the allottee class, the San Xavier Farm Cooperative, the San Xavier District, the United States, the City of Tucson, Asarco and Farmers Investment Company would be approved in Title III.

12. Separate agreements between the Nation/allottees and Tucson, Asarco and FICO would be confirmed and approved in Title III.

a. The Tucson Agreement provides:

- (i) For the payment by the City of Tucson of \$300,000 to the San Xavier District to establish a sinkhole remediation fund to be used to maintain and repair any future sinkholes after the United States has completed its sinkhole repair project.
- (ii) For the release by the San Xavier District and allottees of past, present and future claims for damages from sinkholes or subsidence; release from the Nation of past, present and future claims for damages from sinkholes; and an administrative process for review by the City of any claim of the Nation for damages from subsidence before any court action is filed on such claim.

b. The Asarco Agreement provides:

- (i) Up to 10,000 acre feet of the 35,000 acre foot allocation of CAP water for use in San Xavier, will be delivered to Asarco for mining purposes in exchange for an equivalent reduction in groundwater pumping pursuant to a water lease from the Nation.
- (ii) Asarco will have an option to renew the existing on-Reservation well site lease with the Nation for an additional 25 year term.
- (iii) Subject to adequate security to assure repayment, the Nation agrees to loan Asarco up to \$800,000 for construction of CAP delivery system repayable over a period not to exceed 14 years.
- (iv) Pursuant to A.R.S. Section 45-841.01, the Nation is qualified to earn marketable storage credits which have an assigned value under the Asarco Agreement and are used to repay the Asarco loan and thereafter apportioned between the Nation and San Xavier District.

- (v) With the exception of discharges of toxic or hazardous substances to groundwater, certain claims for groundwater contamination by Asarco are settled by Asarco payments of water lease delivery charges into a settlement fund, with Asarco making additional direct payment from its funds to the extent of any shortfall in the scheduled payment amount.
- (vi) Waivers and releases of all past and future claims by the Nation, District, allottees, United States and Asarco related to withdrawal of groundwater by the parties within the Tucson Management Area.

c. The FICO Agreement provides:

- (i) Limitation of 850 acre feet annual withdrawal of groundwater by FICO within two miles of the exterior boundaries of the San Xavier Reservation.
- (ii) Limitation of 36,000 acre feet annual withdrawal of groundwater by FICO from all FICO lands.
- (iii) Prohibition on FICO from selling groundwater credits to third parties for withdrawal within three miles of the exterior boundaries of the Tohono O'odham Nation.
- (iv) Except as otherwise provided in (i), (ii) and (iii) above, waivers and releases of all past and future claims by the Nation, allottees, United States and FICO related to withdrawal of groundwater by the parties within the Tucson Management Area.
- (v) Terms of Agreement binding on heirs, devisees, executors, assigns and successors of the parties.

SUMMARY OF TITLE III EXPENDITURES

The following is a summary of the various provisions in Title III that authorize use of the Lower Colorado River Basin Development Fund. The summary first discusses federal obligations in Title III that arise from obligations in the 1982 Act and second new federal financial obligations under Title III.

A. FEDERAL OBLIGATIONS ARISING FROM THE 1982 ACT

Section 304(c)(3)(B): Authorizes the Secretary of the Interior to pay to the San Xavier District the sum of \$18,300,000 in lieu of and in full satisfaction of, the obligation of the Secretary to construct a "new farm" on the San Xavier Reservation including design and construction activities relating to additional canals, laterals, farm ditches, and irrigation works for the efficient distribution of water described in section 303(a)(1)(A). Use of the funds is regulated pursuant to section 304(f).

History of the Expenditure. Section 303(a)(1)(B) of the 1982 Act directs the Secretary, acting through the Bureau of Reclamation, to improve and extend the irrigation system, including the design and construction of additional canals, laterals, farm ditches and irrigation works, necessary for the efficient distribution for agricultural purposes of 27,000 acre feet of water referred to in 303(a)(1)(A). Section 304(c)(3)(B) of Title III gives the San Xavier District the option to cash out the construction benefit of a new farm and thereby to use the portion of the 27,000 acre feet annually not required for the existing or extended cooperative farm for other purposes. Identification and retention of this amount in the Lower Colorado River Basin Development Fund is a condition to Title III becoming effective pursuant to section 301(a).

Sections 308(d)(2)(A)(i) and (ii): Authorize the Secretary to enter into a contract with the San Xavier District and to pay a sum not to exceed \$891,200 for the development of a water management plan for the San Xavier District and authorizes the Secretary to enter into a contract with the Nation and to pay a sum not to exceed \$237,200 for the development of a water management plan for the eastern Schuk Toak District.

History of the Expenditure. Section 303(a)(3) of the 1982 Act directs the Secretary, acting through the Bureau of Reclamation, to establish water management plans for the San Xavier Reservation and the Schuk Toak District, that have the same effect as those plans developed under state law. Identification and retention of this amount in the Lower Colorado River Basin Development Fund is a condition to Title III becoming effective pursuant to section 301(a).

Section 310(a)(2)((A)(ii): Establishes that the cooperative fund may be increased in principal by an amount not to exceed \$32,000,000 based on a determination by the Secretary that the additional funds are necessary to carry out Title III and after providing notice to Congress.

History of the Expenditure. Section 313(b)(3)(B) of the 1982 Act provided for an additional sum up to \$16,000,000 which the Secretary determined to be necessary to meet its obligation, after providing notice to Congress. The 1982 Act provides that the \$16,000,000 shall be adjusted pursuant to § 313(b)(2). Section 313(b)(2) states that the adjustment represents the additional

interest that would have been earned by the cooperative fund had the monies been contributed initially. A technical amendment to the 1982 Act enacted in 1992 inadvertently dropped the reference to the means of calculating the adjustment. Thus, the requirement to adjust the \$16,000,000 existed between 1982 and 1992.

Section 317(1): Authorizes an expenditure of \$3,500,000 to construct features of the irrigation systems described in § 304(c)(1) through (4) that are not authorized to be constructed under any other provision of law.

History of the Expenditure. Section 303(a)(4) of the 1982 Act authorizes the appropriation of up to \$3,500,000, adjusted by fluctuations in construction costs.

Section 317(3): Authorizes an expenditure of \$4,000,000 to carry out § 311(d).

History of the Expenditure. Section 303(b)(1) of the 1982 Act authorized the Secretary to carry out a study to determine the availability of water resources within the Sells Reservation. Identification and retention of this amount in the Lower Colorado River Basin Development Fund is a condition to Title III becoming effective pursuant to section 301(a).

B. NEW FEDERAL OBLIGATIONS OF TITLE III

Sections 311(c)(1) and (2): Authorize the Secretary to expend sums not to exceed \$215,000 for San Xavier and \$175,000 for eastern Schuk Toak for groundwater monitoring programs.

History of the Expenditure. The tribal parties and the federal team reached agreement on this new obligation prior to the introduction of S.3231, the Arizona Water Settlements Act of 2000. Identification and retention of this amount in the Lower Colorado River Basin Development Fund is a condition to Title III becoming effective pursuant to section 301(a).

Section 311(f): Authorizes the Secretary to conduct a land exchange study with Asarco for a sum not to exceed \$250,000.

History of the Expenditure. This is a new obligation. S.2992 introduced last session included a land exchange study with Asarco but did not provide a specific dollar amount for the study. The current Title III has included a not to exceed sum of \$250,000. Identification and retention of this amount in the Lower Colorado River Basin Development Fund is a condition to Title III becoming effective pursuant to section 301(a).

Executive Summary and Appendices
to the
Indian Firming Study Commission Final Report, dated January 6, 2006

INDIAN FIRING STUDY COMMISSION MEMBERS

Herb Guenther	Arizona Department of Water Resources – Chair
Cecil Antone	Gila River Indian Community
Tom Buschatzke	City of Phoenix
Chuck Cahoy	Arizona Water Banking Authority
Larry Dozier	Central Arizona Project
Senator Jake Flake	Senate (ex officio/non-voting)
Tim Henley	Arizona Water Banking Authority
Mike Leonard	Roosevelt Water Conservation District
Bill Perry	Central Arizona Project Board of Directors
Bill Richardson	Phelps Dodge Corporation
Dave Roberts	Salt River Project
Dennis Rule	Tucson Water
Supervisor David Snider	Pinal County Board of Supervisors
Selso Villegas	Tohono O’odham Nation
Grant Ward	Maricopa-Stanfield Irrigation & Drainage Dist
Representative Jim Weiers	House of Representatives (ex officio/non-voting)

EXECUTIVE SUMMARY

This report of the Indian Firming Study Commission (Study Commission) will provide as background an overview and description of the State's obligation for Indian Firming and an overview of the modeling efforts completed by Arizona Department of Water Resources (ADWR) staff to determine the estimated volumetric obligation for Indian Firming. Additionally, this report will summarize the solution elements reviewed by the Study Commission, including the water supply availability analysis and a review of the estimated cost and availability of funds to meet the obligation. Finally, the report will provide the recommendations from the Study Commission to the Arizona Legislature.

In December of 2004 President Bush signed legislation approving the Arizona Water Settlements Act (Settlement Act) P.L. 108-451, settling longtime claims to water by the Gila River Indian Community (Community) and the Tohono O'odham Nation. A key provision within the Settlement Act is the provision for enacting State legislation creating an Indian Firming Program (Firming Program) for the Community and future Indian water rights settlements. The provision authorizes the Secretary of the Interior (Secretary) and the State of Arizona (State) to develop a Firming Program to ensure that 60,648 acre-feet of non-Indian Agricultural priority Central Arizona Project (CAP) water made available for re-allocation to Indian tribes shall, for a 100-year period, be delivered during water shortages in the same manner as water with an municipal and industrial (M&I) priority is delivered during water shortages. Because the non-Indian Agricultural priority water has the lowest priority on the Central Arizona Project (CAP) system, in times of shortage this supply would be reduced or eliminated before M&I and Indian priority supplies are impacted. Therefore, in the case of reallocating non-Indian Agricultural priority water to the tribes, the parties to the Settlement Act agreed to increase the reliability (firm) of this block of water in times of shortage on the Colorado River. The importance of this provision is underscored by the clause in the Settlement that State legislation be enacted as part of the enforceability conditions to the Settlement.

The Settlement further identifies specific firming responsibilities for the Secretary and the State. Of the 60,648 acre-feet, the Secretary has responsibility for 28,200 acre-feet, as required by the Southern Arizona Water Rights Settlement Act (SAWRSA). The State agreed to firm 15,000 acre-feet for the Community, consistent with the Settlement. Responsibility for the remaining 17,447 acre-feet, which is to be dedicated for future Indian settlements, was divided equally (8,724 acre-feet each) between the Secretary and the State. Therefore, the State's total responsibility under this program is 23,724 acre-feet.

In the spring of 2005 the Arizona Legislature created the Indian Firming Study Commission (Study Commission) to develop the Firming Program for Arizona (Appendix I HB 2728, Section 12) by:

- Reviewing the modeling assumptions that were developed by the Arizona Department of Water Resources to estimate the volume of water needed to meet the firming obligation;
- Identifying options for meeting the firming obligations;
- Identifying cost components for each of the firming options;
- Identifying funding sources appropriate to finance the options; and
- Identifying the necessary changes to the Arizona Revised Statutes to meet the firming obligations.

Summary of Recommendations

The Study Commission reviewed several options for meeting the State's obligation. First, however, the Study Commission identified the following issues that needed to be considered prior to developing possible solution elements:

- The capability of delivering water to the Community whether it is stored and recovered, or directly delivered for use or storage by the Community.
- In times of shortage well capacity may be limited for recovery due to the need for increased groundwater pumping.
- Competition for excess supplies will increase over the next ten, twenty, fifty, and even one hundred years. Competition for underground storage capacity could also increase in the early years.
- How can the firming program be implemented while ensuring that the goals of the Active Management Areas are being met?

After reviewing estimated shortages, water supply availability, mechanisms for ensuring water would be made available to the tribes in times of shortage, and potential costs and funding availability the Study Commission concluded that the Arizona Water Banking Authority (AWBA), in cooperation with the Arizona Department of Water Resources (ADWR) and the Central Arizona Water Conservation District (CAWCD), is the most appropriate and best suited entity to fulfill the State's obligations described in Section 105(b) of the Settlements Act. The Study Commission recognizes that in order to fulfill this role, the AWBA needs to be provided with sufficient funding or the mechanisms to develop the funding necessary to implement the Indian Firming Program on behalf of the State and recommends that the Arizona Legislature provide the AWBA with appropriate funding to do so. Additionally, the Study Commission recommends the AWBA be empowered by the Arizona Legislature to include the following programs to address annual Indian Firming needs within its Annual Plan of Operation and the 10-Year Plan:

- Traditional water banking (off reservation underground storage of excess water for future recovery and delivery);
- On-Reservation Storage and Recovery;
- Leasing of non-Indian Agricultural priority or Indian priority CAP water from Indian tribes;
- Importation of groundwater from authorized groundwater basins;
- Use of long-term storage credits developed by the AWBA prior the Enforceability Date, as defined in the Act.
- Enter into a Memorandum of Understanding with the United States for monetary or in-kind goods or services pursuant to section 306(b) of the Arizona Water Settlements Act; and
- Use of general fund appropriations and withdrawal fees, collected within the Phoenix, Pinal and Tucson Active Management Areas, to store and recover water, lease Indian CAP supplies, import groundwater, and deliver water to the Indian Communities for the purposes of satisfying the Section 105(b) State obligation.

APPENDIX I
SECTION 105 - ARIZONA WATER SETTLEMENTS ACT

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

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

(b) **DUTIES** -

(1) **SECRETARY** - The Secretary shall -

- (A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) **STATE** - The state shall -

- (A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).
- (C) assist the Secretary in carrying out obligations of the secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

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

APPENDIX II
SECTION 306 - ARIZONA WATER SETTLEMENTS ACT

SEC . 306. ADDITIONAL WATER DELIVERY.

- (a) **IN GENERAL** - In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the main project works of the central Arizona project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which -
- (1) 23,000 acre-feet shall -
 - (A) be delivered to, and used by, the San Xavier Reservation; or
 - (B) otherwise be used by the nation in accordance with section 309; and
 - (2) 5,200 acre-feet shall -
 - (A) be delivered to, and used by, the eastern Schuk Toak District; or
 - (B) otherwise be used by the nation in accordance with section 309.
- (b) **STATE CONTRIBUTION** - To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute \$3,000,000 -
- (1) in accordance with a schedule that is acceptable to the secretary and the State; and
 - (2) in the form of cash or in-kind goods and services.

APPENDIX III HOUSE BILL 2728

Sec. 12. Arizona water firming program study commission

A. The Arizona water firming program study commission is established. The purpose of the commission is to:

1. Study the options for a water firming program that would satisfy the requirements of section 105(b)(2) of the Arizona water settlements act (P.L. 108-451).
2. Identify appropriate mechanisms for the firming of water under the water firming program, including storage and recovery with specification of authorized entities to recover the water and determination of the financial structure for the recovery, as well as forbearance, and other alternative mechanisms.
3. Study the existing powers and duties of the Arizona water banking authority and the general statutory authorities necessary to implement the firming program and to make recommendations regarding appropriate statutory and regulatory provisions that are necessary to fully implement the water firming program.

B. The commission consists of members who are appointed by the director of the department of water resources and who represent at least the following entities:

1. Municipal and industrial priority central Arizona project water users.
2. Agricultural improvement districts established pursuant to title 48, chapter 17, Arizona Revised Statutes.
3. Non-Indian agricultural priority central Arizona project water users.
4. The Gila River Indian community.
5. The Tohono O'odham nation.
6. A multi-county water conservation district established under title 48, chapter 22, Arizona Revised Statutes.
7. The Arizona water banking authority established under title 45, chapter 14, Arizona Revised Statutes.
8. Hardrock mining industries.

C. The director of the department of water resources shall serve as chairperson of the commission. All members appointed by the director shall be knowledgeable in water resource management in this state. The president of the senate and the speaker of the House of Representatives, or their designees, shall serve as nonvoting ex officio members of the commission.

D. The department of water resources shall provide staff support for the commission.

E. The commission shall submit to the legislature an interim report of its activities on or before November 1, 2005 and shall report its final findings and recommendations to the legislature on or before January 6, 2006. The commission

shall provide copies of each report to the secretary of state and the director of the Arizona state library, archives and public records.

Sec. 13. Delayed repeal

Section 12 of this act, establishing the Arizona water firming program study commission, is repealed on June 1, 2006.

Sec. 14. State and tribal cooperation for acquisition of certain land

A. This state recognizes the interest of the Gila River Indian community to acquire and to place into trust status a parcel of land located within the exterior boundaries of the community's reservation. This state, through any of its authorized agencies, in cooperation with the community and on application of the community shall take actions in accordance with Arizona law for the acquisition of the property designated as section 36, township 4 south, range 4 east, Gila and Salt river base and meridian, to include the maximum right, title and interest in that property, including mineral rights as permitted by Arizona law.

B. For purposes of a finding by the secretary of interior or for any other legal requirement, the state and the community agree that this section combined with the enactment of the firming program authorized by this act fully satisfies section 207(c)(1)(E) of the Arizona water settlements act (P.L. 108-451).

Sec. 15. Conditional enactment; written notice

A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

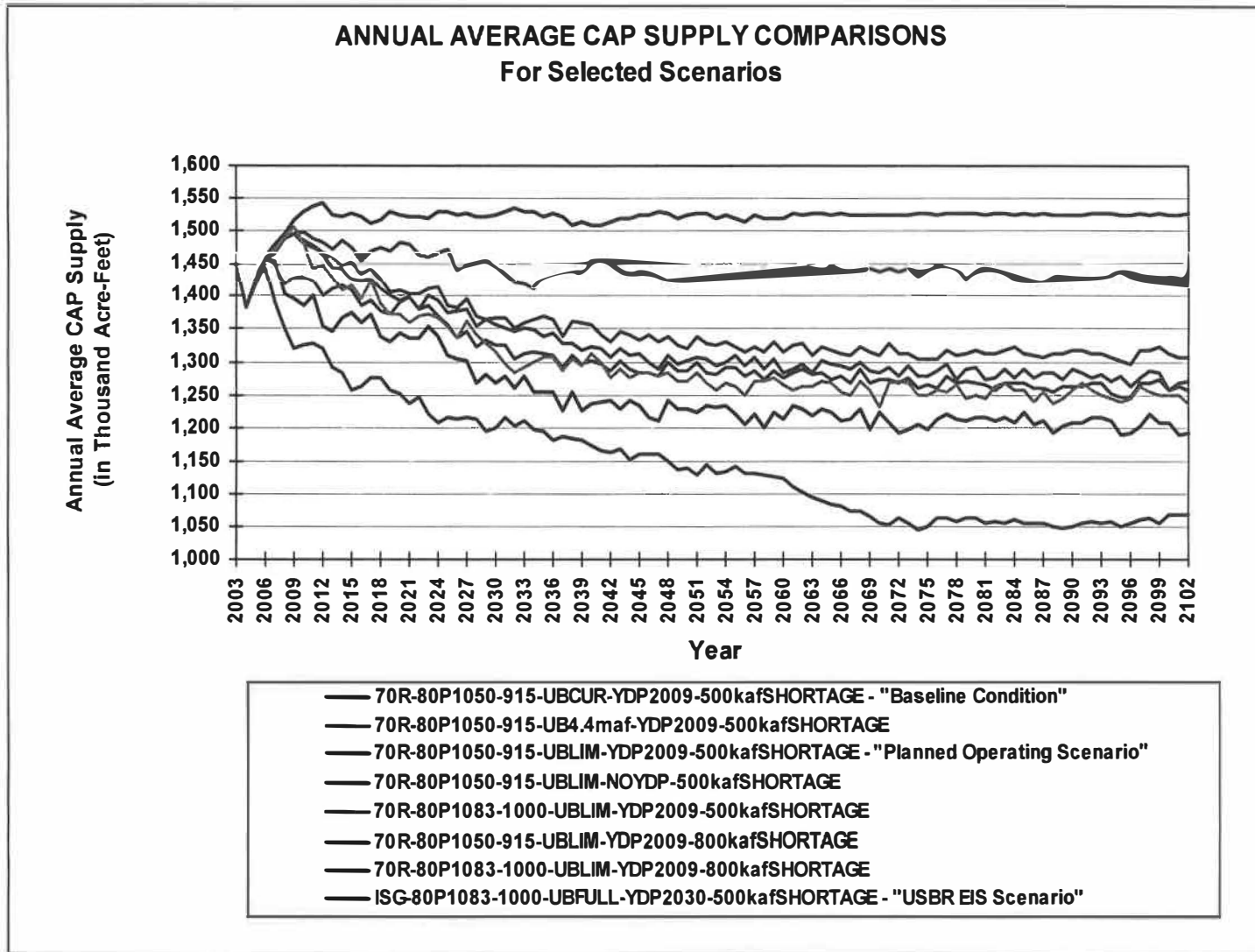
B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment.

Sec. 16. Conditional delayed repeal; conditional enactment

A. Title 45, chapter 15, Arizona Revised Statutes, as added by this act, and section 11 of this act, relating to the establishment of the water firming program for Arizona Indian tribes, are repealed if the condition prescribed in section 15 of this act is not met.

B. Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met.

APPENDIX IV MODELING SCENARIOS



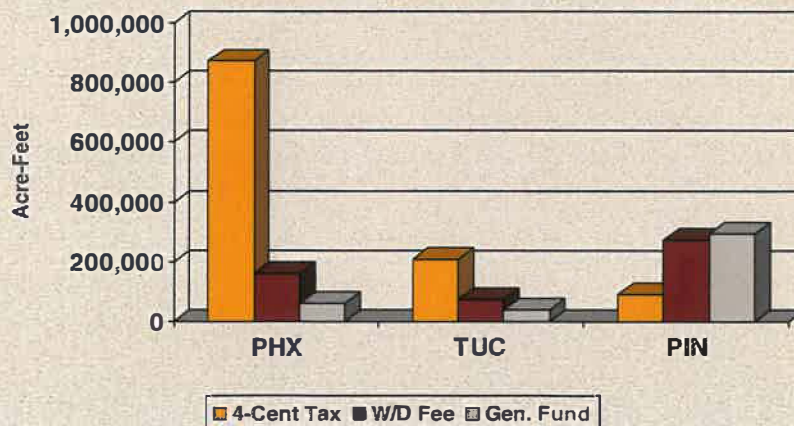
Indian Firming Study Commission

OUTSTANDING ISSUES

- **AWBA Ability to Achieve Existing Goals**
- **Water Availability**
- **Capacity Availability**
- **Funding Sources Available to Achieve Obligation**

Indian Firming Study Commission

AWBA Cumulative Storage thru 2005



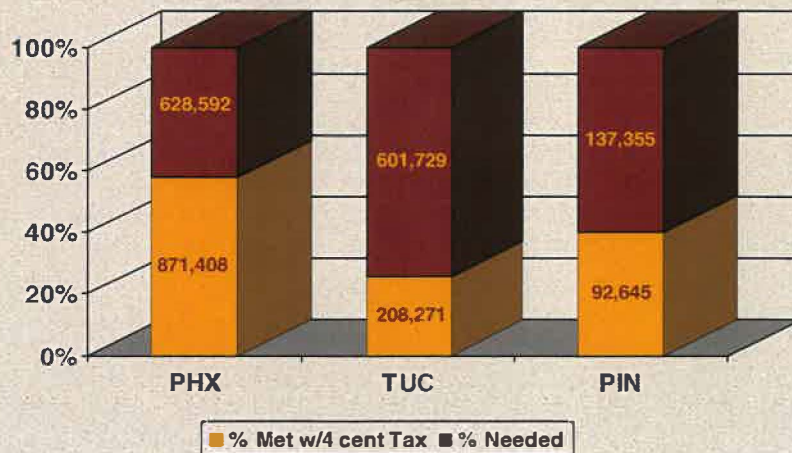
Indian Firming Study Commission

AWBA M&I FIRMING GOALS

- Phoenix = 1,500,000 Acre-Feet
- Tucson = 810,000 Acre-Feet
- Pinal = 230,000 Acre-Feet

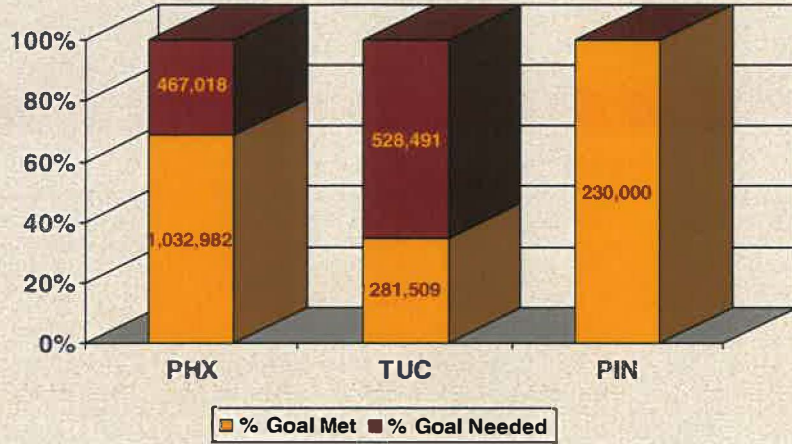
Indian Firming Study Commission

AWBA Firming Goal - Not INCL W/D Fees



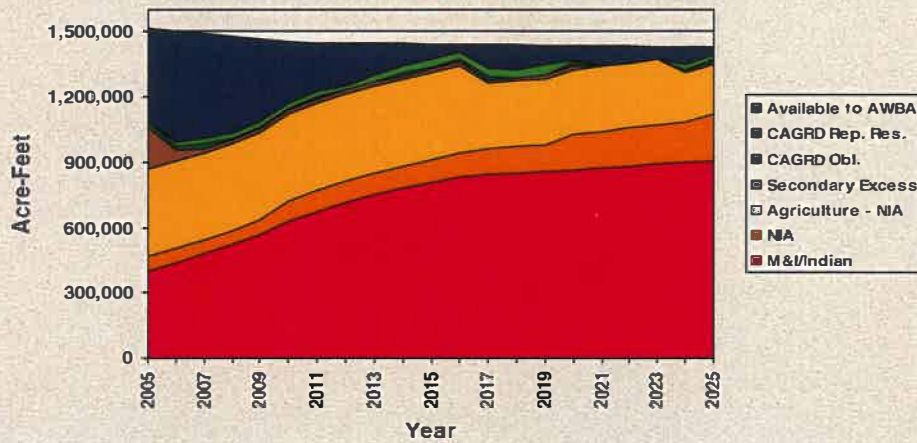
Indian Firming Study Commission

AWBA Firming Goal - INCL W/D Fees



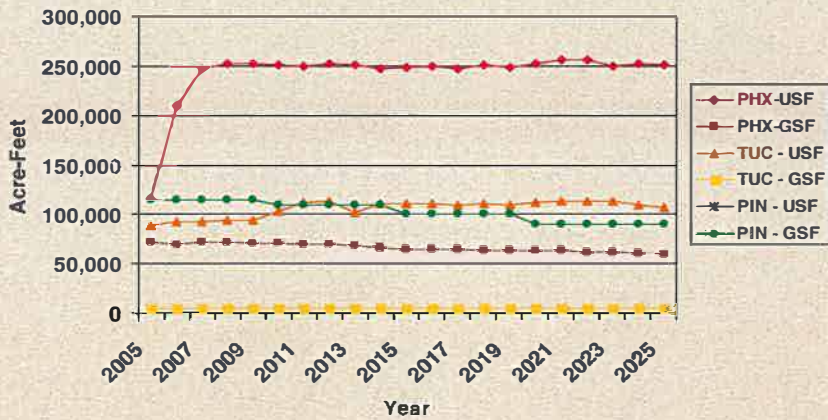
Indian Firming Study Commission

CAP Water Supply Availability



Indian Firming Study Commission

AWBA Storage Capacity



Indian Firming Study Commission

Estimated Cost to AWBA for Excess CAP Water

EXCESS CAP WATER	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Est AWBA Cost *	\$73	\$82	\$84	\$87	\$90	\$92	\$95	\$98	\$101	\$104
Est AWBA Cost + 15%	\$73	\$82	\$97	\$100	\$103	\$106	\$109	\$113	\$116	\$119
Est AWBA Cost - 5%	\$73	\$82	\$90	\$83	\$85	\$88	\$90	\$93	\$96	\$99

* Estimated AWBA Cost includes increasing cost based on 3%/year starting in 2008 AWBA 10-Year Plan assumption

EXCESS CAP WATER	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Est AWBA Cost *	\$107	\$110	\$114	\$117	\$120	\$124	\$128	\$132	\$136	\$140	\$144
Est AWBA Cost + 15%	\$123	\$127	\$131	\$134	\$138	\$143	\$147	\$151	\$156	\$161	\$165
Est AWBA Cost - 5%	\$102	\$105	\$108	\$111	\$114	\$118	\$121	\$125	\$129	\$133	\$137

Indian Firming Study Commission

Estimated Cost to AWBA for Storage

STORAGE FACILITIES	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
USF	\$11	\$12	\$12	\$13	\$13	\$14	\$14	\$14	\$15	\$15
GSF	\$28	\$28	\$31	\$33	\$34	\$35	\$36	\$37	\$38	\$39

STORAGE FACILITIES	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
USF	\$16	\$16	\$17	\$17	\$18	\$18	\$19	\$19	\$20	\$20	\$21
GSF	\$41	\$42	\$43	\$44	\$46	\$47	\$48	\$50	\$51	\$53	\$55

Indian Firming Study Commission

	2005	2006	2007	2008	2009	2010
PHX - \$.04	\$11409k	\$11638k	\$11870k	\$12108k	\$12350k	\$12597k
PHX - W/D	\$2140k	\$2126k	\$2113k	\$2100k	\$2086k	\$2073k
TUC - \$.04	\$2233k	\$2256k	\$2278k	\$2301k	\$2324k	\$2347k
TUC - W/D	\$552k	\$547k	\$541k	\$536k	\$530k	\$525k
PIN - \$.04	\$462k	\$471k	\$481k	\$490k	\$500k	\$510k
PIN - W/D	\$1187k	\$1177k	\$1166k	\$1156k	\$1145k	\$1135k
TOTAL - \$.04	\$14105k	\$14364k	\$14629k	\$14899k	\$15174k	\$15454k
TOTAL - W/D	\$3879k	\$3850k	\$3820k	\$3791k	\$3762k	\$3732k

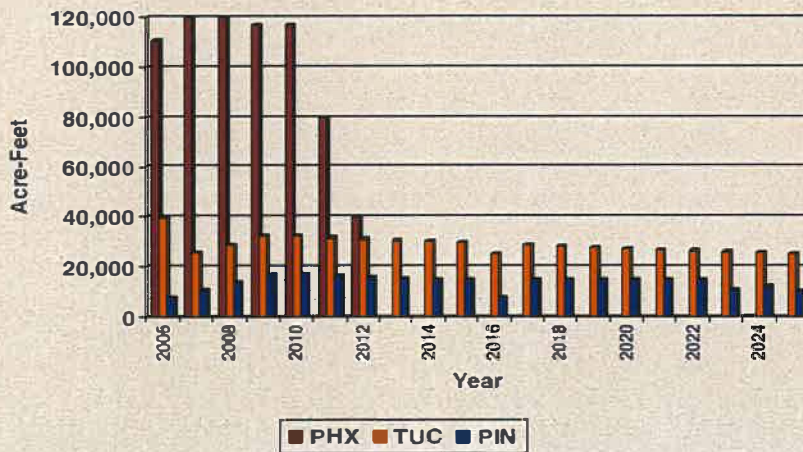
	2011	2012	2013	2014	2015	2016
PHX - \$.04	\$12849k	\$13106k	\$13368k	\$13635k	\$13908k	\$14186k
PHX - W/D	\$2059k	\$2046k	\$2037k	\$2029k	\$2021k	\$2012k
TUC - \$.04	\$2371k	\$2394k	\$2418k	\$2442k	\$2467k	\$2491k
TUC - W/D	\$520k	\$515k	\$509k	\$504k	\$499k	\$494k
PIN - \$.04	\$520k	\$531k	\$541k	\$552k	\$563k	\$574k
PIN - W/D	\$1124k	\$1114k	\$1123k	\$1133k	\$1143k	\$1153k
TOTAL - \$.04	\$15740k	\$16031k	\$16327k	\$16630k	\$16938k	\$17252k
TOTAL - W/D	\$3703k	\$3674k	\$3670k	\$3667k	\$3663k	\$3659k

Indian Firming Study Commission

AWBA ABILITY TO ACHIEVE M&I FIRMING GOAL

Indian Firming Study Commission

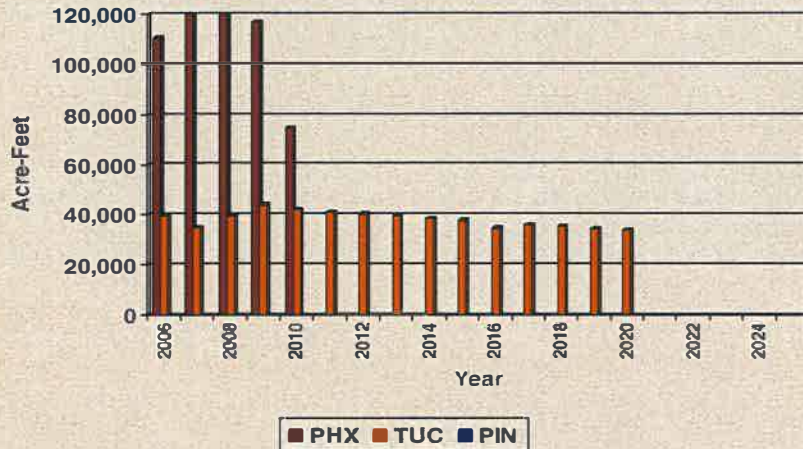
M&I Firming W/Out W/D Fees



Constrained by Available Funds, Water & Storage Capacity

Indian Firming Study Commission

M&I Firming WITH W/D Fees



Constrained by Available Funds, Water & Storage Capacity

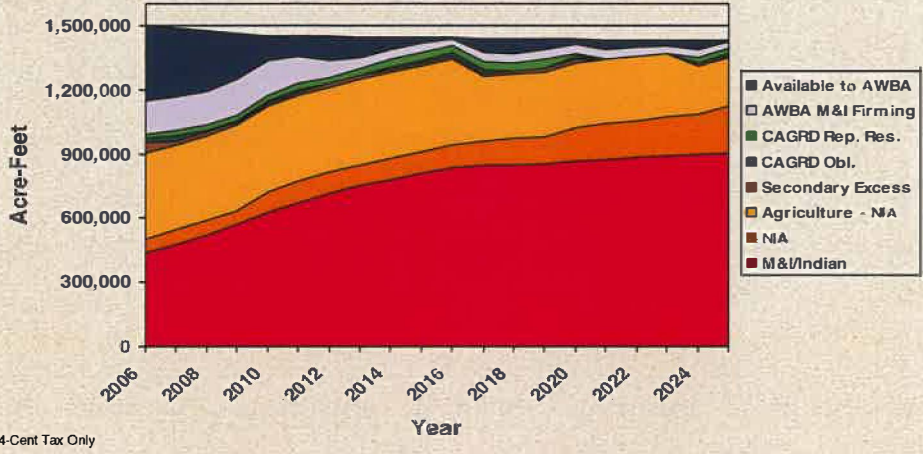
Indian Firming Study Commission

Other AWBA Commitments

- **Interstate Banking**
 - Total Commitment = 1,200,000 AF
 - Volume Met (through 2005) = 234,260 AF
 - Remaining Commitment = 965,740 AF
- **Southside Replenishment Bank**
 - 15,000 AF
- **Indian Firming**
 - Total Commitment = 548,770 AF
 - GRIC = 346,986AF
 - Other = 201,784 AF

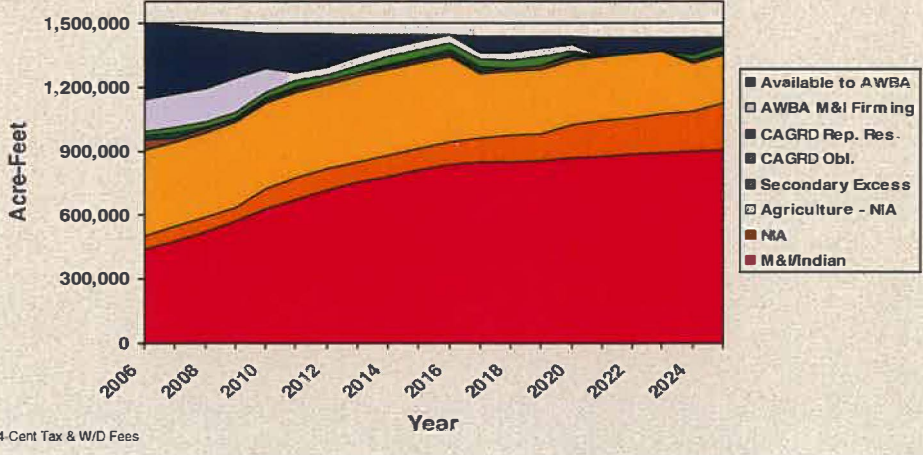
Indian Firming Study Commission

CAP Water Supply Availability



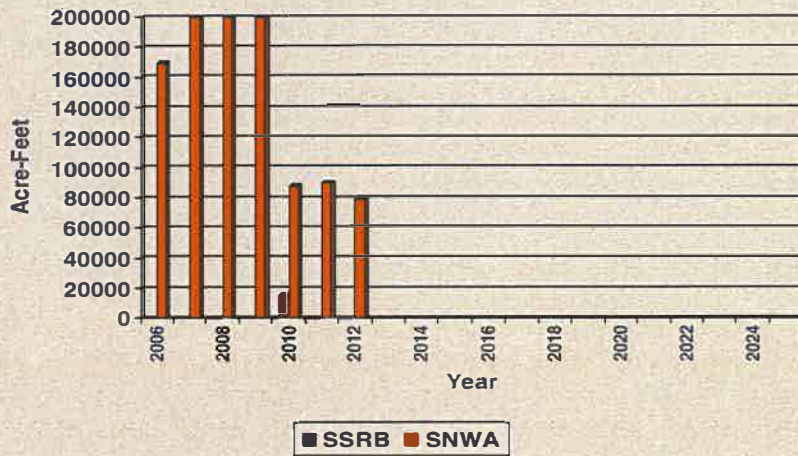
Indian Firming Study Commission

CAP Water Supply Availability



Indian Firming Study Commission

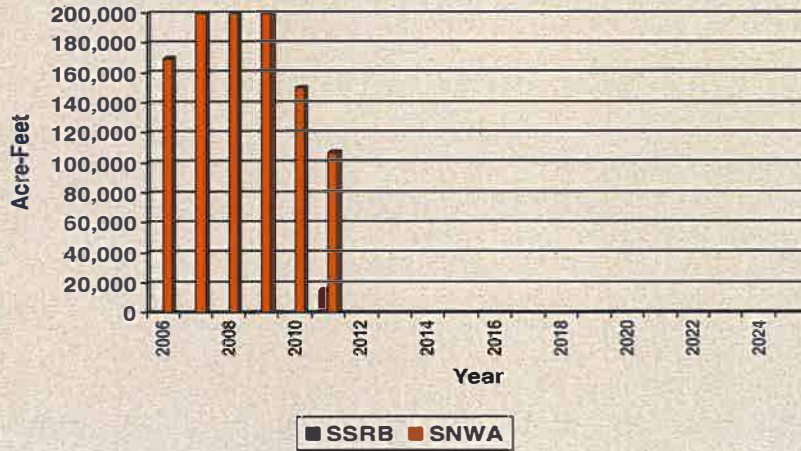
SNWA & SSRB



Constrained by Available Funds, Water & Storage Capacity

Indian Firming Study Commission

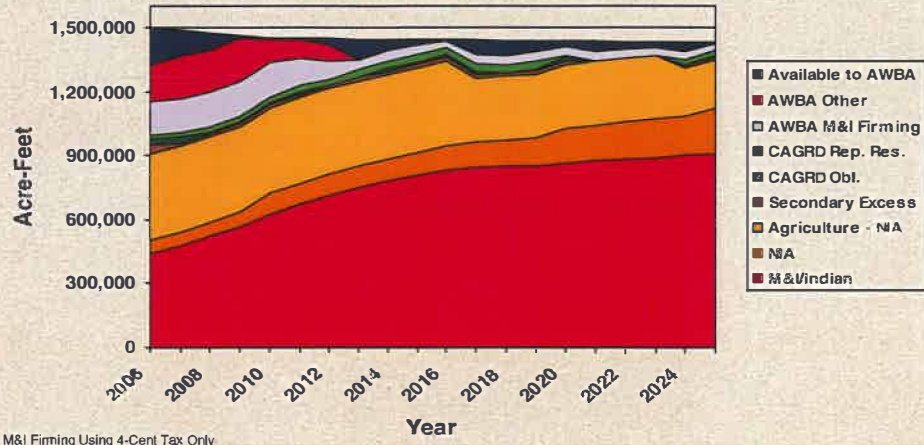
SNWA & SSRB



Constrained by Available Funds, Water & Storage Capacity

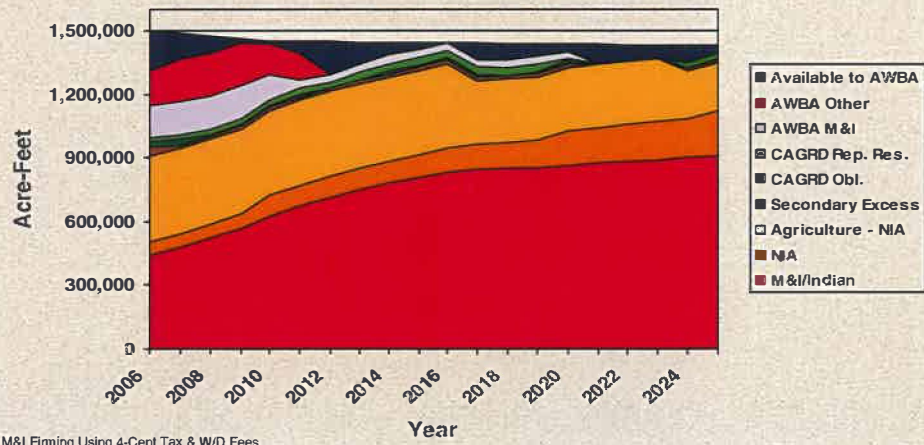
Indian Firming Study Commission

CAP Water Supply Availability



Indian Firming Study Commission

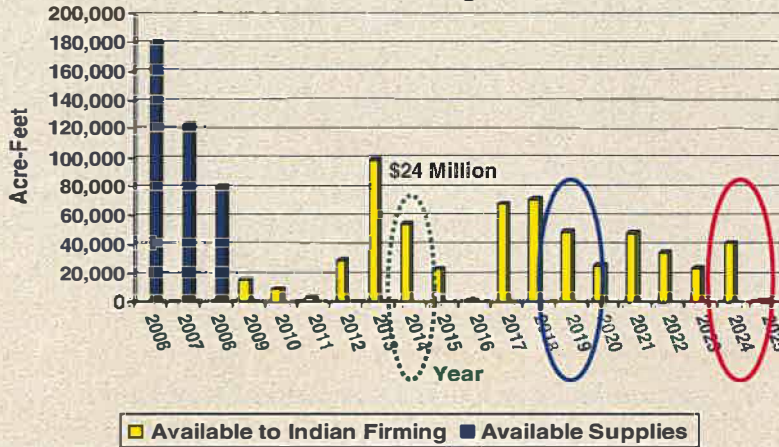
CAP Water Supply Availability



Indian Firming Study Commission

UTILIZE ALL AVAILABLE WATER

Total Cost = \$56 Million - - Average cost \$3.2 Million/Year

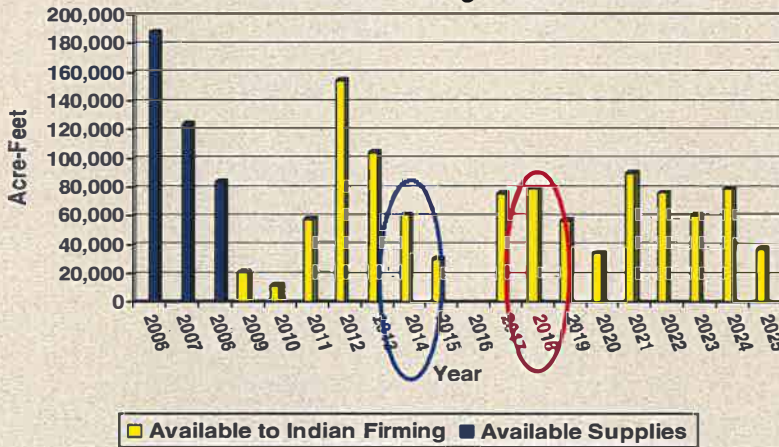


M&I Firming Using 4-Cent Tax Only

Indian Firming Study Commission

UTILIZE ALL AVAILABLE WATER

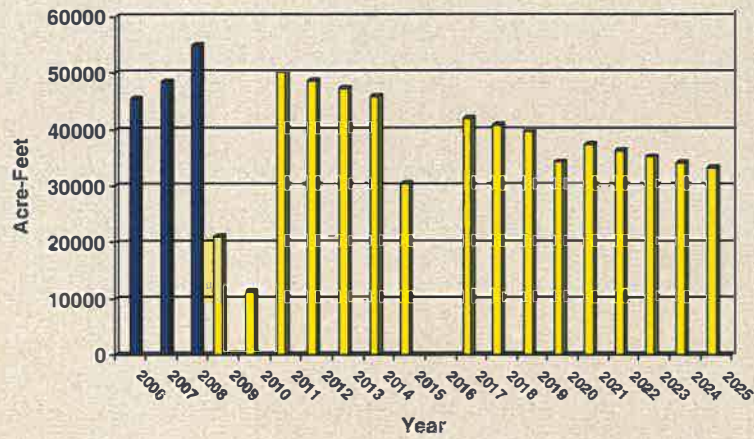
Total Cost = \$50 Million - - Average cost \$5.1 Million/Year



M&I Firming Using 4-Cent Tax & W/D Fees

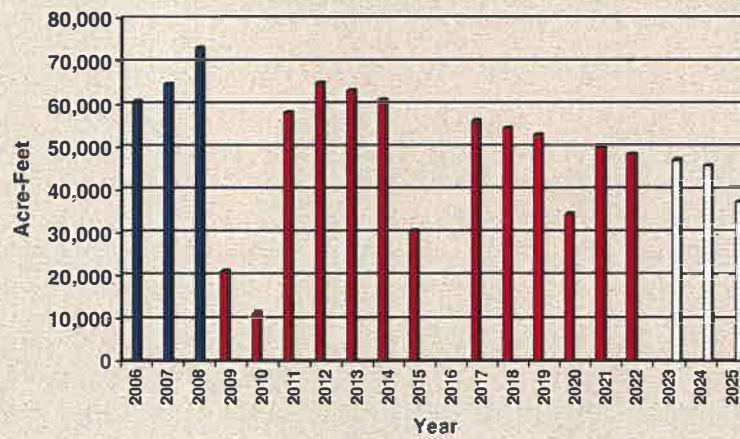
Indian Firming Study Commission

Indian Firming Volume
@ \$3 Million/Year



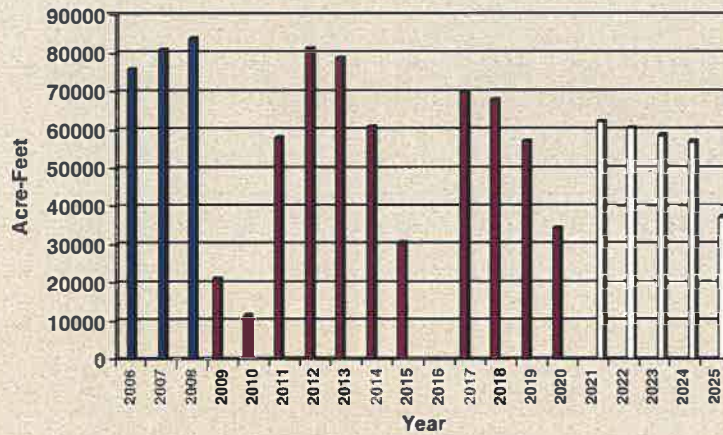
Indian Firming Study Commission

Indian Firming Volume
@ \$4 Million/Year



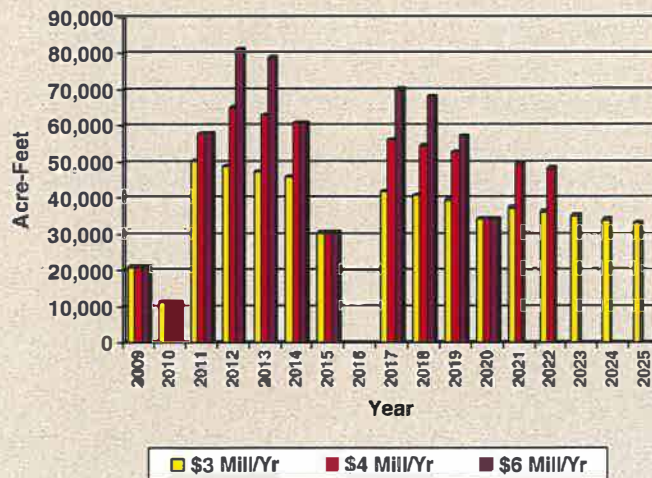
Indian Firming Study Commission

Indian Firming Volume
@ \$5 Million/Year



Indian Firming Study Commission

Indian Firming Volume



Indian Firming Study Commission

SUMMARY OF FINDINGS

- Sufficient Storage Capacity
- Sufficient Water Supplies through 2025 to achieve all AWBA Priorities + Indian Firming
- Utilization of W/D Fees at current rates (\$3 Mill/Year) Sufficient to achieve Indian Firming Goal
- Additional Funding results in earlier achievement of Indian Firming Goal

REFERENCE TITLE: Arizona water settlements act; implementation

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

H. B. _____

Introduced by _____

AN ACT

AMENDING SECTIONS 45-552 AND 45-554, ARIZONA REVISED STATUTES; AMENDING SECTION 45-611, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 143, SECTION 1; AMENDING SECTIONS 45-2401 AND 45-2402, ARIZONA REVISED STATUTES; AMENDING SECTION 45-2423, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 143, SECTION 4; AMENDING SECTION 45-2425, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 143, SECTION 5 AND CHAPTER 332, SECTION 1; AMENDING TITLE 45, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; AMENDING SECTIONS 45-2601, 45-2611, 45-2622 AND 45-2626, ARIZONA REVISED STATUTES; RELATING TO WATERS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 45-552, Arizona Revised Statutes, is amended to
3 read:
4 45-552. Transportation of groundwater withdrawn in McMullen
5 valley basin to an active management area:
6 definitions
7 A. A city that purchased land before January 1, 1988 in the McMullen
8 valley groundwater basin or a person who purchased land before January 1,
9 1988 that was in that basin and that was in the same county as an adjacent
10 initial active management area ~~may~~, either directly or in exchange for
11 central Arizona project water allocated for agricultural purposes, ~~MAY~~
12 transport groundwater from that land to an adjacent initial active management
13 area for use by any city, town, private water company or groundwater
14 replenishment district. A city, town, private water company or groundwater
15 replenishment district that purchases any land in the McMullen valley
16 groundwater basin from that city or land that was in that basin and that was
17 in the same county as an adjacent initial active management area from that
18 person ~~may~~, either directly or in exchange for central Arizona project water
19 allocated for agricultural purposes, ~~MAY~~ transport groundwater from that land
20 to the adjacent initial active management area only for use by a city, town,
21 private water company or groundwater replenishment district ~~OR THE ARIZONA~~
22 ~~WATER BANKING AUTHORITY PURSUANT TO SECTION 45-2491~~. The amount of
23 groundwater that may be transported away from the basin shall be determined
24 pursuant to subsection B of this section but shall not exceed:
25 1. In any year, two times the annual transportation allotment for the
26 land determined pursuant to subsection B of this section.
27 2. For any period of ten consecutive years computed in continuing
28 progressive series beginning in the year transportation of groundwater from
29 the land begins, ten times the annual transportation allotment for the land
30 determined pursuant to subsection B of this section.
31 3. Six million acre-feet in total.
32 B. The director shall determine the annual transportation allotment
33 for land that is subject to this section as follows:
34 1. Determine each farm or portion of a farm on that land.
35 2. For each such farm or portion of a farm, determine the historically
36 irrigated acres.
37 3. Multiply the sum of those historically irrigated acres for all such
38 farms or portions of farms by three acre-feet per acre.
39 C. In an initial active management area, for purposes of determining
40 whether to issue a certificate of assured water supply or to designate or
41 redesignate a city, town or private water company as having an assured water
42 supply, pursuant to section 45-576, based in whole or in part on groundwater
43 transported from the groundwater basin under this section, the director shall
44 consider only the amount of groundwater that can be withdrawn in the
45 groundwater basin from a depth to one thousand two hundred feet at the site

1 or sites of the proposed withdrawals at a rate that, when added to the
2 existing rates of withdrawal in the area, is not expected to cause the
3 groundwater table at the site or sites to decline more than an average of ten
4 feet per year during the one hundred year evaluation period and does not
5 exceed forty per cent of the groundwater that can be withdrawn in the
6 groundwater basin, less the sum of the following amounts of groundwater in
7 the groundwater basin:

8 1. The total amount on which the director has already based
9 certificates or designations of assured water supply in an initial active
10 management area.

11 2. The total amount transported to an initial active management area
12 for other purposes.

13 D. For THE purposes of this section:

14 1. Land that is owned by a city, town, private water company or
15 groundwater replenishment district includes land that is owned indirectly
16 through a nonprofit corporation or other entity that is owned or controlled
17 by the city, town, private water company or groundwater replenishment
18 district.

19 ~~3.~~ 2. "Historically irrigated acres" means land overlying an aquifer
20 that was irrigated with groundwater from that aquifer before January 1, 1988.

21 ~~2.~~ 3. "Person" means person as defined in section 45-402 and a person
22 who purchased land before January 1, 1988 includes any successor in interest
23 of that person if the successor acquires an interest in the land by means of
24 either of the following:

25 (a) Inheritance, devise or intrafamily gift or conveyance directly or
26 in trust.

27 (b) The reorganization of a closely held corporation, a partnership or
28 a limited liability company that is and remains owned by or controlled by or
29 for the benefit of individuals related to that person.

30 Sec. 2. Section 45-554, Arizona Revised Statutes, is amended to read:

31 45-554. Transportation of groundwater withdrawn in Harquahala
32 irrigation non-expansion area to an initial active
33 management area

34 A. A groundwater replenishment district established under title 48,
35 chapter 27 may lease from an irrigation district located entirely within the
36 Harquahala irrigation non-expansion area the use of one or more of the wells
37 in the irrigation district to withdraw the groundwater that can be withdrawn
38 from a depth to one thousand feet, at a rate that, when added to the existing
39 rates of withdrawal in the area, does not cause the groundwater table at the
40 site or sites to decline more than ten feet per year, for transportation to
41 an initial active management area. The lease payments shall be made to the
42 members of the irrigation district on a pro rata basis, per acre of land that
43 is eligible to be irrigated under section 45-437, subsection B, minus the
44 irrigation district's administrative costs. Wells leased under this
45 subsection are exempt from well spacing requirements under section 45-559.

1 B. THIS STATE OR a political subdivision OF THIS STATE that owns land
2 eligible to be irrigated under section 45-437, subsection B in the Harquahala
3 irrigation non-expansion area may withdraw groundwater from the land for
4 transportation to an initial active management area FOR ITS OWN USE OR USE BY
5 THE ARIZONA WATER BANKING AUTHORITY PURSUANT TO SECTION 45-2491 only:

6 1. If the groundwater is withdrawn:

7 (a) From a depth to one thousand feet at the site or sites of the
8 proposed withdrawals.

9 (b) At a rate that, when added to the existing rate of withdrawals in
10 the area, does not cause the groundwater table at the site or sites of the
11 withdrawals to decline more than an average of ten feet per year during the
12 one hundred year evaluation period.

13 2. In an amount either:

14 (a) Per acre of the eligible land, not to exceed:

15 (i) Six acre-feet in any year.

16 (ii) Thirty acre-feet for any period of ten consecutive years computed
17 in continuing progressive series beginning in the year transportation of
18 groundwater from the land begins.

19 (b) Established by the director, but only if the director determines
20 that withdrawals in an amount greater than that permitted by subdivision (a)
21 of this paragraph will not unreasonably increase damage to residents of
22 surrounding land and other water users in the irrigation non-expansion area,
23 or that one or more of the entities withdrawing the groundwater will mitigate
24 the damage to the residents and other water users.

25 C. If this state or one or more political subdivisions of this state
26 own eighty per cent or more of the land that is eligible to be irrigated
27 under section 45-437, subsection B in the irrigation non-expansion area, each
28 of the entities may withdraw groundwater from the eligible land it owns for
29 transportation to an initial active management area:

30 1. From a depth to one thousand feet at the site or sites of
31 withdrawals.

32 2. From a depth between one thousand and one thousand two hundred feet
33 at the site or sites of the withdrawals only if the director determines
34 either that the withdrawals will not unreasonably increase damage to
35 residents of surrounding land or that one or more of the entities withdrawing
36 the groundwater will mitigate the damage to the residents.

37 Sec. 3. Section 45-611, Arizona Revised Statutes, as amended by Laws
38 2005, chapter 143, section 1, is amended to read:

39 45-611. Groundwater withdrawal fee; amounts and purposes of
40 fee; exception

41 A. Except as provided in subsection B of this section, the director
42 shall levy and collect an annual groundwater withdrawal fee from each person
43 withdrawing groundwater in the Prescott active management area or the person
44 who owns the right to withdraw the groundwater, in an amount not to exceed
45 five dollars per acre-foot of groundwater withdrawn and beneficially used.

1 The director shall levy and collect an annual withdrawal fee from each person
2 withdrawing water, other than stored water, from a well in the Santa Cruz
3 active management area or the person who owns the right to withdraw the
4 water, in an amount not to exceed five dollars per acre-foot of water, other
5 than stored water, that is withdrawn and beneficially used. For purposes of
6 this article, the annual withdrawal fee levied and collected in the Santa
7 Cruz active management area shall be considered a groundwater withdrawal fee.
8 The actual amount of the fee levied and collected by the director pursuant to
9 this subsection shall be set by the director as follows:

10 1. For administration and enforcement of this chapter, an amount not
11 less than fifty cents and not greater than one dollar per acre-foot per year.
12 The initial fee for administration and enforcement shall be levied as soon as
13 practicable after the active management area is established.

14 2. For augmentation of the water supply of the active management area,
15 conservation assistance to water users within the active management area and
16 monitoring and assessing water availability within the active management
17 area, an amount not greater than two dollars per acre-foot per year.

18 3. For purchasing and retiring grandfathered rights, an amount not
19 greater than two dollars per acre-foot per year. The initial fee for
20 purchasing and retiring grandfathered rights shall be levied in the first
21 year in which the director develops and implements a program for the purchase
22 and retirement of grandfathered rights as part of the management plan for the
23 active management area, but not earlier than January 1, 2006. The director
24 may not levy a fee under this paragraph on a district member of a groundwater
25 replenishment district that withdraws groundwater in the district for a
26 non-irrigation use in the district.

27 B. A person, other than an irrigation district, who withdraws
28 groundwater in an active management area from a non-exempt well for use
29 pursuant to an irrigation grandfathered right that is appurtenant to ten or
30 fewer irrigation acres and the person who owns the right to withdraw the
31 groundwater are exempt from the groundwater withdrawal fee requirements of
32 subsections A and C of this section for those withdrawals unless the
33 irrigation acres are part of an integrated farming operation.

34 C. Except as provided in section 45-411.01, subsection C and
35 subsection B of this section, the director shall levy and collect an annual
36 groundwater withdrawal fee from each person who withdraws groundwater in the
37 Tucson, Phoenix and Pinal active management areas or the person who owns the
38 right to withdraw the groundwater, in an amount of not more than five dollars
39 per acre-foot of groundwater withdrawn and beneficially used. The director
40 shall set the actual amount of the fee as follows:

41 1. In the Tucson and Phoenix active management areas, beginning in
42 2017, for administration and enforcement of this chapter, an amount of at
43 least fifty cents but not more than one dollar per acre-foot per year. In
44 the Pinal active management area, beginning in 2017, for administration and

1 enforcement of this chapter, an amount of not more than one dollar per
2 acre-foot per year.

3 2. Through 2016, for augmentation of the water supply of the active
4 management area, conservation assistance to water users within the active
5 management area and monitoring and assessing water availability within the
6 active management area, an amount of not more than fifty cents per acre-foot
7 per year, and after 2016, an amount of not more than two dollars per
8 acre-foot per year. If a permanent board of directors of an active
9 management area water district assumes office under section 48-4831, the fee
10 for augmentation under this paragraph shall not be levied in that active
11 management area.

12 3. In the Tucson and Phoenix active management areas, ~~through-2016,~~
13 for Arizona water banking purposes, the amount of two dollars fifty cents per
14 acre-foot per year. In the Pinal active management area, through 2016, for
15 Arizona water banking purposes, including replenishment under chapter 15,
16 article 3 of this title, the amount of two dollars fifty cents per acre-foot
17 per year and, beginning in 2017, for Arizona water banking purposes,
18 including replenishment under chapter 15, article 3 of this title, an amount
19 of not more than two dollars fifty cents per acre-foot per year.

20 4. For purchasing and retiring grandfathered rights, an amount of not
21 more than two dollars per acre-foot per year. The initial fee for purchasing
22 and retiring grandfathered rights shall be levied in the first year in which
23 the director develops and implements a program for the purchase and
24 retirement of grandfathered rights as part of the management plan for the
25 active management area, but not earlier than January 1, 2006. The director
26 may not levy a fee pursuant to this paragraph on a district member of a
27 groundwater replenishment district that withdraws groundwater in the district
28 for non-irrigation use in the district.

29 Sec. 4. Section 45-2401, Arizona Revised Statutes, is amended to read:
30 45-2401. Declaration of policy and purpose

31 A. The legislature finds that this state is currently and temporarily
32 underutilizing both the entitlement to Colorado river water confirmed to it
33 by the United States supreme court in Arizona v. California, 373 U.S. 546
34 (1963), and the central Arizona project, which has the capacity to divert
35 into this state a significant portion of this state's entitlement to Colorado
36 river water. The legislature further finds that, due to the low priority on
37 the Colorado river of the central Arizona project and other Arizona Colorado
38 river water users, the susceptibility of this state to future shortages of
39 water on the Colorado river is a threat to the general economy and welfare of
40 this state and its citizens.

41 B. The legislature further finds that water users within the central
42 Arizona project service area also rely on other surface water supplies, that
43 these supplies are susceptible to future shortages of water and that these
44 shortages are a threat to the general economy and welfare of this state and
45 its citizens.

1 C. The legislature further finds that future water needs in the states
2 of California and Nevada could exceed the entitlements of those states to
3 Colorado river water. Those future water needs could thereby affect the
4 general economy and welfare of this state and its citizens because of the
5 close economic ties among Arizona, California and Nevada.

6 D. The legislature further finds that Arizona water users could more
7 efficiently manage, distribute and use available water resources through the
8 storage of water supplies and through stored water lending arrangements, but
9 that not all of these Arizona water users have the opportunities or resources
10 needed to store water or enter into stored water lending arrangements.

11 E. The legislature further finds that for the purposes of this chapter
12 diverting Colorado river water for storage off of the Colorado river system
13 is a consumptive use of that water.

14 F. The legislature further finds that water banking is complimentary
15 and compatible with existing water management efforts. The Arizona water
16 banking authority will compliment and assist the activities of the central
17 Arizona water conservation district in its mission to provide a dependable
18 and cost-effective water supply.

19 G. The legislature therefore finds that it is in the best interest of
20 the general economy and welfare of this state and its citizens to:

21 1. Use the central Arizona project to store otherwise unused Arizona
22 entitlement to Colorado river water within this state to meet future water
23 needs within this state.

24 2. Provide the opportunity to the states of California and Nevada to
25 store currently unused Colorado river water in Arizona to meet future needs
26 in those states.

27 3. Provide the opportunity to facilitate the storage of water and
28 stored water lending arrangements by entities in Arizona that may not have
29 the opportunities or resources needed to store water.

30 4. PROVIDE THE OPPORTUNITY TO FACILITATE THE SETTLEMENT OF INDIAN
31 WATER RIGHTS CLAIMS BY DELIVERING AND STORING WATER.

32 H. The public policy and general purposes of this chapter are to:

33 1. Increase utilization of Arizona's Colorado river entitlement that
34 was confirmed to Arizona by the United States supreme court in article
35 ii(b)(1), (2) and (6) of the decree entered at Arizona v. California, 376
36 U.S. 340 (1964), and that would otherwise be unused in Arizona, by delivering
37 that water into this state through the central Arizona project aqueducts.

38 2. Store water brought into this state through the central Arizona
39 project to protect Arizona municipal and industrial water users against
40 future water shortages on the Colorado river and disruptions of operation of
41 the central Arizona project.

42 3. Store water brought into this state through the central Arizona
43 project to fulfill the water management objectives of this state set forth in
44 chapter 2 of this title.

1 4. Provide the opportunity for storing water brought into this state
2 through the central Arizona project to be available to implement the
3 settlement of water right claims by Indian communities within Arizona.

4 5. Provide the opportunity to authorized agencies in the states of
5 California and Nevada to store otherwise unused Colorado river water in
6 Arizona to assist those states in meeting future water needs.

7 6. Provide the opportunity to facilitate the storage of water and
8 stored water lending arrangements by entities in Arizona that may not have
9 the opportunities or resources needed to store water.

10 Sec. 5. Section 45-2402, Arizona Revised Statutes, is amended to read:

11 45-2402. Definitions

12 Unless the context otherwise requires, the terms defined in sections
13 45-101, 45-402 and 45-802.01 have the same meaning in this chapter and for
14 purposes of this chapter:

15 1. "Authority" means the Arizona water banking authority.

16 2. "Banking fund" means the Arizona water banking fund.

17 3. "Central Arizona water conservation district" or "CAWCD" means the
18 multi-county water conservation district established under title 48, chapter
19 22.

20 4. "Commission" means the Arizona water banking authority commission.

21 5. "Decree" means the decree entered by the United States supreme
22 court in Arizona v. California, 376 U.S. 340 (1964).

23 6. "INDIAN FIRING" MEANS MEASURES TAKEN TO ENSURE THAT CENTRAL
24 ARIZONA PROJECT NON-INDIAN AGRICULTURAL PRIORITY WATER THAT IS MADE AVAILABLE
25 TO INDIAN TRIBES PURSUANT TO PUBLIC LAW 108-451 MAY BE DELIVERED DURING WATER
26 SHORTAGES IN THE SAME MANNER THAT WATER WITH A MUNICIPAL AND INDUSTRIAL
27 PRIORITY IN THE CENTRAL ARIZONA PROJECT SYSTEM IS DELIVERED DURING WATER
28 SHORTAGES.

29 ~~6.~~ 7. "Water banking services" means services provided by the
30 authority to persons and Indian communities in this state to facilitate for
31 those persons and Indian communities storage of water and stored water
32 lending arrangements. WATER BANKING SERVICES INCLUDE THE DIRECT DELIVERY OF
33 WATER TO INDIAN COMMUNITIES IN THIS STATE IN REPLACEMENT OF OR SUPPLEMENTAL
34 TO THE ACCRUAL OF LONG-TERM STORAGE CREDITS PURSUANT TO ARTICLE 5 OF THIS
35 CHAPTER. Water banking services include only arrangements by which water
36 will be made available for use in this state. Water banking services do not
37 include interstate water banking undertaken by the authority pursuant to
38 article 4 of this chapter. Water banking services may include:

39 (a) Storage of water.

40 (b) Obtaining water storage permits.

41 (c) Accruing, exchanging and assigning long-term storage credits.

42 (d) Lending and obtaining repayment of long-term storage credits.

43 ~~7.~~ 8. "Water banking services agreement" means an agreement entered
44 into between the authority and a person or Indian community in this state

1 under which the authority will provide water banking services to that person
2 or Indian community.

3 Sec. 6. Section 45-2423, Arizona Revised Statutes, as amended by Laws
4 2005, chapter 143, section 4, is amended to read:

5 45-2423. Powers and duties of authority

6 A. The authority, acting through its commission, shall:

7 1. Administer the Arizona water banking fund in accordance with this
8 chapter.

9 2. Coordinate its staffing needs with the director and CAWCD.

10 3. Coordinate the storage of water and distribution and extinguishment
11 of long-term storage credits with the director in accordance with this
12 chapter and the water management objectives set forth in chapter 2 of this
13 title.

14 4. Coordinate with CAWCD for the purchase, delivery and storage of
15 Colorado river water delivered through the central Arizona project in
16 accordance with this chapter.

17 5. Coordinate and confer with state agencies, municipal corporations,
18 special districts, authorities, other political subdivisions, private
19 entities, Indian communities and the United States on matters within their
20 jurisdiction relating to the policy and purposes of this chapter.

21 6. Determine, on an annual basis, the quantity of Colorado river
22 water, SURFACE WATER OTHER THAN COLORADO RIVER WATER AND EFFLUENT to be
23 stored by the authority and where that storage will occur.

24 7. Account for, hold and distribute or extinguish long-term storage
25 credits in accordance with this chapter.

26 8. Comply with all aspects of chapter 3.1 of this title.

27 9. Perform the authority's replenishment responsibilities under
28 chapter 15, article 3 of this title with monies appropriated from the state
29 general fund by the legislature for that purpose and to the extent that
30 monies appropriated by the legislature for that purpose are not available,
31 with monies collected in the Pinal active management area pursuant to section
32 45-611, subsection C, paragraph 3.

33 10. CARRY OUT THE OBLIGATIONS OF THIS STATE UNDER SECTION 105 OF PUBLIC
34 LAW 108-451 AS AGENT FOR THIS STATE, INCLUDING THE DIRECT DELIVERY OF WATER
35 TO INDIAN COMMUNITIES IN THIS STATE AND THE LEASING OF NON-INDIAN
36 AGRICULTURAL PRIORITY AND INDIAN PRIORITY CENTRAL ARIZONA PROJECT WATER AS
37 PRESCRIBED BY ARTICLE 5 OF THIS CHAPTER.

38 ~~10.~~ 11. Adopt an official seal for the authentication of its records,
39 decisions and resolutions.

40 ~~11.~~ 12. Keep the minutes of its meetings and all records, reports and
41 other information relating to its work and programs in permanent form,
42 systematically indexed and filed.

43 B. The authority, acting through its commission, may:

44 1. Apply for and hold water storage permits.

1 2. Accrue, exchange, assign, lend and hold long-term storage credits
2 in accordance with this chapter.

3 3. Exchange Colorado river water for any type of water in accordance
4 with chapter 4 of this title.

5 4. Enter into water banking services agreements.

6 5. Charge fees for water banking services.

7 6. Apply for and hold any water quality permit required for water
8 storage by the department of environmental quality under title 49, chapter 2,
9 article 3 or by federal law.

10 7. Make and execute all contracts, including intergovernmental
11 agreements pursuant to title 11, chapter 7, article 3, that shall be signed
12 by the chairperson, or in the chairperson's absence the vice-chairperson, and
13 attested by the secretary, necessary to:

14 (a) Obtain for storage Colorado river water delivered through the
15 central Arizona project. Agreements by which the authority obtains Colorado
16 river water are exempt from the requirements of title 41, chapter 23.

17 (b) Obtain effluent **OR SURFACE WATER OTHER THAN COLORADO RIVER WATER**
18 for storage but only after the authority has stored all available excess
19 Central Arizona project water or when central Arizona project water is
20 otherwise unavailable or undeliverable.

21 (c) Affiliate water storage permits held by the authority with storage
22 facility permits.

23 (d) Store ~~Colorado river~~ water **FOR PURPOSES OF THIS CHAPTER** at
24 permitted storage facilities.

25 (e) Distribute long-term storage credits earned by the authority to
26 make water available to municipal and industrial users of Colorado river
27 water in this state that are inside or outside of the CAWCD service area, in
28 accordance with the provisions of this chapter.

29 (f) Store Colorado river water in Arizona on behalf of appropriately
30 authorized agencies in California and Nevada.

31 (g) Cause a decrease in Arizona diversions from the Colorado river,
32 ensuring that Arizona will use less than its full entitlement to Colorado
33 river water in years in which California and Nevada agencies are
34 contractually authorized to call on the water stored on their behalf by the
35 authority.

36 (h) Distribute long-term storage credits earned by the authority on
37 behalf of agencies in California and Nevada to Colorado river water users in
38 Arizona to use in place of Colorado river water that would have otherwise
39 been used by those Arizona users.

40 (i) Replenish water pursuant to chapter 15, article 3 of this title,
41 including entering into an intergovernmental agreement with the Gila river
42 Indian community pursuant to section 45-2624.

43 (j) **DISTRIBUTE LONG-TERM STORAGE CREDITS EARNED BY THE AUTHORITY TO**
44 **MAKE WATER AVAILABLE TO INDIAN COMMUNITIES IN THIS STATE FOR INDIAN FIRING**
45 **MEASURES PURSUANT TO ARTICLE 5 OF THIS CHAPTER.**

1 8. Sue and be sued.

2 9. Perform all other acts necessary for the authority to carry out its
3 purposes, powers and duties in accordance with this chapter.

4 10. Submit a request for a general fund appropriation to the
5 legislature each year. A request shall be accompanied by a budget detailing
6 how the appropriation would be used and justifying the need for the
7 appropriation.

8 11. Form temporary committees as deemed necessary by the authority to
9 provide the authority with advice on issues identified by the authority.
10 Advisory committees may consist of members of the public selected by the
11 authority, members of the authority and authority staff.

12 12. Purchase long-term storage credits accrued by an Indian community
13 pursuant to section 45-841.01, provided such long-term storage credits are
14 distributed or extinguished in accordance with the rules of operation
15 specified in section 45-2457 for the funds used by the authority to purchase
16 the credits.

17 Sec. 7. Section 45-2425, Arizona Revised Statutes, as amended by Laws
18 2005, chapter 143, section 5 and chapter 332, section 1, is amended to read:
19 45-2425. Arizona water banking fund

20 A. The Arizona water banking fund is established and shall include
21 subaccounts based on funding sources. The authority shall administer the
22 banking fund in accordance with this chapter.

23 B. The banking fund consists of all of the following:

24 1. Monies appropriated from the state general fund by the legislature
25 for water banking purposes other than replenishment under chapter 15, article
26 3 of this title.

27 2. Monies appropriated from the state general fund by the legislature
28 for replenishment under chapter 15, article 3 of this title.

29 3. Reimbursement for the distribution of long-term storage credits,
30 collected by the authority in accordance with section 45-2457, subsection B,
31 paragraph 2.

32 4. Monies paid to the authority by the recipients of in lieu water at
33 a groundwater savings facility, in accordance with section 45-2455,
34 subsection C.

35 5. Monies collected in accordance with section 45-611, subsection C,
36 paragraph 3.

37 6. Monies deposited in the banking fund in accordance with section
38 48-3715.03, subsection B.

39 7. Monies paid to the authority by agencies that have entered into
40 interstate water banking agreements with the authority in accordance with
41 section 45-2471. All monies received through an interstate water banking
42 agreement with the state of Nevada that are not used to purchase or store
43 water or otherwise fulfill contractual obligations with the state of Nevada
44 are subject to legislative appropriation.

1 8. Monies paid to the authority by persons and Indian communities in
2 this state that have entered into water banking services agreements with the
3 authority in accordance with section 45-2458.

4 C. In addition to the monies prescribed in this section, the authority
5 may accept any gifts, grants or donations and deposit those monies in the
6 banking fund.

7 D. Monies in the banking fund are exempt from ~~lapsing under~~ THE
8 PROVISIONS OF section 35-190 RELATING TO LAPSING OF APPROPRIATIONS. On
9 notice from the authority, the state treasurer shall invest and divest monies
10 in the fund as provided by section 35-313, and monies earned from investment
11 shall be credited to the banking fund. The authority may invest the monies
12 paid to the authority in accordance with section 45-2471, ~~Arizona Revised~~
13 ~~Statutes~~, with the state treasurer pursuant to section 35-326, ~~Arizona~~
14 ~~Revised Statutes~~.

15 E. The authority may use the banking fund to pay all reasonable
16 expenses incurred in carrying out its duties and responsibilities in
17 accordance with this chapter.

18 F. THE AUTHORITY SHALL ESTABLISH A RESERVE SUBACCOUNT IN THE FUND FOR
19 THE DEPOSIT OF MONIES TO BE USED FOR THE PURPOSES OF ARTICLE 5 OF THIS
20 CHAPTER.

21 Sec. 8. Title 45, chapter 14, Arizona Revised Statutes, is amended by
22 adding article 5, to read:

23 ARTICLE 5. INDIAN FIRING MEASURES

24 45-2491. State commitments to firm Indian settlement water

25 A. THE AUTHORITY SHALL ACT AS AGENT FOR THIS STATE IN MEETING THIS
26 STATE'S OBLIGATION TO DELIVER WATER IN TIMES OF SHORTAGE PURSUANT TO PUBLIC
27 LAW 108-451, FULFILLING THE REQUIREMENTS OF SECTIONS 105, 207(c)(I)(ii) AND
28 302(b)(8), AND THE INDIAN FIRING MEASURES ESTABLISHED PURSUANT TO THIS
29 ARTICLE. IN CARRYING OUT THIS OBLIGATION THE AUTHORITY MAY:

30 1. STORE WATER AT PERMITTED RECHARGE FACILITIES FOR THE PURPOSE OF
31 INDIAN FIRING.

32 2. ENTER INTO CONTRACTS OR AGREEMENTS WITH THE UNITED STATES AND
33 INDIAN COMMUNITIES FOR STORAGE, RECOVERY OR DIRECT DELIVERY OF WATER FOR
34 INDIAN FIRING.

35 3. ENTER INTO LEASING AGREEMENTS WITH ONE OR MORE INDIAN COMMUNITIES
36 IN PARTNERSHIP WITH OTHER ENTITIES FOR NON-INDIAN AGRICULTURAL PRIORITY OR
37 INDIAN PRIORITY CENTRAL ARIZONA PROJECT WATER.

38 4. ENTER INTO CONTRACTS FOR THE USE OF WATER SOURCES INCLUDING
39 COLORADO RIVER WATER, SURFACE WATER OTHER THAN COLORADO RIVER WATER AND
40 EFFLUENT.

41 5. ENTER INTO CONTRACTS WITH ELIGIBLE ENTITIES FOR THE USE OF IMPORTED
42 GROUNDWATER FROM ALLOWABLE GROUNDWATER BASINS PURSUANT TO SECTIONS 45-552,
43 45-553 AND 45-554 FOR THE PURPOSES OF INDIAN FIRING.

1 6. ENTER INTO AGREEMENTS WITH A MULTI-COUNTY WATER CONSERVATION
2 DISTRICT ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 22 FOR DELIVERY OF WATER
3 TO INDIAN COMMUNITIES.

4 7. SUBJECT TO PERIODIC REVIEW OF PROGRESS TOWARD MEETING THIS STATE'S
5 INDIAN FIRING OBLIGATION, ALLOW FOR THE USE OF EXISTING LONG-TERM STORAGE
6 CREDITS DEVELOPED FROM WITHDRAWAL FEES COLLECTED PURSUANT TO SECTION 45-611,
7 SUBSECTION C, PARAGRAPH 3.

8 8. TRANSFER LONG-TERM STORAGE CREDITS TO A MULTI-COUNTY WATER
9 CONSERVATION DISTRICT ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 22 FOR
10 RECOVERY AND SUBSEQUENT DELIVERY TO INDIAN COMMUNITIES IN TIMES OF SHORTAGE.

11 9. ENTER INTO AGREEMENTS FOR THE RECOVERY OF LONG-TERM STORAGE CREDITS
12 FOR PURPOSES OF INDIAN FIRING.

13 B. INDIAN FIRING MEASURES ESTABLISHED PURSUANT TO THIS ARTICLE SHALL
14 INCLUDE FUNDING FROM THE FOLLOWING SOURCES:

15 1. LEGISLATIVE APPROPRIATIONS PROVIDED FOR INDIAN FIRING ON AN ANNUAL
16 BASIS TO CARRY OUT INDIAN FIRING MEASURES.

17 2. TO THE EXTENT NECESSARY TO CARRY OUT INDIAN FIRING MEASURES AFTER
18 EXPENDITURE OF LEGISLATIVE APPROPRIATIONS, THE AUTHORITY MAY USE WITHDRAWAL
19 FEES COLLECTED FROM THE PHOENIX, PINAL AND TUCSON ACTIVE MANAGEMENT AREA
20 WATER MANAGEMENT ACCOUNTS.

21 Sec. 9. Section 45-2601, Arizona Revised Statutes, is amended to read:

22 45-2601. Definitions

23 Unless the context otherwise requires, the terms defined in sections
24 45-402 and 45-802.01 have the same meaning in this chapter and for the
25 purposes of this chapter:

26 1. "Central protection zone" means the central protection zone
27 established under section 45-2602.

28 2. "Community" means the Gila river Indian community, a government
29 composed of members of the Pima tribe and the Maricopa tribe and organized
30 under section 16 of the act of June 18, 1934 (25 United States Code section
31 476).

32 3. "Dam" has the meaning prescribed in section 45-1201 on January 1,
33 2005.

34 4. "Designed storage capacity" means the storage capacity in acre-feet
35 of a reservoir at the elevation of the lowest spillway in the dam impounding
36 water in the reservoir, as the dam was originally constructed.

37 5. "Eastern protection zone" means the eastern protection zone north
38 or the eastern protection zone south.

39 6. "Eastern protection zone north" means the eastern protection zone
40 north established under section 45-2602, subsection A.

41 7. "Eastern protection zone south" means the eastern protection zone
42 south established under section 45-2602, subsection A.

43 8. "Gila river maintenance area" means the Gila river maintenance area
44 established under section 45-2603, subsection A.

1 9. "Gila river maintenance area impact zone" means the Gila river
2 maintenance area impact zone established under section 45-2603, subsection B.

3 10. "Globe equity decree" means the decree dated June 29, 1935 and
4 entered in United States of America v. Gila valley irrigation district, Globe
5 equity No. 59, et al. by the United States district court for the district of
6 Arizona and includes all court orders and decisions supplemental to that
7 decree.

8 11. "Industrial use" means all of the following:

9 (a) A nonirrigation use of water commenced after December 31, 2002
10 that is not supplied by a municipal provider, including animal industry use
11 and expanded animal industry use.

12 (b) A use of groundwater commenced before January 1, 2003 by a holder
13 of a type 1 nonirrigation grandfathered right in existence on December 31,
14 2002, other than a type 1 nonirrigation grandfathered right held by a
15 municipal provider and other than a use under another groundwater right or
16 permit, in excess of the amount allowed under the type 1 nonirrigation
17 grandfathered right.

18 (c) A use of groundwater commenced before January 1, 2003 by a holder
19 of a type 2 nonirrigation grandfathered right in existence on December 31,
20 2002, other than a type 2 nonirrigation grandfathered right held by a
21 municipal provider, in excess of the amount allowed under the right and for
22 which the holder has no other groundwater right.

23 (d) A use of groundwater commenced before January 1, 2003 by a holder
24 of a general industrial use permit issued under section 45-515 and in
25 existence on December 31, 2002, other than a use under another groundwater
26 right or permit, in excess of the amount allowed under the general industrial
27 use permit.

28 12. "Irrigation use" means the use of water on two or more acres of
29 land to produce plants or parts of plants for sale or human consumption, or
30 for use as feed for livestock, range livestock or poultry, as defined in
31 section 3-1201.

32 13. "Municipal acre" means the acre or acres of land within a
33 protection zone, on which water pumped from within a protection zone is
34 supplied by a municipal provider, on which water use was first commenced
35 after December 31, 2002 and for which the water use is reported pursuant to
36 section 45-632, 45-875.01 or 45-2602.

37 14. "Municipal provider" means a city, town, private water company or
38 ~~irrigation-district~~ SPECIAL TAXING DISTRICT ESTABLISHED PURSUANT TO TITLE 48
39 that supplies water for nonirrigation use.

40 15. "Municipal use" means a nonirrigation use of water commenced after
41 December 31, 2002 and supplied by a municipal provider on municipal acres.

42 16. "Nonirrigation use" means a use of water withdrawn from a well,
43 other than an irrigation use.

44 17. "Reservation" means the Gila river Indian community reservation.

1 18. "Settlement agreement" means the agreement entitled the "Gila river
2 Indian community water rights settlement agreement", dated February 4, 2003
3 between the community, this state and other parties, as amended before ~~the~~
4 ~~effective date of this section~~ DECEMBER 21, 2005, a copy of which is on file
5 in the department.

6 19. "Southside protection zones" means the eastern protection zone
7 north, the eastern protection zone south, the western municipal protection
8 zone, the western municipal and industrial protection zone and the central
9 protection zone.

10 20. "Stockpond" means a pond that has a capacity of not more than
11 fifteen acre-feet and that is used solely for watering livestock or wildlife.
12 Stockpond does not include a pond used primarily for fishing or for the
13 culturing of fish.

14 21. "Stored water" means water that has been stored or saved
15 underground pursuant to a storage permit issued under chapter 3.1 of this
16 title.

17 22. "Underground water" means water, other than stored water, withdrawn
18 from a well.

19 23. "Water company" means either of the following:

20 (a) A private water company that as of January 1, 2000 was regulated
21 as a public service corporation by the Arizona corporation commission and was
22 withdrawing underground water from lands now within the eastern protection
23 zone north.

24 (b) Any successor of a private water company described in subdivision
25 (a) of this paragraph.

26 24. "Western municipal and industrial protection zone" means the
27 western municipal and industrial protection zone established under section
28 45-2602, subsection A.

29 25. "Western municipal protection zone" means the western municipal
30 protection zone established under section 45-2602, subsection A.

31 26. "Western protection zones" means the western municipal protection
32 zone and the western municipal and industrial protection zone.

33 Sec. 10. Section 45-2611, Arizona Revised Statutes, is amended to
34 read:

35 45-2611. Transportation of underground water and stored water
36 away from an eastern protection zone or western
37 protection zone prohibited; exceptions

38 A. Except as provided in subsection B of this section, beginning on
39 the effective date of this section, underground water or stored water
40 withdrawn in an eastern protection zone or a western protection zone may not
41 be transported away from the protection zone in which the water was withdrawn
42 if the transportation is for a nonirrigation use.

43 B. Subsection A of this section does not apply to any of the
44 following:

1 1. The transportation of underground water or stored water away from
2 an eastern protection zone or a western protection zone for a nonirrigation
3 use in an annual amount that does not exceed the highest annual volume of
4 underground water or stored water transported away from the same protection
5 zone for that use during calendar years 1999 through 2001.

6 2. The transportation of underground water or stored water away from
7 an eastern protection zone or a western protection zone for a nonirrigation
8 use if the person transporting the underground water or stored water
9 replenishes the water as provided in section 45-2625 within twenty-four
10 months after the end of the calendar year in which the transportation occurs.

11 3. The transportation of underground water or stored water away from
12 an eastern protection zone or a western protection zone for a nonirrigation
13 use if the person transporting the underground water or stored water replaces
14 the water with an equivalent amount of water imported into that protection
15 zone within the same calendar year in which the transportation occurs.

16 4. The transportation of stored water away from an eastern protection
17 zone or a western protection zone if the stored water was originally stored
18 in the protection zone from which the water was recovered.

19 5. The transportation of underground water or stored water between the
20 eastern protection zone north and the eastern protection zone south.

21 6. The transportation of underground water or stored water between the
22 western municipal and industrial protection zone and the western municipal
23 protection zone if the water is transported for a municipal use on municipal
24 acres.

25 7. Through 2023, the transportation of underground water and stored
26 water withdrawn by a water company within an eastern protection zone and
27 transported by the water company for municipal uses outside of the eastern
28 protection zones. For the purposes of this paragraph, stored water does not
29 include any water stored within an eastern protection zone and recovered
30 within that protection zone.

31 8. Beginning with calendar year 2024, the annual transportation of up
32 to one thousand two hundred seventy-five acre-feet of underground water and
33 stored water withdrawn by a water company within ~~an~~ THE eastern protection
34 ~~zone~~ ZONES and transported by the water company for municipal uses outside of
35 the eastern protection zones. For the purposes of this paragraph, stored
36 water does not include any water stored within an eastern protection zone and
37 recovered within that protection zone.

38 Sec. 11. Section 45-2622, Arizona Revised Statutes, is amended to
39 read:

40 45-2622. Annual southside replenishment obligations

41 A. No later than October 1 of each calendar year following the year in
42 which this section becomes effective, the director shall calculate the
43 southside replenishment obligations for the preceding calendar year and
44 notify the authority of the amount of the obligations.

1 B. The director shall calculate the southside replenishment
2 obligations for a calendar year as follows:

3 1. The director shall calculate the municipal and industrial
4 replenishment obligation for the western municipal and industrial protection
5 zone for the year as follows:

6 (a) Determine the total amount of underground water and stored water
7 withdrawn during the year from within the western municipal and industrial
8 protection zone for municipal uses within a western protection zone and the
9 total amount of underground water and stored water withdrawn during the year
10 from within the western municipal and industrial protection zone for
11 industrial uses within the western municipal and industrial protection zone,
12 as reported to the director under sections 45-632, 45-875.01 and 45-2602.
13 For the purposes of this subdivision, stored water does not include any water
14 stored at a storage facility located within the western municipal and
15 industrial protection zone ~~or any water stored and recovered on an annual
16 basis pursuant to section 45-851.01.~~

17 (b) Divide the volume of water determined in subdivision (a) of this
18 paragraph by the total number of municipal acres and industrial acres within
19 the western protection zones on which the water was used during the year.

20 (c) Multiply the total number of municipal acres and industrial acres
21 within the western protection zones on which the water determined in
22 subdivision (a) of this paragraph was used during the year by two acre-feet.

23 (d) Subtract the product in subdivision (c) of this paragraph from the
24 quotient in subdivision (b) of this paragraph. The result is the municipal
25 and industrial replenishment obligation for the western municipal and
26 industrial protection zone for the year, except that if the result is less
27 than zero, there is no replenishment obligation.

28 2. The director shall calculate the municipal replenishment obligation
29 for the western municipal protection zone for the year as follows:

30 (a) Determine the total amount of underground water and stored water
31 withdrawn during the year from within the western municipal protection zone
32 for municipal uses within a western protection zone, as reported to the
33 director under sections 45-632, 45-875.01 and 45-2602. For the purposes of
34 this subdivision, stored water does not include any water stored at a storage
35 facility located within the western municipal protection zone ~~or any water
36 stored and recovered on an annual basis pursuant to section 45-851.01.~~

37 (b) Divide the volume of water determined in subdivision (a) of this
38 paragraph by the total number of municipal acres within the western
39 protection zones on which the water was used during the year.

40 (c) Multiply the total number of municipal acres within the western
41 protection zones on which the water determined in subdivision (a) of this
42 paragraph was used during the year by two acre-feet.

43 (d) Subtract the product in subdivision (c) of this paragraph from the
44 quotient in subdivision (b) of this paragraph. The result is the municipal
45 replenishment obligation for the western municipal protection zone for the

1 year, except that if the result is less than zero, there is no replenishment
2 obligation.

3 3. The director shall calculate the municipal and industrial
4 replenishment obligation for the eastern protection zone north for the year
5 as follows:

6 (a) Determine the total amount of underground water and stored water
7 withdrawn during the year from within the eastern protection zone north for
8 municipal uses and industrial uses within an eastern protection zone, as
9 reported to the director under sections 45-632, 45-875.01 and 45-2602. For
10 the purposes of this subdivision, stored water does not include any water
11 stored at a storage facility located within the eastern protection zone north
12 ~~or any water stored and recovered on an annual basis pursuant to section~~
13 ~~45-851.01.~~

14 (b) Determine the total amount of underground water and stored water
15 withdrawn during the year by a water company from within the eastern
16 protection zone south and used for municipal uses within the eastern
17 protection zone north. For the purposes of this subdivision, stored water
18 does not include any water stored at a storage facility located within the
19 eastern protection zone south ~~or any water stored and recovered on an annual~~
20 ~~basis pursuant to section 45-851.01.~~

21 (c) Add the volumes of water in subdivisions (a) and (b) of this
22 paragraph and then divide the sum by the total number of municipal acres and
23 industrial acres within the eastern protection zones on which the water was
24 used during the year.

25 (d) Multiply the total number of municipal acres and industrial acres
26 within the eastern protection zones on which the water determined in
27 subdivision (c) of this paragraph was used during the year by 2.33 acre-feet.

28 (e) Subtract the product in subdivision (d) of this paragraph from the
29 quotient in subdivision (c) of this paragraph. The result is the municipal
30 and industrial replenishment obligation for the eastern protection zone north
31 for the year, except that if the result is less than zero, there is no
32 replenishment obligation.

33 4. The director shall calculate the municipal and industrial
34 replenishment obligation for the eastern protection zone south for the year
35 as follows:

36 (a) Determine the total amount of underground water and stored water
37 withdrawn during the year from within the eastern protection zone south for
38 municipal uses and industrial uses within an eastern protection zone, as
39 reported to the director under sections 45-632, 45-875.01 and 45-2602. For
40 the purposes of this subdivision, stored water does not include any water
41 stored at a storage facility located within the eastern protection zone south
42 ~~or any water stored and recovered on an annual basis pursuant to section~~
43 ~~45-851.01.~~

1 (b) Determine the total amount of underground water and stored water
2 withdrawn during the year by a water company from within the eastern
3 protection zone south and used for municipal uses within the eastern
4 protection zone north. For the purposes of this subdivision, stored water
5 does not include any water stored at a storage facility located within the
6 eastern protection zone south ~~or any water stored and recovered on an annual~~
7 ~~basis pursuant to section 45-851.01.~~

8 (c) Subtract the volume in subdivision (b) of this paragraph from the
9 volume in subdivision (a) of this paragraph and then divide the difference by
10 the total number of municipal acres and industrial acres within the eastern
11 protection zones on which the water determined in subdivision (a) of this
12 paragraph other than water determined in subdivision (b) of this paragraph
13 was used during the year.

14 (d) Multiply the total number of municipal acres and industrial acres
15 within the eastern protection zones on which the water determined in
16 subdivision (a) of this paragraph other than water determined in subdivision
17 (b) of this paragraph was used during the year by 2.33 acre-feet.

18 (e) Subtract the product in subdivision (d) of this paragraph from the
19 quotient in subdivision (c) of this paragraph. The result is the municipal
20 and industrial replenishment obligation for the eastern protection zone south
21 for the year, except that if the result is less than zero, there is no
22 replenishment obligation.

23 5. The director shall calculate the irrigation replenishment
24 obligation for the western municipal and industrial protection zone and the
25 western municipal protection zone for the year as follows:

26 (a) Determine the total amount of underground water and stored water
27 withdrawn during the year from within the western municipal and industrial
28 protection zone and the western municipal protection zone and used for the
29 irrigation of lands within those protection zones, as reported to the
30 director on the annual reports required by sections 45-632, 45-875.01 and
31 45-2602. For the purposes of this subdivision, stored water does not include
32 any water stored at a storage facility located within the western municipal
33 and industrial protection zone or the western municipal protection zone.

34 (b) For each farm within the western municipal and industrial
35 protection zone and the western municipal protection zone for which an annual
36 report is filed under section 45-632, 45-875.01 or 45-2602 for the year,
37 calculate the maximum amount of groundwater that may be used on the farm for
38 irrigation purposes during the year without causing the flexibility account
39 for the farm to be in arrears in excess of the amount allowed under section
40 45-467, subsection I. In making this calculation, the director shall use the
41 irrigation water duty established for the farm for the third management
42 period pursuant to section 45-566, subsection A, paragraph 1.

43 (c) Add together the amount calculated for each farm under
44 subdivision (b) of this paragraph.

1 (d) Subtract the amount in subdivision (c) of this paragraph from the
2 amount in subdivision (a) of this paragraph. The difference is the
3 irrigation replenishment obligation for the year for the western municipal
4 and industrial protection zone and the western municipal protection zone,
5 except that if the difference is less than zero, there is no replenishment
6 obligation.

7 6. The director shall calculate the irrigation replenishment
8 obligation for the eastern protection zone north and the eastern protection
9 zone south for the year as follows:

10 (a) Determine the total amount of underground water and stored water
11 withdrawn during the year from within the eastern protection zone north and
12 the eastern protection zone south and used for the irrigation of lands within
13 those protection zones, as reported to the director on the annual reports
14 required by section 45-632, section 45-875.01, subsection D and section
15 45-2602. For the purposes of this subdivision, stored water does not include
16 any water stored at a storage facility located within the eastern protection
17 zone north or the eastern protection zone south.

18 (b) For each farm within the eastern protection zone north and the
19 eastern protection zone south for which an annual report is filed under
20 section 45-632, 45-875.01 or 45-2602 for the year, calculate the maximum
21 amount of groundwater that may be used on the farm for irrigation purposes
22 during the year without causing the flexibility account for the farm to be in
23 arrears in excess of the amount allowed under section 45-467, subsection
24 I. In making this calculation, the director shall use the irrigation water
25 duty established for the farm for the third management period pursuant to
26 section 45-566, subsection A, paragraph 1.

27 (c) Add together the amount calculated for each farm under
28 subdivision (b) of this paragraph.

29 (d) Subtract the amount in subdivision (c) of this paragraph from the
30 amount in subdivision (a) of this paragraph. The difference is the
31 irrigation replenishment obligation for the year for the eastern protection
32 zone north and the eastern protection zone south, except that if the
33 difference is less than zero, there is no replenishment obligation.

34 7. Through 2023, the director shall calculate the water company
35 replenishment obligation for the year by determining the amount of
36 underground water and stored water withdrawn during the year from within ~~an~~
37 THE eastern protection ~~zone~~ ZONES by a water company and transported for
38 municipal uses outside of the eastern protection zones and then subtracting
39 from that amount one thousand two hundred seventy-five acre-feet. The
40 difference is the water company replenishment obligation for the year, except
41 that if the difference is less than zero, there is no replenishment
42 obligation. For the purposes of this paragraph, stored water does not
43 include any water stored at a storage facility located within an eastern
44 protection zone and recovered within that protection zone.

1 Sec. 12. Section 45-2626, Arizona Revised Statutes, is amended to
2 read:

3 45-2626. Individual replenishment obligations of persons using
4 underground water or stored water within an eastern
5 protection zone or a western protection zone for
6 industrial use; enforcement action; notice

7 A. If there is a municipal and industrial replenishment obligation for
8 the eastern protection zone north for any year, as calculated under section
9 45-2622, subsection B, any person who withdraws underground water or stored
10 water from within that protection zone during the year for an industrial use
11 within an eastern protection zone in an amount that exceeds a volume
12 calculated by multiplying the number of industrial acres associated with the
13 industrial use by three and one-half acre-feet shall have an individual
14 replenishment obligation for that year in the amount of the excess, except
15 that if the industrial use was commenced prior to January 1, 2003, the
16 replenishment obligation shall be limited to the volume of groundwater
17 withdrawn in excess of the amount allowed under the industrial user's type 1
18 nonirrigation grandfathered right, type 2 nonirrigation grandfathered right
19 or general industrial use permit issued under section 45-515. For the
20 purposes of this subsection, stored water does not include any water stored
21 at a storage facility located within the eastern protection zone north ~~or any~~
22 ~~water stored and recovered on an annual basis pursuant to section 45-851.01.~~

23 B. If there is a municipal and industrial replenishment obligation for
24 the eastern protection zone south for any year, as calculated under section
25 45-2622, subsection B, any person who withdraws underground water or stored
26 water from within that protection zone during the year for an industrial use
27 within an eastern protection zone in an amount that exceeds a volume
28 calculated by multiplying the number of industrial acres associated with the
29 industrial use by three and one-half acre-feet shall have an individual
30 replenishment obligation for that year in the amount of the excess, except
31 that if the industrial use was commenced prior to January 1, 2003, the
32 replenishment obligation shall be limited to the volume of groundwater
33 withdrawn in excess of the amount allowed under the industrial user's type 1
34 nonirrigation grandfathered right, type 2 nonirrigation grandfathered right
35 or general industrial use permit issued under section 45-515. For the
36 purposes of this subsection, stored water does not include any water stored
37 at a storage facility located within the eastern protection zone south ~~or any~~
38 ~~water stored and recovered on an annual basis pursuant to section 45-851.01.~~

39 C. If there is a municipal and industrial replenishment obligation for
40 the western municipal and industrial protection zone for any year, as
41 calculated under section 45-2622, subsection B, any person who withdraws
42 underground water or stored water from within that protection zone during the
43 year for an industrial use within that protection zone in an amount that
44 exceeds a volume calculated by multiplying the number of industrial acres
45 associated with the industrial use by three and one-half acre-feet shall have

1 an individual replenishment obligation for that year in the amount of the
2 excess, except that if the industrial use was commenced prior to January 1,
3 2003, the replenishment obligation shall be limited to the volume of
4 groundwater withdrawn in excess of the amount allowed under the industrial
5 user's type 1 nonirrigation grandfathered right, type 2 nonirrigation
6 grandfathered right or general industrial use permit issued under section
7 45-515. For the purposes of this subsection, stored water does not include
8 any water stored at a storage facility located within the western municipal
9 and industrial protection zone ~~or any water stored and recovered on an annual
10 basis pursuant to section 45-851.01.~~

11 D. A person who has an individual replenishment obligation under
12 subsection A, B or C of this section shall satisfy the obligation no later
13 than twelve months after the authority sends written notice of the obligation
14 to the person as provided in subsection E of this section. The person shall
15 satisfy the obligation by performing one of the following replenishment
16 activities in an amount equivalent to the replenishment obligation:

17 1. Pay the authority the actual or estimated cost of replenishing the
18 water under section 45-2623, subsection C as determined by the authority and
19 included in the notice described in subsection E of this section.

20 2. If approved by the authority, deliver water or long-term storage
21 credits to the authority in the amount of the replenishment obligation.

22 E. No later than December 31 of each year, the authority shall send
23 written notice to each person who has an individual replenishment obligation
24 for the preceding year. The notice shall be sent by first-class mail to the
25 person's mailing address on file with the department. The notice shall
26 specify the amount of the replenishment obligation, the authority's actual or
27 estimated cost of replenishing the water under section 45-2623, subsection C,
28 the date by which the person must satisfy the replenishment obligation and
29 the manner in which the person may satisfy the replenishment obligation.

30 F. If a person with an individual replenishment obligation fails to
31 satisfy the replenishment obligation by the date specified in the written
32 notice received from the authority, the person shall be subject to an
33 enforcement action by the department pursuant to article 6 of this chapter.

34 G. The director shall include written notice of the requirements of
35 this section in any groundwater withdrawal permit, nonirrigation
36 grandfathered right authorization to drill a nonexempt well under section
37 45-596 or recovery well permit issued in an eastern protection zone or the
38 western municipal and industrial protection zone after the effective date of
39 this section.

40 Sec. 13. Effective date; condition

41 The following are effective as prescribed in Laws 2005, chapter 143,
42 section 15:

43 1. Section 45-611, Arizona Revised Statutes, as amended by Laws 2005,
44 chapter 143, section 1 and this act.

- 1 2. Section 45-2423, Arizona Revised Statutes, as amended by Laws 2005,
2 chapter 143, section 4 and this act.
- 3 3. Section 45-2425, Arizona Revised Statutes, as amended by Laws 2005,
4 chapter 143, section 5 and chapter 332, section 1 and this act.
- 5 4. Sections 45-2611, 45-2622 and 45-2626, Arizona Revised Statutes, as
6 amended by this act.

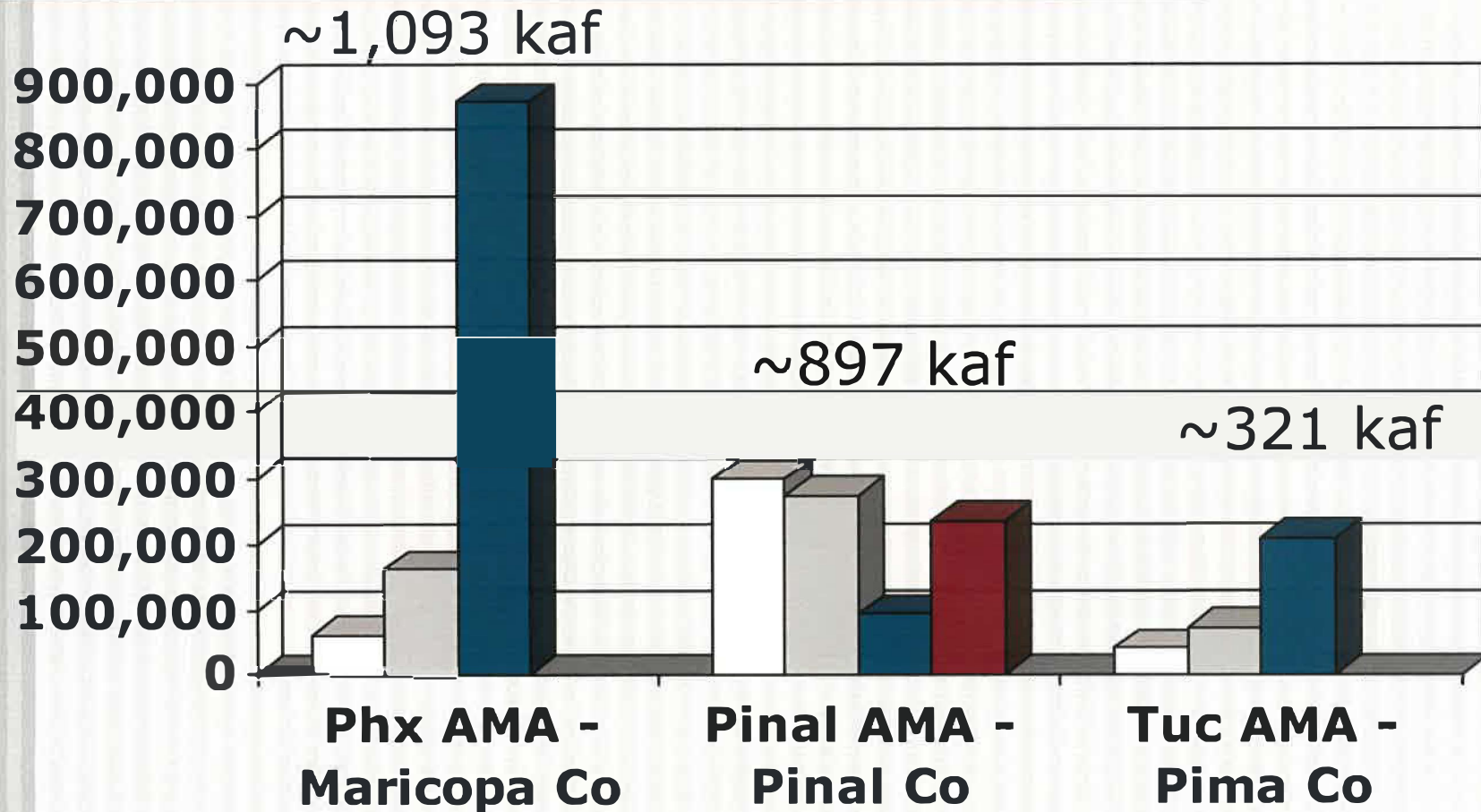
Planning for Recovery of Long-Term Storage Credits: ICUA & Firming

AWBA Commission Work Study Session
February 1, 2006

Chuck Cullom, CAP Resource, Planning, & Analysis

AWBA Storage 1997 – 2005

(LTSC ~ 2,311 kaf, AWBA 2006 APO)

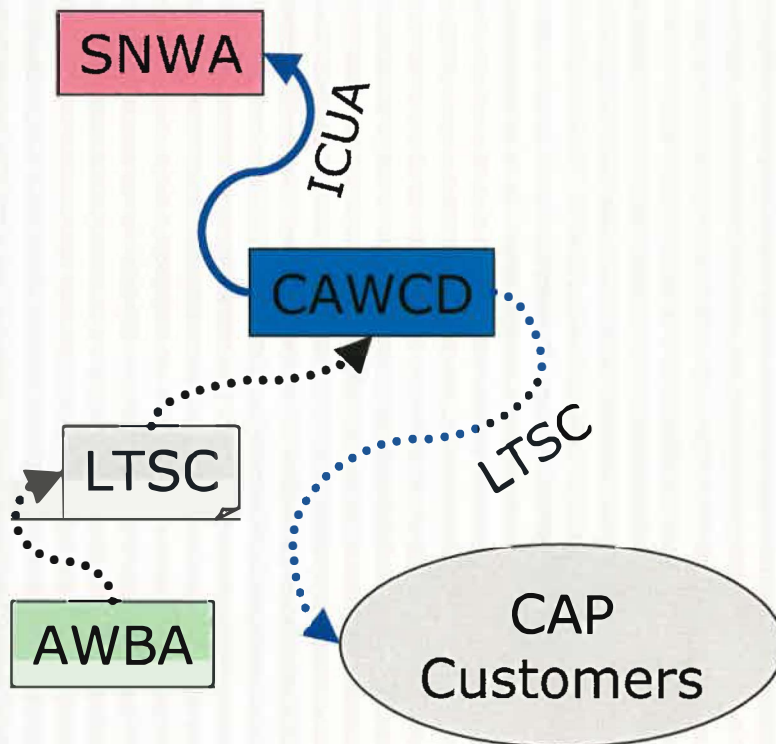


General Fund
 Withdrawal Fees
 4-cent Tax
 SNWA

TWO TYPES OF RECOVERY

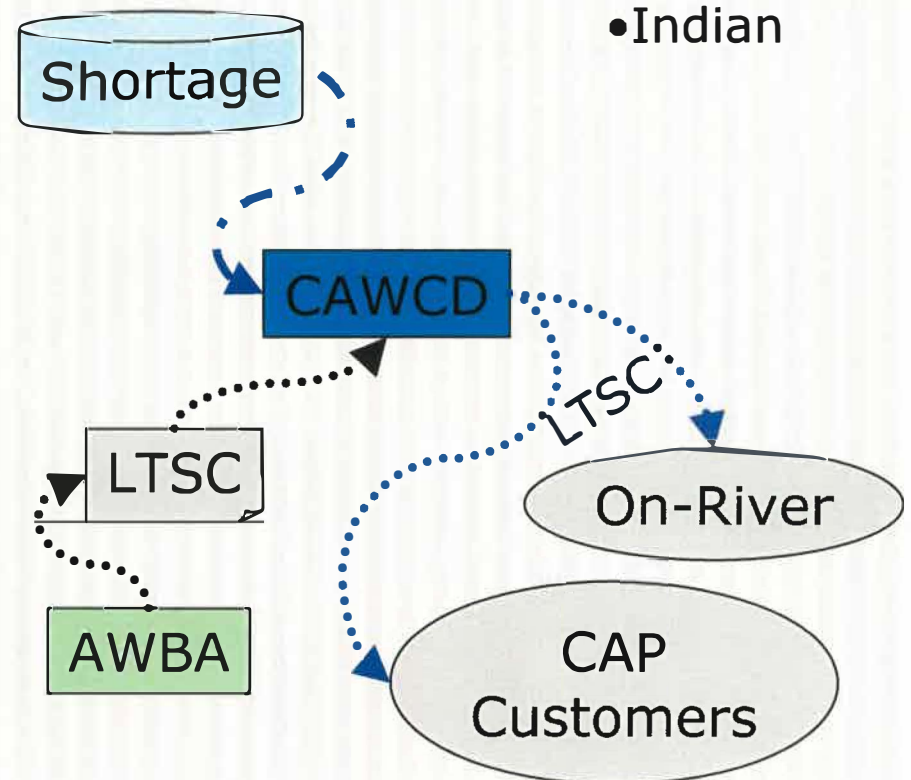
ICUA

- Interstate



FIRMING

- CAP M&I
- On-River
- Indian



ICUA Recovery Planning Schedule:

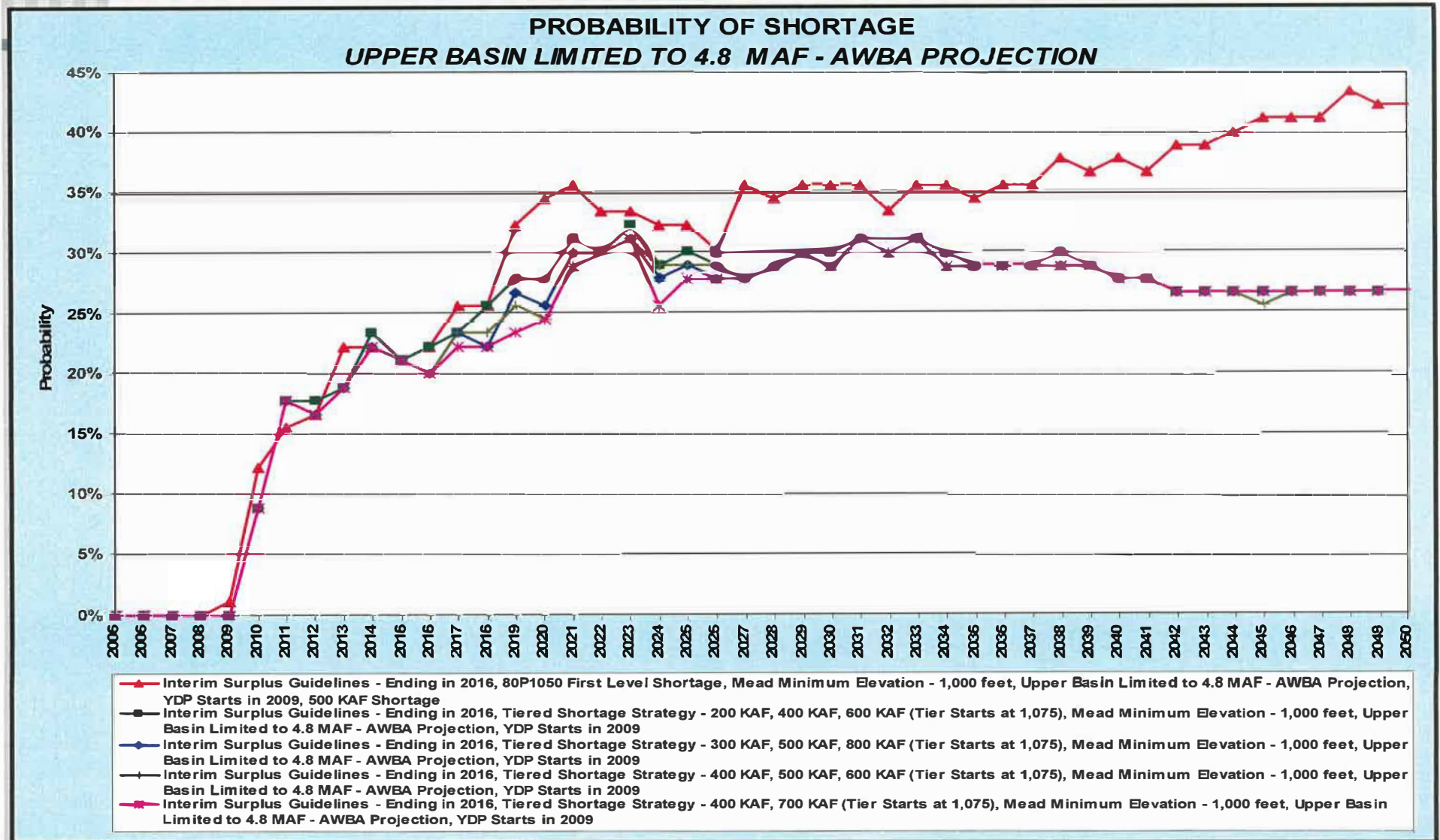
- SNWA 2007 – 2008
 - Not exceeding 20,000 af per year
 - Notice of Intent by June 1 of preceding year
 - Comprehensive Plan by November of preceding year

- SNWA 2009 – 2010:
 - Not exceeding 30,000 af per year

- SNWA 2011 – Completion (or 6/1/2060):
 - Not exceeding 40,000 af per year

Firming Recovery Schedule:

- 2017, Shortage Probability \sim 25%



Recovery Planning Status:

- ICUA Recovery Planning:
 - CAWCD Recovery Well Permits
 - ~ 20,000 af/yr Capacity
 - 14 wells in MSIDD
 - 7 wells in CAIDD
 - Framework Recovery Agreements
 - 1992 Storage and Recovery Agreements

- Firming Recovery Planning:
 - AWBA Study (1999) & Recovery Committee
 - B-E Study
 - Regional Discussions & Plans

Recovery Planning Process:

- Phase 1 – Existing Framework:
 - Complete Data Collection
 - Meet with Stakeholders
 - Recommend Planning Priorities
 - Draft Report - April, 2006

Recovery Planning Process:

- Phase 2 –Comprehensive '07-'08 Plan for ICUA :
 - '07 – '08 SNWA Schedule:
 - Define Delivery & Recovery Schedules
 - Refine Recovery Agreements
 - Prepare Certifications
 - Meet with Stakeholders
 - Recommend Rate and Cost Schedules
 - CAWCD Board Approvals
 - November 2006 for 2007 Recovery

Recovery Planning Process:

- Phase 3 – General Plans for ICUA & Firming Recovery:
 - Complete General Plans for 2009 - +2011 SNWA Recovery
 - Estimate Needed Firming Capacity
 - Draft General Firming Recovery Plans
 - Meet with Stakeholders
 - Establish Process for Updating Plans
 - November 2007

QUESTIONS?

