

Agenda Number 13.

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MEETING DATE: October 2, 2014

AGENDA ITEM: Report, Discussion and Consideration of Action to Adopt Position on the Proposed Bill Williams River Water Rights Settlement Act of 2014

RECOMMENDATION:

Staff recommends that the Board formally support the pending Bill Williams River Water Rights Settlement Act of 2014.

FINANCIAL IMPLICATIONS:

None.

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

2010 CAWCD Board of Directors Strategic Plan

- Leadership and Public Trust: Relationships-Other Stakeholders
- Project Reliability: Effectively Operate and Maintain CAP Assets
- Water Supply: Reliability of the CAP Water Supply

PREVIOUS BOARD ACTION/ACTIVITY:

The Board has been briefed on this issue during executive session, most recently at the June 5, 2014, Board meeting.

ISSUE SUMMARY/DESCRIPTION:

Background

On December 13, 2011, Freeport McMoRan (Freeport) finalized the acquisition of Planet Ranch from the City of Scottsdale with the intent of transferring approximately 2/3 of the water rights to their Wikieup well-field located on the Big Sandy River, a tributary of the Bill Williams River. The water rights transfer would be a "paper" water rights transfer in that no wet water would transfer to the well-field. Rather, Freeport

wants to "paper" five wells in the well-field with surface water rights to provide additional protection should it be determined that those wells have been pumping surface water.

When Freeport filed applications to sever and transfer this water, objections were filed by the United States, the Hualapai Tribe, the Arizona Game and Fish Commission, and Mohave County. The Arizona Department of Water Resources (ADWR) agreed not to take administrative action on the sever and transfer applications and objections while the parties negotiated a resolution. During these negotiations, the United States conditioned their approval of the sever and transfer applications on, among other conditions, the lease of the remaining 1/3 of the water rights at Planet Ranch to the Lower Colorado River Multi-Species Conservation Program (MSCP).

Concurrently, negotiations were underway among the Central Arizona Water Conservation District (CAWCD), ADWR, the Salt River Project (SRP), the Hualapai Tribe and the United States for the resolution of the Tribe's water rights claims to the Colorado River. Freeport worked with the Tribe to join in these negotiations, and because of the unique benefits that Freeport could provide in a comprehensive settlement, the parties agreed to combine the negotiations.

In late 2013, despite agreement on almost all of the underlying issues, the parties decided to bi-furcate the Hualapai settlement into two phases. Phase one is designed to address the sever and transfer of certain of Freeport's water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield and the Multi-Species Conservation Program (MSCP), while phase two will comprehensively settle the Tribe's water rights claims to the Colorado River.

This phased approach was deemed necessary because of competing time frames. The first of these began on the day Freeport acquired Planet Ranch and runs for five years. On that date, December 13, 2016, any water rights at Planet Ranch that are not being beneficially used shall revert to the state pursuant to Arizona Revised Statute § 45-189.¹ While Freeport is currently irrigating enough land to preserve the volume of water needed for their sever and transfer applications, Freeport is not irrigating the remaining water rights because they claim that to do so is costly and not in their interests.

The second timeframe is related to the settlement of the Tribe's water rights claims to the Colorado River. As part of this comprehensive settlement, the Tribe has requested federal monies to build a water project on the reservation. The type and design of this water project is still under consideration though the project will likely move Colorado River water to the Tribe's reservation. Any such project would require significant environmental compliance and design work. Such work would be impossible to perform by the December 13, 2016 deadline.

Senators Flake and McCain introduced S.2503 in the Senate on June 19, 2014. An identical bill, H.R.4924, was introduced the following day by Representative Gosar with

¹ Prior to Freeport's acquisition of Planet Ranch, the reversion provisions did not apply to the City of Scottsdale because of an exception for municipal providers

the entire Arizona delegation joining as co-sponsors. These two pieces of legislation represent this first phase with phase two to follow pending the results of the tribal water study examining the various water project alternatives.

Benefits to CAWCD

CAWCD is not a party to this phase one settlement, nor is CAP obligated to perform any actions pursuant to the phase one agreements. However, CAP does receive significant benefits from this phase one settlement. Specifically:

1. 5,541 acre-feet of water rights at Planet Ranch shall be leased to the MSCP in exchange for \$8.3 million provided by the MSCP. This lease would allow for the creation of 550 acres of new habitat, including 350 acres of cottonwood willow and 50 acres of marsh. This acquisition would provide an additional benefit by protecting 396 acres of existing cottonwood-willow habitat on the Bill Williams Refuge. CAWCD is not responsible for this payment, except to the extent that CAWCD provides regular contributions to the MSCP.
2. Planet Ranch will be donated by Freeport to AGFC. The water rights previously leased by Freeport to the MSCP and the lease agreement between Freeport and the MSCP shall also be assigned to AGFC.
3. Freeport is providing a monetary contribution to the Tribe's Economic Development Fund that will allow the Tribe to purchase Colorado River Water and any appurtenant lands. The parties, including the Hualapai Tribe, acknowledge that this water is a key component of satisfying the Tribe's water rights claims in the comprehensive settlement by bridging the gap between the quantity of water the state parties' are willing to offer and the quantity that the Tribe has requested.

While the Hualapai Tribe will receive the money to acquire this water in phase one, the state parties have stressed that this benefit to the Tribe is part of the future comprehensive settlement. Therefore, the state parties have required that certain limiting conditions be placed upon the Tribe's ability to use these waters prior to the negotiation of a comprehensive settlement. Specifically, the Tribe may only use these waters for irrigation of the lands to which they are appurtenant or for storage in a permitted recharge facility² in the State of Arizona until either (1) a comprehensive settlement becomes enforceable; or (2) December 31, 2039. Finally, even if a comprehensive settlement is not reached by December 31, 2039, the Colorado River water acquired by this monetary contribution will be counted on an acre-foot for acre-foot basis towards any future tribal claims in a settlement or adjudication of those claims.

² Any long-term storage credits that the Tribe acquires by storing the Colorado River water are subject to the same limitations.

4. Freeport will contribute \$1 million to support a tribal water supply study necessary for the advancement of the comprehensive settlement that will allow the Tribe to study various water project proposals.

SUGGESTED MOTION:

I move that the Board formally support the pending Bill Williams River Water Rights Settlement Act of 2014.

113TH CONGRESS
2^D SESSION

S. 2503

To direct the Secretary of the Interior to enter into the Big Sandy River-Planet Ranch Water Rights Settlement Agreement and the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement, to provide for the lease of certain land located within Planet Ranch on the Bill Williams River in the State of Arizona to benefit the Lower Colorado River Multi-Species Conservation Program, and to provide for the settlement of specific water rights claims in the Bill Williams River watershed in the State of Arizona.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2014

Mr. FLAKE (for himself and Mr. McCAIN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To direct the Secretary of the Interior to enter into the Big Sandy River-Planet Ranch Water Rights Settlement Agreement and the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement, to provide for the lease of certain land located within Planet Ranch on the Bill Williams River in the State of Arizona to benefit the Lower Colorado River Multi-Species Conservation Program, and to provide for the settlement of specific water rights claims in the Bill Williams River watershed in the State of Arizona.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bill Williams River Water Rights Settlement Act of 2014”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to achieve a fair, equitable, and final settlement of certain claims among certain parties to water rights in the Bill Williams River watershed in the State of Arizona for—

(A) the Hualapai Tribe (acting on behalf of the Tribe and members of the Tribe); and

(B) the Department of the Interior, including, and acting on behalf of, the constituent bureaus of the Department and, as specified, the United States as trustee for the Hualapai Tribe, the members of the Tribe, and the allottees;

(2) to approve, ratify, and confirm—

(A) the Big Sandy River-Planet Ranch Water Rights Settlement Agreement entered into among the Hualapai Tribe, the United States as trustee for the Tribe, the members of the Tribe and allottees, the Secretary of the Interior, the Arizona department of water resources, and others, to the extent the Big Sandy River-Planet Ranch Agreement is consistent with this Act; and

(B) the Hualapai Tribe Big Sandy River-Planet Ranch Water Rights Settlement Agreement entered into among the Tribe, the United States, and the Freeport Minerals Corporation, to the extent the Hualapai Tribe Agreement is consistent with this Act;

(3) to authorize and direct the Secretary—

(A) to execute the duties and obligations of the Secretary under the Big Sandy River-Planet Ranch Agreement, the Hualapai Tribe Agreement, and this Act;

(B)(i) to remove objections to the applications for the severance and transfer of certain water rights, in partial consideration of the agreement of the parties to impose certain limits on the extent of the use and transferability of the severed and transferred water

right and other water rights; and

(ii) to provide confirmation of those water rights; and

(C) to carry out any other activity necessary to implement the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement in accordance with this Act;

(4) to advance the purposes of the Lower Colorado River Multi-Species Conservation Program;

(5) to secure a long-term lease for a portion of Planet Ranch, along with appurtenant water rights primarily along the Bill Williams River corridor, for use in the Conservation Program;

(6) to bring the leased portion of Planet Ranch into public ownership for the long-term benefit of the Conservation Program; and

(7) to secure from the Freeport Minerals Corporation non-Federal contributions—

(A) to support a tribal water supply study necessary for the advancement of a settlement of the claims of the Tribe for rights to Colorado River water; and

(B) to enable the Tribe to secure Colorado River water rights and appurtenant land, increase security of the water rights of the Tribe, and facilitate a settlement of the claims of the Tribe for rights to Colorado River water.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADWR.**—The term “ADWR” means the Arizona department of water resources, established pursuant to title 45 of the Arizona Revised Statutes (or a successor agency or entity).

(2) **ALLOTMENT.**—The term “allotment” means any allotment that—

(A) was originally allotted to an individual Indian in the allotting document;

(B) is located on land outside the boundaries of an Indian reservation within Mohave County, Arizona; and

(C) as of the enforceability date, is held in trust by the United States for the benefit of an allottee.

(3) ALLOTTEE.—The term “allottee” means any individual who holds a beneficial real property interest in an allotment.

(4) ARIZONA GAME AND FISH COMMISSION.—The term “Arizona Game and Fish Commission” means the entity established pursuant to title 17 of the Arizona Revised Statutes to control the Arizona game and fish department (or a successor agency or entity).

(5) BAGDAD MINE COMPLEX AND BAGDAD TOWNSITE.—The term “Bagdad Mine Complex and Bagdad Townsite” means the geographical area depicted on the map attached as exhibit 2.9 to the Big Sandy River-Planet Ranch Agreement.

(6) BIG SANDY RIVER-PLANET RANCH AGREEMENT.—

(A) IN GENERAL.—The term “Big Sandy River-Planet Ranch Agreement” means the Big Sandy River-Planet Ranch Water Rights Settlement Agreement dated [_____, 2014] and entered into among—

(i) the Tribe;

(ii) Department, including, and acting on behalf of, the constituent bureaus of the Department and, as specified, the United States as trustee for the Hualapai Tribe, the members of the Tribe, and the allottees;

(iii) the Arizona Game and Fish Commission;

(iv) ADWR; and

(v) the Corporation.

(B) INCLUSIONS.—The term “Big Sandy River-Planet Ranch Agreement” includes—

(i) all exhibits to the agreement referred to in subparagraph (A);

(ii) any amendments necessary to make the agreement consistent with this Act; and

(iii) any other amendment approved by the parties to the agreement that are affected by the amendment (including the Secretary, acting on behalf of the United States).

(7) **BILL WILLIAMS RIVER WATERSHED.**—The term “Bill Williams River watershed” means the watershed drained by the Bill Williams River and the tributaries of that river, including the Big Sandy and Santa Maria Rivers.

(8) **CONSERVATION PROGRAM.**—The term “Conservation Program” has the meaning given the term “Lower Colorado River Multi-Species Conservation Program” in section 9401 of the Omnibus Public Land Management Act of 2009 ([Public Law 111–11](#); 123 Stat. 1327).

(9) **CORPORATION.**—

(A) **IN GENERAL.**—The term “Corporation” means the Freeport Minerals Corporation, incorporated in the State of Delaware.

(B) **INCLUSIONS.**—The term “Corporation” includes all subsidiaries, affiliates, successors, and assigns of the Freeport Minerals Corporation (such as Byner Cattle Company, incorporated in the State of Nevada).

(10) **DEPARTMENT.**—The term “Department” means the Department of the Interior.

(11) **ENFORCEABILITY DATE.**—The term “enforceability date” means the applicable date described in section 9.

(12) **FREEPORT GROUNDWATER WELLS.**—

(A) **IN GENERAL.**—The term “Freeport Groundwater Wells” means the 5 wells identified by ADWR well registration numbers—

- (i) 55–592824;
- (ii) 55–595808;
- (iii) 55–595810;
- (iv) 55–200964; and
- (v) 55–908273.

(B) INCLUSIONS.—The term “Freeport Groundwater Wells” includes any replacement of a well referred to in subparagraph (A) drilled by or for the Corporation to supply water to the Bagdad Mine Complex and Bagdad Townsite.

(C) EXCLUSIONS.—The term “Freeport Groundwater Wells” does not include any other well owned by the Corporation at any other location.

(13) HUALAPAI TRIBE AGREEMENT.—

(A) IN GENERAL.—The term “Hualapai Tribe Agreement” means the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement dated [_____, 2014] entered into among—

- (i) the Tribe;
- (ii) the United States, as trustee for the Tribe, the members of the Tribe, and the allottees; and
- (iii) the Corporation.

(B) INCLUSIONS.—The term “Hualapai Tribe Agreement” includes—

- (i) all exhibits to the agreement referred to in subparagraph (A);
- (ii) any amendments necessary to make the agreement consistent with this Act; and
- (iii) any other amendments approved by—

(I) each party to the agreement that is affected by the amendment; and

(II) the Secretary.

(14) HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT.—The term “Hualapai Tribe Water Rights Settlement Agreement” means the settlement agreement in the process of negotiation as of the date of enactment of this Act among the Tribe, the United States, the State of Arizona, the Central Arizona Water Conservation District, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users Association, and the Corporation to resolve the claims of the Tribe for rights to Colorado River water and Verde River water.

(15) INJURY.—The term “injury”, with respect to a water right, means any interference with, diminution of, or deprivation of the water right under Federal, State, or other law.

(16) LINCOLN RANCH.—The term “Lincoln Ranch” means the property owned by the Corporation described in the special warranty deed recorded on December 4, 1995, at Book 1995 and Page 05874 in the official records of La Paz County, Arizona.

(17) PARCEL 1.—The term “Parcel 1” means the parcel of land that

—

(A) is depicted as 3 contiguous allotments identified as 1A, 1B, and 1C on the map attached to the Big Sandy River-Planet Ranch Agreement as exhibit 2.10; and

(B) is held in trust for certain allottees.

(18) PARCEL 2.—The term “Parcel 2” means the parcel of land that

—

(A) is depicted on the map attached to the Big Sandy River-Planet Ranch Agreement as exhibit 2.10; and

(B) is held in trust for certain allottees.

(19) PARCEL 3.—The term “Parcel 3” means the parcel of land that

—

(A) is depicted on the map attached to the Big Sandy River-Planet Ranch Agreement as exhibit 2.10;

(B) is held in trust for the Tribe; and

(C) is part of the Hualapai Reservation pursuant to Executive Order 1368 of June 2, 1911.

(20) PARTY.—The term “party” means an individual or entity that is a signatory to—

(A) the Big Sandy River-Planet Ranch Agreement;

(B) the Hualapai Tribe Agreement; or

(C) an exhibit to the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement.

(21) PLANET RANCH.—The term “Planet Ranch” means the property owned by the Corporation described—

(A) in the special warranty deed recorded on December 14, 2011, at Book 2011 and Page 05267 in the official records of La Paz County, Arizona; and

(B) as Instrument No. 2011–062804 in the official records of Mohave County, Arizona.

(22) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(23) SEVER AND TRANSFER APPLICATIONS.—The term “sever and transfer applications” means the applications filed or amended by the Corporation and pending on the date of enactment of this Act to sever and transfer certain water rights—

(A) from Lincoln Ranch and from Planet Ranch to the Wikieup Wellfield for use at the Bagdad Mine Complex and Bagdad Townsite; and

(B) from portions of Planet Ranch (as determined on the date on which the applications were filed or amended) to new locations within Planet Ranch.

(24) **TRIBE.**—The term “Tribe” means the Hualapai Tribe, organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476) (commonly known as the “Indian Reorganization Act”), and recognized by the Secretary.

(25) **WATER RIGHT.**—The term “water right” means—

(A) any right in or to groundwater, surface water, or effluent under Federal, State, or other law; and

(B) for purposes of subsections (d) and (e) of section 5, any right to Colorado River water.

(26) **WIKIEUP WELLFIELD.**—The term “Wikieup Wellfield” means the geographical area depicted on the map attached as exhibit 2.10 to the Big Sandy River-Planet Ranch Agreement.

SEC. 4. BIG SANDY RIVER-PLANET RANCH AGREEMENT.

(a) **IN GENERAL.**—Except to the extent that any provision of, or amendment to, the Big Sandy River-Planet Ranch Agreement conflicts with this Act—

(1) the Big Sandy River-Planet Ranch Agreement is authorized, ratified, and confirmed; and

(2) any amendment to the Big Sandy River-Planet Ranch Agreement executed to make the Big Sandy River-Planet Ranch Agreement consistent with this Act is authorized, ratified, and confirmed.

(b) **EXECUTION.**—To the extent that the Big Sandy River-Planet Ranch Agreement does not conflict with this Act, and in support of the purposes of this Act, the Secretary shall execute—

(1) the Big Sandy River-Planet Ranch Agreement (including all exhibits to the Big Sandy River-Planet Ranch Agreement requiring the signature of the Secretary);

(2) any amendment to the Big Sandy River-Planet Ranch Agreement (including any amendment to an exhibit of the Big Sandy River-Planet Ranch Agreement requiring the signature of the Secretary) that is necessary to make the Big Sandy River-Planet Ranch Agreement consistent with this Act; and

(3) a conditional withdrawal of each objection filed by the Bureau of Indian Affairs, the Bureau of Land Management, and the United States Fish and Wildlife Service to the sever and transfer applications in the form set forth in exhibit 4.2.1(ii)(b) to the Big Sandy River-Planet Ranch Agreement.

(c) DISCRETION OF SECRETARY.—The Secretary may execute any other amendment to the Big Sandy River-Planet Ranch Agreement (including any amendment to an exhibit to the Big Sandy River-Planet Ranch Agreement requiring the signature of the Secretary) that is not inconsistent with this Act, if the amendment does not require approval by Congress.

(d) PROHIBITION.—The Secretary shall not file an objection to any amendment to the sever and transfer applications or any new sever or transfer application filed by the Corporation to accomplish the sever and transfer of 10,055 acre-feet per year of water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield, subject to the condition that the form of such an amendment or new application shall be substantially similar to a form attached to the Big Sandy River-Planet Ranch Agreement as exhibit 4.2.1(ii)(a)(1) or 4.2.1(ii)(a)(2).

SEC. 5. HUALAPAI TRIBE AGREEMENT.

(a) IN GENERAL.—Except to the extent that any provision of, or amendment to, the Hualapai Tribe Agreement conflicts with this Act—

(1) the Hualapai Tribe Agreement is authorized, ratified, and confirmed; and

(2) any amendment to the Hualapai Tribe Agreement executed to make the Hualapai Tribe Agreement consistent with this Act is authorized, ratified, and confirmed.

(b) EXECUTION.—To the extent that the Hualapai Tribe Agreement does not conflict with this Act, and in support of the purposes of this Act, the Secretary shall execute—

(1) the Hualapai Tribe Agreement (including all exhibits to the Hualapai Tribe Agreement requiring the signature of the Secretary); and

(2) any amendment to the Hualapai Tribe Agreement (including any amendment to an exhibit of the Hualapai Tribe Agreement requiring the signature of the Secretary) that is necessary to make the Hualapai Tribe

Agreement consistent with this Act.

(c) DISCRETION OF SECRETARY.—The Secretary may execute any other amendment to the Hualapai Tribe Agreement (including any amendment to an exhibit to the Hualapai Tribe Agreement requiring the signature of the Secretary) that is not inconsistent with this Act, if the amendment does not require approval by Congress.

(d) CONTRIBUTION OF CORPORATION TO ECONOMIC DEVELOPMENT FUND.—

(1) IN GENERAL.—The contribution of the Corporation to the economic development fund of the Tribe, as provided in section 8.1 of the Hualapai Tribe Agreement—

(A) may be used by the Tribe for the limited purpose of enabling the Tribe—

(i) to acquire Colorado River water rights with the intent to increase the security of the water rights of the Tribe; and

(ii) to otherwise facilitate the use of water on the Hualapai Reservation; and

(B) shall be considered to be a non-Federal contribution that counts toward any non-Federal contribution associated with a settlement of the claims of the Tribe for rights to Colorado River water.

(2) LIMITATION ON TRANSFER OF WATER RIGHTS.—The Colorado River water rights acquired by the Tribe may be used off the Hualapai Reservation only for irrigation of acquired appurtenant land, or for storage in accordance with Federal and State law in a permitted recharge facility in the State of Arizona, subject to the conditions that—

(A) the Tribe shall not seek to transfer or sell accumulated long-term storage credits generated from the storage of the acquired Colorado River water rights; and

(B) the Tribe shall not seek approval to change the place of use of the acquired Colorado River water rights, except for the purposes of storing the water in accordance with subparagraph (A).

(3) EXPIRATION.—The authority provided under paragraph (2) expires on the earlier of—

(A) the date on which the Hualapai Tribe Water Rights Settlement Agreement becomes enforceable; and

(B) December 31, 2039.

(4) COLORADO RIVER WATER RIGHTS COUNTED AGAINST CLAIMS OF TRIBE.—

(A) IN GENERAL.—If the Hualapai Tribe Water Rights Settlement Agreement does not become enforceable by December 31, 2039, any Colorado River water rights acquired by the Tribe with the contribution of the Corporation to the economic development fund of the Tribe shall be counted, on an acre-foot per acre-foot basis, toward the claims of the Tribe for rights to Colorado River water in any subsequent settlement or adjudication of those claims.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph restricts any claim for rights of the Tribe to Colorado River water in any subsequent settlement or adjudication.

(e) FUTURE LIMITATIONS ON LAND TAKEN INTO TRUST.—As provided in section 10.11 of the Hualapai Tribe Agreement, the parties to the Hualapai Tribe Agreement shall negotiate in good faith with other parties the terms under which any land within the State of Arizona held or acquired in fee by the Tribe may be taken into trust by the United States for the benefit of the Tribe, with any applicable terms to be incorporated into a future agreement settling the claims of the Tribe for rights to Colorado River water, and the Federal law approving the agreement, subject to approval by Congress.

SEC. 6. WAIVERS, RELEASES, AND RETENTION OF CLAIMS.

(a) CLAIMS BY DEPARTMENT UNDER BIG SANDY RIVER-PLANET RANCH AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Secretary is authorized to execute a waiver and release of all claims of the Department against the Corporation under Federal, State, or any other law for—

(A) all past and present claims for injury to water rights resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells arising prior to the enforceability date;

(B) all claims for injury to water rights arising after the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement; and

(C) all past, present, and future claims arising out of, or relating in any manner to, the negotiation or execution of the Big Sandy River-Planet Ranch Agreement.

(2) EFFECTIVE DATE.—The waivers and releases of claims under paragraph (1) shall—

(A) be in the form set forth in exhibit 7.2(ii) to the Big Sandy River-Planet Ranch Agreement; and

(B) take effect on the enforceability date.

(3) RETENTION OF RIGHTS.—The Department shall retain all rights not expressly waived under paragraph (1), including the right—

(A) to assert any claim for breach of, or to seek enforcement of, the Big Sandy River-Planet Ranch Agreement or this Act in any United States court or State court of competent jurisdiction; and

(B) to assert any past, present, or future claim to a water right that is not inconsistent with the Big Sandy River-Planet Ranch Agreement or this Act.

(b) CLAIMS BY TRIBE AND UNITED STATES AS TRUSTEE UNDER BIG SANDY RIVER-PLANET RANCH AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Tribe and the United States, acting as trustee for the Tribe and members of the Tribe, are authorized to execute a waiver and release of all claims against the Corporation for—

(A) any water rights of the Tribe or the United States as trustee

for the Tribe and members of the Tribe with respect to Parcel 3 in excess of 300 acre-feet per year;

(B) all past and present claims for injury to water rights arising before the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells; and

(C) all claims for injury to water rights arising after the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement.

(2) EFFECTIVE DATE.—The waivers and releases of claims under paragraph (1) shall—

(A) be in the form set forth in exhibit 7.1(ii) to the Hualapai Tribe Agreement; and

(B) take effect on the enforceability date.

(3) RETENTION OF RIGHTS.—The Tribe and the United States, acting as trustee for the Tribe and members of the Tribe, shall retain all rights not expressly waived under paragraph (1), including the right—

(A) to assert any claim for breach of, or to seek enforcement of, the Big Sandy River-Planet Ranch Agreement or this Act in any United States court or State court of competent jurisdiction; and

(B) to assert any past, present, or future claim to a water right that is not inconsistent with the Big Sandy River-Planet Ranch Agreement or this Act.

(c) CLAIMS BY UNITED STATES AS TRUSTEE FOR ALLOTTEES UNDER BIG SANDY RIVER-PLANET RANCH AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the United States, acting as trustee for the allottees, is authorized to execute a waiver and release of all claims against the Corporation for—

(A) any water rights of the allottees or the United States as trustee for the allottees with respect to—

(i) Parcel 1 in excess of 82 acre-feet per year; or

(ii) Parcel 2 in excess of 312 acre-feet per year;

(B) all past and present claims for injury to water rights arising before the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells; and

(C) all claims for injury to water rights arising after the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement.

(2) EFFECTIVE DATE.—The waivers and releases of claims under paragraph (1) shall—

(A) be in the form set forth in exhibit 7.1(ii) to the Hualapai Tribe Agreement; and

(B) take effect on the enforceability date.

(3) RETENTION OF RIGHTS.—The United States, acting as trustee for the allottees, shall retain all rights not expressly waived under paragraph (1), including the right—

(A) to assert any claim for breach of, or to seek enforcement of, the Big Sandy River-Planet Ranch Agreement or this Act in any United States court or State court of competent jurisdiction; and

(B) to assert any past, present, or future claim to a water right that is not inconsistent with the Big Sandy River-Planet Ranch Agreement or this Act.

(d) CLAIMS BY TRIBE AND UNITED STATES AS TRUSTEE UNDER HUALAPAI TRIBE AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Tribe and the United States, acting as trustee for the Tribe, members of the Tribe, and the allottees, as part of the performance of obligations under the Hualapai Tribe Agreement, are authorized to execute a waiver and release of all claims that the Tribe or the United States as trustee for the

Tribe, members of the Tribe, or the allottees may have against the Corporation under Federal, State, or any other law, for—

(A) all past and present claims for injury to water rights resulting from the diversion of water by the Corporation from the Bill Williams River watershed arising prior to the enforceability date;

(B) all claims for injury to water rights arising after the enforceability date resulting from the diversion of water by the Corporation from the Bill Williams River watershed in a manner not in violation of the Hualapai Tribe Agreement; and

(C) all past, present, and future claims arising out of, or relating in any manner to, the negotiation or execution of the Hualapai Tribe Agreement.

(2) EFFECTIVE DATE.—The waivers and releases of claims under paragraph (1) shall—

(A) be in the form set forth in exhibit 7.1(ii) to the Hualapai Tribe Agreement; and

(B) take effect on the enforceability date.

(3) RETENTION OF RIGHTS.—The Tribe and the United States, acting as trustee for the Tribe, the members of the Tribe, and the allottees, shall retain all rights not expressly waived under paragraph (1), including the right to assert—

(A) subject to paragraph 10.5 of the Hualapai Tribe Agreement, a claim for breach of, or to seek enforcement of, the Hualapai Tribe Agreement or this Act in any United States court or State court of competent jurisdiction;

(B) any claim for injury to, or to seek enforcement of, the rights of the Tribe under any applicable judgment or decree approving or incorporating the Hualapai Tribe Agreement; and

(C) any past, present, or future claim to water rights that is not inconsistent with the Hualapai Tribe Agreement or this Act.

(e) CLAIMS BY TRIBE AGAINST UNITED STATES UNDER BIG SANDY RIVER-PLANET RANCH AGREEMENT AND HUALAPAI TRIBE AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Tribe, on behalf of the Tribe and the members of the Tribe, is authorized to execute a waiver and release of all claims against the Department and the agents and employees of the Department for—

(A) all past, present, and future claims relating to injury to water rights associated with Parcel 3 in excess of 300 acre-feet per year that the Department, acting as trustee for the Tribe, asserted or could have asserted against any party to the Hualapai Tribe Agreement, including the Corporation;

(B) all past and present claims relating to injury to water rights arising before the enforceability date associated with Parcel 3, including any injury from withdrawal of a protest to the sever and transfer applications;

(C) all claims relating to injury to water rights arising after the enforceability date associated with Parcel 3, except for injury to the water right for 300 acre-feet per year associated with Parcel 3; and

(D) all past, present, and future claims relating to any potential injury arising out of, or relating in any manner to, the negotiation or execution of the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement.

(2) EFFECTIVE DATE.—The waivers and releases of claims under paragraph (1) shall—

(A) be in the form set forth in, as applicable—

(i) exhibit 7.6(ii) to the Big Sandy River-Planet Ranch Agreement; or

(ii) exhibit 7.3(ii) to the Hualapai Tribe Agreement; and

(B) take effect on the enforceability date.

(3) RETENTION OF RIGHTS.—The Tribe shall retain all rights not expressly waived under paragraph (1), including the right—

(A) to assert any claim for breach of, or to seek enforcement of, the Big Sandy River-Planet Ranch Agreement, the Hualapai Tribe Agreement, or this Act in any United States court or State court of

competent jurisdiction; and

(B) to assert any past, present, or future claim to a water right that is not inconsistent with the Big Sandy River-Planet Ranch Agreement, the Hualapai Tribe Agreement, or this Act.

SEC. 7. ADMINISTRATION.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

(1) IN GENERAL.—In the case of a civil action described in paragraph (2)—

(A) the United States or the Tribe, or both, may be joined in a civil action commenced by any party to the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement; and

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of, as applicable—

(i) this Act;

(ii) the Big Sandy River-Planet Ranch Agreement; or

(iii) the Hualapai Tribe Agreement.

(2) DESCRIPTION OF CIVIL ACTION.—A civil action referred to in paragraph (1) is a civil action filed by any party in a United States court or State court that—

(A) relates solely and directly to the interpretation or enforcement of this Act, the Big Sandy River-Planet Ranch Agreement, or the Hualapai Tribe Agreement;

(B) does not seek any award against the United States or the Tribe for monetary damages, costs, or attorneys' fees; and

(C) names the United States or the Tribe as a party.

(b) ANTIDEFICIENCY.—

(1) **IN GENERAL.**—Notwithstanding any authorization of appropriations to carry out this Act, the expenditure or advance of any funds, and the performance of any obligation by the Department in any capacity, pursuant to this Act shall be contingent on the appropriation of funds for that expenditure, advance, or performance.

(2) **LIABILITY.**—The Department shall not be liable for the failure to carry out any obligation or activity authorized by this Act if adequate appropriations are not provided to carry out this Act.

(c) **PUBLIC ACCESS.**—Nothing in this Act prohibits reasonable public access to Planet Ranch or Lincoln Ranch in a manner that is consistent with all applicable Federal and State laws and any applicable conservation management plan implemented under the Conservation Program.

SEC. 8. ENVIRONMENTAL COMPLIANCE.

(a) **IN GENERAL.**—In implementing the Big Sandy River-Planet Ranch Agreement, the Hualapai Tribe Agreement, and this Act, the Secretary shall comply with all applicable Federal environmental laws (including regulations), including—

(1) the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) **EXECUTION OF AGREEMENTS.**—The execution by the Secretary of the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement in accordance with this Act shall not constitute a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 ([42 U.S.C. 4332](#)).

(c) **UNITED STATES ENFORCEMENT AUTHORITY.**—Nothing in this Act, the Big Sandy River-Planet Ranch Agreement, or the Hualapai Tribe Agreement affects any right of the United States to take any action (including any environmental action) under any law (including regulations and common law) relating to human health, safety, or the environment.

SEC. 9. ENFORCEABILITY DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), the enforceability date shall be the date on which the Secretary publishes in the

Federal Register a statement of findings that—

(1)(A) to the extent that the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement conflict with this Act, the applicable agreement has been revised by amendment to eliminate the conflict; and

(B) the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement have been executed by all parties to those agreements;

(2) the Corporation has submitted to ADWR a conditional amendment of the sever and transfer applications for the Lincoln Ranch water right and amendments to the sever and transfer applications for Planet Ranch and Lincoln Ranch water rights consistent with section 4.2.1(ii)(a) of the Big Sandy River-Planet Ranch Agreement;

(3) the Secretary and the Arizona Game and Fish Commission have executed and filed with ADWR a conditional withdrawal of each objection described in section 4(b)(3);

(4)(A) ADWR has issued a conditional order approving the sever and transfer applications of the Corporation; and

(B) all objections to the sever and transfer applications have been—

(i) conditionally withdrawn; or

(ii) resolved in a decision issued by ADWR that is final and nonappealable;

(5) the Secretary has provided a notice to the parties to the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement that the Department has completed the legally required environmental compliance described in section 8;

(6) the steering committee for the Conservation Program has approved and authorized the manager of the Conservation Program to execute the lease in the form as set forth in exhibit 2.33 to the Big Sandy River-Planet Ranch Agreement; and

(7) the waivers and releases authorized by section 6 have been executed by the Tribe and the Secretary.

(b) **RATIFICATION AND EXECUTION OF AGREEMENTS.**—Notwithstanding subsection (a), for purposes of sections 4, 5, and 8, the Secretary shall carry out the requirements of this Act as promptly as practicable after the date of enactment of this Act.

(c) **FAILURE OF ENFORCEABILITY DATE TO OCCUR.**—If the Secretary does not publish a statement of findings under subsection (a) by December 15, 2015, or an extended date agreed to by the Tribe, the Secretary, and the Corporation, after providing reasonable notice to the State of Arizona—

(1) this Act is repealed effective beginning on the later of—

(A) December 31, 2015; and

(B) the date that is 14 days after the extended date agreed to by the Tribe, the Secretary, and the Corporation, after providing reasonable notice to the State of Arizona;

(2) any action taken by the Secretary to carry out this Act shall cease, and any agreement executed pursuant to this Act, shall be void; and

(3) the Tribe, members of the Tribe, the allottees, and the United States, acting as trustee for the Tribe, members of the Tribe, and the allottees, shall retain the right to assert past, present, and future claims to water rights and claims for injury to water rights in the Bill Williams River watershed.

Bill Williams River Water Rights Settlement Act of 2014

October 2, 2014, Board Meeting
Jay Johnson, General Counsel

9/25/2014 ● 1

Hualapai Tribe

- The reservation consists of just less than 1,000,000 acres and is bounded by the Grand Canyon to the north, though the exact location of the northern tribal boundary is in dispute
- The majority of the reservation is located in the Colorado River watershed; however a small portion is located in the Verde River watershed
- The Tribe also holds three parcels of trust lands north of Wikieup and one parcel of fee land east of Wikieup. All four parcels are located along the Big Sandy River, which drains into the Bill Williams River
- According to the 2010 US Census, there are 1965 members of the Tribe, of which 1335 live on the reservation

9/25/2014 ● 2

Hualapai Tribe



9/25/2014 ● 3

Background

- In 2011, CAWCD, ADWR and SRP (the "State parties") began negotiations with the Hualapai Tribe and the United States for resolution of the Tribe's claims to the water of the Colorado River
- During those initial negotiations, it was clear that the State parties and the Tribe were in disagreement on the terms necessary to effectuate a settlement
- Concurrent to these negotiations, Freeport McMoRan was meeting with the Tribe and the United States to resolve issues around Freeport's plans for Planet Ranch

9/25/2014 ● 4

Freeport and Planet Ranch

- Planet Ranch is located on the Bill Williams River, upstream of the Bill Williams Wildlife Refuge and downstream of Alamo Dam
- Freeport acquired Planet Ranch on December 13, 2011 from the City of Scottsdale with the intent of transferring 2/3 of the water rights located there to Freeport's Wikieup well-field located on the Big Sandy River
- This transfer would be a "paper" water rights transfer in that no wet water would transfer to the well-field
- Rather, Freeport wants to protect its Wikieup well-field from claims that it is pumping the surface water of the Big Sandy River

9/25/2014 ● 5

Freeport and Planet Ranch

- Freeport filed applications to sever and transfer this water prior to acquisition of Planet Ranch
- Objections to the transfer were filed by the Bureau of Indian Affairs on behalf of the Hualapai Tribe, the Fish and Wildlife Service, the Bureau of Land Management, the Arizona Game and Fish Commission, and Mohave County
- ADWR agreed not to take action on the sever and transfer applications while the parties negotiated a resolution
- In those negotiations, the United States conditioned the withdrawal of its objections on the lease of the remaining 1/3 of the water rights at Planet Ranch to the Lower Colorado River Multi-Species Conservation Program (MSCP)
- At some point however, negotiations between Freeport and the United States broke down

9/25/2014 ● 6

Negotiations Combined

- In mid-2012, with the consent of the Tribe and the United States, the State parties and Freeport agreed to combine efforts because of the unique advantages joint meetings provided over separate negotiations
- In the combined negotiations, the State parties, Freeport and the Tribe agreed on the specific terms of a comprehensive settlement of the Tribe's water rights claims
- However, despite agreement on many issues, the joint negotiations slowed down because of uncertainty over the type and design of the water project the Tribe requested from the United States

9/25/2014 ● 7

Competing Timeframes

- Planning for any tribal water project would require significant environmental compliance and design work and will likely require years of study
- Such a timeline is incompatible with Freeport's needs at Planet Ranch and the transfer of the 1/3 of Planet Ranch's water rights to the MSCP
- Pursuant to Arizona Revised Statute § 45-189, any water rights at Planet Ranch that are not beneficially used for five years revert to the state
- The timing of this reversion only began to run when Freeport acquired the property on December 13, 2011; the City of Scottsdale was exempt from this reversion

9/25/2014 ● 8

Competing Timeframes

- Therefore, Freeport must either irrigate Planet Ranch by December 13, 2016 or successfully sever and transfer their water rights by that date
- At this time, Freeport is irrigating enough land to preserve 2/3 of Planet Ranch's water rights, which makes up the volume of water that they want to transfer to the Wikieup well-field
- Freeport is not irrigating the remaining 1/3 of Planet Ranch's water rights for a few reasons including river movement making irrigation of some lands impossible or expensive
- Without irrigation, the remaining 1/3 of the Planet Ranch water will revert to the State, unless it can be transferred to the MSCP by December 13, 2016

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Bill Williams River Water Rights Settlement Act of 2014

- Given the competing deadline of December 13, 2016 at Planet Ranch and the lengthy timeframe needed for the Tribe's water project, the parties decided to bi-furcate the Hualapai settlement into two phases
- Phase 1, which is designed to address the Planet Ranch issues, was initiated on June 19, 2014 when Senators Flake and McCain introduced S.2503
- Representative Gosar introduced H.R.4924, which is identical to S.2503, on June 20, 2014 with the entire Arizona delegation co-sponsoring

9/25/2014 ● 10

Bill Williams River Water Rights Settlement Act of 2014

- CAWCD is not a party to the Phase 1 settlement, nor is CAWCD obligated to perform any actions pursuant to the Phase 1 agreements
- Rather we are being asked to publicly support the settlement
- CAWCD staff recommends supporting the Bill Williams River Water Rights Settlement Act of 2014 as the settlement provides significant immediate benefits to CAWCD and provides the foundation for a future comprehensive settlement of the Tribe's water rights claims

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Benefits to CAWCD

- 5,541 acre-feet of water rights at Planet Ranch will be leased to the MSCP and Planet Ranch will be donated by Freeport to the Arizona Game and Fish Commission
- This will allow for the creation of 550 acres of new habitat and benefit a long list of Lower Colorado River water and power users, including CAWCD, that will benefit from the MSCP's coverage for their water diversions and power production
- The donation of Planet Ranch to AGFC also provides significant additional benefits over other properties: the protection of 396 acres of existing cottonwood willow habitat in the Bill Williams Wildlife Refuge

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Benefits to CAWCD

- Freeport will contribute \$1M to support a tribal water study necessary to study various water project proposals
- Freeport will provide a monetary contribution to the Tribe that will allow the Tribe to purchase Colorado River water and any appurtenant lands
- Because a comprehensive settlement could be years away, the State parties agreed to allow the Tribe to purchase this water once the settlement is enforceable
- But because this is not a comprehensive settlement, the State parties required that certain limitations be placed on the Tribe's ability to use that water until a comprehensive settlement is reached

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Benefits to CAWCD

- The Tribe may only use Colorado River water acquired with the Freeport contribution for irrigation of the lands to which they are appurtenant or for storage in a permitted recharge facility in the State of Arizona until either:
 1. A comprehensive settlement becomes enforceable; or
 2. December 31, 2039.
- Even if a comprehensive settlement is not reached by December 31, 2039, this Colorado River water will be counted, on an acre-foot per acre-foot basis, towards any future tribal claims in a settlement or adjudication of those claims

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