

**Agenda Number 1.**

**CONTACT:** David Johnson  
(623) 869-2375  
djohnson@cap-az.com

Jay Johnson  
(623) 869-2374  
jjohnson@cap-az.com

**MEETING DATE:** June 29, 2016

**AGENDA ITEM:** Report, Discussion and Consideration of Action to Approve the Hualapai Tribe Water Rights Settlement Agreement and to Support the Hualapai Tribe Water Rights Settlement Act of 2016

**RECOMMENDATION:**

Staff recommends that the Board approve the Hualapai Tribe Water Rights Settlement Agreement and support the Hualapai Tribe Water Rights Settlement Act of 2016.

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**FINANCIAL IMPLICATIONS:**

None.

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

2016 CAWCD Board of Directors Strategic Plan

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

**PREVIOUS BOARD ACTION/ACTIVITY:**

The Board has been briefed on this settlement during Executive Session.

The Board was previously briefed on the Bill Williams River Water Rights Settlement at the October 2014 meeting of the CAWCD Board of Directors and at numerous other meetings during the 2011-2016 timeframe.

**ISSUE SUMMARY/DESCRIPTION:**Background

Since 2011, CAWCD has been involved in negotiations to resolve the water rights claims of the Hualapai Tribe to the Colorado River. In late 2013, despite agreement on almost all of the underlying issues, the parties to those negotiations decided to bifurcate the settlement into two phases. Phase one resolved the Tribe's claims to the Bill Williams River while also addressing the sever and transfer of certain of Freeport Minerals Corporation's water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield and to the Multi-Species Conservation Program.

Phase one became enforceable in late 2015, and subsequently negotiations on phase two began in earnest. The result is the attached Hualapai Tribe Water Rights Settlement Act of 2016 and the Hualapai Tribe Water Rights Settlement Agreement. The legislation and agreement comprehensively resolve the Tribe's water rights claims to any remaining waters of the State of Arizona, including to the main-stem of the Colorado River.

While many of the material terms in these settlement documents are similar or identical to those of past settlements, this settlement differs in a key way – rather than allowing for the delivery of water to the Tribe through the CAP, this settlement authorizes the construction of a water project on the Hualapai Reservation that would allow direct delivery of the Tribe's Colorado River water to Peach Springs and Grand Canyon West. Among this water would be 4,000 acre feet of Non-Indian Agricultural Priority CAP Water (NIA Water) which would be re-allocated by the Secretary of the Interior from the pool of NIA Water set aside by the Arizona Water Settlements Act of 2004 for future tribal water rights settlements.

Staff notes that the attached settlement agreement and federal legislation does contain a few tracked changes and highlighting. Each of those instances is related to the settlement of claims between Freeport Minerals Corporation and the United States. Negotiations between those parties has proceeded concurrently to those of the larger group and this language was shared with the other State parties on Monday, June 27. While the other State parties have not fully reviewed this language, the resolution of the Freeport-US settlement is not a matter of principal concern to CAWCD and does not need to delay the decision of CAWCD Board of Directors.

Once approval is obtained from CAWCD and the other settling parties, it is anticipated that Senator Flake and Representative Gosar will introduce the federal legislation necessary for this settlement to become final.

The material terms of the settlement are as follows:

Parties: The Hualapai Tribe, the United States of America, the State of Arizona, CAWCD, the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association, and Freeport Minerals Corporation. The Arizona State Land Department, the Arizona Game and Fish Commission, and Mohave County were involved in the phase two negotiations, but are not parties to the settlement.

Project: The Hualapai Water Project will be designed to divert, treat, and convey 3,414 acre-feet of water from the Colorado River for municipal, commercial, and industrial use on the Hualapai Reservation. The specific project is described in an Appraisal Design Report prepared by DOWL HKM (236 pages), but generally, water will be diverted from Diamond Creek, located on the Hualapai Reservation, and delivered through a pipeline to Peach Springs and Grand Canyon West. Delivery of this water will be pursuant to the attached water delivery contract

between the Tribe and the United States. The costs of this project will be borne by the United States through a federal appropriation.

CAP Costs: The Tribe shall pay the Fixed OM&R costs of delivery of CAP water regardless of whether that water is delivered through the CAP or through the Hualapai Water Project. The Tribe shall pay Pumping Energy Charges only for CAP water that is delivered through the CAP. Like other tribal entities, the Tribe does not pay CAP water service capital charges.

Firming: The State of Arizona and the United States have each agreed to firm 557.50 acre-feet of the NIA Water (for a total of 1125 acre-feet) to a priority equivalent to CAP Municipal and Industrial Priority Water.

Leasing: The Tribe may temporarily lease or exchange its NIA Water to water users within the State of Arizona. The Tribe may not permanently alienate any of the NIA Water.

**SUGGESTED MOTION:**

I move that the Board approve the Hualapai Tribe Water Rights Settlement Agreement and support the Hualapai Tribe Water Rights Settlement Act of 2016.

**HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT**

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## 1.0 INTRODUCTION

The purpose of this Agreement is to resolve, fully and finally, any and all claims that the Hualapai Tribe on behalf of itself and its Members and the United States acting in its capacity as trustee for the Hualapai Tribe and its Members, and Allottees, may have to rights to Water in Arizona, including rights to the Verde River, the Bill Williams River and the Colorado River.

## 2.0 PARTIES

This Agreement dated as of this \_\_\_ day of \_\_\_\_\_, 2016, is entered into among the Hualapai Tribe (“Tribe”); the United States of America (“United States”); the State of Arizona; the Central Arizona Water Conservation District (“CAWCD”); the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users’ Association (collectively, “SRP”); and Freeport Minerals Corporation (“Freeport”).

## 3.0 GENERAL PROVISIONS

### 3.1 DEFINITIONS

For purposes of this Agreement, the terms set forth below shall have the meanings ascribed to them in this Subparagraph.

3.1.1 “1947 Judgment” shall mean the Judgment and the Stipulation and Agreement, and exhibits thereto, entered on March 13, 1947, in the case styled *United States of America v. Santa Fe Pacific Railroad Co., and The Atchison, Topeka and Santa Fe Railway Co.*, No. E-190, United States District Court for the District of Arizona, Prescott Division, attached hereto as Exhibit 3.1.1.

3.1.2 “AFY” shall mean acre-feet per Year.

3.1.3 “AWSA” shall mean the Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, 118 Stat. 3478 (2004).

3.1.4 “Act” shall mean the Hualapai Tribe Water Rights Settlement Act of 2016, a copy of which is attached hereto as Exhibit 3.1.4.



- 3.1.5 “Agreement” shall mean this Hualapai Tribe Water Rights Settlement Agreement and the Exhibits attached hereto.
- 3.1.6 “Allotments” shall mean the four (4) off-reservation parcels held in trust by the United States for individual Indians in the Big Sandy River basin in Mohave County, Arizona, under Patent Nos. 1039995, 1039996, 1039997, and 1019494. These allotments are identified as Parcels 1A, 1B, 1C, and Parcel 2 on the map attached hereto as Exhibit 3.1.6.
- 3.1.7 “Allottee” shall mean any Indian owner of an Allotment.
- 3.1.8 “Available CAP Supply” shall mean, for any given Year, all Fourth Priority Water available for delivery through the CAP System, Water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.
- 3.1.9 “Bill Williams Act” shall mean the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113-223, 128 Stat. 2096-2110, attached hereto as Exhibit 3.1.9.
- 3.1.10 [“Bill Williams River Phase 2 Water Rights Settlement Agreement” shall mean the agreement of that name attached to and incorporated into this Agreement as exhibit 4.3.3. \[Placeholder FMI/US — Pending US Review\]](#)
- 3.1.11 “Bill Williams River Water Rights Settlement Agreements” or “Bill Williams Agreements” shall mean the Amended and Restated Big Sandy River-Planet Ranch Water Rights Settlement Agreement and the Amended and Restated Hualapai Tribe Bill Williams River Water Rights Settlement Agreement, including all exhibits thereto. Copies of the Bill Williams Agreements without the exhibits are attached hereto as Exhibit 3.1.11.
- 3.1.12 “Bill Williams River Watershed” shall mean the watershed drained by the Bill Williams River and all its tributaries, including, but not limited to, the Big Sandy and the Santa Maria Rivers, all as more particularly set forth

on the map attached hereto as Exhibit 3.1.12.

- 3.1.13 “CAP Contract” shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of CAP Water through the CAP System.
- 3.1.14 “CAP Contractor” shall mean a person or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of CAP Water through the CAP System. The Hualapai Tribe shall be a CAP Contractor.
- 3.1.15 “CAP Fixed OM&R Charge” shall mean ‘Fixed OM&R Charge’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.16 “CAP M&I Priority Water” shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.
- 3.1.17 “CAP NIA Priority Water” shall mean that CAP Water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.
- 3.1.18 “CAP Operating Agency” shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the Effective Date, CAWCD is the CAP Operating Agency.
- 3.1.19 “CAP Pumping Energy Charge” shall mean ‘Pumping Energy Charge’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.20 “CAP Repayment Contract” shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

- 3.1.21 “CAP Repayment Stipulation” shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.
- 3.1.22 “CAP Subcontract” shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for delivery of CAP Water through the CAP System.
- 3.1.23 “CAP Subcontractor” shall mean a person or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for delivery of CAP Water through the CAP System.
- 3.1.24 “CAP System” shall mean: (1) the Mark Wilmer Pumping Plant; (2) the Hayden-Rhodes Aqueduct; (3) the Fannin-McFarland Aqueduct; (4) the Tucson Aqueduct; (5) any pumping plant or appurtenant works of a feature described in any of (1) through (4); and (6) any extension of, addition to, or replacement for a feature described in any of (1) through (5).
- 3.1.25 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.
- 3.1.26 “Central Arizona Project” or “CAP” shall mean the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. § 1521, et seq.).
- 3.1.27 “Central Arizona Water Conservation District” or “CAWCD” shall mean the political subdivision of the

State that is the contractor under the CAP Repayment Contract.

3.1.28 “Colorado River Compact” shall mean the Colorado River Compact of 1922, as ratified and reprinted in article 2 of chapter 7 of Title 45, Arizona Revised Statutes.

3.1.29 “Colorado River Water” shall mean the waters of the Colorado River within the United States, including: (1) the waters of the reservoirs thereon; (2) waters of all tributaries to the Colorado River within the United States, other than tributaries located within Arizona; (3) all water beneath the surface of the Earth that is hydraulically connected to the Colorado River within the United States; and (4) all water beneath the surface of the Earth that is hydraulically connected to tributaries to the Colorado River within the United States, other than tributaries located within Arizona. The definition of Colorado River Water in this Agreement and the Act shall only be used for purposes of interpreting this Agreement and the Act and shall not be used for any interpretation of any other provision of applicable federal law including for example, the Colorado River Compact, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, the Colorado River Basin Project Act, 43 U.S.C. § 1501, or any contracts or agreements entered into pursuant thereto.

3.1.30 “Colorado River Water Entitlement” or “Entitlement” shall mean the right or authorization to use Colorado River Water in Arizona, but shall not include the Tribe’s right to use Hualapai Tribe CAP Water pursuant to the Hualapai Tribe Water Delivery Contract.

3.1.31 “Commissioner” shall mean the Commissioner of the Bureau of Reclamation.

3.1.32 “Diversion” shall mean the act of Diverting.

3.1.33 “Divert,” “Diverting,” and “Diverted” shall mean to receive, withdraw or develop and produce or capture

Water by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam or other mechanical device, or any other act of man.

- 3.1.34 “Effective Date” shall mean the date as of which this Agreement has been executed by all of the Parties, except the United States.
- 3.1.35 “Effluent” shall mean Water that has been used in Arizona for domestic, municipal or industrial purposes and that is available for reuse for any purpose, whether or not the Water has been treated to improve its quality, but Water shall not become Effluent solely as a result of having been used for hydropower generation.
- 3.1.36 “Enforceability Date” shall mean the date on which the Secretary publishes in the Federal Register the statement of findings described in section 110 of the Act.
- 3.1.37 “Exchange” shall mean a trade between one or more Persons of any Water for any other Water, if each party has a right to claim to use the Water it gives in trade. This definition applies whether or not Water is traded in equal amounts or other consideration is included in the trade.
- 3.1.38 “Exhibit” shall mean an exhibit to this Agreement as enumerated in Subparagraph 3.2.
- 3.1.39 “Fourth Priority Water” shall mean Colorado River Water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for the delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Repayment Contract for the delivery

of Colorado River Water for the CAP including use of Colorado River Water on Indian lands.

- 3.1.40 “Freeport Minerals Corporation” or “Freeport” shall mean the Delaware corporation of that name, and all Freeport subsidiaries, affiliates, successors and assigns, such as Byner Cattle Company, a Nevada corporation.
- 3.1.41 “Gila River Adjudication” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water in The Gila River System and Source*, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated).
- 3.1.42 “Gila River Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Maricopa exercising jurisdiction over the Gila River Adjudication.
- 3.1.43 “Gila River Adjudication Decree” shall mean the judgment or decree entered by the Gila River Adjudication Court, which shall be in substantially the same form as the form of judgment attached as Exhibit 3.1.43.
- 3.1.44 “Groundwater” shall mean all Water beneath the surface of the Earth within Arizona that is not Surface Water, Effluent or Colorado River Water.
- 3.1.45 “Hualapai Fee Land” shall mean land, other than Hualapai Trust Land, that: (1) is located in Arizona outside the exterior boundaries of the Hualapai Reservation or Hualapai Trust Land; and (2) as of the Enforceability Date, is owned by the Hualapai Tribe, whether in its own name or through a related entity.
- 3.1.46 “Hualapai Land” shall mean, collectively, the Hualapai Reservation, Hualapai Trust Land and Hualapai Fee Land.
- 3.1.47 “Hualapai OM&R Trust Account” shall mean the account created in the Treasury of the United States pursuant to

section 103(c) of the Act.

- 3.1.48 “Hualapai Reservation” shall mean the lands within the exterior boundaries of the Hualapai Reservation, including: (1) all land withdrawn by the Executive Order dated January 4, 1883, as modified by the May 28, 1942 Order from the Secretary, in accordance with the Act of February 20, 1925; (2) land identified by the Executive Orders of December 22, 1898, May 14, 1900, and June 2, 1911; and (3) those lands added to the Hualapai Reservation by section 106 of the Act.
- 3.1.49 “Hualapai Tribe” or “Tribe” shall mean a Tribe of Hualapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. § 476), and duly recognized by the Secretary.
- 3.1.50 “Hualapai Tribe CAP Water” shall mean the 4,000 AFY of the CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, and was retained by the Secretary for reallocation to Arizona Indian tribes pursuant to section 104(a)(1)(A)(iii) of the AWSA and reallocated to the Hualapai Tribe pursuant to section 109(a) of the Act.
- 3.1.51 “Hualapai Tribe Water Delivery Contract” shall mean the contract entered into pursuant to this Agreement and section 109(c) of the Act for the delivery of Hualapai Tribe CAP Water, the form of which is attached hereto as Exhibit 3.1.51.
- 3.1.52 “Hualapai Trust Land” shall mean land, other than Hualapai Fee Land, that: (1) is located in Arizona; (2) is located outside the exterior boundaries of the Hualapai Reservation; and (3) as of the Enforceability Date, is held in trust by the United States for the benefit of the Hualapai Tribe.
- 3.1.53 “Hualapai Water Project” shall mean the project constructed in accordance with Paragraph 8.0.

- 3.1.54 “Indian Tribe” shall mean the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450b).
- 3.1.55 “Injury to Water Rights” shall mean any interference with, diminution of, or deprivation of, a Water Right under federal, State, or other law. The term “Injury to Water Rights” does not include any injury to water quality.
- 3.1.56 “Lower Basin” shall have the meaning given the term in article II(g) of the Colorado River Compact.
- 3.1.57 “Lower Colorado River Basin Development Fund” shall mean the fund established by Section 403 of the Colorado River Basin Project Act (43 U.S.C. § 1543).
- 3.1.58 “Member” or “Members” shall mean any person or persons duly enrolled as a member or members of the Hualapai Tribe.
- 3.1.59 “OM&R” shall mean: (1) any recurring or ongoing activity associated with the day-to-day operation of a project; (2) any activity relating to scheduled or unscheduled maintenance of a project; and (3) any activity related to replacing a feature of a project.
- 3.1.60 “Paragraph” shall mean a numbered paragraph of this Agreement, including all Subparagraphs in such paragraph.
- 3.1.61 “Parcel 1” shall mean the parcel of land that –
- (a) is depicted as 3 contiguous Allotments identified as 1A, 1B, and C on the map attached hereto as Exhibit 3.1.6; and



(b) is held in trust for certain Allottees.

3.1.62 “Parcel 2” shall mean the parcel of land that –

(a) is depicted on the map attached hereto as Exhibit 3.1.6; and

(b) is held in trust for certain Allottees.

3.1.63 “Parcel 3” shall mean the parcel of land that –

(a) is depicted on the map attached hereto as Exhibit 3.1.6; and

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

(c) is part of the Hualapai Reservation pursuant to Executive Order No. 1368 of June 2, 1911.

3.1.64 “Party” or “Parties” shall mean a Person who is a signatory to this Agreement as listed in Paragraph 2.0.

3.1.65 “Person” shall mean an individual; public or private corporation; company; partnership; joint venture; firm; association; society; estate or trust; any other private organization or enterprise; the United States; any Indian tribe; any state, territory, or country; any governmental entity; and any political subdivision or municipal corporation organized under or subject to the constitution and laws of the State, including the officers, directors, agents, insurers, representatives, employees, attorneys, subsidiaries, affiliates, enterprises, legal representatives, assigns, predecessors and successors in interest and their heirs, of any Person.

3.1.66 “Preconstruction Activities” shall mean work associated with the preplanning, planning, and design phases of construction, as those terms are defined in paragraphs (1) through (3) of section 900.112(a) of title 25, Code of Federal Regulations (or successor regulation), including activities described in section 900.112(b) of title 25, Code of Federal Regulations (or successor regulation).

- 3.1.67 “Reclamation” shall mean the United States Bureau of Reclamation.
- 3.1.68 “Secretary” shall mean the Secretary of the Interior.
- 3.1.69 “SRP” shall mean both the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users’ Association, an Arizona Territorial Corporation.
- 3.1.70 “State” shall mean the State of Arizona.
- 3.1.71 “Subparagraph” shall mean a numbered subparagraph of this Agreement.
- 3.1.72 “Surface Water” shall mean all Water in Arizona that is appropriable under State law.
- 3.1.73 “United States” or “United States of America” in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term ‘United States’ or ‘United States of America’ is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.
- 3.1.74 “Water” shall mean, when used without a modifying adjective, Groundwater, Surface Water, Effluent, or Colorado River Water.
- 3.1.75 “Water Right” shall mean any right in or to Groundwater, Surface Water, Effluent or Colorado River Water under federal, State and other law.
- 3.1.76 “Year” shall mean a calendar year.

## 3.2 EXHIBITS

The following is a list of Exhibits to this Agreement. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraph 12.4 No Party shall have, by reason of this Agreement,

any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit and except with respect to Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5.

Exhibit No.	Exhibit Description	Page Number
3.1.1	1947 Judgment	
3.1.4	Act	
3.1.6	Map of Parcels 1, 2 and 3	
3.1.9	Bill Williams Act	
3.1.11	Bill Williams Agreements without exhibits	
3.1.12	Bill Williams River Watershed Map	
3.1.43	Gila River Adjudication Decree	
3.1.51	Form of Hualapai Tribe Water Delivery Contract	
4.3.3	<del>[Placeholder FMI/US—Bill Williams River Phase 2 Water Rights Settlement Agreement—Pending US Review]</del>	
4.8.1.1A	Lands in fee	
4.8.1.1B	Abstracts	
10.1	Form of waiver and release of claims by the Hualapai Tribe on behalf of itself and its Members (but not Members in their capacity as Allottees) and by the United States acting in its capacity as trustee for the Hualapai Tribe and its Members (but not Members in their capacity as Allottees)	
10.2	Form of waiver and release of claims by the United States acting in its capacity as trustee for Allottees	

Exhibit No.	Exhibit Description	Page Number
10.3	Form of waiver and release of claims by the Hualapai Tribe on behalf of itself and its Members (but not Members in their capacity as Allottees) against the United States	
10.4	Form of waiver and release of claims by the United States in all capacities (except as trustee for an Indian tribe other than the Hualapai Tribe) against the Hualapai Tribe and its Members	
10.5	Form of waiver and release of claims by the Parties other than the United States and the Hualapai Tribe as against the Hualapai Tribe, its Members and Allottees, and the United States acting in its capacity as trustee for the Hualapai Tribe, its Members and Allottees	
12.18	Contact Information for Notices	

4.0 WATER RIGHTS OF THE HUALAPAI TRIBE AND ALLOTTEES

The Tribe, the Allottees and the United States acting in its capacity as trustee for the Tribe and the Allottees, shall have the following rights to use Water and CAP Water.

4.1 GENERALLY APPLICABLE PROVISIONS

4.1.1 The Water Rights and Hualapai Tribe CAP Water described in this Paragraph 4.0 may be used for any purpose, consistent with this Agreement.

4.1.2 Water Rights Held in Trust.

4.1.2.1 The United States shall hold the following Water Rights in trust for the benefit of the Hualapai Tribe:

- 4.1.2.1.1 The Water Rights for the Hualapai Reservation described in Subparagraph 4.2
- 4.1.2.1.2 The Water Rights for Hualapai Trust Land described in Subparagraph 4.4.
- 4.1.2.1.3 The Water Rights described in Subparagraph 12.1.2 for any land taken into trust by the United States for the benefit of the Hualapai Tribe after the Enforceability Date in compliance with Subparagraph 12.1.
- 4.1.2.1.4 All Hualapai Tribe CAP Water.
- 4.1.2.2 The United States shall hold in trust for the benefit of the Allottees all Water Rights for the Allotments as described in Subparagraph 4.3.2.
- 4.1.3 Forfeiture and Abandonment.
  - 4.1.3.1. The following Water Rights shall not be subject to loss through non-use, forfeiture, abandonment or other operation of law:
    - 4.1.3.1.1 The Water Rights for the Hualapai Reservation described in Subparagraph 4.2.
    - 4.1.3.1.2. The Water Rights for Hualapai Trust Land described in Subparagraph 4.4.
    - 4.1.3.1.3. The Water Rights described in Subparagraph 12.1.2 for any lands described in Subparagraph 12.1.3 that are taken into trust by the United States for the benefit of the Hualapai Tribe after the Enforceability Date.
    - 4.1.3.1.4. Any Colorado River Water Entitlement purchased by the Tribe wholly or in substantial part with monies contributed by Freeport to the Economic Development Fund as provided in Section 8.1 of the Amended and Restated

Hualapai Tribe Bill Williams River Settlement  
Agreement.

4.1.3.2. Any Colorado River Water Entitlement purchased by the Tribe wholly or in substantial part with monies contributed by Freeport to the Economic Development Fund as provided in Section 8.1 of the Amended and Restated Hualapai Tribe Bill Williams River Settlement Agreement shall be restricted against permanent alienation by the Tribe.

4.2 ON-RESERVATION WATER RIGHTS

4.2.1 Groundwater

4.2.1.1 Except as provided in the 1947 Judgment and Subparagraph 4.3, the Tribe and the United States acting in its capacity as trustee for the Tribe shall have the permanent and exclusive right to the on-Reservation Diversion, use, and storage in impoundments of all Groundwater beneath the Hualapai Reservation.

4.2.1.2 Notwithstanding Subparagraph 4.2.1.1, the Tribe and its Members and the United States acting in its capacity as trustee for the Tribe, its Members and the Allottees, shall not object to, dispute, or challenge, in any judicial or administrative proceeding, any Diversion, use, or storage in impoundments of Groundwater by any Person in any location outside of the exterior boundaries of the Hualapai Reservation, except as provided in Paragraphs 4.0, 5.0 and 6.0 of the Amended and Restated Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and Section 4.0 of the Amended and Restated Big Sandy River-Planet Ranch Water Rights Settlement Agreement.

4.2.2 Surface Water

4.2.2.1 Except as provided in the 1947 Judgment and Subparagraph 4.3, the Tribe and the United States acting in its capacity as trustee for the Tribe shall have the permanent

and exclusive right to the on-Reservation Diversion, use, and storage of all Surface Water on the Hualapai Reservation.

4.2.2.2 Notwithstanding Subparagraph 4.2.2.1, the Tribe, and its Members, and the United States acting in its capacity as trustee for the Tribe, its Members and the Allottees, shall not object to, dispute, or challenge, in any judicial or administrative proceeding, any Diversion, use, or storage of Surface Water by any person in any location outside of the exterior boundaries of the Hualapai Reservation, except as provided in Paragraphs 4.0 and 5.0 of the Amended and Restated Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and Section 4.0 of the Amended and Restated Big Sandy River-Planet Ranch Water Rights Settlement Agreement.

#### 4.3 BILL WILLIAMS RIVER WATERSHED

##### 4.3.1 Rights of the Tribe

The Tribe and the United States acting in its capacity as trustee for the Tribe shall have those Water Rights for Parcel 3 that are specified in the Bill Williams River Water Rights Settlement Agreements and the Bill Williams Act. The Tribe has those Water Rights for Hualapai Fee Land in the Bill Williams River Watershed that are specified in Exhibit 4.1(i) of the Bill Williams River Water Rights Settlement Agreement. The Tribe may acquire additional Water Rights for those and other lands as provided in Subparagraph 4.8.

##### 4.3.2 Rights of Allottees

The Allottees, and the United States acting in its capacity as trustee for the Allottees, shall have the right to use water on the Allotments in the amounts specified in Exhibit 4.1(iii) of the Amended and Restated Big Sandy-Planet Ranch Water Rights Settlement Agreement. The Allottees, and the United States acting in its capacity as trustee for the Allottees, may temporarily use all or a portion of the amount of water specified for an Allotment in Exhibit

4.1(iii) of the Amended and Restated Big Sandy-Planet Ranch Water Rights Settlement Agreement off of the Allotment.

~~[4.3.3 –[Bill Williams River Phase 2 Water Rights Settlement Agreement](#).~~

~~[The United States, acting solely on behalf of the Department of the Interior and its constituent agencies the Bureau of Land Management and the Fish and Wildlife Service, Freeport, and the Tribe have entered into the Bill Williams River Phase 2 Water Rights Settlement Agreement to resolve certain water rights disputes among themselves in the Bill Williams River Watershed. The Arizona Department of Water Resources is a party to the Bill Williams River Phase 2 Water Rights Settlement Agreement for the limited purpose of issuing a final, appealable conditional decision and order regarding the Bill Williams River Instream Flow Applications \(as that term is defined in the Bill Williams River Phase 2 Water Rights Settlement Agreement\). The Bill Williams River Phase 2 Water Rights Settlement Agreement is attached hereto as Exhibit 4.3.3. Placeholder FMI/US – Pending US Review\]](#)~~

#### 4.4 TRUST LANDS

##### 4.4.1 Groundwater

4.4.1.1 The Tribe and the United States acting in its capacity as trustee for the Tribe shall have the permanent and exclusive right to the Diversion, use, and storage in impoundments of all Groundwater beneath Hualapai Trust Land.

4.4.1.2 Notwithstanding Subparagraph 4.4.1.1, the Tribe and its Members and the United States acting in its capacity as trustee for the Tribe, its Members and the Allottees, shall not object to, dispute, or challenge, in any judicial or administrative proceeding, any Diversion, use, or storage in impoundments of Groundwater by any Person in any location outside of the exterior boundaries of Hualapai Trust Land, except as provided in Paragraphs 4.0, 5.0 and 6.0 of the Amended and Restated Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and Section 4.0 of the Amended and Restated Big Sandy River- Planet Ranch Water Rights Settlement Agreement.



#### 4.4.2 Surface Water

4.4.2.1 The Tribe, and the United States acting in its capacity as trustee for the Tribe, shall have the permanent and exclusive right to the Diversion, use, and storage of all Surface Water on Hualapai Trust Land.

4.4.2.2 Notwithstanding Subparagraph 4.4.2.1, the Tribe and its Members, and the United States acting in its capacity as trustee for the Tribe, its Members and the Allottees, shall not object to, dispute, or challenge, in any judicial or administrative proceeding, any Diversion, use, or storage of Surface Water by any Person in any location outside of the exterior boundaries of Hualapai Trust Land, except as provided in Paragraphs 4.0 and 5.0 of the Amended and Restated Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and Section 4.0 of the Amended and Restated Big Sandy River-Planet Ranch Water Rights Settlement Agreement.

#### 4.5 EFFLUENT

The Hualapai Tribe shall have the permanent right to Effluent that originates on the Hualapai Reservation or lands held in trust by the United States for the benefit of the Hualapai Tribe. The Effluent may be used for such purposes as the Hualapai Tribe may determine.

#### 4.6 CAP WATER

The Tribe's right to Hualapai Tribe CAP Water is set forth in Paragraph 5.0 and in the Hualapai Tribe Water Delivery Contract attached as Exhibit 3.1.51.

#### 4.7 COLORADO RIVER WATER ENTITLEMENTS

The Tribe's right to use any Colorado River Water Entitlements purchased by or donated to the Tribe is set forth in Paragraph 9.0.

#### 4.8 WATER RIGHTS FOR LAND OWNED OR SUBSEQUENTLY ACQUIRED IN FEE BY THE HUALAPAI TRIBE

- 4.8.1 Water Rights and Uses of Water for Lands Owned in Fee by the Hualapai Tribe as of the Effective Date.
- 4.8.1.1 As of the Effective Date, the Hualapai Tribe owns lands in fee that are located outside the boundaries of the Hualapai Reservation, as set forth in Exhibit 4.8.1.1A. Such lands are entitled to the Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition, as described in the Abstracts attached as Exhibits 4.8.1.1B. Such Water Rights and uses of Water shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or in any other judicial or administrative proceeding. After their incorporation into the judgment and decree in the Gila River Adjudication, the Water Rights and uses described in Exhibit 4.8.1.1B for any lands that are located within the Verde River watershed shall be binding upon all parties to the Gila River Adjudication.
- 4.8.1.2 In addition to the Water Rights and uses of Water for the lands described in Subparagraph 4.8.1.1 and Exhibit 4.8.1.1A, after the Effective Date but before the Enforceability Date, the Hualapai Tribe may obtain new Water Rights or initiate new uses of Water for such lands as permitted by State law, or, for Colorado River Water Entitlements, applicable federal law. Except for Colorado River Water Entitlements, the Hualapai Tribe shall complete Abstracts for all Water Rights obtained and uses of Water initiated for such lands after the Effective Date but before the Enforceability Date. All such Abstracts must be completed on or before the Enforceability Date. The Hualapai Tribe shall promptly move to supplement the judgment and decree in the Gila River Adjudication to include the abstracts of any such additional Water Rights and uses of Water for lands located within the Verde River watershed.
- 4.8.1.3 If the Abstracts described in Subparagraph 4.8.1.2 are agreed to by all of the Parties, the Water Rights and uses of Water described in such Abstracts shall not be subject

to objection, dispute, or challenge by the Parties in the Gila River Adjudication or in any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.8.1.2 are not agreed to by all of the Parties, the Parties, other than the Hualapai Tribe, reserve the right to object to all or portions of such Abstracts in the Gila River Adjudication (for lands located within the Verde River watershed) or in any other judicial or administrative proceeding.

4.8.1.4 After the Enforceability Date, the Hualapai Tribe may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.8.1.1 and Exhibit 4.8.1.1A as permitted by State law, or, for Colorado River Water Entitlements, applicable federal law.

4.8.2 Water Rights and Uses of Water for Lands Acquired by the Hualapai Tribe in fee after the Effective Date but Before the Enforceability Date.

4.8.2.1 Lands acquired by the Hualapai Tribe in fee after the Effective Date but before the Enforceability Date are entitled to any Water Rights and uses of Water initiated and perfected in accordance with State law that are appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction, or, for Colorado River Water Entitlements, perfected in accordance with applicable federal law. Except for Colorado River Water Entitlements, the Hualapai Tribe shall complete Abstracts of all Water Rights and uses of Water appurtenant to or associated with such lands at the time of their acquisition. All such Abstracts must be completed on or before the Enforceability Date.

4.8.2.2 The Hualapai Tribe may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.8.2.1 after the date of their acquisition but before the Enforceability Date as permitted by State law, or, for Colorado River Water Entitlements,

applicable federal law. Except for Colorado River Water Entitlements, the Hualapai Tribe shall complete Abstracts for all Water Rights obtained and uses of Water initiated for such lands after the date of their acquisition but before the Enforceability Date. All such Abstracts must be completed on or before the Enforceability Date.

4.8.2.3 The Hualapai Tribe shall promptly move to supplement the judgment and decree in the Gila River Adjudication to include the Abstracts described in Subparagraphs 4.8.2.1 and 4.8.2.2 for lands acquired by the Hualapai Tribe in fee after the Effective Date but before the Enforceability Date that are located within the Gila River watershed.

4.8.2.4 If the Abstracts described in Subparagraphs 4.8.2.1 and 4.8.2.2 are agreed to by all of the Parties, the Water Rights and uses described in such Abstracts shall not be subject to objection, dispute, or challenge by the Parties in the Gila River Adjudication or in any other judicial or administrative proceeding. If the Abstracts described in Subparagraphs 4.8.2.1 and 4.8.2.2 are not agreed to by all of the Parties, the Parties, other than the Hualapai Tribe, reserve the right to object to all or portions of such Abstracts in the Gila River Adjudication or in any judicial or administrative proceeding.

#### 4.8.3 Water Rights and Uses of Water for Lands Acquired by the Hualapai Tribe in fee after the Enforceability Date

4.8.3.1 The Hualapai Tribe may acquire lands in fee after the Enforceability Date and such lands shall be entitled to Water Rights and uses of Water initiated or perfected in accordance with State law that are appurtenant to or associated with the lands that were held by the grantor or transferor of the lands and included in the transaction, or, for Colorado River Water Entitlements, perfected in accordance with applicable federal law.

4.8.3.2 The Hualapai Tribe may obtain new Water Rights or initiate new uses of Water for the lands described in Subparagraph 4.8.3.1 as permitted by State law, or, for Colorado River Water Entitlements, applicable federal law.

#### 4.9 PROHIBITION

No rights to Groundwater under the Hualapai Reservation or under Hualapai Trust Land, or to Surface Water on the Hualapai Reservation or on Hualapai Trust Land may be sold, leased, transferred or used outside the boundaries of the Hualapai Reservation or Hualapai Trust Land, other than pursuant to an Exchange.

#### 5.0 CAP WATER

5.1 Pursuant to section 109(a) of the Act, the Secretary shall reallocate and deliver to the Tribe, directly or through an Exchange with an individual or entity acceptable to the Tribe and the Secretary, upon the terms and conditions set forth in the Hualapai Tribe Water Delivery Contract, the following described CAP Water:

5.1.1 4,000 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, that was retained by the Secretary for reallocation to Arizona Indian tribes pursuant to section 104(a)(1)(A)(iii) of the AWSA, and reallocated by the Secretary to the Tribe pursuant to section 109(a) of the Act.

5.2 Pursuant to section 109(c) of the Act, and in accordance with section 104(d)(1) of the AWSA, the Secretary shall execute the Hualapai Tribe Water Delivery Contract. Pursuant to section 109(c)(2)(A) of the Act, the Hualapai Tribe Water Delivery Contract shall be for permanent service, as that term is used in section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, shall take effect on the Enforceability Date, and shall be without limit as to term.

5.3 The Hualapai Tribe CAP Water may be delivered through the Hualapai Water Project authorized by section 103(a) of the Act or through the CAP System for use in the Lower Basin in Arizona. The Secretary shall authorize

deliveries to be effected by the Diversion and use of Water directly from the Colorado River in Arizona pursuant to section 109(c)(2)(B)(ii) of the Act. In accordance with section 109(e) of the Act, all Hualapai Tribe CAP Water Diverted directly from the Colorado River shall be accounted for as deliveries of CAP Water within Arizona.

- 5.4 In accordance with section 105(b)(1)(B) of the AWSA and section 109(b) of the Act, the Secretary shall firm 557.50 AFY of the Hualapai Tribe CAP Water for the benefit of the Tribe for the one hundred Year period beginning on January 1, 2008, with priority equivalent to CAP M&I Priority Water, to ensure that such Hualapai Tribe CAP Water shall be delivered during water shortages in the same manner as CAP M&I Priority Water is delivered during water shortages. In accordance with section 105(b)(2)(B) of the AWSA, section 109(b) of the Act, and the terms of the Agreement between the Secretary of the Interior and the State of Arizona for Firming of Central Arizona Project Indian Water dated November 15, 2007, the State shall firm 557.50 AFY of the Hualapai Tribe CAP Water for the benefit of the Tribe for the one hundred Year period beginning on January 1, 2008, with priority equivalent to CAP M&I Priority Water, to ensure that such Hualapai Tribe CAP Water shall be delivered during water shortages in the same manner as CAP M&I Priority Water is delivered during water shortages. Neither the United States nor the State of Arizona shall have any obligation beyond December 31, 2107, to provide water to firm any deliveries of Hualapai Tribe CAP Water under this Agreement or the Hualapai Tribe Water Delivery Contract or under any Exchanges entered into under this Agreement or the Hualapai Tribe Water Delivery Contract.

- 5.4.1 The Tribe may, at the expense of the Tribe, take additional actions to firm or supplement the Hualapai Tribe CAP Water, including by entering into agreements for that purpose with the Central Arizona Water Conservation District, the Arizona Water Banking Authority, or any other lawful authority, in accordance with State law.

- 5.5 Pursuant to sections 109(c)(2)(E) through (G) of the Act, the Tribe may, on approval of the Secretary, enter into contracts or options to lease, or contracts or options to Exchange Hualapai Tribe CAP Water within Arizona, providing for the temporary delivery to any individual or entity of any portion of the Hualapai Tribe CAP Water. The term of a contract or option to lease shall not be longer than one hundred years. A contract or option to Exchange shall

be for the term provided for in the contract or option. The Tribe may, with the approval of the Secretary, renegotiate any lease at any time during the term of that lease, subject to the condition that the term of the renegotiated lease shall not exceed one hundred years. No portion of the Hualapai Tribe's CAP Water may be permanently alienated. The firming obligations of the United States or the State set forth in Subparagraph 5.4 shall not apply to any Hualapai Tribe CAP Water leased to other persons. Because the limitation on firming obligations of the United States or the State with respect to any Hualapai Tribe CAP Water leased to other persons is the product of negotiation among the Parties, the limitation shall have no precedential effect in any judicial or administrative proceeding, other than a proceeding to interpret or enforce the terms, conditions, and limitations of this Agreement or the Act, and shall not be binding in any future Indian water rights settlement.

- 5.6 No Hualapai Tribe CAP Water may be leased, exchanged, forborne or otherwise transferred in any way by the Tribe for use directly or indirectly outside of the Lower Basin in Arizona.
- 5.7 The Tribe may store the Hualapai Tribe CAP Water, including water that has been firming pursuant to Subparagraph 5.4, at underground storage facilities or groundwater savings facilities located within Arizona, in accordance with State law. The Tribe may assign any long-term storage credits accrued as a result of storage under this Subparagraph, in accordance with State law, except that the Tribe shall not assign any long-term storage credits accrued as a result of the storage of Hualapai Tribe CAP Water that has been firming by the United States or the State pursuant to Subparagraph 5.4. If the Tribe stores Hualapai Tribe CAP Water that has been firming by the United States or the State pursuant to Subparagraph 5.4, the stored water may only be used by the Tribe or exchanged by the Tribe for Water that will be used by the Tribe. Because the limitation on the Tribe's ability to assign long-term storage credits—accrued as a result of the storage of Hualapai Tribe CAP Water that has been firming by the United States or the State and the limitation on the use of such stored water are the product of negotiation among the Parties, the limitations shall have no precedential effect in any judicial or administrative proceeding, other than a proceeding to interpret or enforce the terms, conditions, and limitations of this Agreement or the Act, and shall not be binding in any future Indian water rights settlement.

- 5.8 Nothing in the Act or this Agreement limits the right of the Tribe to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, or with any other lawful authority for the storage or banking of Water in accordance with State law. Any Hualapai Tribe CAP Water stored pursuant to such an agreement is subject to Subparagraph 5.7.
- 5.9 Pursuant to section 109(c)(2)(H) of the Act, the Tribe, and not the United States in any capacity, shall be entitled to all consideration due to the Tribe under any contract or option to lease or Exchange Hualapai Tribe CAP Water entered into by the Tribe. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner: (1) any funds received by the Tribe as consideration under a contract or option to lease or Exchange Hualapai Tribe CAP Water; or (2) the expenditure of those funds, except in a case in which the Hualapai Tribe deposits the proceeds of any such lease, option to lease, Exchange, or option to Exchange into an account held in trust for the Hualapai Tribe by the United States.
- 5.10 Pursuant to section 109(c)(2)(I) of the Act, the Tribe may use Hualapai Tribe CAP Water on or off the Hualapai Reservation within the Lower Basin in Arizona for any purpose.
- 6.0 PAYMENT OF CAP WATER DELIVERY CHARGES
- 6.1 Pursuant to section 109(c)(2)(Q) of the Act, for purposes of determining the allocation and repayment of costs of any stages of the CAP constructed after November 21, 2007, the costs associated with the delivery of Hualapai Tribe CAP Water, whether such CAP Water is delivered for use by the Tribe or in accordance with any assignment, Exchange, lease, option to lease, or other agreement for the temporary disposition of such CAP Water entered into by the Tribe, shall be (1) non-reimbursable, and (2) shall be excluded from the repayment obligation of the CAWCD.
- 6.2 The costs associated with the construction of the CAP allocable to the Hualapai Tribe shall be non-reimbursable, and the Tribe shall have no repayment obligation for such costs.
- 6.3 Pursuant to section 109(c)(2)(R)ii) of the Act, no CAP Water service capital charges shall be due or payable for Hualapai Tribe CAP Water, whether such CAP Water is delivered for use by the Tribe or pursuant to a contract or



option to lease or Exchange Hualapai Tribe CAP Water entered into by the Tribe.

- 6.4 Pursuant to section 109(c)(2)(N)(i) of the Act, any lease or option to lease providing for the temporary delivery to others of any Hualapai Tribe CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased CAP Water. Neither the Tribe nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of Hualapai Tribe CAP Water leased to others.
- 6.5 The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all Hualapai Tribe CAP Water. Pursuant to section 109(c)(2)(K)(ii) of the Act and as authorized by 43 U.S.C. §1543(f)(2)(A), as amended, to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of Hualapai Tribe CAP Water, except for Hualapai Tribe CAP Water leased to others, and if funds are not available from the Lower Colorado River Basin Development Fund, such charges shall be paid by the Tribe. Any lease or option to lease providing for the temporary delivery to other persons of any Hualapai Tribe CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased Hualapai Tribe CAP Water. Neither the Tribe nor the United States in any capacity shall be responsible for the payment of any charges associated with the delivery of the Hualapai Tribe CAP Water leased to other persons. CAP Fixed OM&R Charges associated with the delivery of Hualapai Tribe CAP Water leased to others shall be paid as provided in Subparagraph 6.4.
- 6.6 The Tribe shall pay the CAP Operating Agency any applicable CAP Pumping Energy Charges associated with the delivery of Hualapai Tribe CAP Water, except for Hualapai Tribe CAP Water leased to others and CAP Water not delivered through the CAP System. Notwithstanding the preceding sentence, other persons or entities with whom the Tribe may Exchange Hualapai Tribe CAP Water may agree with the Tribe to pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of Hualapai Tribe CAP Water pursuant to such Exchange. CAP Pumping Energy Charges associated with the delivery of Hualapai Tribe

CAP Water leased to others shall be paid as provided in Subparagraph 6.4.

- 6.7 The CAP Operating Agency shall have no responsibility to deliver any Hualapai Tribe CAP Water for which CAP Fixed OM&R Charges and any applicable CAP Pumping Energy Charges have not been paid in advance.
- 6.8 The charges for delivery of Hualapai Tribe CAP Water pursuant to the Hualapai Tribe Water Delivery Contract shall be calculated in accordance with the CAP Repayment Stipulation.
- 6.9 No property tax or in-lieu property tax equivalency shall be due or payable by the Tribe for the delivery of CAP Water or for the storage of CAP Water in an underground storage facility or groundwater savings facility.

#### 7.0 DISTRIBUTION OF CAP NIA PRIORITY WATER

7.1 If, in any Year, the Available CAP Supply is insufficient to meet all demands under CAP Contracts and CAP Subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall prorate the CAP NIA Priority Water among the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor and CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water.

7.1.1 Notwithstanding Subparagraph 7.1, if the Available CAP Supply is insufficient to meet all demands under CAP Contracts and CAP Subcontracts for the delivery of CAP NIA Priority Water in the Year following the Year in which the Enforceability Date occurs, the Secretary shall assume that the Hualapai Tribe used the full volume of Hualapai Tribe CAP Water in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. This assumption shall continue until the Available CAP Supply is sufficient to meet all demands under CAP Contracts and CAP Subcontracts for the delivery of CAP NIA Priority Water.

7.1.2 The Secretary shall determine the quantity of CAP NIA Priority Water used by the Gila River Indian Community and the Tohono O'odham Nation in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water

in a manner consistent with the settlements agreements with these tribes.

## 8.0 INFRASTRUCTURE

- 8.1 Subject to this Paragraph and section 103 of the Act, the Secretary, acting through the Commissioner, shall plan, design, and construct the Hualapai Water Project, which shall be designed to divert, treat and convey not less than 3,414 AFY of Water from the Colorado River for municipal, commercial and industrial use anywhere on the Hualapai Reservation.
- 8.2 Reclamation shall serve as the lead agency for any activity relating to the planning, design, and construction of the Water diversion and delivery features of the Hualapai Water Project. The United States Bureau of Indian Affairs, United States Fish and Wildlife Service and the National Park Service shall be cooperating agencies.
- 8.3 Subject to Subparagraph 8.4, the scope of the planning, design, and construction of the Hualapai Water Project shall be generally as described in the document prepared by DOWL HKM entitled “Appraisal Design Report (October 2014).”
- 8.4 Before beginning construction activities for the Hualapai Water Project, the Secretary shall review the proposed design of the Hualapai Water Project, carry out value engineering analyses of the proposed design, and perform appropriate federal compliance activities.
- 8.5 As necessary, the Secretary shall periodically negotiate and reach agreement with the Tribe regarding any appropriate changes to the proposed design of the Hualapai Water Project. On the basis of the review, the Secretary may determine that a change is necessary (i) to meet applicable industry standards, (ii) to ensure the Hualapai Water Project will be constructed for not more than the amount set forth in Subparagraph 8.8, and (iii) to improve the cost-effectiveness of the delivery of Water.
- 8.6 The Hualapai Water Project shall be capable of delivering 3,414 AFY of Water from the Colorado River for municipal, commercial and industrial uses on the Hualapai Reservation. The Hualapai Water Project shall include all facilities and appurtenant items necessary to Divert, store, treat and deliver the Water.

- 8.7 All costs incurred by the Secretary in carrying out this Paragraph shall be nonreimbursable.
- 8.8 The total amount of obligations incurred by the Secretary for the planning, design, and construction of the Hualapai Water Project shall be as set forth in the Act.
- 8.9 At the request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 *et seq.*), the Secretary shall enter into one or more agreements with the Tribe to carry out the activities authorized by this Paragraph. Such agreements shall provide for technical assistance, including operation and management training, to the Tribe sufficient to prepare the Tribe to operate the Hualapai Water Project, prior to the transfer of title to the Tribe pursuant to Subparagraph 8.12. The Commissioner and the Tribe shall negotiate the cost of any oversight activity carried out by Reclamation pursuant to an agreement entered into under this Subparagraph, subject to the condition that the total cost for the oversight shall not exceed the amount set forth in the Act.
- 8.10 To the greatest extent feasible, the Hualapai Water Project shall be designed and constructed to minimize OM&R costs.
- 8.11 Consistent with section 103(a)(5) of the Act, and subject to the availability of appropriations, the Secretary, acting through Reclamation and in cooperation with the Tribe, shall operate, maintain, and replace the Hualapai Water Project until the date on which title to the Hualapai Water Project is transferred to the Tribe pursuant to Subparagraph 8.12.
- 8.12 The Hualapai Water Project shall be owned by the United States and shall be held in trust for the benefit of the Tribe, until transferred to the Tribe. The Secretary shall convey to the Tribe title to the Hualapai Water Project on the date on which the Secretary issues a notice of substantial completion that (i) the infrastructure constructed is capable of storing, Diverting, treating, transmitting, and distributing 3,414 AFY as generally set forth in Subparagraph 8.3; and (ii) the Secretary has consulted with the Tribe regarding the proposed finding that the Hualapai Water Project is substantially complete. Effective beginning on the date on which the Secretary transfers to the Tribe title to the Hualapai Water Project under this Subparagraph, the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the

facilities transferred, other than damages caused by an intentional act or an act of negligence committed by the United States, or by employees or agents of the United States, prior to the date on which the Secretary transfers title to the Hualapai Water Project to the Tribe.

- 8.13 The United States shall have no obligation to pay for the OM&R costs of the Hualapai Water Project beginning on the date on which title to the Hualapai Water Project is transferred to the Tribe.
- 8.14 The Secretary shall facilitate the formation of a project management committee composed of representatives from Reclamation, the Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and the Tribe —
- 8.14.1 to review cost factors and budgets for construction, operation, and maintenance activities for the Hualapai Water Project;
  - 8.14.2 to improve management of inherently governmental functions through enhanced communication; and
  - 8.14.3 to seek additional ways to reduce overall costs for the Hualapai Water Project.
- 8.15 The Secretary is authorized to construct the Hualapai Water Project at such time as the Secretary publishes in the Federal Register the statement of findings required by section 110 of the Act. Notwithstanding the forgoing, the Secretary is authorized to use amounts appropriated pursuant to section 103(a)(9)(B) of the Act to carry out Pre-Construction Activities for the Hualapai Water Project and to carry out any necessary environmental studies for such project, prior to the Enforceability Date.

## 9.0 COLORADO RIVER WATER ENTITLEMENTS

- 9.1 The Tribe shall have the right to use any Colorado River Water Entitlement purchased by or donated to the Tribe at the location to which the Entitlement is appurtenant when the Entitlement is purchased or donated. The Tribe may transfer the Entitlement for use or storage at another location within Arizona, including the Hualapai Reservation, or may lease the Entitlement to a water user within Arizona, in compliance with this Agreement and all applicable federal and State laws and policies governing the transfer of Colorado River Water entitlements in Arizona. The Tribe, or any person who leases the

Entitlement from the Tribe, may transport Colorado River Water available pursuant to the Entitlement through the Central Arizona Project in compliance with all laws and policies of the United States and CAWCD governing the use of the Central Arizona Project to transport water other than CAP Water.

- 9.2 Subject to Subparagraph 9.1, the Tribe may store Colorado River Water available pursuant to any Colorado River Water Entitlement purchased by or donated to the Tribe at underground storage facilities or groundwater savings facilities located within Arizona in accordance with State law. The Tribe may assign any long-term storage credits accrued as a result of storage under this Subparagraph in accordance with State law.

## 10.0 WAIVERS, RELEASES AND RETENTIONS OF CLAIMS

### 10.1 WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE HUALAPAI TRIBE, ON BEHALF OF ITSELF AND THE MEMBERS OF THE HUALAPAI TRIBE, AND THE UNITED STATES, ACTING IN ITS CAPACITY AS TRUSTEE FOR THE HUALAPAI TRIBE AND THE MEMBERS OF THE HUALAPAI TRIBE

10.1.1 Except as provided in Subparagraph 10.1.3, the Tribe, on behalf of itself and the Members of the Tribe (but not Members in their capacity as Allottees), and the United States, acting as trustee for the Tribe and the Members of the Tribe (but not Members in their capacity as Allottees), as part of the performance of the respective obligations of the Tribe and the United States under this Agreement and section 104(a)(1) of the Act, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), and any other person, entity, corporation or municipal corporation under federal, State or other law for all:

- (a) Past, present, and future claims for Water Rights, including rights to Colorado River Water, for Hualapai Land, arising from time immemorial and, thereafter, forever;
- (b) Past, present, and future claims for Water Rights, including rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy

of land by the Tribe, the Members of the Tribe, or their predecessors;

- (c) Past and present claims for Injury to Water Rights, including injury to rights to Colorado River Water, for Hualapai Land, arising from time immemorial through the Enforceability Date;
- (d) Past, present, and future claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, the Members of the Tribe, or their predecessors;
- (e) Claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date for Hualapai Land, resulting from the off-Reservation Diversion or use of Water in a manner not in violation of the Agreement or State law;
- (f) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, any judgment or decree approving or incorporating the Agreement, or the Act; and
- (g) Claims for Water Rights of the Tribe or United States, acting as trustee for the Tribe and Members of the Tribe, with respect to Parcel 3 in excess of 300 AFY.

10.1.2 The waiver and release of claims set forth in Subparagraph 10.1.1 shall be in the form set forth in Exhibit 10.1 and shall become effective on the Enforceability Date.

10.1.3 Notwithstanding the waiver and release of claims set forth in Subparagraph 10.1.1 and Exhibit 10.1, the Tribe, on behalf of itself and the Members of the Tribe (but not Members in their capacity as Allottees), and the United States, acting as trustee for the Tribe and the Members of the Tribe (but not Members in their capacity as Allottees), shall retain any right:

- (a) Subject to Subparagraph 12.7 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe

under the Agreement or the Act, in any federal or State court of competent jurisdiction;

- (b) To assert claims for injuries to, and seek enforcement of, the rights of the Tribe under any judgment or decree approving or incorporating the Agreement;
- (c) To assert claims for Water Rights based upon State law for lands owned or acquired by the Hualapai Tribe in fee, as provided in Subparagraph 4.8;
- (d) To object to any claims for Water Rights or Injury to Water Rights by or for any Indian Tribe, or the United States on behalf thereof;
- (e) To assert past, present, or future claims for Injury to Water Rights against any Indian Tribe, or the United States on behalf thereof;
- (f) To assert claims for injuries to, and seek enforcement of, the rights of the Hualapai Tribe under the Bill Williams Agreements or the Bill Williams Act, in any federal or State court of competent jurisdiction; and
- (g) Subject to Subparagraph 9.1, to assert the rights of the Hualapai Tribe under any Colorado River Water Entitlement purchased by or donated to the Tribe.

## 10.2 WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES, ACTING IN ITS CAPACITY AS TRUSTEE FOR THE ALLOTTEES

- 10.2.1 Except as provided in Paragraph 10.2.3, the United States, acting as trustee for the Allottees of the Tribe, as part of the performance of its obligations under this Agreement and section 104(b) of the Act, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), the Tribe, and any other person, entity, corporation, or municipal corporation under federal, State or other law, for all:



- (a) Past, present, and future claims for Water Rights, including rights to Colorado River Water, for the Allotments arising from time immemorial, and, thereafter, forever;
- (b) Past, present, and future claims for Water Rights, including rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Allottees or their predecessors;
- (c) Past and present claims for Injury to Water Rights, including injury to rights to Colorado River Water, for the Allotments arising from time immemorial through the Enforceability Date;
- (d) Past, present, and future claims for Injury to Water Rights, if any, including injury to rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Allottees or their predecessors;
- (e) Claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date for the Allotments resulting from the off-Reservation Diversion or use of Water in a manner not in violation of this Agreement or State law;
- (f) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act; and
- (g) Any claims for Water Rights of the Allottees or the United States acting as trustee for the Allottees with respect to:
  - (1) Parcel 1 in excess of 82 AFY; or
  - (2) Parcel 2 in excess of 312 AFY.

10.2.2 The waiver and release of claims set forth in Subparagraph 10.2.1 shall be in the form set forth in Exhibit 10.2 and shall become effective upon the Enforceability Date.

- 10.2.3 Notwithstanding the waiver and release of claims set forth in Subparagraph 10.2.1 and Exhibit 10.2, the United States, acting as trustee for the Allottees, shall retain any right:
- (a) Subject to Subparagraph 12.7, to assert claims for injuries to, and seek enforcement of, the rights of the Allottees, if any, under the Agreement or the Act, in any federal or State court of competent jurisdiction;
  - (b) To assert claims for injuries to, and seek enforcement of, the rights of the Allottees under any judgment or decree approving or incorporating the Agreement;
  - (c) To object to any claims for Water Rights or Injury to Water Rights by or for any Indian Tribe other than the Hualapai Tribe, or the United States on behalf thereof;
  - (d) To assert past, present, or future claims for Injury to Water Rights against any Indian Tribe other than the Hualapai Tribe, or the United States on behalf thereof; and
  - (e) To assert claims for injuries to, and seek enforcement of, the rights of the Allottees under the Bill Williams Agreements or the Bill Williams Act, in any federal or State court of competent jurisdiction.

**10.3 WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE HUALAPAI TRIBE, ON BEHALF OF ITSELF AND THE MEMBERS OF THE HUALAPAI TRIBE, AGAINST THE UNITED STATES**

- 10.3.1 Except as provided in Subparagraph 10.3.3, the Tribe, on behalf of itself and the Members of the Tribe (but not Members in their capacity as Allottees), as part of the performance of the respective obligations of the Tribe under this Agreement and section 104(a)(2) of the Act, shall execute a waiver and release of any claims against the United States (or agencies, officials or employees of the United States) under federal, State, or other law for all:

- (a) Past, present, and future claims for Water Rights, including rights to Colorado River Water, for Hualapai Land, arising from time immemorial and, thereafter, forever;
- (b) Past, present, and future claims for Water Rights, including rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, the Members of the Tribe, or their predecessors;
- (c) Past and present claims relating in any manner to damages, losses, or Injury to Water Rights (including rights to Colorado River Water), land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the State that first accrued at any time prior to the Enforceability Date;
- (d) Past and present claims for Injury to Water Rights, including injury to rights to Colorado River Water, for Hualapai Land, arising from time immemorial through the Enforceability Date;
- (e) Past, present, and future claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, the Members of the Tribe, or their predecessors;
- (f) Claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date for Hualapai Land, resulting from the off-Reservation Diversion or use of Water in a manner not in violation of this Agreement or State law; and
- (g) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this

Agreement, any judgment or decree approving or incorporating this Agreement, or the Act.

- 10.3.2 The waiver and release of claims set forth in Subparagraph 10.3.1 shall be in the form set forth in Exhibit 10.3 and shall become effective upon the Enforceability Date.
- 10.3.3 Notwithstanding the waiver and release of claims set forth in Subparagraph 10.3.1 and Exhibit 10.3, the Tribe and the Members of the Tribe (but not Members in their capacity as Allottees) shall retain any right:
- (a) Subject to Subparagraph 12.7, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under this Agreement or the Act, in any federal or State court of competent jurisdiction;
  - (b) To assert claims for injuries to, and seek enforcement of, the rights of the Tribe under any judgment or decree approving or incorporating this Agreement;
  - (c) To assert claims for Water Rights based upon State law for lands owned or acquired by the Hualapai Tribe in fee, as provided in Subparagraph 4.8;
  - (d) To object to any claims for Water Rights or Injury to Water Rights by or for any Indian Tribe, or the United States on behalf thereof;
  - (e) To assert past, present, or future claims for Injury to Water Rights against any Indian tribe, or the United States on behalf thereof;
  - (f) To assert claims for injuries to, and seek enforcement of, any rights under the Bill Williams Agreements or the Bill Williams Act, in any federal or State court of competent jurisdiction; and
  - (g) Subject to Subparagraph 9.1, to assert the rights of the Hualapai Tribe under any Colorado River Water Entitlement purchased by or donated to the Tribe.

10.4 WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES IN ALL CAPACITIES (EXCEPT AS TRUSTEE FOR AN INDIAN TRIBE OTHER THAN THE HUALAPAI TRIBE) AGAINST THE HUALAPAI TRIBE AND ITS MEMBERS

10.4.1 Except as provided in Subparagraph 10.4.3, the United States, in all capacities (except as trustee for an Indian tribe other than the Hualapai Tribe), as part of the performance of its obligations under this Agreement and Section 104(c) of the Act, shall execute a waiver and release of any claims against the Hualapai Tribe, its Members, or any agency, official, or employee of the Hualapai Tribe, under Federal, State or other law for all:

- (a) past and present claims for Injury to Water Rights, including injury to rights to Colorado River Water, resulting from the Diversion or use of Water on Hualapai Land arising from time immemorial through the Enforceability Date;
- (b) claims for Injury to Water Rights, including injury to rights to Colorado River Water, arising after the Enforceability Date resulting from the Diversion or use of Water on Hualapai Land in a manner that is not in violation of this Agreement or State law; and
- (c) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act.

10.4.2 The waiver and release of claims set forth in Subparagraph 10.4.1 shall be in the form set forth in Exhibit 10.4 and shall become effective upon the Enforceability Date.

10.4.3 Notwithstanding the waiver and release of claims set forth in Subparagraph 10.4.1 and Exhibit 10.4, the United States shall retain any right to assert any claims not specifically waived in Subparagraph 10.4.1, including, without limitation, any right to assert claims for injuries to, and seek enforcement of, the rights of the United States under the Bill Williams Agreements or the Bill Williams Act, in any federal or State court of competent jurisdiction.

10.5 WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE HUALAPAI TRIBE ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE HUALAPAI TRIBE, ITS MEMBERS AND THE ALLOTTEES

10.5.1 Except as provided in Subparagraph 10.5.3, the Parties, except the Hualapai Tribe on behalf of itself and its Members and the United States acting in its capacity as trustee for the Hualapai Tribe and its Members, shall execute a waiver and release of any claims against the Hualapai Tribe and its Members and the United States acting in its capacity as trustee for the Hualapai Tribe, its Members and the Allottees, under Federal, State or other law for all:

- (a) Past and present claims for Injury to Water Rights resulting from the Diversion or use of Water on Hualapai Land and the Allotments arising from time immemorial through the Enforceability Date;
- (b) Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for Hualapai Land and the Allotments in a manner not in violation of this Agreement or State law; and
- (c) Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, any judgment or decree approving or incorporating this Agreement, or the Act.

10.5.2 The waiver and release of claims described in Subparagraph 10.5.1 shall be in the form set forth in Exhibit 10.5 and shall become effective upon the Enforceability Date.

10.5.3 Notwithstanding the waiver and release of claims described in Subparagraph 10.5.1 and Exhibit 10.5, the Parties, other than the Hualapai Tribe on behalf of itself and its Members and the United States acting in its capacity as trustee for the Hualapai Tribe and its Members, shall retain any right to:

- (a) Subject to Subparagraph 12.7, assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State court or Federal court of competent jurisdiction;
- (b) Assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the court in the Gila River Adjudication Proceedings, including the Gila River Adjudication Decree;
- (c) Assert claims for injuries to, and seek enforcement of, their rights under any judgment or decree entered by the court in the Little Colorado River Adjudication Proceedings;
- (d) Assert past, present, and future claims to Surface Water that are not inconsistent with this Agreement;
- (e) Assert past, present, and future claims to Colorado River Water that are not inconsistent with this Agreement;
- (f) Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;
- (g) Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein; and
- (h) Assert claims for injuries to, and seek enforcement of, their rights under the Bill Williams Agreements or the Bill Williams Act in any State court or Federal court of competent jurisdiction.

## 10.6 SATISFACTION OF WATER RIGHTS AND OTHER BENEFITS

### 10.6.1 Hualapai Tribe and Its Members.

- 10.6.1.1 The benefits realized by the Tribe and its Members (but not Members in their capacity as Allottees) under this Agreement, the Act, the Bill Williams Agreements and the Bill Williams Act shall be in full satisfaction of all claims

of the Tribe and its Members, and the United States acting in its capacity as trustee for the Tribe and its Members, for Water Rights and Injury to Water Rights, under federal, State, or other law with respect to Hualapai Land.

10.6.1.2 Any entitlement to Water of the Tribe and its Members (but not Members in their capacity as Allottees), or the United States acting in its capacity as trustee for the Tribe and its Members, for Hualapai Land shall be satisfied out of the water resources and other benefits granted, confirmed, quantified or recognized to or for the Tribe and its Members, and the United States acting in its capacity as trustee for the Tribe and its Members by this Agreement, the Act, the Bill Williams Agreements and the Bill Williams Act.

10.6.2 Allottees and the United States Acting in Its Capacity as Trustee for the Allottees.

10.6.2.1 The benefits realized by the Allottees under this Agreement, the Act, and the Bill Williams Agreements and the Bill Williams Act shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Allottees, and the United States acting in its capacity as trustee for the Allottees, for Water Rights and Injury to Water Rights, under federal, State, or other law with respect to the Allotments.

10.6.2.2 Any entitlement to Water of the Allottees, or the United States acting in its capacity as trustee for the Allottees, for the Allotments shall be satisfied out of the water resources and other benefits granted, confirmed or recognized to or for the Allottees, and the United States, acting as trustee for the Allottees, by this Agreement, the Act and by the Bill Williams Agreements and the Bill Williams Act.

10.6.3 Notwithstanding Subparagraphs 10.6.1 and 10.6.2:



10.6.3.1 Nothing in this Agreement or the Act has the effect of recognizing or establishing any right of a Member or an Allottee to Water on Hualapai Land.

10.6.3.2 Nothing in this Agreement or the Act shall prohibit the Hualapai Tribe or an Allottee from acquiring additional Water Rights by purchase or donation of land, credits or Water Rights.

## 10.7 WAIVERS AND RELEASES OF CLAIMS IN THE BILL WILLIAMS RIVER WATERSHED

Additional waivers and releases of claims by the Tribe and the United States, acting as trustee for the Tribe, its Members and the Allottees in the Bill Williams River Watershed are provided in the Bill Williams Agreements and authorized by the Bill Williams Act. The waivers and releases in this Agreement, authorized by the Act, are in addition to and not in substitution for the waivers and releases in the Bill Williams Agreements, authorized by the Bill Williams Act.

## 10.8 EFFECT ON MEMBERS AND ALLOTTEES

Except as provided in Subparagraphs 10.1, 10.2 and 10.3 nothing in this Agreement shall affect any rights to Water of any Member of the Tribe, or any Allottee, for land outside of Hualapai Land or the Allotments.

## 10.9 COMPLIANCE WITH FEDERAL ENVIRONMENTAL LAW

### Enforcement of Federal Environmental Laws

10.9.1 Environmental Compliance. The Secretary shall carry out all federal compliance activities necessary to implement this Agreement including activities necessary to comply with all applicable provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental laws and regulations.

10.9.2 United States Enforcement Authority. Nothing in this Agreement affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and

the common law) relating to human health, safety, or the environment.

## 11.0 ENFORCEABILITY DATE

### 11.1 CONDITIONS TO THE ENFORCEABILITY DATE

This Agreement, including the waivers and releases of claims described in Subparagraphs 10.1 through 10.5, shall take effect and be fully enforceable, and construction of the Hualapai Water Project may begin, on the date that the Secretary publishes in the Federal Register a statement of findings that:

- 11.1.1 to the extent that this Agreement conflicts with the Act, this Agreement has been revised through an amendment to eliminate the conflict and the revised Agreement has been executed by the Secretary, the Tribe, the Governor of Arizona, and all of the Parties;
- 11.1.2 the waivers and releases of claims described in section 104 of the Act have been executed by the Tribe, the United States, and the other Parties;
- 11.1.3 the Abstracts referenced in Subparagraphs 4.8.1.2, 4.8.2.1 and 4.8.2.2 have been completed by the Tribe;
- 11.1.4 the full amount described in section 103(b)(2)(A) of the Act, as adjusted through the Enforceability Date by section 103(b)(2)(B) of the Act, has been deposited in the Hualapai Water Project Account;
- 11.1.5 the full amount described in section 103(c)(2)(A) of the Act, as adjusted through the Enforceability Date by section 103(c)(2)(B) of the Act, has been deposited in the Hualapai OM&R trust account;
- 11.1.6 the full amounts described in section 103(a)(5)(B) of the Act and section 103(a)(7)(B) of the Act have been appropriated;
- 11.1.7 the judgment and decree in the Gila River Adjudication has been approved by the Gila River Adjudication Court substantially in the form of the judgment and decree attached to this Agreement as Exhibit 3.1.43;

11.1.8 the Secretary has executed the Hualapai Tribe Water Delivery Contract described in Subparagraph 5.2;

11.1.9 the Secretary has issued a final Record of Decision approving the construction of the Hualapai Water Project in a configuration substantially as described in Subparagraph 8.3 and section 103 of the Act.

## 11.2 FAILURE TO SATISFY CONDITIONS

If the Secretary does not publish the statement of findings under Subparagraph 11.1 by October 15, 2027 then this Agreement shall be null and void.

## 11.3 CONSTRUCTION

Except as provided in Subparagraph 8.15, construction of the Hualapai Water Project may begin only after the Enforceability Date.

## 12.0 OTHER PROVISIONS

### 12.1 TRUST LANDS.

12.1.1 The Following lands currently owned in fee by the Tribe shall be taken into trust [by the Secretary] for the benefit of the Tribe on the date of enactment of the Act:

#### 12.1.1.1 Cholla Canyon Ranch Parcels:

In T.16 N., R. 13 W., Gila and Salt River Base and Meridian, Mohave County, Arizona:

(1) Section 25: SW  $\frac{1}{4}$ ; and

(2) Section 35: NE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ .

#### 12.1.1.2 Valentine Cemetery:

In T.23 N., R. 13 W., Gila and Salt River Base and Meridian, Mohave County, Arizona, Section 22: W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

12.1.1.3 Truxton Triangle:

In T.24 N., R. 12 W., Gila and Salt River Base and Meridian, Mohave County, Arizona, that portion of the South  $\frac{1}{2}$  of Section 3 lying South of the South boundary of the Hualapai Reservation and North of the North right-of-way boundary of Arizona Highway 66, and bounded by the West section line of said Section 3 and the South section line of said Section 3.

12.1.1.4 Hunt Parcel 4:

In T.25 N., R. 13 W., Gila and Salt River Base and Meridian, Mohave County, Arizona, Section 7: SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ . [Hunt Parcel 4]

12.1.1.5 Hunt Parcel 5:

In T.25 N., R. 14 W., Gila and Salt River Base and Meridian, Mohave County, Arizona, Section 1: SE  $\frac{1}{4}$ , E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$  SW  $\frac{1}{4}$

12.1.1.6 Hunt Parcels 1 and 2:

In T.26 N., R. 14 W., Gila and Salt River Base and Meridian, Mohave County, Arizona:

- (1) Section 9: NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ ' and
- (2) Section 27: NW  $\frac{1}{4}$  SE  $\frac{1}{4}$

12.1.1.7 Hunt Parcel 3:

In T.27 N., R. 15 W., Gila and Salt River Base and Meridian, Mohave County, Arizona, Section 25: SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ .

12.1.2 After the date of enactment of the Act, if the Tribe seeks to have legal title to additional land in the State located outside the exterior boundaries of the Hualapai Reservation taken into trust by the

United States for the benefit of the Tribe, the Tribe may do so only pursuant to an Act of Congress enacted after the date of enactment of the Act specifically authorizing the transfer for the benefit of the Tribe.

- 12.1.3 Any land taken into trust for the benefit of the Tribe after the Enforceability Date shall have only those rights to Water provided under State law, and shall not have any federally reserved Water Rights.

## 12.2 NO IMPAIRMENT OF EXISTING RIGHTS

Nothing in this Agreement or any contract entered into pursuant to this Agreement or the Act shall impair any right to the delivery or beneficial consumptive use of Colorado River Water under the 1944 Treaty with Mexico or any compact, law, decree, or contract in effect on the Enforceability Date.

## 12.3 ENTIRE UNDERSTANDING

This Agreement and the Bill Williams Agreements constitute the entire understanding among the Parties regarding the subjects addressed in these Agreements. Evidence of conduct or statements made in the course of negotiating these Agreements, including but not limited to previous drafts of these Agreements, is inadmissible in any legal proceeding.

## 12.4 MODIFICATIONS TO AGREEMENTS AND AMENDMENTS TO EXHIBITS

No modification shall be made to this Agreement or to any Exhibit after the Enforceability Date unless it is in writing and signed by all Parties affected by such modification. Notice of such amendments shall be made to all of the Parties in accordance with Subparagraph 12.18.

## 12.5 BINDING EFFECT; OBLIGATION TO WORK IN GOOD FAITH

The Tribe shall enact a Resolution authorizing and approving the tribal Chairperson's execution of this Agreement. As of the Effective Date, all of

the Parties except the United States shall be bound by the terms of this Agreement, regardless of the date on which each Party executes this Agreement. The United States shall be bound by the terms of this Agreement as of the Enforceability Date. Each Party agrees to work in good faith to satisfy the conditions in this Agreement.

## 12.6 AUTHORITY TO EXECUTE

By signing this Agreement, each signatory represents that he or she has the authority to execute it on behalf of the Party he or she represents.

## 12.7 RIGHT TO PETITION ANY COURT OF COMPETENT JURISDICTION

12.7.1 Any Party shall have the right to petition any court of competent jurisdiction (but not a tribal court), for such declaratory and injunctive relief as may be necessary to interpret or enforce the terms, conditions, and limitations of this Agreement or the Act.

12.7.2 Nothing in this Agreement waives the right of any Party to object to the jurisdiction of any court to adjudicate any dispute arising under this Agreement or the Act; and

12.7.3 In any action described in Subparagraph 12.7.1, each Party shall bear its own court costs and attorney's fees and waives any right it may have to an award of court costs or attorneys' fees against another Party.

## 12.8 GOVERNING LAW

This Agreement shall be construed in accordance with applicable State and federal law.

## 12.9 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

## 12.10 NO BENEFIT TO MEMBERS OF CONGRESS OR RESIDENT COMMISSIONERS

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share of this Agreement or to any benefit that may arise

herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

#### 12.11 DUPLICATE ORIGINALS AND COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Agreement also may be executed in duplicate originals, each of which shall constitute an original Agreement.

#### 12.12 NO QUANTIFICATION OR EFFECT ON RIGHTS OF OTHER TRIBES OR THE UNITED STATES ON THEIR BEHALF

Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any Indian tribe, nation, band or community other than the Tribe, its Members and the Allottees.

Nothing in this Agreement shall affect the ability of the United States to take action on behalf of any Indian tribe, nation, band, or community, other than the Tribe.

The rights and obligations of the United States, acting through the Department of the Interior in its non-trustee capacity, has undertaken certain rights and obligations by execution of the Bill Williams River Water Rights Settlement Agreements and the Bill Williams River Phase 2 Water Rights Settlement Agreement. Other than as specified in those agreements, the rights, [or to take action on behalf of any Interior Department bureaus in their non-trustee capacities are not affected by this Agreement given that their rights and obligations are defined by the Big Sandy River Planet Ranch Agreement]. [U.S. considering new language].

#### 12.13 CONSTRUCTION AND EFFECT

The Paragraph and Subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement. As used in this Agreement, a capitalized term shall have the meaning set forth in Subparagraph 3.1. To the extent there is a conflict between the definitions in this Agreement and the definitions in the Bill Williams Agreements or Bill Williams Act, the definitions in this Agreement control as to the interpretation and application of this Agreement. All other

words shall have their ordinary meaning. All references to defined terms in the singular shall also include the plural and vice versa. To the extent there is any conflict between the provisions of this Agreement and the Act, the provisions of the Act shall control.

#### 12.14 STATE CAPACITY

12.14.1 Execution of this Agreement by the Governor of the State constitutes the commitment of the State to assist in carrying out the provisions of this Agreement to the extent it may do so in accordance with its responsibility and authority under the law. Execution of this Agreement by the Governor of the State also constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 5.4, 10.5, and 12.5.

12.14.2 Nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its trust lands under the Enabling Act.

#### 12.15 ANTI-DEFICIENCY

12.15.1 United States. The United States shall not be liable for any failure to carry out any obligation or activity authorized by the Act (including all titles and all agreements or exhibits ratified or confirmed by this Act) if-

- (1) Adequate appropriations are not provided expressly by Congress to carry out the purposes of this Act; or
- (2) There are not enough monies available to carry out this Act in the Lower Basin Development Fund established by Section 403 of the Colorado Basin Project Act (43 U.S.C. § 1543).

12.15.2 State. The expenditure or advance of any money or the performance of any obligation by the State, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds. No liability shall accrue to the State, in any of its capacities, in the event funds are not appropriated.

#### 12.16 NOTICE OF A.R.S. § 38-511



Notice is hereby given of the provisions of A.R.S. § 38-511. By this reference, the provisions of said statute are incorporated herein to the extent they may be applicable to agreements of the nature of this Agreement under the laws of the State.

#### 12.17 DISPUTE RESOLUTION

The Parties agree to engage in alternative dispute resolution procedures in accordance with state and federal statutes, regulations or court orders, including but not limited to 5 U.S.C. § 575 and A.R.S. § 12-1518. Nothing in this Subparagraph shall be interpreted as requiring the Parties to participate in alternative dispute resolution, including arbitration.

#### 12.18 NOTICES

All notices required to be given hereunder shall be in writing and may be given in person or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight hours after deposit in the United States mail addressed as shown on Exhibit 12.18 or to such other address as such Party may from time to time designate in writing. Any communication by facsimile transmission or electronic mail by one Party to another shall not constitute effective notice as is required by this Subparagraph, but shall be deemed to be given as a courtesy only.

#### 12.19 RECLAMATION REFORM ACT

The Reclamation Reform Act of 1982 (43 U.S.C. § 390aa et seq.) and any other acreage limitation or full-cost pricing provision of Federal law shall not apply to any person, entity, or tract of land solely on the basis of (1) receipt of any benefit under the Act; (2) execution or performance of this Agreement; or (3) the use, storage, delivery, lease, or Exchange of CAP water.

#### 13.0 SIGNATURES

**IN WITNESS WHEREOF**, the Parties have executed this Agreement dated as of the day and year first above written.

**THE HUALAPAI TRIBE**

By: \_\_\_\_\_  
Chairman

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Hualapai Tribe

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Secretary of the Interior

Dated: \_\_\_\_\_

**THE STATE OF ARIZONA**

By: \_\_\_\_\_  
Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Central Arizona Water Conservation District

**SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Salt River Project Agricultural Improvement and Power District

**SALT RIVER VALLEY WATER USERS' ASSOCIATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Salt River Valley Water Users' Association

**FREEMPORT MINERALS CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Freeport Minerals Corporation

**114TH CONGRESS**

\_\_\_ **SESSION**

**H.R./S. XXXX**

To approve the settlement of water rights claims of the Hualapai Tribe, and certain allottees, in the State of Arizona, to authorize construction of a water project relating to the water rights claims, and for other purposes.

-----  
IN THE HOUSE OF REPRESENTATIVES/SENATE OF THE UNITED STATES  
-----

**A BILL**

To approve the settlement of water rights claims of the Hualapai Tribe, and certain allottees, in the State of Arizona, to authorize construction of a water project relating to the water rights claims, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS**

4 (a) Short Title.—This Act may be cited as the “Hualapai Tribe Water Rights Settlement  
5 Act of 2016”.

6 (b) Table of Contents.—The table of contents of this Act is as follows:

7 Sec. 1. Short title; table of contents.

8 Sec. 2. Purposes.

9 Sec. 3. Definitions.

10 **TITLE I—HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT**

11 Sec. 101. Ratification and execution of the Hualapai Tribe water rights settlement  
12 agreement.

13 Sec. 102. Water rights.

14 Sec. 103. Authorization for construction of municipal, domestic, commercial, and industrial  
15 water project; funding.

16 Sec. 104. Waivers, releases, and retentions of claims.

17 Sec. 105. Satisfaction of water rights and other benefits.

18 Sec. 106. Lands added to Hualapai Reservation

19 Sec. 107. After-acquired trust land.

20 Sec. 108. Administration.

1

2 Sec. 109. Reallocation of CAP NIA priority water; firming; water delivery contract;  
3 Colorado River accounting.

4 Sec. 110. Enforceability date.

5 **SEC. 2. PURPOSES.**

6 The purposes of this Act are—

7 (1) to resolve, fully and finally any and all claims to rights to water in Arizona ,  
8 including the Verde River, the Bill Williams River and the Colorado River, of—

9 (A) the Hualapai Tribe, on behalf of itself and the members of the Hualapai  
10 Tribe;

11 (B) the United States, acting as trustee for the Hualapai Tribe, the members of  
12 the Hualapai Tribe, and allottees;

13 (2) to authorize, ratify, and confirm the Hualapai Tribe water rights settlement  
14 agreement entered into among the Hualapai Tribe, the United States, the State of  
15 Arizona, and others, to the extent that the Agreement is consistent with this Act;

16 (3) to authorize and direct the Secretary to execute and perform the duties and  
17 obligations of the Secretary under the Hualapai Tribe water rights settlement agreement  
18 and this Act; and

19 (4) to authorize funds necessary for implementation of the settlement agreement and  
20 this Act.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) 1947 Judgment.—The term “1947 Judgment” means the Judgment and the  
24 Stipulation and Agreement, and exhibits thereto, entered on March 13, 1947, in the  
25 case styled *United States of America v. Santa Fe Pacific Railroad Co., and The*  
26 *Atchison, Topeka and Santa Fe Railway Co.*, No. E-190, United States District Court  
27 for the District of Arizona, Prescott Division, attached to the Hualapai Tribe water  
28 rights settlement agreement as Exhibit 3.1.1

29 (2) AFY.—The term “afy” means acre-feet per year.

30 (3) ALLOTMENTS.—The term “allotments” means the four off-reservation parcels  
31 held in trust by the United States for individual Indians in the Big Sandy River basin in  
32 Mohave County, Arizona, under the patents numbered 1039995, 1039996, 1039997,  
33 and 1019494.

34 (4) ALLOTTEE.—The term “allottee” means any Indian owner of an allotment.

35 (5) AVAILABLE CAP SUPPLY.—The term “available CAP supply” means, for any  
36 given year—

37 (A) all fourth priority water available for delivery through the CAP system;

38 (B) water available from CAP dams and reservoirs other than Modified

1 Roosevelt Dam; and

2 (C) return flows captured by the Secretary for CAP use.

3 ~~(6) BILL WILLIAMS RIVER PHASE 2 WATER RIGHTS SETTLEMENT AGREEMENT. The~~  
4 ~~term “Bill Williams River phase 2 water rights settlement agreement” means the~~  
5 ~~agreement of that name that is attached to and incorporated into the Hualapai Tribe~~  
6 ~~water rights settlement agreement as exhibit 4.3.3. Add definition of the Bill~~  
7 ~~WILLIAMS RIVER PHASE 2 WATER RIGHTS SETTLEMENT AGREEMENT and a reference to a~~  
8 ~~new Exhibit 4.3.3 – Pending Federal Review!~~

Commented [A1]: Definition previously circulated by Sandy Fabritz-Whitney on 4/20/16.

9 (7) BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT AGREEMENTS.—The term  
10 “Bill Williams River water rights settlement agreements” or “Bill Williams  
11 agreements” means the Amended and Restated Big Sandy River-Planet Ranch Water  
12 Rights Settlement Agreement and the Amended and Restated Hualapai Tribe Bill  
13 Williams River Water Rights Settlement Agreement, including all exhibits thereto.  
14 Copies of the Bill Williams agreements without the exhibits are attached to the  
15 Hualapai Tribe water rights settlement agreement as Exhibit 3.1.11.

16 (8) BILL WILLIAMS WATER RIGHTS SETTLEMENT ACT OF 2014. --- The term Bill  
17 Williams Water Rights Settlement Agreement Act of 2014 or “Bill Williams act”  
18 means the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113-223,  
19 128 Stat. 2096-2110, attached to the Hualapai Tribe water rights settlement agreement  
20 as Exhibit 3.1.9.

21 (9) CAP CONTRACT.—The term “CAP contract” means a long-term contract, as that  
22 term is used in the CAP repayment stipulation, with the United States for delivery of  
23 CAP water through the CAP system.

24 (10) CAP CONTRACTOR.—The term “CAP contractor” means a person or entity that  
25 has entered into a long-term contract, as that term is used in the CAP repayment  
26 stipulation, with the United States for delivery of CAP water through the CAP system.  
27 The Hualapai Tribe shall be a CAP contractor.

28 (11) CAP FIXED OM&R CHARGE.—The term “CAP fixed OM&R charge” means  
29 “Fixed OM&R Charge”, as that term is defined in the CAP repayment stipulation.

30 (12) CAP M&I PRIORITY WATER.—The term “CAP M&I priority water” means the  
31 CAP water that has a municipal and industrial delivery priority under the CAP  
32 repayment contract.

33 (13) CAP NIA PRIORITY WATER.—The term “CAP NIA priority water” means the  
34 CAP water deliverable under a CAP contract or CAP subcontract providing for the  
35 delivery of non-Indian agricultural priority water.

36 (14) CAP OPERATING AGENCY.—

37 (A) IN GENERAL.—The term “CAP operating agency” means the entity or  
38 entities authorized to assume responsibility for the care, operation, maintenance  
39 and replacement of the CAP system.

40 (B) ADMINISTRATION.—As of the date of enactment of this Act, the “CAP  
41 operating agency” is the Central Arizona Water Conservation District.

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1 (15) CAP PUMPING ENERGY CHARGE.—The term “CAP pumping energy charge”  
2 means “Pumping Energy Charge”, as that term is defined in the CAP repayment  
3 stipulation.

4 (16) CAP REPAYMENT CONTRACT.—The term “CAP repayment contract” means—

5 (A) the contract between the United States and CAWCD for Delivery of Water and  
6 Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and  
7 dated December 1, 1988; and

8 (B) any amendment to, or revision of, that contract.

9 (17) CAP REPAYMENT STIPULATION.—The term “CAP repayment stipulation” means  
10 the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to  
11 those documents), entered on November 21, 2007, in the United States District Court  
12 for the District of Arizona in the consolidated civil action styled *Central Arizona Water*  
13 *Conservation District v. United States, et al.*, and numbered CIV 95–625–TUC–WDB  
14 (EHC) and CIV 95–1720–PHX–EHC.

15 (18) CAP SUBCONTRACT.—The term “CAP subcontract” means a long-term  
16 subcontract, as that term is used in the CAP repayment stipulation, with the United  
17 States and the Central Arizona Water Conservation District for delivery of CAP water  
18 through the CAP system.

19 (19) CAP SUBCONTRACTOR.—The term “CAP subcontractor” means a person or  
20 entity that has entered into a long-term subcontract, as that term is used in the CAP  
21 repayment stipulation, with the United States and the Central Arizona Water  
22 Conservation District for delivery of CAP water through the CAP System.

23 (20) CAP SYSTEM.—The term “CAP system” means—

24 (A) the Mark Wilmer Pumping Plant;

25 (B) the Hayden-Rhodes Aqueduct;

26 (C) the Fannin-McFarland Aqueduct;

27 (D) the Tucson Aqueduct;

28 (E) any pumping plant or appurtenant works of a feature described in any of  
29 subparagraphs (A) through (D); and

30 (F) any extension of, addition to, or replacement for a feature described in any of  
31 subparagraphs (A) through (E).

32 (21) CAP WATER.—The term “CAP water” means “Project Water”, as that term is  
33 defined in the CAP repayment stipulation.

34 (22) CENTRAL ARIZONA PROJECT OR CAP.—The term “Central Arizona Project” or  
35 “CAP” means the reclamation project authorized and constructed by the United States  
36 in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et  
37 seq.).

38 (23) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term “Central  
39 Arizona Water Conservation District” means the political subdivision of the State of



1 Arizona that is the contractor under the CAP repayment contract.

2 (24) COLORADO RIVER COMPACT.—The term “Colorado River Compact” means the  
3 Colorado River Compact of 1922, as ratified and reprinted in article 2 of chapter 7 of  
4 title 45, Arizona Revised Statutes.

5 (25) COLORADO RIVER WATER.— The term “Colorado River water” means the waters  
6 of the Colorado River within the United States, including: (1) the waters of the  
7 reservoirs thereon; (2) waters of all tributaries to the Colorado River within the United  
8 States, other than tributaries located within Arizona; (3) all water beneath the surface of  
9 the Earth that is hydraulically connected to the Colorado River within the United  
10 States; and (4) all water beneath the surface of the Earth that is hydraulically connected  
11 to tributaries to the Colorado River within the United States, other than tributaries  
12 located within Arizona. The definition of Colorado River Water in this Act and any  
13 definition of the term in the Hualapai Tribe water rights settlement agreement shall  
14 only be used for purposes of interpreting this Act and the Hualapai Tribe water rights  
15 settlement agreement, as applicable, and shall not be used for any interpretation of any  
16 other provision of applicable federal law including for example, the Colorado River  
17 Compact, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, the Colorado  
18 River Basin Project Act, 43 U.S.C. § 1501, or any contracts or agreements entered into  
19 pursuant thereto.

20 (26) COLORADO RIVER WATER ENTITLEMENT OR ENTITLEMENT.— The term  
21 “Colorado River water entitlement” or “entitlement” means the right or authorization to  
22 use Colorado River Water in Arizona, but shall not include the Tribe’s right to use  
23 Hualapai Tribe CAP Water pursuant to the Hualapai Tribe Water Delivery Contract.

24 (27) COMMISSIONER.—The term “Commissioner” means the Commissioner of the  
25 Bureau of Reclamation.

26 (28) DIVERSION.—The term “diversion” means the act of diverting.

27 (29) DIVERT OR DIVERTING OR DIVERTED.—The term “divert” or “diverting” or  
28 “diverted” means to receive, withdraw or develop and produce or capture water by  
29 means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery,  
30 conduit, well, pump, turnout, dam or other mechanical device, or any other act of man.

31 (30) EFFLUENT.— The term “effluent” means water that has been used in Arizona  
32 for domestic, municipal or industrial purposes and that is available for reuse for any  
33 purpose, whether or not the water has been treated to improve its quality, but water  
34 shall not become effluent solely as a result of having been used for hydropower  
35 generation.

36 (31) ENFORCEABILITY DATE.—The term “enforceability date” means the date  
37 described in section 110.

38 (32) EXCHANGE. – The term “exchange” means a trade between one or more persons  
39 of any water for any other water, if each party has a right to claim to use the water it  
40 gives in trade. This definition applies whether or not water is traded in equal amounts  
41 or other consideration is included in the trade.

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1 (33) **FOURTH PRIORITY WATER.**—The term “fourth priority water” means Colorado  
2 River water that is available for delivery in the State for satisfaction of entitlements—

3 (A) pursuant to contracts, Secretarial reservations, perfected rights, and other  
4 arrangements between the United States and water users in the State entered into  
5 or established subsequent to September 30, 1968, for use on Federal, State, or  
6 privately owned lands in the State, in a total quantity that does not exceed 164,652  
7 acre-feet of diversions annually; and

8 (B) after first providing for the delivery of water under section 304(e) of the  
9 Colorado River Basin Project Act (43 U.S.C. 1524(e)), pursuant to the CAP  
10 repayment contract, for the delivery of Colorado River water for the CAP,  
11 including use of Colorado River water on Indian lands.

12 (34) **FREEPORT MINERALS CORPORATION OR FREEPORT.**—The term “Freeport  
13 Minerals Corporation” or “Freeport” means the Delaware corporation of that name, and  
14 all Freeport subsidiaries, affiliates, successors, and assigns, such as Byner Cattle  
15 Company, a Nevada corporation.

16 (35) **GILA RIVER ADJUDICATION.**—The term “Gila River adjudication” means that  
17 action pending in the Superior Court of the State of Arizona in and for the County of  
18 Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The*  
19 *Gila River System and Source*, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San  
20 Pedro) (Consolidated).

21 (36) **GILA RIVER ADJUDICATION COURT.**—The term “Gila River adjudication court”  
22 means the Superior Court of the State of Arizona in and for the County of Maricopa,  
23 exercising jurisdiction over the Gila River adjudication.

24 (37) **GILA RIVER ADJUDICATION DECREE.**—The term “Gila River adjudication decree”  
25 means the judgment or decree entered by the Gila River adjudication court, which shall  
26 be in substantially the same form as the form of judgment attached to the Hualapai  
27 Tribe water rights settlement agreement as Exhibit 3.1.43.

28 (38) **GROUNDWATER.**—The term “groundwater” means all water beneath the surface  
29 of the earth within Arizona that is not—

30 (A) surface water;

31 (B) effluent; or

32 (C) Colorado River water.

33 (39) **HUALAPAI FEE LAND.**—The term “Hualapai fee land” means land, other than  
34 Hualapai trust land, that—

35 (A) is located in Arizona;

36 (B) is located outside the exterior boundaries of the Hualapai Reservation or  
37 Hualapai trust land; and

38 (C) as of the enforceability date, is owned by the Hualapai Tribe, including  
39 ownership through a related entity.

1 (40) HUALAPAI LAND.—The term “Hualapai land” means—

2 (A) the Hualapai Reservation;

3 (B) Hualapai trust land; and

4 (C) Hualapai fee land.

5 (41) HUALAPAI OM&R TRUST ACCOUNT.—The term “Hualapai OM&R Trust  
6 Account” means the account created in the Treasury of the United States pursuant to  
7 section 103(c).

8 (42) HUALAPAI RESERVATION.—The term “Hualapai Reservation” means the lands  
9 within the exterior boundaries of the Hualapai Reservation, including:

10 (A) all land withdrawn by the Executive Order dated January 4, 1883, as modified  
11 by the May 28, 1942 Order from the Secretary, in accordance with the Act of  
12 February 20, 1925;

13 (B) the land identified by the Executive Orders of December 22, 1898, May 14,  
14 1900, and June 2, 1911; and

15 (C) those lands added to the Hualapai Reservation by section 106 of this Act.

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

20 (44) HUALAPAI TRIBE CAP WATER.—The term “Hualapai Tribe CAP water” means  
21 the 4,000 afy of the CAP NIA priority water that was previously allocated to non-  
22 Indian agricultural entities, and was retained by the Secretary for reallocation to  
23 Arizona Indian tribes pursuant to section 104(a)(1)(A)(iii) of the Arizona Water  
24 Settlements Act (Public Law 108–451; 118 Stat. 3487) and reallocated to the Hualapai  
25 Tribe pursuant to section 109(a) of this Act.

26 (45) HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT.—

27 (A) IN GENERAL.—The term “Hualapai Tribe water rights settlement  
28 agreement” means the agreement, including exhibits, entitled the “Hualapai Tribe  
29 Water Rights Settlement Agreement”.

30 (B) INCLUSIONS.—The term “Hualapai Tribe water rights settlement  
31 agreement” includes—

32 (i) any amendments necessary to make the Hualapai Tribe water rights  
33 settlement agreement consistent with this Act; and

34 (ii) any other amendments approved by the parties to the Hualapai Tribe  
35 water rights settlement agreement and the Secretary.

36 (46) HUALAPAI TRIBE WATER DELIVERY CONTRACT.—The term “Hualapai Tribe  
37 water delivery contract” means the contract entered into pursuant to the Hualapai Tribe  
38 water rights settlement agreement and section 109(c) of this Act for the delivery of  
39 Hualapai Tribe CAP water the form of which is attached to the Hualapai Tribe water

1 rights settlement agreement as Exhibit 3.1.51.

2 (47) HUALAPAI TRUST LAND.—The term “Hualapai trust land” means land, other  
3 than Hualapai fee land, that—

4 (A) is located in Arizona;

5 (B) is located outside the exterior boundaries of the Hualapai Reservation; and

6 (C) as of the enforceability date, is held in trust by the United States for the  
7 benefit of the Hualapai Tribe.

8 (48) HUALAPAI WATER PROJECT.—The term “Hualapai Water Project” or “Water  
9 Project” means the project constructed in accordance with section 103.

10 (49) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in  
11 section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.  
12 450b).

13 (50) INJURY TO WATER RIGHTS.

14 (A) IN GENERAL. – The term “injury to water rights” means any interference  
15 with, diminution of, or deprivation of, a water right under Federal, State, or other law.

16 (B) EXCLUSION.—The term “injury to water rights” does not include any  
17 injury to water quality.

18 (51) LOWER BASIN.—The term “lower basin” has the meaning given the term in  
19 article II(g) of the Colorado River Compact.

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

23 (53) MEMBER.—The term “member” or “members” means any person or persons  
24 duly enrolled as a member or members of the Hualapai Tribe.

25 (54) OM&R.—The term “OM&R” means—

26 (A) any recurring or ongoing activity associated with the day-to-day  
27 operation of a project;

28 (B) any activity relating to scheduled or unscheduled maintenance of a  
29 project; and

30 (C) any activity related to replacing a feature of a project.

31 (55) Parcel 1. – The term “Parcel 1” means the parcel of land that –

32 (A) is depicted as 3 contiguous allotments identified as 1A, 1B, and 1C on  
33 the map attached to the Hualapai Tribe water rights settlement agreement as  
34 Exhibit 3.1.6; and

35 (B) is held in trust for certain allottees.

36 (56) Parcel 2. – The term “Parcel 2” means the parcel of land that –

37 (A) is depicted on the map attached to the Hualapai Tribe water rights

1 settlement agreement as Exhibit 3.1.6; and

2 (B) is held in trust for certain allottees.

3 (57) Parcel 3. – The term “Parcel 3” means the parcel of land that –

4 (A) is depicted on the map attached to the Hualapai Tribe water rights  
5 settlement agreement as Exhibit 3.1.6;

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

7 (C) is part of the Hualapai Reservation pursuant to Executive Order No.  
8 1368 of June 2, 1911.

9 (58) PARTY.—The term “party” means an individual or entity that is a signatory to  
10 the Hualapai Tribe water rights settlement agreement.

11 (59) PERSON.—

12 (A) IN GENERAL.—The term “person” means—

13 (i) an individual;

14 (ii) a public or private corporation;

15 (iii) a company;

16 (iv) a partnership;

17 (v) a joint venture;

18 (vi) a firm;

19 (vii) an association;

20 (viii) a society;

21 (ix) an estate or trust;

22 (x) a private organization or enterprise;

23 (xi) the United States;

24 (xii) any Indian tribe;

25 (xiii) a state, territory, or country;

26 (xiv) a governmental entity; and

27 (xv) a political subdivision or municipal corporation organized under or  
28 subject to the constitution and laws of the State.

29 (B) INCLUSIONS.—The term “person” includes an officer, director, agent,  
30 insurer, representative, employee, attorney, assign, subsidiary, affiliate, enterprise,  
31 legal representative, any predecessor and successor in interest and any heir of a  
32 predecessor and successor in interest of a person.

33 (60) PRECONSTRUCTION ACTIVITY.—

34 (A) IN GENERAL.—The term “preconstruction activity” means the work  
35 associated with the preplanning, planning, and design phases of construction, as

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1 those terms are defined in paragraphs (1) through (3) of section 900.112(a) of title  
2 25, Code of Federal Regulations (or successor regulation).

3 (B) INCLUSION.—The term “preconstruction activity” includes activities  
4 described in section 900.112(b) of title 25, Code of Federal Regulations (or  
5 successor regulation).

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

7 (62) STATE.—The term “State” means the State of Arizona.

8 (63) SURFACE WATER.—The term “surface water” means all water in Arizona that is  
9 appropriable under State law.

10 (64) WATER.—The term “water”, when used without a modifying adjective,  
11 means—

12 (A) groundwater;

13 (B) surface water;

14 (C) effluent; or

15 (D) Colorado River water.

16 (65) WATER RIGHT.—The term “water right” means any right in or to groundwater,  
17 surface water, effluent or Colorado River water under Federal, State, or other law.

18 **TITLE I—HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT**

19 **SEC. 101. RATIFICATION AND EXECUTION OF THE HUALAPAI TRIBE**  
20 **WATER RIGHTS SETTLEMENT AGREEMENT.**

21 (a) Ratification –

22 (1) IN GENERAL.—Except as modified by this Act and to the extent that the Hualapai  
23 Tribe water rights settlement agreement does not conflict with this Act, the Hualapai Tribe  
24 water rights settlement agreement is authorized, ratified, and confirmed.

25 (2) AMENDMENTS TO HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT.—If an  
26 amendment to the Hualapai Tribe water rights settlement agreement is executed in  
27 accordance with this Act to make the Hualapai Tribe water rights settlement agreement  
28 consistent with this Act, the amendment is authorized, ratified, and confirmed, to the extent  
29 consistent with this Act.

30 (b) EXECUTION.—

31 (1) In General. -- To the extent the Hualapai Tribe water rights settlement agreement  
32 does not conflict with this Act, the Secretary shall execute the Hualapai Tribe water rights  
33 settlement agreement, including all exhibits to, or parts of, the Hualapai Tribe water rights  
34 settlement agreement requiring the signature of the Secretary.

35 (2) Modifications.—Nothing in this Act precludes the Secretary from approving any  
36 modification to an appendix or exhibit to the Hualapai Tribe water rights settlement  
37 agreement that is consistent with this Act, to the extent that the modification does not  
38 otherwise require congressional approval under section 2116 of the Revised Statutes (25

1 U.S.C. 177) or any other applicable provision of Federal law.

2 (c) Environmental Compliance.---

3 (1) In General.--- The Secretary shall carry out all Federal compliance activities  
4 necessary to implement the Hualapai Tribe water rights settlement agreement and this Act  
5 including activities necessary to comply with all applicable provisions of –

6 (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

7 (B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

8 (C) all other applicable environmental laws and regulations.

9 (2) Effect of Execution.—

10 (A) In General. — The execution of the Hualapai Tribe water rights  
11 settlement agreement by the Secretary under this section shall not constitute a major action  
12 for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

13 (B) Compliance. — The Secretary shall carry out all Federal compliance  
14 activities necessary to implement the Hualapai Tribe water rights settlement agreement and  
15 this Act.

16 **SEC. 102. WATER RIGHTS.**

17 (a) WATER RIGHTS TO BE HELD IN TRUST. –

18 (1) The United States shall hold the following water rights in trust for the benefit  
19 of the Hualapai Tribe:

20 (A) The water rights for the Hualapai Reservation described in  
21 Subparagraph 4.2 of the Hualapai Tribe water rights settlement agreement;

22 (B) The water rights for Hualapai Trust Land described in Subparagraph 4.4  
23 of the Hualapai Tribe water rights settlement agreement;

24 (C) The water rights described in section 107(b) for any land taken into trust  
25 by the United States for the benefit of the Hualapai Tribe after the enforceability  
26 date in compliance with section 107; and

27 (D) All Hualapai Tribe CAP Water.

28 (2) The United States shall hold in trust for the benefit of the allottees all water  
29 rights for the allotments as described in subparagraph 4.3.2 of the Hualapai Tribe  
30 water rights settlement agreement.

31 (b) FORFEITURE AND ABANDONMENT— The following water rights shall not be subject to  
32 loss through non-use, forfeiture, abandonment or other operation of law:

33 (1) The water rights for the Hualapai Reservation described in Subparagraph 4.2 of  
34 the Hualapai Tribe water rights settlement agreement;

35 (2) The water rights for Hualapai Trust Land described in Subparagraph 4.4 of the  
36 Hualapai Tribe water rights settlement agreement;

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1 (3) The water rights described in section 107(b) for any lands described in section  
2 107(c) that are taken into trust by the United States for the benefit of the Hualapai  
3 Tribe after the enforceability date; and

4 (4) Any Colorado River water entitlement purchased by the Hualapai Tribe wholly  
5 or in substantial part with monies contributed by Freeport to the Economic  
6 Development Fund as provided in Section 8.1 of the Amended and Restated Hualapai  
7 Tribe Bill Williams River Settlement Agreement.

8 (c) ALIENATION.— Any Colorado River water entitlement purchased by the Hualapai  
9 Tribe wholly or in substantial part with monies contributed by Freeport to the Economic  
10 Development Fund as provided in Section 8.1 of the Amended and Restated Hualapai Tribe  
11 Bill Williams River Settlement Agreement shall be restricted against permanent alienation  
12 by the Tribe.

13 (d) HUALAPAI TRIBE CAP WATER.—The Hualapai Tribe shall have the right to divert, use  
14 and store the Hualapai Tribe CAP water as provided in section 109.

15 (e) COLORADO RIVER WATER ENTITLEMENTS.—

16 (1) The Hualapai Tribe shall have the right to use any Colorado River water  
17 entitlement purchased by or donated to the Hualapai Tribe at the location to which the  
18 entitlement is appurtenant when the entitlement is purchased or donated. The  
19 Hualapai Tribe may transfer the entitlement for use or storage at another location  
20 within the State, including the Hualapai Reservation, or may lease the entitlement to a  
21 water user within the State, in compliance with the Hualapai Tribe water rights  
22 settlement agreement and all applicable federal and State laws and policies governing  
23 the transfer of Colorado River water entitlements within the State. The Hualapai  
24 Tribe, or any person who leases the entitlement from the Hualapai Tribe, may  
25 transport Colorado River Water available pursuant to the entitlement through the  
26 Central Arizona Project in compliance with all laws and policies of the United States  
27 and the Central Arizona Water Conservation District governing the use of the Central  
28 Arizona Project to transport water other than CAP Water.

29 (2) Subject to paragraph (1), the Hualapai Tribe may store Colorado River water  
30 available pursuant to any Colorado River Water entitlement purchased by or donated  
31 to the Hualapai Tribe at underground storage facilities or groundwater savings  
32 facilities located within the State in accordance with State law. The Hualapai Tribe  
33 may assign any long-term storage credits accrued as a result of storage under this  
34 paragraph in accordance with State law.

35 (f) USE OFF RESERVATION.—No water rights to groundwater under the Hualapai  
36 Reservation or under the Hualapai trust land, or to surface water on the Hualapai  
37 Reservation or on Hualapai trust land may be sold, leased, transferred or used outside the  
38 boundaries of the Hualapai Reservation or Hualapai trust land, other than pursuant to an  
39 exchange.

40 **SEC. 103. AUTHORIZATION FOR CONSTRUCTION OF MUNICIPAL,**  
41 **DOMESTIC, COMMERCIAL, AND INDUSTRIAL WATER PROJECT; FUNDING.**

42 (a) HUALAPAI WATER PROJECT.—



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1 (1) IN GENERAL.—Subject to the availability of appropriations, the Secretary, acting  
2 through the Commissioner of Reclamation, shall plan, design, and construct the  
3 Hualapai Water Project, which shall be designed to divert, treat and convey not less  
4 than 3,414 afy of water from the Colorado River for municipal, commercial and  
5 industrial uses on the Hualapai Reservation. Nothing in this Act is intended to limit the  
6 Tribe’s right to use its water anywhere on the Hualapai Reservation.

7 (2) LEAD AGENCY.—The Bureau of Reclamation shall serve as the lead agency with  
8 respect to any activity to plan, design and construct the water diversion and delivery  
9 features of the Hualapai Water Project. The Bureau of Indian Affairs, National Park  
10 Service, and Fish and Wildlife Service shall serve as cooperating agencies.

11 (3) SCOPE.—

12 (A) IN GENERAL.—The scope of the planning, design, and construction  
13 activities for the Hualapai Water Project shall be as generally described in the  
14 document prepared by DOWL HKM entitled “Appraisal Design Report (October  
15 2014)”, subject to the condition that, before commencing final design and  
16 construction activities, the Secretary shall—

- 17 (1) review the design of the proposed construction;  
18 (2) perform value engineering analyses; and  
19 (3) perform appropriate Federal compliance activities.

20 The Hualapai Water Project shall be capable of delivering 3,414 afy of water from  
21 the Colorado River to the Reservation and shall include all facilities and  
22 appurtenant items necessary to divert, store, treat and deliver water for municipal,  
23 commercial, and industrial uses on the Hualapai Reservation.

24 (B) NEGOTIATIONS WITH THE HUALAPAI TRIBE.—On the basis of the review  
25 described in paragraph (A)(1), the Secretary shall periodically negotiate and  
26 reach agreement with the Hualapai Tribe regarding any appropriate changes,  
27 if any, to the final design—

- 28 (I) to ensure that the final design meets applicable industry standards;  
29 (II) to improve the cost-effectiveness of the delivery of Colorado  
30 River Water; and  
31 (III) to ensure the Hualapai Water Project may be constructed using  
32 only the amounts made available under subsection (b)(2).

33 (C) MINIMIZE OM&R COSTS.—To the greatest extent feasible, the  
34 Hualapai Water Project shall be designed and constructed to minimize  
35 OM&R costs.

36 (4) APPLICABILITY OF THE ISDEAA.—At the request of the Hualapai Tribe and in  
37 accordance with the Indian Self-Determination and Education Assistance Act (25  
38 U.S.C. 450 et seq.), the Secretary shall enter into one or more agreements with the  
39 Hualapai Tribe to carry out this section.

40 (5) OPERATION AND MAINTENANCE.—

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1 (A) Consistent with subsection (c) and subject to the availability of  
2 appropriations, the Secretary, acting through the Commissioner and in cooperation  
3 with the Hualapai Tribe, shall operate, maintain, and replace the Hualapai Water  
4 Project until the date on which title to the Hualapai Water Project is transferred to  
5 the Hualapai Tribe pursuant to subsection (a)(6).

6 (B) There are authorized to be appropriated to the Secretary \$5,000,000 to be  
7 used by the Secretary to carry out the activities described in subsection  
8 103(a)(5)(A), to remain available until expended. Any funds that remain  
9 unexpended on the date on which title to the Hualapai Water Project is transferred  
10 to the Hualapai Tribe pursuant to subsection (a)(6) shall revert to the Treasury. The  
11 Secretary shall not use any amounts from the Hualapai Water Project Account  
12 described in subsection 103(b)(1) or the Hualapai OM&R Trust Account described  
13 in subsection 103(c)(1) to carry out the activities described in subsection  
14 103(a)(5)(A).

15 (6) TITLE TO HUALAPAI WATER PROJECT.—

16 (A) IN GENERAL.—The Secretary shall convey to the Hualapai Tribe title to the  
17 Hualapai Water Project on the date on which the Secretary issues a notice of  
18 substantial completion that—

19 (i) the infrastructure constructed is capable of storing, diverting, treating,  
20 transmitting, and distributing a supply of water as generally set forth in the  
21 final project design described in paragraph (3); and

22 (ii) the Secretary has consulted with the Hualapai Tribe regarding the  
23 proposed finding that the respective Hualapai Water Project is substantially  
24 complete.

25 (B) LIMITATION ON LIABILITY.—Effective beginning on the date on which the  
26 Secretary transfers to the Hualapai Tribe title to the Hualapai Water Project under  
27 subparagraph (A), the United States shall not be held liable by any court for  
28 damages arising out of any act, omission, or occurrence relating to the facilities  
29 transferred, other than damages caused by an intentional act or an act of  
30 negligence committed by the United States, or by employees or agents of the  
31 United States, prior to the date on which the Secretary transfers title to the  
32 Hualapai Water Project to the Hualapai Tribe.

33 (C) OM&R OBLIGATION OF THE UNITED STATES AFTER CONVEYANCE.—The  
34 United States shall have no obligation to pay for the operation, maintenance or  
35 replacement costs of the Hualapai Water Project beginning on the date on which  
36 title to the Hualapai Water Project is transferred to the Hualapai Tribe.

37 (7) TECHNICAL ASSISTANCE.—

38 (A) Subject to the availability of appropriations, the Secretary shall provide  
39 technical assistance, including operation and management training, to the Hualapai  
40 Tribe to prepare the Hualapai Tribe for the operation of the Hualapai Water Project.

41 (B) There are authorized to be appropriated to the Secretary \$2,000,000 to be

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1 used by the Secretary to carry out the activities described in subsection 103(a)(7)(A),  
2 to remain available until expended. Any funds that remain unexpended on the date  
3 on which title to the Hualapai Water Project is transferred to the Hualapai Tribe  
4 pursuant to subsection (a)(6) shall revert to the Treasury.

5 (8) PROJECT MANAGEMENT COMMITTEE.—The Secretary shall facilitate the  
6 formation of a project management committee composed of representatives from the  
7 Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, Fish and  
8 Wildlife Service, and the Hualapai Tribe—

9 (A) to review cost factors and budgets for construction, operation, and  
10 maintenance activities for the Hualapai Water Project;

11 (B) to improve management of inherently governmental functions through  
12 enhanced communication; and

13 (C) to seek additional ways to reduce overall costs for the Hualapai Water  
14 Project.

15 (9) AUTHORIZATION TO CONSTRUCT.—

16 (A) IN GENERAL.—The Secretary is authorized to construct the Hualapai Water  
17 Project beginning on the day after the date on which the Secretary publishes in the  
18 Federal Register the statement of findings under section 110.

19 (B) PRECONSTRUCTION ACTIVITIES.—Notwithstanding subparagraph (A), the  
20 Secretary is authorized to use not to exceed \$14,615,500.00 out of the amounts  
21 appropriated and deposited in the Hualapai Water Project Account pursuant to this  
22 section to carry out, prior to the enforceability date, preconstruction activities for  
23 the Hualapai Water Project and to carry out necessary environmental studies for  
24 such project.

25 (b) HUALAPAI WATER PROJECT ACCOUNT.—

26 (1) ESTABLISHMENT.—There is established in the Treasury of the United States an  
27 account, to be known as the “Hualapai Water Project Account”, to be administered by  
28 the Secretary, consisting of the amounts deposited in the account under paragraph (2),  
29 together with any interest accrued by those amounts, for use in constructing the  
30 Hualapai Water Project.

31 (2) FUNDING; AUTHORIZATION OF APPROPRIATIONS.—

32 (A) IN GENERAL.—Subject to subparagraph (B), there are authorized to be  
33 appropriated to the Secretary for deposit in the Hualapai Water Project Account  
34 \$135,900,000.00, to remain available until expended

35 (B) FLUCTUATION IN DEVELOPMENT COSTS.—The amount authorized to be  
36 appropriated under subparagraph (A) and deposited in the Hualapai Water Project  
37 Account shall be increased or decreased, as appropriate, by such amounts as may  
38 be justified by reason of ordinary fluctuations in development costs occurring  
39 after February 2016, as indicated by engineering cost indices applicable to the  
40 type of construction involved, until the Secretary declares that the Hualapai Water  
41 Project is substantially complete.

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1 (C) NO REIMBURSEMENT.—The Secretary shall not be reimbursed by any  
2 entity, including the Hualapai Tribe, for any amounts expended by the Secretary  
3 in carrying out this section.

4 (D) PROJECT EFFICIENCIES.—If the total cost of planning, design, and  
5 construction activities of the Hualapai Water Project results in cost savings and is  
6 less than the amounts authorized to be obligated under this paragraph, the  
7 Secretary, at the request of the Hualapai Tribe, may—

8 (i) use those cost savings to carry out capital improvement projects  
9 associated with the Hualapai Water Project; or

10 (ii) transfer those cost savings to the Hualapai OM&R Trust Account.

11 (3) MANAGEMENT OF ACCOUNT.—

12 (A) IN GENERAL.—The Secretary shall manage the Hualapai Water Project  
13 Account in a manner that is consistent with—

14 (i) the American Indian Trust Fund Management Reform Act of 1994 (25  
15 U.S.C. 4001 et seq.); and

16 (ii) this subsection.

17 (B) INVESTMENTS.—The Secretary shall invest amounts in the Hualapai Water  
18 Project Account in accordance with—

19 (i) the Act of April 1, 1880 (25 U.S.C. 161);

20 (ii) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

21 (iii) obligations of Federal corporations and Federal Government-  
22 sponsored entities, the charter documents of which provide that the  
23 obligations of the entities are lawful investments for federally managed  
24 funds, including—

25 (I) obligations of the United States Postal Service described in section  
26 2005 of title 39, United States Code;

27 (II) bonds and other obligations of the Tennessee Valley Authority  
28 described in section 15d of the Tennessee Valley Authority Act of 1933  
29 (16 U.S.C. 831n-4);

30 (III) mortgages, obligations, or other securities of the Federal Home  
31 Loan Mortgage Corporation described in section 303 of the Federal  
32 Home Loan Mortgage Corporation Act (12 U.S.C. 1452); and

33 (IV) bonds, notes, or debentures of the Commodity Credit  
34 Corporation described in section 4 of the Act of March 8, 1938 (15  
35 U.S.C. 713a-4).

36 (C) CREDITS TO ACCOUNT.—The interest on, and the proceeds from, the sale or  
37 redemption of, any obligations held in the Hualapai Water Project Account shall  
38 be credited to, and form a part of, the account.

1 (4) AVAILABILITY OF AMOUNTS AND INVESTMENT EARNINGS.—

2 (A) IN GENERAL.—Except as provided in section 103(a)(9)(B), amounts  
3 appropriated to and deposited in the Hualapai Water Project Account shall not be  
4 available to the Secretary for expenditure until the date on which the Secretary  
5 publishes in the Federal Register the statement of findings under section 110.

6 (B) INVESTMENT EARNINGS.—Investment earnings under paragraph (3) on  
7 amounts deposited in the Hualapai Water Project Account shall not be available to  
8 the Secretary for expenditure until the date on which the Secretary publishes in the  
9 Federal Register the statement of findings under section 110.

10 (c) HUALAPAI OM&R TRUST ACCOUNT.—

11 (1) ESTABLISHMENT.—There is established in the Treasury of the United States a  
12 trust account, to be known as the “Hualapai OM&R Trust Account”, to be administered  
13 by the Secretary and to be available until expended, consisting of the amounts  
14 deposited in the account under paragraph (2), together with any interest accrued by  
15 those amounts, for the OM&R of the Hualapai Water Project.

16 (2) AUTHORIZATION OF APPROPRIATIONS.—

17 (A) IN GENERAL.—Subject to subparagraph (B) and in addition to the amounts  
18 transferred to the Hualapai Water Project Account pursuant to subsection (b),  
19 there is authorized to be appropriated, deposited, and retained in the Hualapai  
20 OM&R Trust Account, \$32,000,000.00.

21 (B) FLUCTUATION IN COSTS.—The amount authorized to be appropriated under  
22 subparagraph (A) shall be increased or decreased, as appropriate, by such amounts  
23 as may be justified by reason of ordinary fluctuations in costs occurring after  
24 [date], as indicated by applicable engineering cost indices.

25 (3) MANAGEMENT OF ACCOUNT.—

26 (A) IN GENERAL.—The Secretary shall manage the Hualapai OM&R Trust  
27 Account in a manner that is consistent with—

28 (i) the American Indian Trust Fund Management Reform Act of 1994 (25  
29 U.S.C. 4001 et seq.); and

30 (ii) this subsection.

31 (B) INVESTMENTS.—The Secretary shall invest amounts in the Hualapai OM&R  
32 Trust Account in accordance with subsection (a)(3)(B).

33 (4) AVAILABILITY OF AMOUNTS.—All amounts appropriated to and deposited in the  
34 Hualapai OM&R Trust Account, including any investment earnings, shall be made  
35 available to the Hualapai Tribe by the Secretary beginning on the date on which title to  
36 the Hualapai Water Project is transferred to the Hualapai Tribe.

37 (d) All costs incurred by the Secretary in carrying out this section shall be  
38 nonreimbursable.

39 **SEC. 104. WAIVERS, RELEASES, AND RETENTIONS OF CLAIMS.**

1 (a) HUALAPAI TRIBE WAIVERS, RELEASES, AND RETENTIONS OF CLAIMS.—

2 (1) CLAIMS AGAINST THE STATE AND OTHERS.—

3 (A) Except as provided in subparagraph (C), the Tribe, on behalf of itself and  
4 the members of the Tribe (but not members in their capacity as allottees), and the  
5 United States, acting as trustee for the Tribe and the members of the Tribe (but not  
6 members in their capacity as allottees), as part of the performance of the  
7 respective obligations of the Tribe and the United States under the Hualapai Tribe  
8 water rights settlement agreement, shall execute a waiver and release of any  
9 claims against the State (or any agency or political subdivision of the State), and  
10 any other person, entity, corporation or municipal corporation under federal, state  
11 or other law for all:

12 (i) past, present, and future claims for water rights, including rights to  
13 Colorado River water, for Hualapai land, arising from time immemorial and,  
14 thereafter, forever;

15 (ii) past, present, and future claims for water rights, including rights to  
16 Colorado River water, arising from time immemorial and, thereafter, forever, that  
17 are based on aboriginal occupancy of land by the Tribe, the members of the Tribe,  
18 or their predecessors;

19 (iii) past and present claims for injury to water rights, including injury to rights  
20 to Colorado River water, for Hualapai land, arising from time immemorial  
21 through the enforceability date;

22 (iv) past, present, and future claims for injury to water rights, including injury  
23 to rights to Colorado River water, arising from time immemorial and, thereafter,  
24 forever, that are based on aboriginal occupancy of land by the Tribe, the members  
25 of the Tribe, or their predecessors;

26 (v) claims for injury to water rights, including injury to rights to Colorado  
27 River water, arising after the enforceability date for Hualapai land, resulting from  
28 the off-Reservation diversion or use of water in a manner not in violation of the  
29 Hualapai Tribe water rights settlement agreement or state law;

30 (vi) past, present, and future claims arising out of, or relating in any manner to,  
31 the negotiation, execution, or adoption of the Hualapai Tribe water rights  
32 settlement agreement, any judgment or decree approving or incorporating the  
33 Hualapai Tribe water rights settlement agreement, or this Act; and

34 (vii) claims for water rights of the Tribe or United States acting as trustee for  
35 the Tribe and members of the Tribe with respect to Parcel 3 in excess of 300 AFY.

36 (B) EFFECTIVE DATE.—The waiver and release of claims under subparagraph  
37 (A) shall become effective on the enforceability date.

38 (C) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding  
39 the waiver and release under subparagraph (A), the Hualapai Tribe, acting on  
40 behalf of the Tribe and members of the Tribe, and the United States, acting as  
41 trustee for the Tribe and the members of the Tribe (but not members in their  
42 capacity as allottees), shall retain any right—

43 (i) subject to subparagraph 12.7 of the Hualapai Tribe water rights  
44 settlement agreement, to assert claims for injuries to, and seek enforcement  
45 of, the rights of the Tribe under the Hualapai Tribe water rights settlement  
46 agreement or this Act, in any federal or state court of competent jurisdiction;

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1 (ii) to assert claims for injuries to, and seek enforcement of, the rights of  
2 the Tribe under any judgment or decree approving or incorporating the  
3 Hualapai Tribe water rights settlement agreement;

4 (iii) to assert claims for water rights based upon state law or, for lands  
5 owned or acquired by the Hualapai Tribe in fee, as provided in subparagraph  
6 4.8 of the Hualapai Tribe water rights settlement agreement;

7 (iv) to object to any claims for water rights or injury to water rights by or  
8 for any Indian tribe, or the United States on behalf thereof;

9 (v) to assert past, present, or future claims for injury to water rights  
10 against any Indian tribe, or the United States on behalf thereof;

11 (vi) to assert claims for injuries to, and seek enforcement of, the rights of  
12 the Hualapai Tribe under the Bill Williams agreements or the Bill Williams  
13 act, in any federal or state court of competent jurisdiction; and

14 (vii) subject to section 102(e)(1), to assert the rights of the Hualapai Tribe  
15 under any Colorado Water River Entitlement purchased by or donated to the  
16 Tribe.

17 (2) CLAIMS AGAINST THE UNITED STATES.—

18 (A) IN GENERAL.— Except as provided in subparagraph (C), the Hualapai Tribe,  
19 acting on behalf of the Tribe and members of the Hualapai Tribe (but not  
20 members in their capacity as allottees), shall execute a waiver and release of any  
21 claims against the United States (or agencies, officials or employees of the United  
22 States) under federal, State, or other law for all:

23 (a) past, present, and future claims for water rights, including rights to  
24 Colorado River water, for Hualapai land, arising from time immemorial and,  
25 thereafter, forever;

26 (b) past, present, and future claims for water rights, including rights to  
27 Colorado River water, arising from time immemorial and, thereafter, forever,  
28 that are based on aboriginal occupancy of land by the Tribe, the members of  
29 the Tribe, or their predecessors;

30 (c) past and present claims relating in any manner to damages, losses, or  
31 injury to water rights (including injury to rights to Colorado River water),  
32 land, or other resources due to loss of water or water rights (including  
33 damages, losses, or injuries to hunting, fishing, gathering, or cultural rights  
34 due to loss of water or water rights, claims relating to interference with,  
35 diversion, or taking of water, or claims relating to failure to protect, acquire,  
36 or develop water, water rights, or water infrastructure) within the State that  
37 first accrued at any time prior to the enforceability date;

38 (d) past and present claims for injury to water rights, including injury to  
39 rights to Colorado River water, for Hualapai land, arising from time  
40 immemorial through the enforceability date;

41 (e) past, present, and future claims for injury to water rights, including  
42 injury to rights to Colorado River water, arising from time immemorial and,  
43 thereafter, forever, that are based on aboriginal occupancy of land by the  
44 Tribe, the members of the Tribe, or their predecessors;

45 (f) claims for injury to water rights, including injury to rights to  
46 Colorado River water, arising after the enforceability date for Hualapai land,

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1 resulting from the off-Reservation diversion or use of water in a manner not  
2 in violation of the Hualapai Tribe water rights settlement agreement or State  
3 law; and

4 (g) past, present, and future claims arising out of, or relating in any  
5 manner to, the negotiation, execution, or adoption of the Hualapai Tribe  
6 water rights settlement agreement, any judgment or decree approving or  
7 incorporating the Hualapai Tribe water rights settlement agreement, or this  
8 Act.

9 (B) EFFECTIVE DATE.—The waiver and release of claims under subparagraph  
10 (A) shall become effective on the enforceability date.

11 (C) RETENTION OF CLAIMS.— Notwithstanding the waiver and release of claims  
12 set forth in subparagraph (A), the Tribe and the members of the Tribe (but not  
13 members in their capacity as allottees) shall retain any right—

14 (a) subject to subparagraph 12.7 of the Hualapai Tribe water rights  
15 settlement agreement, to assert claims for injuries to, and seek enforcement  
16 of, the rights of the Tribe under the Hualapai Tribe water rights settlement  
17 agreement or this Act, in any federal or State court of competent jurisdiction;

18 (b) to assert claims for injuries to, and seek enforcement of, the rights of  
19 the Tribe under any judgment or decree approving or incorporating the  
20 Hualapai Tribe water rights settlement agreement;

21 (c) to assert claims for water rights based upon state law or, for lands  
22 owned or acquired by the Hualapai Tribe in fee, as provided in subparagraph  
23 4.8 of the Hualapai Tribe water rights settlement agreement;

24 (d) to object to any claims for water rights or injury to water rights by or  
25 for any Indian tribe, or the United States on behalf thereof;

26 (e) to assert past, present, or future claims for injury to water rights  
27 against any Indian tribe, or the United States on behalf thereof;

28 (f) to assert claims for injuries to, and seek enforcement of, the rights of  
29 the Hualapai Tribe under the Bill Williams agreements or the Bill Williams  
30 act, in any federal or state court of competent jurisdiction; and

31 (g) subject to section 102(e)(1), to assert the rights of the Hualapai Tribe  
32 under any Colorado Water River Entitlement purchased by or donated to the  
33 Tribe.

34 (b) WAIVERS AND RELEASES OF CLAIMS BY THE UNITED STATES, ACTING AS TRUSTEE FOR  
35 THE ALLOTTEES.—

36 (1) IN GENERAL.—Except as provided in subparagraph (3), the United States,  
37 acting as trustee for the allottees of the Tribe, as part of the performance of the  
38 obligations of the United States under the Hualapai Tribe water rights settlement  
39 agreement, shall execute a waiver and release of any claims against the state (or  
40 any agency or political subdivision of the state), the Tribe, and any other person,  
41 entity, corporation, or municipal corporation under federal, state or other law, for  
42 all:

43 (a) past, present, and future claims for water rights, including rights to  
44 Colorado River water, for the allotments arising from time immemorial, and,  
45 thereafter, forever;

46 (b) past, present, and future claims for water rights, including rights to



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1 Colorado River water, arising from time immemorial and, thereafter, forever,  
2 that are based on aboriginal occupancy of land by the allottees or their  
3 predecessors;

4 (c) past and present claims for injury to water rights, including injury to  
5 rights to Colorado River water, for the allotments arising from time  
6 immemorial through the enforceability date;

7 (d) past, present, and future claims for injury to water rights, if any,  
8 including injury to rights to Colorado River water, arising from time  
9 immemorial and, thereafter, forever, that are based on aboriginal occupancy of  
10 land by the allottees or their predecessors;

11 (e) claims for injury to water rights, including injury to rights to  
12 Colorado River water, arising after the enforceability date for the allotments  
13 resulting from the off-Reservation diversion or use of water in a manner not in  
14 violation of the Hualapai Tribe water rights settlement agreement or state law;

15 (f) past, present, and future claims arising out of, or relating in any  
16 manner to, the negotiation, execution, or adoption of the Hualapai Tribe water  
17 rights settlement agreement, any judgment or decree approving or  
18 incorporating the Hualapai Tribe water rights settlement agreement, or this  
19 Act; and

20 (g) claims for any water rights of the allottees or the United States acting  
21 as trustee for the allottees with respect to:

22 (1) Parcel 1 in excess of 82 afy; or

23 (2) Parcel 2 in excess of 312 afy.

24 (2) EFFECTIVE DATE.—The waiver and release of claims under subparagraph  
25 (A) shall become effective on the enforceability date;

26 (3) RETENTION OF CLAIMS.—Notwithstanding the waiver and release of claims  
27 set forth in subsection (1), the United States, acting as trustee for the allottees,  
28 shall retain any right:

29 (a) subject to subparagraph 12.7 of the Hualapai Tribe water rights  
30 settlement agreement, to assert claims for injuries to, and seek enforcement of, the  
31 rights of the allottees, if any, under the Hualapai Tribe water rights settlement  
32 agreement or this Act, in any federal or state court of competent jurisdiction;

33 (b) to assert claims for injuries to, and seek enforcement of, the rights of  
34 the allottees under any judgment or decree approving or incorporating the  
35 Hualapai Tribe water rights settlement agreement;

36 (c) to object to any claims for water rights or injury to water rights by or  
37 for any Indian tribe other than the Hualapai Tribe, or the United States on behalf  
38 thereof;

39 (d) to assert past, present, or future claims for injury to water rights  
40 against any Indian tribe other than the Hualapai Tribe, or the United States on  
41 behalf thereof; and

42 (e) to assert claims for injuries to, and seek enforcement of, the rights of  
43 the allottees under the Bill Williams agreements or the Bill Williams act, in any  
44 federal or State court of competent jurisdiction.

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1 (c) WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES AGAINST THE HUALAPAI  
2 TRIBE.—

3 (1) IN GENERAL.—Except as provided in subsection (3), the United States, in all  
4 capacities (except as trustee for an Indian tribe other than the Hualapai Tribe), as part of  
5 the performance of its obligations under the Hualapai Tribe water rights settlement  
6 agreement, shall execute a waiver and release of any claims against the Hualapai Tribe, its  
7 members, or any agency, official, or employee of the Hualapai Tribe, under federal, state  
8 or other law for all:

9 (a) past and present claims for injury to water rights, including injury to rights  
10 to Colorado River water, resulting from the diversion or use of water on Hualapai  
11 land arising from time immemorial through the Enforceability Date;

12 (b) claims for Injury to water rights, including injury to rights to Colorado  
13 River water, arising after the enforceability date resulting from the diversion or  
14 use of water on Hualapai land in a manner that is not in violation of the Hualapai  
15 Tribe water rights settlement agreement or State law; and

16 (c) past, present, and future claims arising out of or related in any manner to  
17 the negotiation, execution, or adoption of the Hualapai Tribe water rights  
18 settlement agreement, any judgment or decree approving or incorporating the  
19 Hualapai Tribe water rights settlement agreement, or this Act.

20 (2) EFFECTIVE DATE.—The waiver and release of claims under subparagraph (1) shall  
21 become effective on the enforceability date.

22 (3) RETENTION OF CLAIMS.— Notwithstanding the waiver and release of claims set  
23 forth in subsection (1), the United States shall retain any right to assert any claims not  
24 specifically waived in subsection (1), including, without limitation, any right to assert  
25 claims for injuries to, and seek enforcement of, the rights of the United States under the  
26 Bill Williams agreements or the Bill Williams act, in any federal or State court of  
27 competent jurisdiction.

28 (d) BILL WILLIAMS RIVER PHASE 2 WATER RIGHTS SETTLEMENT AGREEMENT WAIVER,  
29 RELEASE AND RETENTION OF CLAIMS, NO PRECEDENTIAL EFFECT.—

30 (1) CLAIMS AGAINST FREEPORT.—

31 (A) IN GENERAL.—Except as provided in subparagraph (C), the United States,  
32 acting solely on behalf of the Department of the Interior and its constituent  
33 agencies the Bureau of Land Management and the Fish and Wildlife Service, as  
34 part of the performance of the obligations of the United States under the Hualapai  
35 Tribe water rights settlement agreement, is authorized and instructed to execute a  
36 waiver and release of any and all claims of the United States against Freeport  
37 under Federal, State, or any other law for all—

38 (i) past and present claims for injury to water rights resulting from the  
39 diversion or use of water by Freeport pursuant to the water rights set forth in  
40 exhibit 4.1 to the Bill Williams River phase 2 water rights settlement  
41 agreement;

42 (ii) all claims for injury to water rights arising after the enforceability date

Commented [A2]: Waiver language from Bill Williams River Phase 2 Agreement previously circulated by Sandy Fabritz-Whitney on 4/20/16, modified to reflect additional requirements for enforceability now set forth in Section 110(e).

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1 resulting from the diversion of water by Freeport pursuant to the water rights  
2 set forth in exhibit 4.1 to the Bill Williams River phase 2 water rights  
3 settlement agreement in a manner not in violation of that agreement; and

4 (iii) past, present, and future claims arising out of, or relating in any  
5 manner to, the negotiation or execution of the Hualapai Tribe water rights  
6 settlement agreement or this Act.

7 (B) EFFECTIVE DATE.—The waiver and release of claims under subparagraph  
8 (A) shall be effective on the date on which the Bill Williams River phase 2 water  
9 rights settlement agreement becomes enforceable pursuant to Section 110(e).

10 (C) RETENTION OF CLAIMS.—The United States shall retain all rights not  
11 expressly waived in the waiver and release of claims under subparagraph (A),  
12 including, subject to subparagraph 6. of the Bill Williams River phase 2 water  
13 rights settlement agreement, to assert claims for injuries to, and seek enforcement  
14 of, the Bill Williams River water rights phase 2 settlement agreement or this Act,  
15 in any Federal or State court of competent jurisdiction (but not a tribal court).

16 (2) NO PRECEDENTIAL EFFECT.—

17 (A) PENDING AND FUTURE PROCEEDINGS.—The Bill Williams River phase 2  
18 water rights settlement agreement shall have no precedential effect in—

19 (i) any pending or future general stream adjudication or in any other  
20 litigation involving Freeport or the United States, including but not limited to  
21 any proceeding to establish or quantify a federal reserved water right;

22 (ii) any pending or future administrative or judicial proceeding relating to  
23 an application to appropriate water (for instream flow or other purposes), to  
24 sever and transfer a water right, to change a point of diversion, or to change a  
25 place of use for any water right; or

26 (iii) any proceedings regarding water rights or claims for any federal lands  
27 other than the Bill Williams River National Wildlife Refuge and the Bill  
28 Williams River Watershed Wilderness Area.

29 (B) NO METHODOLOGY OR STANDARD—Nothing in the Bill Williams phase 2  
30 water rights settlement agreement shall be construed as establishing any standard  
31 or methodology to be used for the quantification of any claims to water rights  
32 (whether based on state or federal law) in any judicial or administrative  
33 proceeding other than to enforce the terms of the Bill Williams River phase 2  
34 water rights settlement agreement.

35 [pending FMI/US language – Pending Federal Review.]

36 **SEC. 105. SATISFACTION OF WATER RIGHTS AND OTHER BENEFITS.**

37 (a) HUALAPAI TRIBE AND ITS MEMBERS—

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1 (1) The benefits realized by the Tribe and the members of the Tribe (but not  
2 members in their capacity as allottees) under the Hualapai Tribe water rights settlement  
3 agreement, this Act, the Bill Williams agreements and the Bill Williams act shall be in  
4 full satisfaction of all claims of the Tribe and the members of the Tribe, and the United  
5 States acting in its capacity as trustee for the Tribe and the members of the Tribe, for  
6 water rights and injury to water rights, under federal, state, or other law with respect to  
7 Hualapai land.

8 (2) Any entitlement to water of the Tribe and members of the Tribe (but not  
9 members in their capacity as allottees), or the United States acting in its capacity as  
10 trustee for the Tribe and members of the Tribe, for Hualapai land shall be satisfied out  
11 of the water resources and other benefits granted, confirmed, quantified or recognized  
12 to or for the Tribe and its members, and the United States acting in its capacity as  
13 trustee for the Tribe and its members by the Hualapai Tribe water rights settlement  
14 agreement, this Act, the Bill Williams agreements and the Bill Williams act.

15 (b) ALLOTTEE WATER CLAIMS.—

16 (1) The benefits realized by the allottees of the Tribe under the Hualapai Tribe  
17 water rights settlement agreement, this Act, the Bill Williams agreements and the Bill  
18 Williams act shall be in complete replacement of and substitution for, and full  
19 satisfaction of, all claims of the allottees, and the United States acting in its capacity as  
20 trustee for the allottees, for water rights and injury to water rights, under federal, state,  
21 or other law with respect to the allotments.

22 (2) Any entitlement to water of the allottees, or the United States acting in its  
23 capacity as trustee for the allottees, for the allotments shall be satisfied out of the water  
24 resources and other benefits granted, confirmed or recognized to or for the allottees,  
25 and the United States, acting as trustee for the allottees, by the Hualapai Tribe water  
26 rights settlement agreement, this Act, the Bill Williams agreements and the Bill  
27 Williams act.

28 (c) Notwithstanding subsections (a) and (b):

29 (1) Nothing in this act or the Hualapai Tribe water rights settlement agreement  
30 has the effect of recognizing or establishing any right of a member or an allottee to  
31 water on Hualapai land.

32 (2) Nothing in this act or the Hualapai Tribe water settlements agreement shall  
33 prohibit the Hualapai Tribe or an allottee from acquiring additional water rights by  
34 purchase or donation of land, credits or water rights.

35 **SEC. 106. LANDS ADDED TO HUALAPAI RESERVATION.**

36 As authorized by the Act of May 25, 1918, 40 Stat. 570, 25 U.S.C. 211, (a) the lands  
37 declared to be held in trust by the United States for the Hualapai Indian Tribe by the Act of  
38 December 30, 1974, 88 Stat. 1820, Public Law 93-560, and (b) the lands deeded to the  
39 United States in its capacity as trustee for the Tribe pursuant to the 1947 judgment, are  
40 hereby added to the Hualapai Indian Reservation in Arizona.

41 **SEC. 107. TRUST LANDS.**

42 (a) NEW TRUST LANDS. —The following lands currently owned in fee by the Hualapai

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1 Tribe are hereby declared to be held in trust by the United States for the benefit of the  
2 Hualapai Tribe as of the date of enactment of this Act:

3 (1) Cholla Canyon Ranch Parcels.—In T.16 N., R. 13 W., Gila and Salt River Base  
4 and Meridian, Mohave County, Arizona:

5 (A) Section 25: SW  $\frac{1}{4}$ ; and

6 (B) Section 35: NE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ .

7 (2) Valentine Cemetery.—In T. 23 N., R. 13 W., Gila and Salt River Base and  
8 Meridian, Mohave County, Arizona, Section 22: W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

9 (3) Truxton Triangle. —In T. 24 N., R. 12 W., Gila and Salt River Base and  
10 Meridian, Mohave County, Arizona, that portion of the South  $\frac{1}{2}$  of Section 3 lying  
11 South of the South boundary of the Hualapai Reservation and North of the North right-  
12 of-way boundary of Arizona Highway 66, and bounded by the West section line of  
13 said Section 3 and the South section line of said Section 3.

14 (4) Hunt Parcel 4. —In T.25 N., R. 13 W., Gila and Salt River Base and Meridian,  
15 Mohave County, Arizona, Section 7: SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ .

16 (5) Hunt Parcel 5.—In T.25 N., R. 14 W., Gila and Salt River Base and Meridian,  
17 Mohave County, Arizona, Section 1: SE  $\frac{1}{4}$ , E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

18 (6) Hunt Parcels 1 and 2. —In T.26 N., R. 14 W., Gila and Salt River Base and  
19 Meridian, Mohave County, Arizona:

20 (A) Section 9: NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ ; and

21 (B) Section 27: NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ .

22 (7) Hunt Parcel 3. —In T.27 N., R. 15 W., Gila and Salt River Base and Meridian,  
23 Mohave County, Arizona, Section 25: SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ .

24 (b). FUTURE TRUST LANDS. —

25 (1) REQUIREMENT OF ACT OF CONGRESS.—After the date of enactment of this Act,  
26 if the Hualapai Tribe seeks to have legal title to additional land in Arizona, located  
27 outside the exterior boundaries of the reservation, taken into trust by the United States  
28 for the benefit of the Hualapai Tribe, the Tribe may do so only pursuant to an Act of  
29 Congress enacted after the date of enactment of this Act specifically authorizing the  
30 transfer for the benefit of the Tribe.

31 (2) WATER RIGHTS.—Any land taken into trust for the benefit of the Hualapai  
32 Tribe after the enforceability date shall have only those rights to water provided under  
33 state law, and shall not have any federally reserved water rights.

34  
35 **SEC. 108. ADMINISTRATION.**

36 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—If (1) any party to the Hualapai  
37 Tribe water rights settlement agreement for the Bill Williams River water rights  
38 settlement agreements; [bracketed language to be deleted pending review by

Commented [WLS3]: Note: there is a formatting problem with this subsection - this opening paragraph of section 108(a) includes numbers (1) through (4), but immediately following the opening paragraph, the next two indented subsections are numbered (1) and (2). I have not attempted to revise because I am uncertain of the correct formatting per Legislative Council standards.

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1 ~~Freeport~~ brings an action in any court of the United States or any State court relating  
2 only and directly to the interpretation or enforcement of this Act or the Hualapai  
3 Tribe water rights settlement agreement, and names the United States, or the  
4 Hualapai Tribe as a party, or (2) any landowner or water user in the Verde River  
5 Watershed or the Colorado River basin within the State of Arizona files a lawsuit  
6 relating only and directly to the interpretation or enforcement of paragraph 10.0 of  
7 the Hualapai Tribe water rights settlement agreement or section 104 of this Act,  
8 naming the United States, or the Hualapai Tribe as a party, ~~or~~ (3) the State of  
9 California or the State of Nevada files a lawsuit relating only and directly to the  
10 interpretation or enforcement of a provision relating to the Colorado River in  
11 paragraph 10.0 of the Hualapai Tribe water rights settlement agreement or section  
12 104 of this Act naming the United States, or the Hualapai Tribe as a party, or (4) any  
13 party to the Bill Williams River water rights settlement agreements brings an action  
14 in any court of the United States or any State court relating only and directly to the  
15 interpretation or enforcement of the Bill Williams water rights settlement act of 2014  
16 or the Bill Williams water rights settlement agreements, naming the United States, or  
17 the Hualapai Tribe as a party— ~~[Awaiting U.S. comment.]~~

18 (1) the United States, or the Hualapai Tribe may be joined in the action; and

19 (2) any claim by the United States, or the Hualapai Tribe to sovereign  
20 immunity from the action is waived, but only for the limited and sole purpose of  
21 the interpretation or enforcement of this Act or the Hualapai Tribe water rights  
22 settlement agreement, ~~for~~ pursuant to subsection 108(a)(4), the Bill Williams  
23 water rights settlement act of 2014 or the Bill Williams River water rights  
24 settlement agreements, and shall not include any award against the Hualapai  
25 Tribe for money damages, court costs or attorneys' fees. ~~[Awaiting comment~~  
26 ~~from the United States].~~ ~~[Freeport considering deleting bracketed~~  
27 ~~language]~~

28 (b) NO QUANTIFICATION OR EFFECT ON RIGHTS OF OTHER INDIAN TRIBES OR THE UNITED  
29 STATES ON BEHALF OF OTHER INDIAN TRIBES.—Nothing in this Act—

30 (1) shall be construed to quantify or otherwise affect the water rights, claims, or  
31 entitlements to water of any Indian tribe, nation, band, or community, other than the  
32 Hualapai Tribe; or

33 (2) shall affect the ability of the United States to take action on behalf of any Indian  
34 tribe, nation, band, or community, other than the Hualapai Tribe, members of the  
35 Hualapai Tribe, and the allottees.

36 (c) ANTIDEFICIENCY.—Notwithstanding any authorization of appropriations to carry out  
37 this Act, the United States shall not be liable for any the failure to carry out any obligation  
38 or activity authorized by this Act (including all titles and all agreements or exhibits ratified  
39 or confirmed by this Act) if-

40 (1) adequate appropriations are not provided expressly by Congress to carry out the  
41 purposes of this Act; or

Commented [A4]: Revisions made to address comments made by John Weldon. Federal team will be reviewing with DOJ management.

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1 (2) there are not enough monies available to carry out this Act in the Lower Basin  
2 Development Fund established by Section 403 of the Colorado Basin Project Act (43  
3 U.S.C. § 1543).

4 (d) RECLAMATION REFORM ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.  
5 390aa et seq.) and any other acreage limitation or full-cost pricing provision of Federal law  
6 shall not apply to any person, entity, or tract of land solely on the basis of—

- 7 (1) receipt of any benefit under this Act;  
8 (2) execution or performance of this Act; or  
9 (3) the use, storage, delivery, lease, or exchange of CAP water.

10 **SEC. 109. REALLOCATION OF CAP NIA PRIORITY WATER; FIRMING;**  
11 **WATER DELIVERY CONTRACT; COLORADO RIVER ACCOUNTING.**

12 (a) REALLOCATION TO THE HUALAPAI TRIBE.—On the date on which the Secretary  
13 publishes in the Federal Register the statement of findings under section 110, the Secretary  
14 shall reallocate to the Hualapai Tribe the Hualapai Tribe CAP water.

15 (b) FIRMING.—

16 (1) HUALAPAI TRIBE CAP WATER.— The Hualapai Tribe CAP water shall be firmed  
17 as follows:

18 (A) In accordance with section 105(b)(1)(B) of the Arizona Water Settlements  
19 Act (Public Law 108–451; 118 Stat. 3492), the Secretary shall firm 557.50 afy of  
20 the Hualapai Tribe CAP water to the equivalent of CAP M&I priority water for  
21 the period of 100 years beginning on January 1, 2008.

22 (B) In accordance with section 105(b)(2)(B) of the Arizona Water Settlements  
23 Act (Public Law 108–451; 118 Stat. 3492), the State shall firm 557.50 afy of the  
24 Hualapai Tribe CAP water to the equivalent of CAP M&I priority water for the  
25 period of 100 years beginning on January 1, 2008.

26 (2) ADDITIONAL FIRMING.—The Hualapai Tribe may, at the expense of the Hualapai  
27 Tribe, take additional actions to firm or supplement the Hualapai Tribe CAP water,  
28 including by entering into agreements for that purpose with the Central Arizona Water  
29 Conservation District, the Arizona Water Banking Authority, or any other lawful  
30 authority, in accordance with State law.

31 (3) No firming of leased water.—The firming obligations described in paragraph (1)  
32 shall not apply to any Hualapai Tribe CAP water leased by the Hualapai Tribe to other  
33 persons.

34 (c) HUALAPAI TRIBE WATER DELIVERY CONTRACT.—

35 (1) IN GENERAL.—The Secretary shall enter into the Hualapai Tribe water delivery  
36 contract, in accordance with the Hualapai Tribe water rights settlement agreement,  
37 which shall meet, at a minimum, the requirements described in paragraph (2).

38 (2) REQUIREMENTS.—The requirements described in this paragraph are as follows:

39 (A) AUTHORIZATION.—The contract entered into under paragraph (1) shall be

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1 for permanent service (as that term is used in section 5 of the Boulder Canyon  
2 Project Act (43 U.S.C. 617d)), shall take effect on the enforceability date, and  
3 shall be without limit as to term.

4 (B) HUALAPAI TRIBE CAP WATER.—

5 (i) IN GENERAL.—The Hualapai Tribe CAP water may be delivered  
6 through the Hualapai Water Project or through the CAP system for use in the  
7 lower basin in Arizona.

8 (ii) METHOD OF DELIVERY.—The Secretary shall authorize deliveries to be  
9 effected by the diversion and use of water directly from the Colorado River  
10 in Arizona.

11 (C) CONTRACTUAL DELIVERY.—The Secretary shall deliver the Hualapai Tribe  
12 CAP water to the Hualapai Tribe in accordance with the terms and conditions of  
13 the Hualapai Tribe water delivery contract.

14 (D) DISTRIBUTION OF CAP NIA PRIORITY WATER.—

15 (i) If, for any year, the available CAP supply is insufficient to meet all  
16 demands under CAP contracts and CAP subcontracts for the delivery of CAP  
17 NIA priority water, the Secretary and the CAP operating agency shall prorate  
18 the available CAP NIA priority water among the CAP contractors and CAP  
19 subcontractors holding contractual entitlements to CAP NIA priority water  
20 on the basis of the quantity of CAP NIA priority water used by each such  
21 CAP contractor and CAP subcontractor in the last year in which the available  
22 CAP supply was sufficient to fill all orders for CAP NIA priority water.

23 (ii) Notwithstanding clause (i), if the available CAP supply is insufficient  
24 to meet all demands under CAP contracts and CAP subcontracts for the  
25 delivery of CAP NIA priority water in the year following the year in which  
26 the enforceability date occurs, the Secretary shall assume that the Hualapai  
27 Tribe used the full volume of Hualapai Tribe CAP water in the last year in  
28 which the available CAP supply was sufficient to fill all orders for CAP  
29 NIA priority water. This assumption shall continue until the available CAP  
30 supply is sufficient to meet all demands under CAP contracts and CAP  
31 subcontracts for the delivery of CAP NIA priority water.

32 (iii) The Secretary shall determine the quantity of CAP NIA priority water  
33 used by the Gila River Indian Community and the Tohono O'odham Nation  
34 in the last year in which the available CAP supply was sufficient to fill all  
35 orders for CAP NIA priority water in a manner consistent with the  
36 settlements agreements with these tribes.

37 (E) LEASES AND EXCHANGES OF HUALAPAI TRIBE CAP WATER.—On and after  
38 the date on which the Hualapai Tribe water delivery contract becomes effective,  
39 the Hualapai Tribe may, with the approval of the Secretary, enter into contracts or  
40 options to lease or contracts or options to exchange the Hualapai Tribe CAP water  
41 within the lower basin in Arizona, providing for the temporary delivery to other



1 persons of any portion of Hualapai Tribe CAP water.

2 (F) TERM OF LEASES AND EXCHANGES.—

3 (i) LEASING.—Contracts to lease and options to lease under clause (v)  
4 shall be for a term not to exceed 100 years.

5 (ii) EXCHANGING.—Contracts to exchange or options to exchange under  
6 subparagraph (E) shall be for the term provided for in each such contract or  
7 option.

8 (iii) RENEGOTIATION.—The Hualapai Tribe may, with the approval of the  
9 Secretary, renegotiate any lease described in subparagraph (E), at any time  
10 during the term of the lease, if the term of the renegotiated lease does not  
11 exceed 100 years.

12 (G) PROHIBITION ON PERMANENT ALIENATION.—No Hualapai Tribe CAP  
13 water may be permanently alienated.

14 (H) ENTITLEMENT TO LEASE AND EXCHANGE FUNDS.—

15 (i) IN GENERAL.—Only the Hualapai Tribe, and not the United States in  
16 any capacity, shall be entitled to all consideration due to the Hualapai Tribe  
17 under any contracts to lease, options to lease, contracts to exchange, or  
18 options to exchange the Hualapai Tribe CAP water entered into by the  
19 Hualapai Tribe.

20 (ii) OBLIGATIONS OF UNITED STATES.—The United States in any capacity  
21 shall have no trust or other obligation to monitor, administer, or account for,  
22 in any manner, any funds received by the Hualapai Tribe as consideration  
23 under any contracts to lease, options to lease, contracts exchange, or options  
24 to exchange the Hualapai Tribe CAP water entered into by the Hualapai  
25 Tribe, except in a case in which the Hualapai Tribe deposits the proceeds of  
26 any such lease, option to lease, exchange, or option to exchange into an  
27 account held in trust for the Hualapai Tribe by the United States.

28 (I) WATER USE.—The Hualapai Tribe may use the Hualapai Tribe CAP water  
29 on or off the Hualapai Reservation within the lower basin in Arizona for any  
30 purpose.

31 (J) No USE OUTSIDE OF STATE.—No Hualapai Tribe CAP water may be  
32 used, leased, exchanged, forborne, or otherwise transferred by the Hualapai  
33 Tribe for use directly or indirectly outside of the lower basin in Arizona.

34 (K) CAP FIXED OM&R CHARGES.—

35 (i) IN GENERAL.—The CAP operating agency shall be paid the CAP fixed  
36 OM&R charges associated with the delivery of all the Hualapai Tribe CAP  
37 water.

38 (ii) PAYMENT OF CHARGES.—Except as provided in subparagraph (N), all  
39 CAP fixed OM&R charges associated with the delivery of the Hualapai Tribe  
40 CAP water to the Hualapai Tribe shall be paid by—

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1 (I) the Secretary, pursuant to section 403(f)(2)(A) of the Colorado River  
2 Basin Project Act (43 U.S.C. 1543(f)(2)(A)), as long as funds for that  
3 payment are available in the Lower Colorado River Basin Development  
4 Fund; and

5 (II) if those funds become unavailable, the Hualapai Tribe.

6 (L) CAP PUMPING ENERGY CHARGES.—

7 (i) IN GENERAL.—The CAP operating agency shall be paid the CAP  
8 pumping energy charges associated with the delivery of all the Hualapai  
9 Tribe CAP water only when the CAP system is used for the delivery of that  
10 water.

11 (ii) PAYMENT OF CHARGES.—Except for CAP Water not delivered through  
12 the CAP System, which does not incur a CAP pumping energy charge, or  
13 water delivered to other persons as provided in subparagraph (N), any  
14 applicable CAP pumping energy charges associated with the delivery of the  
15 Hualapai Tribe CAP water shall be paid by the Hualapai Tribe.

16 (M) WAIVER OF PROPERTY TAX EQUIVALENCY PAYMENTS.—No property tax  
17 or in-lieu property tax equivalency shall be due or payable by the Hualapai Tribe  
18 for the delivery of CAP water or for the storage of CAP water in an underground  
19 storage facility or groundwater savings facility.

20 (N) LESSEE RESPONSIBILITY FOR CHARGES.—

21 (i) IN GENERAL.—Any lease or option to lease providing for the temporary  
22 delivery to other persons of any Hualapai Tribe CAP water shall require the  
23 lessee to pay the CAP operating agency all CAP fixed OM&R charges and  
24 all CAP pumping energy charges associated with the delivery of the leased  
25 water.

26 (ii) NO RESPONSIBILITY FOR PAYMENT.—Neither the Hualapai Tribe nor  
27 the United States in any capacity shall be responsible for the payment of any  
28 charges associated with the delivery of the Hualapai Tribe CAP water leased  
29 to other persons.

30 (O) ADVANCE PAYMENT.—No Hualapai Tribe CAP water shall be delivered  
31 unless the CAP fixed OM&R charges and any applicable CAP pumping energy  
32 charges associated with the delivery of that water have been paid in advance.

33 (P) CALCULATION.—The charges for delivery of the Hualapai Tribe CAP  
34 water pursuant to the Hualapai Tribe water delivery contract shall be calculated  
35 in accordance with the CAP repayment stipulation.

36 (Q) CAP REPAYMENT.—For purposes of determining the allocation and  
37 repayment of costs of any stages of the CAP constructed after November 21,  
38 2007, the costs associated with the delivery of the Hualapai Tribe CAP water,  
39 regardless of whether the Hualapai Tribe CAP water is delivered for use by the  
40 Hualapai Tribe or in accordance with any lease, option to lease, exchange, or  
41 option to exchange providing for the delivery to other persons of the Hualapai

1 Tribe CAP water, shall be—

2 (i) nonreimbursable; and

3 (ii) excluded from the repayment obligation of the Central Arizona Water  
4 Conservation District.

5 (R) NONREIMBURSABLE CAP CONSTRUCTION COSTS.—

6 (i) IN GENERAL.—With respect to the costs associated with the  
7 construction of the CAP system allocable to the Hualapai Tribe—

8 (I) the costs shall be nonreimbursable; and

9 (II) the Hualapai Tribe shall have no repayment obligation for the costs.

10 (ii) CAPITAL CHARGES.—No CAP water service capital charges shall be  
11 due or payable for the Hualapai Tribe CAP water, regardless of whether the  
12 water is delivered for use by the Hualapai Tribe or is delivered under any  
13 lease, option to lease, exchange, or option to exchange the Hualapai Tribe  
14 CAP water entered into by the Hualapai Tribe.

15 (d) Storage of Hualapai CAP Water and Assignment of Long-term Storage Credits

16 (1) Storage.—The Hualapai Tribe may store the Hualapai Tribe CAP water,  
17 including water that has been firmed pursuant to subsection (b)(1), at underground  
18 storage facilities or groundwater savings facilities in accordance with State law. If the  
19 Hualapai Tribe stores Hualapai Tribe CAP Water that has been firmed pursuant to  
20 subsection (b)(1), the stored water may only be used by the Hualapai Tribe or  
21 exchanged by the Hualapai Tribe for water that will be used by the Hualapai Tribe.

22 (2) Assignment.—The Hualapai Tribe may assign any long-term storage credits  
23 accrued as a result of storage under paragraph (1) in accordance with State law, except  
24 that the Hualapai Tribe shall not assign any long-term storage credits accrued as a result  
25 of the storage of Hualapai Tribe CAP water that has been firmed pursuant to subsection  
26 (b)(1).

27 (3) Agreements.—Nothing in this Act or the Hualapai Tribe water rights settlement  
28 agreement limits the right of the Hualapai Tribe to enter into any agreement with the  
29 Arizona Water Banking Authority, or any successor agency or entity, or with any other  
30 lawful authority for the storage or banking of water in accordance with State law. Any  
31 Hualapai Tribe CAP Water stored pursuant to such an agreement is subject to  
32 paragraphs (1) and (2).

33 (e) COLORADO RIVER ACCOUNTING.—All Hualapai Tribe CAP water diverted directly  
34 from the Colorado River shall be accounted for as deliveries of CAP water within Arizona.

35 (f) NO MODIFICATION OR PREEMPTION OF OTHER LAW.—Unless expressly provided in  
36 this Act, nothing in this Act modifies, conflicts with, preempts, or otherwise affects—

37 (1) the Boulder Canyon Project Act (43 U.S.C. 617 et seq.);

38 (2) the Boulder Canyon Project Adjustment Act (54 Stat. 774, chapter 643);

39 (3) the Act of April 11, 1956 (commonly known as the “Colorado River Storage

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1 Project Act”) (43 U.S.C. 620 et seq.);

2 (4) the Act of September 30, 1968 (commonly known as the “Colorado River Basin  
3 Project Act”) (82 Stat. 885)

4 (5) the Treaty between the United States of America and Mexico respecting  
5 utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed  
6 at Washington February 3, 1944 (59 Stat. 1219);

7 (6) the Colorado River Compact;

8 (7) the Upper Colorado River Basin Compact;

9 (8) the Omnibus Public Land Management Act of 2009, Public Law 111-11; or

10 (9) case law concerning water rights in the Colorado River system other than any  
11 case to enforce the Hualapai Tribe water rights settlement agreement or this Act.

12 **SEC. 110. ENFORCEABILITY DATE.**

13 (a) AGREEMENT, INCLUDING WAIVERS, RELEASES, AND RETENTIONS OF CLAIMS;  
14 WHEN EFFECTIVE.—The Agreement, including the waivers and releases of claims  
15 described in section 104, shall take effect and be fully enforceable, and construction of the  
16 Hualapai Water Project may begin, on the date on which the Secretary publishes in the  
17 Federal Register a statement of findings that—

18 (1) to the extent that the Hualapai Tribe water rights settlement agreement conflicts  
19 with this Act, the Hualapai Tribe water rights settlement agreement has been revised  
20 through an amendment to eliminate the conflict and the revised Hualapai Tribe water  
21 rights settlement agreement [including all exhibits to that agreement requiring](#)  
22 [execution by the Secretary.](#) ~~pending FMI/US language~~ ~~Pending US Review~~ has  
23 been executed by the Secretary, the Hualapai Tribe, the Governor of Arizona, and all of  
24 the parties;

25 (2) the waivers and releases of claims described in section 104 have been executed  
26 by the Hualapai Tribe, and the United States;

27 (3) the abstracts referenced in Subparagraphs 4.8.1.2, 4.8.2.1 and 4.8.2.2 of the  
28 Hualapai Tribe water rights settlement agreement have been completed by the Hualapai  
29 Tribe;

30 (4) the full amount described in section 103(b)(2)(A), as adjusted through the  
31 enforceability date by section 103(b)(2)(B), has been deposited in the Hualapai Water  
32 Project Account;

33 (5) the full amount described in section 103(c)(2)(A), as adjusted through the  
34 enforceability date by section 103(c)(2)(B), has been deposited in the Hualapai OM&R  
35 trust account;

36 (6) the full amounts described in section 103(a)(5)(B) and section 103(a)(7)(B) have  
37 been appropriated;

1 (7) the Gila River adjudication decree has been approved by the Gila River  
2 adjudication court substantially in the form of the judgment and decree attached to the  
3 Hualapai Tribe water rights settlement agreement as Exhibit 3.1.43;

4 (8) the Secretary has executed the Hualapai Tribe Water Delivery Contract  
5 described in section 109(c); and

6 (9) the Secretary has issued a final Record of Decision approving the construction of  
7 the Hualapai Water Project in a configuration substantially as described in section 103.

8 (b) REPEAL ON FAILURE TO MEET ENFORCEABILITY DATE.—Except as provided in  
9 subsection (d), if the Secretary fails to publish in the Federal Register a statement of  
10 findings under subsection (a) by October 15, 2027, this Act is repealed and any action taken  
11 by the Secretary and any contract or agreement entered into pursuant to this Act shall be  
12 void, and any amounts appropriated under section 103, together with any investment  
13 earnings on those amounts, less any amounts expended under section 103(a)(9)(B), shall  
14 revert immediately to the general fund of the Treasury.

15 (c) RIGHT TO OFFSET.—If the Secretary has not published in the Federal Register the  
16 statement of findings under subsection (a) by October 15, 2027, the United States shall be  
17 entitled to offset any Federal amounts made available under section 103(a)(9)(B) that were  
18 used or authorized for any use under that subsection against any claim asserted by the  
19 Hualapai Tribe against the United States described in section 104(a)(2)(A).

20 (d) SEVERABILITY.—Notwithstanding subsection (b), if the Secretary does not publish in  
21 the Federal Register a statement of findings under subsection (a) by October 15, 2027, the  
22 provisions of section 106 and 107(a) shall remain in effect.

23 (e) ENFORCEABILITY OF BILL WILLIAMS RIVER PHASE 2 WATER RIGHTS SETTLEMENT  
24 AGREEMENT.—Notwithstanding section 110(a), the Bill Williams River phase 2 water rights  
25 settlement agreement, including the waivers and releases described in Section 5 of that  
26 agreement and the waivers and releases set forth in section 104(d) of this Act, shall become  
27 enforceable among the parties to that agreement only upon the occurrence of all of the  
28 following conditions—

29 (1) The Hualapai Tribe water rights settlement agreement becomes enforceable  
30 pursuant to section 110(a);

31 (2) Freeport has submitted to ADWR a conditional withdrawal of its objections to the  
32 Bill Williams River watershed instream flow applications pursuant to section 4.3(v) of the  
33 Bill Williams River phase 2 water rights settlement agreement, with such withdrawal to  
34 become effective on the enforceability date of the Bill Williams River phase 2 water rights  
35 settlement agreement;

36 (3) no later than the date on which the Hualapai Tribe water rights settlement  
37 agreement becomes enforceable, ADWR has issued a final, appealable conditional decision  
38 and order for the Bill Williams River watershed instream flow applications, with such  
39 conditional order to become effective on the enforceability date of the Bill Williams River  
40 phase 2 water rights settlement agreement; and

41 (4) the conditional decision and order issued by ADWR pursuant to subsection 110(c)(3),

Commented [A5]: New subsection to address Federal team position regarding instream flow applications and to de-couple Phase 2 agreement enforceability from Hualapai Tribe Water Rights Settlement Agreement.

- | 1 [becomes final and subject to no further appeals.](#)
- 2
- 3

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### Attachment 3.

Contract No. \_\_\_\_\_

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

CONTRACT WITH THE HUALAPAI TRIBE  
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

1. PREAMBLE: THIS CONTRACT NO. \_\_\_\_\_, (“Contract”) is made this \_\_\_ day of \_\_\_\_\_, 2016, in accordance with the Act of Congress approved June 17, 1902 (P.L. 57-161; 32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act enacted December 21, 1928 (P.L. 70-642; 45 Stat. 1057), the Reclamation Project Act of August 4, 1939 (P.L. 76-260; 53 Stat. 1187), as amended, the Colorado River Basin Project Act of September 30, 1968 (P.L. 90-537; 82 Stat. 885, 43 U.S.C. § 1501) as amended, the Arizona Water Settlements Act enacted December 10, 2004 (“AWSA”) (P.L. 108-451; 118 Stat. 3478), and the various authorities and responsibilities of the Secretary of the Interior (“Secretary”) in relation to Indians and Indian Tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, and the Hualapai Tribe Water Rights Settlement Act of 2016, (XX Stat. XXXX) (“Hualapai Act”), between the UNITED STATES OF AMERICA (“United States”), acting through the Bureau of Reclamation, for and on behalf of the Secretary, and the HUALAPAI TRIBE, (“Hualapai Tribe”) or (“Tribe”), a Tribe of Hualapai Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, (P.L. 73-383; 48 Stat. 984; 25 U.S.C. § 476 *et seq.*), and duly recognized by the Secretary. In this Contract, the United States and the Tribe are each individually sometimes hereinafter called “Party” and sometimes collectively called “Parties”.

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, the Tribe, the United States, the State of Arizona, the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users’

Association; Central Arizona Water Conservation District (“CAWCD”), and Freeport Minerals Corporation (collectively known as the “Settlement Parties”) have entered into the Hualapai Tribe Water Rights Settlement Agreement of 201X, dated \_\_\_\_\_”, hereinafter called the (“Settlement Agreement”), which restates the Settlement Agreement dated \_\_\_\_\_ 2016, in accordance with Section 101(a) of the Hualapai Act;

2.2 WHEREAS, the Settlement Agreement is an agreement by the Settlement Parties to permanently quantify the Water Rights of the Tribe, its Members, and the United States on behalf of the Tribe and its Members and to seek funding in accordance with applicable law for the implementation of the Settlement Agreement;

2.3 WHEREAS, on \_\_\_\_\_, 2016, Congress enacted the Hualapai Act;

2.4 WHEREAS, the purposes of the Hualapai Act are (1) to resolve all claims by the Tribe, on behalf of itself and its members, the United States, acting as trustee for the Tribe, the members of the Tribe, and allottees; to rights to water in Arizona, including the Verde River, the Bill Williams River, and the Colorado River (2) to authorize, ratify, and confirm the Settlement Agreement; (3) to authorize and direct the Secretary to execute and perform the duties and obligations of the Secretary under the Settlement Agreement and the Hualapai Act; (4) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Settlement Agreement and the Hualapai Act; and to (5) authorize funds necessary for the United States to implement the Settlement Agreement and the Hualapai Act.

2.5 WHEREAS, prior to the Hualapai Act being enacted, Congress enacted the AWSA to provide for adjustments to the Central Arizona Project (“CAP”) in Arizona, to provide for other Indian water right settlements, and for other purposes;

2.6 WHEREAS, Title I of the AWSA is the Central Arizona Project Settlement Act of 2004, which title provides an agreement on the allocation of CAP water among interested persons, including Federal and State interests, and provides important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State;



2.7 WHEREAS, Title I of the AWSA, in Section 104(a)(1)(A)(iii), provides for the reallocation of 67,300 acre-feet per year of CAP water to Arizona Indian Tribes, of which, in accordance with the Hualapai Act, the Secretary is reallocating 4,000 acre-feet per year of CAP Non-Indian Agricultural Priority Water hereinafter called “CAP NIA Priority Water” to the Tribe in accordance with 109(a) of the Hualapai Act;

2.8 WHEREAS, the Tribe and the Secretary desire to enter into this Contract to conform with the terms and conditions of the Hualapai Act and the Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. CONTRACT PURPOSE: As required in Section 109(c)(1) of the Hualapai Act, the purpose of this Contract is to enter into a water delivery contract for CAP water that conforms to the terms and conditions of the Hualapai Act and the Settlement Agreement.

4. DEFINITIONS: For the purpose of this Contract, the following definitions shall apply:

4.1 Arizona Water Banking Authority means the Arizona Water Banking Authority, formed in accordance with A.R.S. § 45-2401 et seq.

4.2 Available CAP Supply means, for any given Year, all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

4.3 AWSA means the Arizona Water Settlements Act, Public Law 108-451, 118 Stat. 3478 (2004).

4.4 Basin Project Act means the Colorado River Basin Project Act, (43 U.S.C. § 1501 et seq.) 82 Stat. 885, dated September 30, 1968, as amended.

4.5 CAP or Central Arizona Project means the reclamation project authorized and constructed by the United States in accordance with Title III of the Basin Project Act.

4.6 CAP Contract means a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of CAP Water through the CAP system.

4.7 CAP Contractor means a person or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for the delivery of water through the CAP System. The Hualapai Tribe shall be a CAP Contractor.

4.8 CAP Fixed OM&R Charge means Fixed OM&R Charge as that term is defined in the CAP Repayment Stipulation.

4.9 CAP Indian Priority Water means CAP Water having an Indian delivery priority as described in the CAP Repayment Contract.

4.10 CAP M&I Priority Water means CAP Water having a municipal and industrial delivery priority as described in the CAP Repayment Contract.

4.11 CAP NIA Priority Water means the CAP Water deliverable under a CAP contract or CAP subcontract providing for the delivery of non-Indian agricultural priority water as described in subsection 5.8 herein.

4.12 CAP Operating Agency means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the date of this Contract, CAWCD is the CAP Operating Agency.

4.13 CAP Pumping Energy Charge means the “Pumping Energy Charge” as that term is defined in the CAP Repayment Stipulation.

4.14 CAP Repayment Contract means: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

4.15 CAP Repayment Stipulation means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

4.16 CAP Subcontract means a long-term subcontract, as that term is used in the CAP

Repayment Stipulation, among the United States, and CAWCD for the delivery of CAP Water through the CAP System.

4.17 CAP Subcontractor or Subcontractor means a person or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the CAWCD for delivery of CAP Water through the CAP System.

4.18 CAP System means: (1) the Mark Wilmer Pumping Plant, (2) the Hayden Rhodes Aqueduct, (3) the Fannin-McFarland Aqueduct, (4) the Tucson Aqueduct, and (5) the pumping plants and appurtenant works of the CAP aqueduct system that are described in (1) through (5), and (6) any extension of, addition to, or replacement for a feature described in any of (1) through (5).

4.19 CAP Water means “Project Water” as that term is defined in the CAP Repayment Stipulation.

4.20 CAWCD or Central Arizona Water Conservation District means the political subdivision of the State of Arizona that is the contractor under the CAP Repayment Contract.

4.21 Colorado River Water means the waters of the Colorado River within the United States, including: (1) the waters of the reservoirs thereon; (2) waters of all tributaries to the Colorado River within the United States, other than tributaries located within Arizona; (3) all water beneath the surface of the Earth that is hydraulically connected to the Colorado River within the United States; and (4) all water beneath the surface of the Earth that is hydraulically connected to tributaries to the Colorado River within the United States, other than tributaries located within Arizona. The definition of Colorado River Water in this Contract, the Settlement Agreement, and the Hualapai Act shall only be used for purposes of interpreting this Contract, the Settlement Agreement, and the Hualapai Act and shall not be used for any interpretation of any other provision of applicable federal law including for example, the Colorado River Compact, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, the Colorado River Basin Project Act, 43 U.S.C. § 1501, or any contracts or agreements entered into pursuant thereto.

4.22 Community means the Gila River Indian Community, a government composed of

members of the Pima Tribe and the Maricopa Tribe and organized under Section 16 of the Act of June 18, 1934 (25 U.S.C. §476).

4.23 Contracting Officer means the Secretary or a duly authorized representative. Unless otherwise directed by the Secretary, the Regional Director, Bureau of Reclamation, Boulder City, Nevada, shall be the Contracting Officer.

4.24 Delivery Point(s) means the turnout(s) constructed or to be constructed by the United States at such point(s) on the CAP System or to the Hualapai Water Project as may be agreed upon in writing by the Contracting Officer and the Hualapai Tribe, or in the event they are unable to agree, as selected by the Secretary.

4.25 Diversion means the act of diverting.

4.26 Divert means to receive, withdraw or develop and produce or capture water by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam or other mechanical device, or any other act of man.

4.27 Effluent means water that has been used in Arizona for domestic, municipal or industrial purposes and that is available for reuse for any purpose, whether or not the water has been treated to improve its quality, but water shall not become Effluent solely as a result of having been used for hydropower generation.

4.28 Enforceability Date means the date described in Section 110 of the Hualapai Act.

4.29 Excess CAP Water means "Excess Water" as that term is defined in the CAP Repayment Stipulation.

4.30 Excess CAP Water Contract shall mean a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

4.31 Excess CAP Water Contractor or Excess CAP Water Contractors shall mean one or more persons or entities having an Excess CAP Water Contract.

4.32 Exchange means a trade between one or more persons of any water for any other water, if each party has a right to claim to use the water it gives in trade. This definition applies whether or not water is traded in equal amounts or other consideration is included in the trade.

4.33 Fourth Priority Water means Colorado River Water available for delivery within the State of Arizona for satisfaction of entitlements: (1) in accordance with contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968 for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for delivery of water under 43 U.S.C. § 1524(e), in accordance with the CAP Repayment Contract for the delivery of Colorado River Water to the CAP, including use of Colorado River Water on Indian lands.

4.34 Ground Water means all water beneath the surface of the earth within the State of Arizona that is not (1) surface water; (2) effluent; or (3) Colorado River Water.

4.35 Hohokam Agreement means the Agreement among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona cities of Chandler, Mesa, Phoenix and Scottsdale dated December 21, 1993.

4.36 Hualapai Reservation means the lands located within exterior boundaries of the Hualapai Indian Reservation, including: (1) all land withdrawn by the Executive Order dated January 4, 1883, as modified by the May 28, 1942 Order from the Secretary, in accordance with the Act of February 20, 1925; (2) land identified by Executive Orders of December 22, 1898, May 14, 1900, and June 2, 1911; and (3) those lands added to the Hualapai Reservation by Section 106 of the Hualapai Act.

4.37 Hualapai Tribe or Tribe means a Tribe of Hualapai Indians, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. § 476), and duly recognized by the Secretary.

4.38 Hualapai Tribe CAP Water means the 4,000 acre-feet per year of the CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, and was retained by the Secretary for reallocation to Arizona Indian tribes in accordance with Section

104(a)(1)(A)(iii) of the AWSA, (Pub. L. 108-451; 118 Stat. 3487) and reallocated to the Tribe in accordance with Section 109(a) of the Hualapai Act.

4.39 Hualapai Trust Land means land that is: (1) located in the State of Arizona, (2) located outside the exterior boundaries of the Hualapai Reservation, and (3) as of the Enforceability Date, is held in trust by the United States for the benefit of the Tribe.

4.40 Hualapai Water Project means the project constructed in accordance with Section 103 of the Hualapai Act. For purposes of this contract, the Hualapai Water Project shall not be considered a Federal facility.

4.41 Lower Basin means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry and also parts of those states located outside the drainage area which are or shall hereafter be beneficially served by water diverted from the Colorado River below Lee Ferry.

4.42 Lower Colorado River Basin Development Fund means the fund established by Section 403 of the Colorado River Basin Project Act (43 U.S.C. § 1543).

4.43 Member or Members means any person or persons duly enrolled as a member or members of the Hualapai Tribe.

4.44 Non-Project Water means water acquired by the Tribe other than from the CAP.

4.45 OM&R means (1) any recurring or ongoing activity associated with the day to day operation of a project; (2) any activity relating to scheduled or unscheduled maintenance of a project; and (3) any activity related to replacing any feature of a project.

4.46 Project Water means “Project Water” as that term is defined in the Repayment Stipulation.

4.47 Secretary means the Secretary of the Interior of the United States Department of the Interior.

4.48 Settlement Agreement means the Hualapai Tribe Water Rights Settlement Agreement dated as of \_\_\_\_\_, 2016, and any amendment or exhibit (including exhibit

amendments) to that Agreement that are (i) made in accordance with the Hualapai Act, or (ii) otherwise approved by the Secretary. This Contract constitutes Exhibit 3.1.51 to the Settlement Agreement.

4.49 State means the State of Arizona.

4.50 Surface Water means all water in Arizona that is appropriable under State law.

4.51 Water Right means any right in or to Groundwater, Surface Water, or Effluent, or Colorado River Water under Federal, State or other law.

4.52 Year means a calendar year. When not capitalized the term “year” shall have the meaning in the section in which the term was used.

5. DELIVERY OF WATER:

5.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this Contract, the United States will deliver Hualapai Tribe CAP Water to the Tribe directly from the Colorado River to the Hualapai Water Project, or through the CAP System for use in Arizona, or through an Exchange with an individual or entity acceptable to the Tribe and the Secretary. The United States will use reasonable diligence to make available to the Tribe the quantities of water specified in the schedule submitted by the Tribe and shall make deliveries of Hualapai Tribe CAP Water to the Tribe to meet the Tribe’s water requirements within the constraints of and in accordance with subsection 5.6 herein.

5.2 Term of the Contract. This Contract is for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617d, and is without limit as to term.

5.3 Conditions Relating to Delivery. The Tribe agrees that the obligation of the United States to deliver water under this Contract is subject to:

5.3.1 The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Basin Project Act; the contract between the United

States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of *Arizona v. California et al.*, 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now or hereafter modified.

5.3.2 The United States obligation under the Mexican Water Treaty, Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Mexican Water Treaty; and obligations associated with Minutes of the International Boundary and Water Commission adopted in accordance with the Mexican Water Treaty.

5.3.3 The express understanding and agreement by the Tribe that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to the Tribe hereunder.

5.3.4 The right of the United States or the CAP Operating Agency to temporarily discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized or, in the



opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the CAP Operating Agency will give thirty (30) days' notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, employees, successors, or assigns, nor the CAP Operating Agency, its officers, agents, employees, successors, or assigns shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs.

5.3.5 That the Tribe shall indemnify and hold harmless the CAP Operating Agency for any damage or claim of damage whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the operation of the Hualapai Water Project.

5.3.6 That the Tribe shall schedule delivery of Hualapai Tribe CAP Water in accordance with this Contract. If the combined delivery requests for all CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Tribe's delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Tribe requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Tribe's requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Tribe or in the case of the Ak-Chin Indian

Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor shall be considered similarly located for purposes of this section if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor will affect the quantity of the Hualapai Tribe's CAP Water available for delivery to the Tribe.

5.4 Exchanges, Leases, and Other Agreements. The Tribe may, in accordance with Sections 109(c)(2)(E) and (F) of the Hualapai Act, with the approval of the Secretary, enter into contracts to lease or options to lease, or contracts to Exchange or options to Exchange, Hualapai Tribe CAP Water within the Lower Basin in the State of Arizona, providing for the temporary delivery to others of any portion of Hualapai Tribe CAP Water. Contracts to lease and options to lease shall be for a term not to exceed one hundred (100) years. Contracts to Exchange or options to Exchange shall be for the term provided in each such contract or option. In accordance with Section 109(c)(2)(N) of the Hualapai Act, a lease or option to lease providing for the temporary delivery of Hualapai Tribe CAP Water shall require the lessee to pay to the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges (as defined in the CAP Repayment Stipulation) associated with the leased water. Neither the Hualapai Tribe nor the United States in any capacity shall be responsible for the payment of any charges associated with the delivery of Hualapai Tribe CAP Water to other persons.

5.4.1 In accordance with Section 109(c)(2)(F)(iii) of the Hualapai Act, the Tribe may, with the approval of the Secretary, renegotiate any lease at any time during the term of the lease, if the term of the renegotiated lease does not exceed one hundred (100) years.

5.4.2 In accordance with Section 109(c)(2)(H) of the Hualapai Act, the Tribe, and not the United States in any capacity, shall be entitled to all consideration due to the Tribe under any contracts or options to lease, contracts to Exchange or options to Exchange Hualapai Tribe CAP Water entered into by the Tribe. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer, or account for, in any manner: (1) any funds received by the Tribe as consideration under any such contracts entered into by the Tribe

to lease, option to lease, Exchange or option to Exchange Hualapai Tribe CAP Water; or (2) the expenditure of those funds, except in a case in which the Tribe deposits the proceeds of any such lease, option to lease, Exchange or option to Exchange into an account held in trust for the Tribe by the United States.

5.4.3 In accordance with Section 109(c)(2)(I) of the Hualapai Act, the Tribe may use Hualapai Tribe CAP Water on or off the Hualapai Reservation within the Lower Basin in Arizona for any purpose. In accordance with Section 109 (c)(2)(J) of the Hualapai Act, no Hualapai Tribe CAP Water may be used, leased, Exchanged, forborne or otherwise transferred in any way by the Tribe for use directly or indirectly outside of the Lower Basin in the State of Arizona.

5.4.4 Hualapai Tribe CAP Water scheduled for delivery in any Year under this Contract that the Tribe does not use may be made available by the Contracting Officer to other users, or the Contracting Officer may request that the CAP Operating Agency make such water available to other users; provided, however, that the Tribe shall first have an opportunity to enter into contracts to lease, options to lease, contracts to Exchange or options to Exchange or resell such water as provided in this Contract.

5.4.5 In accordance with Section 109(c)(2)(G) of the Hualapai Act, no portion of the Hualapai Tribe CAP Water may be permanently alienated.

5.4.6 The provisions of this Contract shall not be applicable to or affect Non-Project Water or Water Rights now owned or hereafter acquired by the Tribe.

5.4.7 The Secretary or the CAP Operating Agency shall deliver Hualapai Tribe CAP Water in accordance with water delivery schedules provided by the Tribe to the Secretary and the CAP Operating Agency in accordance with subsection 5.6 herein, or in accordance with lease or Exchange agreements approved by the Secretary.

5.4.8 The Secretary or the CAP Operating Agency shall deliver the leased Hualapai Tribe CAP Water to the lessee as further provided herein. Neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries to such lessee if, in the

judgment of the CAP Operating Agency or the Secretary, such deliveries would limit deliveries of CAP Water to other CAP Contractors, including the Hualapai Tribe, or CAP Subcontractors to a degree greater than would direct deliveries to the Hualapai at Superstition Mountains Recharge Turnout.

5.4.9 Any CAP Water received by the Tribe in Exchange for Effluent shall not be deducted from the Tribe's contractual entitlement under this Contract.

5.5 Delivery Entitlements and Obligations.

5.5.1 In accordance with Section 109(a) of the Hualapai Act, the Secretary shall deliver annually to the Tribe directly or through an Exchange with an individual or party acceptable to the Tribe and the Secretary, from the CAP System, a total of 4,000 acre-feet of water for any purpose, of which:

5.5.1.1 4,000 acre-feet of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, that was retained by the Secretary for reallocation to Arizona Indian tribes in accordance with subsection 104(a)(1)(A)(iii) of AWSA, and further reallocated by the Secretary to the Tribe in accordance with Section 109(a) of the Hualapai Act; and

5.5.1.2 In accordance with Section 5.3 of the Settlement Agreement, the Hualapai Tribe CAP Water may be delivered through the Hualapai Water Project authorized by Section 103(a) of the Hualapai Act or through the CAP System for use in the Lower Basin in Arizona. If the Hualapai Tribe CAP Water is to be delivered through the CAP System and the delivery capacity of the CAP System is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same CAP delivery rights as a CAP Contractor or CAP Subcontractor that is allowed to take delivery of water other than through the CAP System.

5.5.1.3 The Secretary shall authorize deliveries to be effected by the Diversion and use of water directly from the Colorado River in Arizona in accordance with Section 109(c)(2)(B)(ii) of the Hualapai Act.

5.5.1.4 In accordance with Section 109(e) of the Hualapai Act, all Hualapai Tribe CAP Water diverted directly from the Colorado River shall be accounted for as deliveries of CAP Water within Arizona.

5.6 Procedure For Ordering Water.

5.6.1 The Tribe will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery.

5.6.2 On or before October 1 of each Year, the Tribe shall submit in writing to the Contracting Officer a water delivery schedule indicating the amount of Hualapai Tribe CAP Water desired by the Tribe during each month of the following Year along with a preliminary schedule of water desired for the succeeding two (2) Years.

5.6.3 Upon receipt of the schedule, the Contracting Officer shall review it and, after consultation with the CAP Operating Agency and the Tribe, shall make only such modifications in it as are necessary to ensure that the amounts, times and rates of delivery to the Tribe will be consistent with the provisions of subsection 5.1 herein. On or before December 1 of each Year, the Contracting Officer shall determine and furnish to the Tribe the water delivery schedule for the next succeeding Year which shall show the amounts of water to be delivered to the Tribe during each month of that Year.

5.6.4 A water delivery schedule may be amended by the Contracting Officer upon the Tribe's written request. Proposed amendments shall be submitted by the Tribe to the Contracting Officer within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

5.6.5 The Tribe shall hold the United States, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature arising out of or connected with the actions of the United States regarding water delivery schedules furnished to the Tribe.

5.6.6 In lieu of the Tribe submitting water delivery schedules to the Contracting

Officer for approval, the Contracting Officer reserves the right to direct the Tribe to submit such schedules to the CAP Operating Agency under such criteria as the Contracting Officer determines to be appropriate, after consultation with the Tribe and the CAP Operating Agency and so long as the Tribe's rights to require the delivery of CAP Water are not thereby adversely impacted or diminished.

5.7 Points of Delivery - Measurement and Responsibility for Distribution of Water.

5.7.1 The Hualapai Tribe CAP Water to be delivered in accordance with this Contract shall be delivered: (i) on the Reservation to the Hualapai Water Project; (ii) at the turnout(s) from the CAP System in accordance with the terms of storage, Exchange, or lease agreements approved by the Secretary, and (iii) at such other points as may otherwise be agreed to by the Contracting Officer subject to the terms of the Settlement Agreement and the Hualapai Act.

5.7.2 All water delivered to the Tribe shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the CAP Operating Agency. Upon request of the Tribe, the accuracy of such measurements will be investigated by the Contracting Officer or the CAP Operating Agency and the Tribe, and any errors appearing therein adjusted; provided, however, that in the event the Parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

5.7.3 Neither the United States nor the CAP Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Delivery Point(s) as specified herein. The Tribe shall indemnify and hold harmless the United States and the CAP Operating Agency on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Tribe's control, carriage, handling, use, disposal, or distribution of such water beyond said Delivery Point(s).

5.8 Priority.

5.8.1 In time of shortage the Available CAP Supply shall be distributed as

described in this subsection 5.8.

5.8.2 On or before June 1 of each Year, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor. For purposes of administering this Contract, a time of shortage shall be a Year when:

5.8.2.1. Prior to January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and (iii) up to one-hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.8.2.2. On or after January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; (iii) up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water in accordance with the Hohokam Agreement; and (iv) up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

5.8.3 In time of shortage the initial distribution of water shall be determined in the following manner:

5.8.3.1. If the available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

5.8.3.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

*Where*

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsections 5.8.2.1 and 5.8.2.2, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 5.8.2.1 herein were nine hundred eighty-one thousand nine hundred two (981,902) acre-feet (343,079 + 638,823 + 0), then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 5.8.2.2 herein were one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

5.8.4 In time of shortage unscheduled CAP Water shall be redistributed in the following manner:

5.8.4.1. Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery in accordance with contracts, leases, or Exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

5.8.4.2. CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by



the Secretary and the CAP Operating Agency in consultation with users of CAP M&I Priority Water to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery in accordance with contracts, leases, or Exchange agreements for the delivery of CAP M&I Priority Water, shall become available for delivery as CAP Indian Priority Water.

5.8.4.3. Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied, shall become available for delivery as CAP NIA Priority Water.

5.8.4.4. Nothing in this subsection 5.8 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, in accordance with such contracts, CAP Water in amounts greater than such CAP Contractor's entitlement.

5.8.5 The distribution of CAP Indian Priority Water among CAP Indian Priority Water users shall be accomplished as follows:

5.8.5.1. In consideration of the agreement by the Community and Tohono O'odham Nation to incur additional shortages beyond those that each would have incurred under the approach described in Exhibit A to each of their respective CAP Water delivery contracts, the Secretary shall first make available to the Community and the Tohono O'odham Nation any water made available for delivery as CAP Indian Priority Water under subsection 5.8.4.2 herein, to the extent necessary in any Year, to offset the additional shortages borne by the Community and the Tohono O'odham Nation. After the additional shortages borne by the Community and the Tohono O'odham Nation have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water, including the Community and the Tohono O'odham Nation, in proportion to their contractual entitlements to CAP Indian Priority Water.

5.8.5.2. If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements

described in subsections 5.8.2.1 or 5.8.2.2, as applicable, then, to the extent that sufficient quantities of CAP Water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with subsection 5.8.4.2 herein, are not available to meet orders for CAP Indian Priority Water, the Community and the Tohono O'odham Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under their respective CAP Water delivery contracts.

5.8.5.3. If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima Maricopa Indian Community, the Tohono O'odham Nation, and the San Carlos Apache Tribe. During a time of shortage described in this subsection 5.8.5.3 herein, the CAP Indian Priority Water available to the tribes referenced in this subsection 5.8.5.3 herein shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

5.8.5.4. If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available in accordance with subsection 5.8.2.1 herein shall be distributed by the Secretary based on the ratio of the amount of water delivered in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. The Secretary shall determine the quantity of CAP Indian Priority Water delivered to the Gila River Indian Community and the Tohono O'odham Nation in the latest non-shortage Year, in a manner consistent with the water settlement agreements with these Tribes.

5.8.5.5. In the event that there is any dispute regarding the amount of CAP water available to the Tribe during a time of shortage, or dispute regarding the operation of this subsection 5.8, the Secretary shall make a final determination after consulting with the Tribe,

which decision shall be subject to such challenge or appeal processes as are available or applicable.

5.8.5.6. In accordance with Section 109(c)(2)(D)(i) of the Hualapai Act, if, in any Year, the Available CAP Supply is insufficient to meet all demands under CAP Contracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority Water to the CAP Contractors or CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. The Secretary shall determine the quantity of CAP NIA Priority Water used by the Gila River Indian Community and the Tohono O'Odham Nation in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, in a manner consistent with the settlement agreements with these Tribes.

5.8.5.7. The shortage sharing criteria in subsection 5.8 shall not apply to Colorado River Water acquired from the Yuma-Mesa Division of the Gila Project in accordance with the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530, or Colorado River Water acquired from the Wellton-Mohawk Irrigation and Drainage District in accordance with the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Public Law 100-512, both of which have a higher priority than Fourth Priority Water.

5.8.5.8. In accordance with Section 109(c)(2)(D)(ii) of the Hualapai Act, notwithstanding subsection 5.8.5.6, if the available CAP supply is insufficient to meet all demands under CAP contracts and CAP subcontracts for the delivery of CAP NIA Priority Water in the year following the year in which the enforceability date occurs, the Secretary shall assume that the Hualapai Tribe used the full volume of Hualapai Tribe CAP water in the last year in which the available CAP supply was sufficient to fill all orders for CAP NIA Priority Water. This assumption shall continue until the available CAP supply is sufficient to meet all demands

under CAP contracts and CAP subcontracts for the delivery of CAP NIA Priority Water.

6. OTHER WATER: Nothing in this Contract shall prevent the Tribe from agreeing with a water user to receive water from a source off of the Hualapai Reservation or off of Hualapai Trust Lands where the water user does not condition delivery upon substitution for Project Water.

7. PAYMENTS:

7.1 In accordance with Section 109(c)(2)(Q) of the Hualapai Act, for the purpose of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Hualapai Tribe CAP Water, whether that water is delivered for use by the Tribe or in accordance with any lease, option to lease, Exchange, or option to Exchange providing for the delivery of water to other persons of the Hualapai Tribe for the CAP Water entered into by the Tribe shall (1) be non-reimbursable, and (2) be excluded from the repayment obligation of CAWCD.

7.2 In accordance with Section 109(c)(2)(R)(ii) of the Hualapai Act, no CAP Water service capital charges shall be due or payable for Hualapai Tribe CAP Water, regardless of whether such water is delivered for use by the Tribe or under any lease, option to lease, Exchange or option to Exchange the Hualapai Tribe CAP Water entered into by the Tribe.

7.3 Pursuant to Section 109(c)(2)(N) of the Hualapai Act, any lease or option to lease providing for the temporary delivery to others of any Hualapai Tribe CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased water. Neither the Tribe nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of Hualapai Tribe CAP Water leased to other persons.

7.4 The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all Hualapai Tribe CAP Water. In accordance with Section 109(c)(2)(K)(ii) of the Hualapai Act, as authorized by 43 U.S.C. § 1543(f)(2)(A), as amended, and to the extent that funds are available in the Lower Colorado River Basin Development Fund,

the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of Hualapai Tribe CAP Water, and to the extent the funds are not available from the Lower Colorado River Basin Development Basin Fund such charges shall be paid by the Tribe. CAP Fixed OM&R Charges associated with the delivery of Hualapai Tribe CAP Water leased to others shall be paid as provided in subsection 7.3 herein.

7.5 In accordance with Sections 109(c)(2)(L)(i) and (ii) of the Hualapai Act, the CAP Operating Agency shall be paid the CAP pumping energy charges associated with the delivery of all the Hualapai Tribe CAP water only when the CAP system is used for the delivery of that water. Except for CAP Water not delivered through the CAP System, which does not incur a CAP pumping energy charge, or water delivered to other persons as provided in clause (xv), any applicable CAP pumping energy charges associated with the delivery of the Hualapai Tribe CAP water shall be paid by the Hualapai Tribe.

7.6 In accordance with Section 109(c)(2)(M) of the Hualapai Act, no property tax or in-lieu property tax equivalency shall be due or payable by the Hualapai Tribe for the delivery of CAP water or for the storage of CAP water in an underground storage facility or groundwater savings facility.

7.7 In those instances in which the monies are not available to the Secretary from the Lower Colorado River Basin Development Fund as set forth in subsection 7.4 and the Tribe is responsible for making payments, the following shall apply:

7.7.1 The CAP Operating Agency shall have no responsibility to deliver any Hualapai Tribe CAP Water for which the CAP Fixed OM&R Charge and any applicable CAP Pumping Energy Charge have not been paid in advance consistent with the United States' obligations in the CAP Repayment Stipulation.

7.7.2 The annual CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Hualapai Tribe CAP Water shall be paid in twelve (12) equal monthly installments and shall be paid on or before the first day of each month in order for the Tribe to receive water deliveries in the succeeding month.

7.7.3 The Contracting Officer may direct that payments be paid in other than the equal monthly installments described in subsection 7.7.2. herein.

7.7.4 Unless otherwise agreed, differences between estimated and actual CAP Fixed OM&R Charge and the estimated and actual CAP Pumping Energy Charge shall be determined by the Contracting Officer and shall be adjusted in the next succeeding annual CAP Fixed OM&R Charge; provided, however, that if in the opinion of the Contracting Officer the amount of funds advanced by the Tribe is likely to be insufficient to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge during the Year, the Contracting Officer may increase the annual estimate of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Hualapai Tribe CAP Water by written notice thereof to the Tribe, and the Tribe shall forthwith increase its remaining monthly payments in such Year by the amount necessary to cover the insufficiency; provided, further, that unless otherwise agreed, if in the opinion of the Contracting Officer the amount of funds advanced by the Tribe is likely to be greater than what is required to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Hualapai Tribe CAP Water during the Year, the Contracting Officer shall reduce the remaining monthly payments on a pro rata basis to adjust the total payment for the Year to the revised estimate. The Tribe agrees to make all advances or payments required under this section.

7.7.5 In the event the Tribe fails or refuses to accept delivery at the Delivery Point(s) of the quantities of water available for delivery to and required to be accepted by it in accordance with this Contract, or in the event the Tribe fails in any Year to submit a schedule for delivery as provided in subsection 5.6 herein, said failure or refusal shall not relieve the Tribe of its obligation to make the payment required in this subsection 7.7.5 herein. The Tribe agrees to make payment therefore in the same manner as if said water had been delivered to and accepted by it in accordance with this Contract except as provided in subsection 7.7.6 herein.

7.7.6 If Hualapai Tribe CAP Water is made available to others by the Contracting Officer or the CAP Operating Agency, the Tribe shall be relieved of its payments

hereunder and only to the extent of the amount paid to the Contracting Officer or the CAP Operating Agency by such other users, but not to exceed the amount the Tribe is obligated to pay under this Contract for said water.

7.7.7 In the event the Tribe or the Contracting Officer and the CAP Operating Agency are unable to sell any portion of Hualapai Tribe CAP Water scheduled for delivery and not required by the Tribe, the Tribe shall be relieved of the CAP Pumping Energy Charges associated with the undelivered water.

7.7.8 In the event that a discontinuance or temporary reduction in deliveries of CAP Water results in the delivery to the Tribe of an amount less than what has been paid for in advance by the Tribe, the Tribe shall be given credit toward future payments due.

7.7.9 The Tribe shall have no right to delivery of CAP Water during any period in which the Tribe may be in arrears in the payment of any charges due to the Contracting Officer or the CAP Operating Agency. The Contracting Officer may sell to another entity any water determined to be available under the Tribe's entitlement for which payment is in arrears or the Contracting Officer may request that the CAP Operating Agency sell such water; provided, however, that the Tribe may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of water by the Contracting Officer or the CAP Operating Agency and payment of charges for the current period.

7.7.10 The Tribe shall be subject to interest, administrative, and penalty charges on delinquent CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of Hualapai Tribe CAP Water.

7.7.11 When a payment is not received by the due date, the Tribe shall pay an interest charge for each day the payment is delinquent beyond the due date. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month

prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

7.7.12 When a payment becomes 60 days delinquent, the Tribe shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment.

7.7.13 When a payment is delinquent 90 days or more, the Tribe shall pay an additional penalty charge of 6 percent per Year for each day the payment is delinquent beyond the due date.

7.7.14 The Tribe shall pay any fees incurred for debt collection services associated with a delinquent payment.

7.7.15 When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of Hualapai Tribe CAP Water.

7.7.16 The obligation of the Tribe to pay the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of Hualapai Tribe CAP Water to the Contracting Officer, or the CAP Operating Agency as provided in this Contract, is a general obligation of the Tribe.

8. ENVIRONMENTAL COMPLIANCE: Notwithstanding any other provision of this Contract, and in accordance with Section 101(c) of the Hualapai Act, the Secretary will not deliver Project Water to the Tribe until the Secretary has complied with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.), and all other applicable environmental Acts and regulations.

9. GENERAL PROVISIONS:

9.1 Water and Air Pollution Control. The Tribe, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the Tribe and the



United States, and shall obtain all required permits or licenses from the appropriate authorities of the Tribe and the United States.

9.2 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. Neither the United States nor the CAP Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

9.3 Books, Records, and Reports. The Tribe shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

9.4 Notices. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Tribe, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Tribe, Office of the Tribal Chairman, P.O. Box 179, Peach Springs, Arizona 86434. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

9.5 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allocated.

9.6 Assignment Limited - Successors and Assigns Obligated. The provisions of this

Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

9.7 Officials Not to Benefit. No member of or delegate to Congress or official of the Tribe shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

9.8 Indian Employment – Equal Employment Opportunity.

9.8.1 In accordance with the provisions of Title 42 U.S.C. § 2000e-2 (i), the Tribe may give preference in employment to Indians living on or near the Hualapai Reservation. The Bureau of Indian Affairs Office of Employment Assistance shall be notified of employment opportunities 48 hours before any positions are advertised to the general public.

9.8.2 Except as provided above, during the performance of this Contract, the Tribe agrees as follows:

9.8.2.1 The Tribe will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Tribe will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Tribe agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

9.8.2.2 The Tribe will, in all solicitations or advertisements for employees placed by or on behalf of the Tribe, state that all qualified applicants will receive

consideration for employment without discrimination because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

9.8.2.3 The Tribe will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the Tribe's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

9.8.2.4 The Tribe will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

9.8.2.5 The Tribe will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

9.8.2.6 In the event of the Tribe's noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Tribe may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

9.8.2.7 The Tribe will include the provisions of subsections 9.8.2.1 through 9.8.2.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Tribe will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as

a means of enforcing such provisions, including sanctions for noncompliance; *provided, however*, that in the event the Tribe becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Tribe may request the United States to enter into such litigation to protect the interests of the United States.

9.9 Compliance with Civil Rights Laws and Regulations.

9.9.1 The Tribe shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the Department of the Interior and/or Bureau of Reclamation.

9.9.2 These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age. By executing this Contract, the Tribe agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

9.9.3 The Tribe makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Tribe by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Tribe recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

9.9.4 Complaints of discrimination against the Tribe shall be investigated by the Contracting Officer's Office of Civil Rights.

9.10 Rules, Regulations, and Determinations.

9.10.1 The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

9.10.2 The Contracting Officer shall have the right to make, after an opportunity has been offered to the Tribe for consultation, rules, regulations, and determinations consistent with the provisions of the Contract and the laws of the United States and to add to or to modify such rules, regulations, and determinations as the Contracting Officer may deem proper and necessary to carry out this Contract, and to supply necessary details of its administration which are not covered by express provisions of this Contract. The Tribe shall observe such rules, regulations, and determinations.

9.10.3 Where the terms of this Contract provide action to be based upon the opinion or determination of either party to this Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Tribe questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Tribe.

10. EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of subsections 9.8 and 9.9 apply except where they conflict with Sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964 (73 Stat. 253-257), which pertain to Indian tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

11. RECLAMATION REFORM ACT: In accordance with subsection 108(d) of the Hualapai Act, the Reclamation Reform Act of 1982 (43 U.S.C. § 390aa, et seq.) and any other acreage limitation or full cost pricing provision of Federal law shall not apply to any person, entity or land solely on the basis of (1) receipt of any benefits under the Hualapai Act, (2)

execution or performance of the Settlement Agreement, or (3) the use, storage, delivery, lease or Exchange of the Hualapai Tribe CAP Water.

12. CONTRACT AND THE HUALAPAI ACT: In the event that differences between the language of this Contract and the Hualapai Act result in ambiguity or confusion or the provisions are inconsistent, the language of the Hualapai Act shall govern.

13. ENFORCEABILITY DATE: This Contract shall become effective on the Enforceability Date.

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Contract the day and year first above written.

Approved as to Legal Sufficiency

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Attorney-Advisor

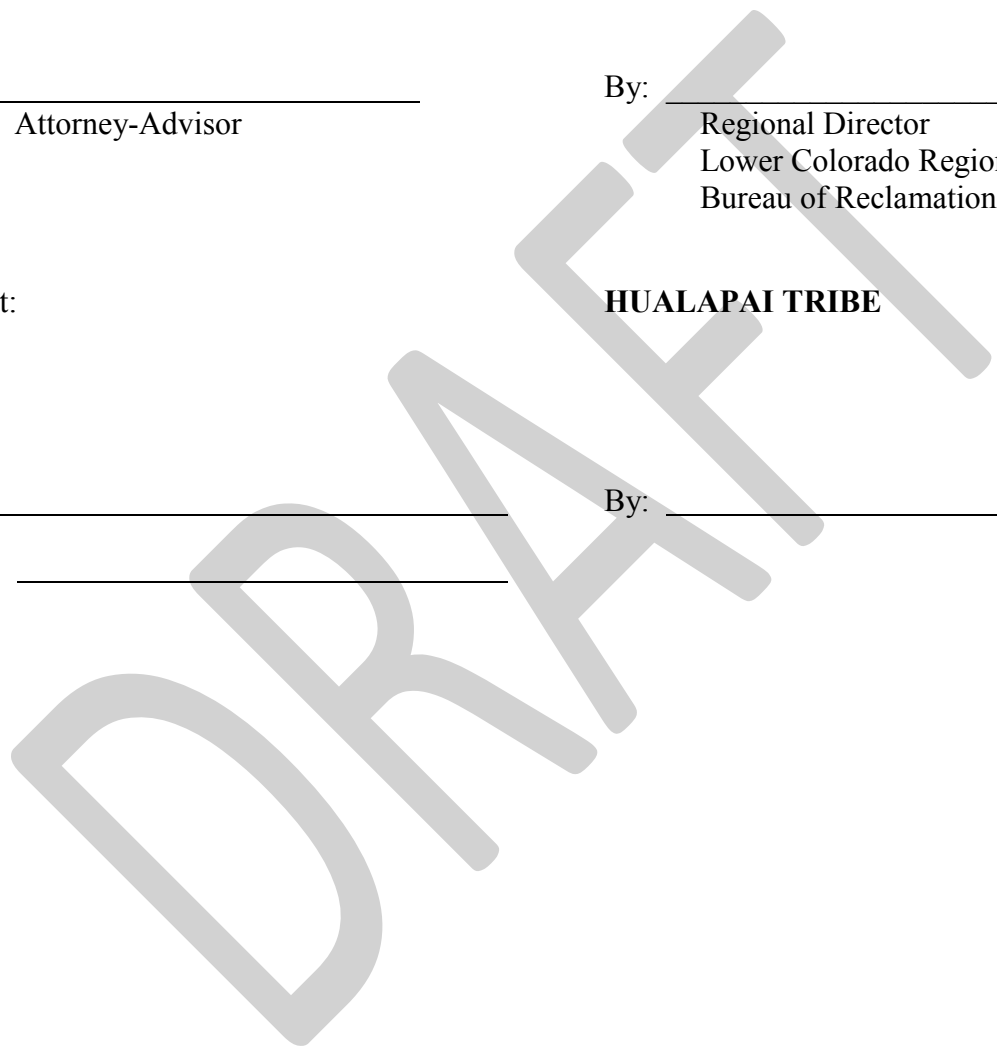
By: \_\_\_\_\_  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

Attest:

**HUALAPAI TRIBE**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_



# Hualapai Tribe Water Rights Settlement Act of 2016

June 29, 2016 Special Board  
Meeting  
David Johnson, Senior Attorney

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## 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; a small portion is located in the Verde River watershed
- The Tribe also holds four parcels of land along the Big Sandy River, which drains into the Bill Williams River

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# Hualapai Tribe



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## Background

- Between 2011 and 2014, CAWCD, ADWR, Freeport-McMoRan, and SRP began negotiations with the Hualapai Tribe and the United States for resolution of the Tribe's claims to the waters of the Colorado River
- Negotiations stalled because of uncertainty over the type and design of the tribal water project
- Given a deadline for Freeport to put water to use at Planet Ranch, the parties agreed to bifurcate the settlement into two phases

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## Phases

- Phase one, which consisted of the Bill Williams River Water Rights Settlement Act of 2014, resolved the Tribe's claims to the Bill Williams Watershed
- While CAWCD was not a party to Phase one, CAWCD supported the settlement because of significant benefits derived by the Multi-Species Conservation Program
- Phase two resolves the Tribe's remaining water rights claims including all claims to the waters of the Colorado River

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## CAWCD Involvement

- The Arizona Water Settlements Act of 2004 set aside 67,300 acre-feet of Non-Indian Agricultural Priority Water (NIA Water) for future tribal water rights settlements
- This Hualapai Water Rights Settlement would reallocate 4,000 of the NIA Water for the settlement of the Hualapai Tribe water rights claims

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# Hualapai Water Project



# Hualapai Water Project

- The Hualapai Water Project will consist of a pipeline from Diamond Creek (a popular landing/take out point for Grand Canyon white water trips) and would follow existing roads from Diamond Creek to Peach Springs and on to Grand Canyon West
- The infrastructure would consist of approximately 68.5 miles of pipeline and nine pump stations and would be designed to deliver 3,414 acre-feet of water
- The project will be paid for through a federal appropriation and will be built entirely on the Hualapai Reservation

## Costs of CAP Water

- The reallocated NIA Water may be delivered either through the Hualapai Water Project for direct delivery to the reservation or through the CAP for delivery to a storage facility or to a lessee
- Regardless of the point of diversion/delivery, CAP will be paid the Fixed OM&R charges associated with the 4,000 acre-feet of NIA Water
- The Tribe (or its lessee) will pay Pumping Energy charges only if the water is delivered through the CAP

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