

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1146

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IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1994

Referred to the Committee on Natural Resources

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## AN ACT

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

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Yavapai-Prescott  
5       Indian Tribe Water Rights Settlement Act of 1994”.

1 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATIONS.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) it is the policy of the United States, in ful-  
4 fillment of its trust responsibility to the Indian  
5 tribes, to promote Indian self-determination and eco-  
6 nomic self-sufficiency, and to settle, wherever pos-  
7 sible, the water rights claims of Indian tribes with-  
8 out lengthy and costly litigation;

9 (2) meaningful Indian self-determination and  
10 economic self-sufficiency depend on the development  
11 of viable Indian reservation economies;

12 (3) quantification of rights to water and devel-  
13 opment of facilities needed to utilize tribal water  
14 supplies effectively is essential to the development of  
15 viable Indian reservation economies, particularly in  
16 arid western States;

17 (4) on June 7, 1935, and by actions subsequent  
18 thereto, the United States established a reservation  
19 for the Yavapai-Prescott Indian Tribe in Arizona ad-  
20 jacent to the city of Prescott;

21 (5) proceedings to determine the full extent of  
22 Yavapai-Prescott Tribe's water rights are currently  
23 pending before the Superior Court of the State of  
24 Arizona in and for Maricopa County, as part of the  
25 general adjudication of the Gila River system and  
26 source;

1           (6) recognizing that final resolution of the gen-  
2           eral adjudication will take many years and entail  
3           great expense to all parties, prolong uncertainty as  
4           to the full extent of the Yavapai-Prescott Tribe's en-  
5           titlement to water and the availability of water sup-  
6           plies to fulfill that entitlement, and impair orderly  
7           planning and development by the Tribe and the city  
8           of Prescott; the Tribe, the city of Prescott, the  
9           Chino Valley Irrigation District, the State of Ari-  
10          zona and the United States have sought to settle all  
11          claims to water between and among them;

12          (7) representatives of the Yavapai-Prescott  
13          Tribe, the city of Prescott, the Chino Valley Irriga-  
14          tion District, the State of Arizona and the United  
15          States have negotiated a Settlement Agreement to  
16          resolve all water rights claims between and among  
17          them, and to provide the Tribe with long term, reli-  
18          able water supplies for the orderly development and  
19          maintenance of the Tribe's reservation;

20          (8) pursuant to the Settlement Agreement and  
21          the Water Service Agreement, the quantity of water  
22          made available to the Yavapai-Prescott Tribe by the  
23          city of Prescott and the Chino Valley Irrigation Dis-  
24          trict will be secured, such Agreements will be contin-  
25          ued in perpetuity, and the Tribe's continued on-res-

1       ervation use of water for municipal and industrial,  
2       recreational and agricultural purposes will be pro-  
3       vided for;

4               (9) to advance the goals of Federal Indian pol-  
5       icy and to fulfill the trust responsibility of the Unit-  
6       ed States to the Tribe, it is appropriate that the  
7       United States participate in the implementation of  
8       the Settlement Agreement and assist in firming up  
9       the long-term water supplies of the city of Prescott  
10      and the Yavapai-Prescott Tribe so as to enable the  
11      Tribe to utilize fully its water entitlements in devel-  
12      oping a diverse, efficient reservation economy; and

13              (10) the assignment of the CAP contract of the  
14      Yavapai-Prescott Tribe and the CAP subcontract of  
15      the city of Prescott is a cost-effective means to en-  
16      sure reliable, long-term water supplies for the  
17      Yavapai-Prescott Tribe and to promote efficient, en-  
18      vironmentally sound use of available water supplies  
19      in the Verde River basin.

20      (b) DECLARATION OF PURPOSES.—The Congress de-  
21      clares that the purposes of this Act are—

22              (1) to approve, ratify and confirm the Settle-  
23      ment Agreement among the Yavapai-Prescott Tribe,  
24      the city of Prescott, the Chino Valley Irrigation Dis-  
25      trict, the State of Arizona and the United States;

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

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

9           (4) to require that expenditures of funds ob-  
10 tained through the assignment of CAP contract enti-  
11 tlements by the Yavapai-Prescott Tribe and Prescott  
12 for the acquisition or development of replacement  
13 water supplies in the Verde River basin shall not be  
14 inconsistent with the goals of the Prescott Active  
15 Management Area, preservation of riparian habitat,  
16 flows and biota of the Verde River and its tribu-  
17 taries; and

18           (5) to repeal section 406(k) of Public Law 101-  
19 628 which authorizes \$30,000,000 in appropriations  
20 for the acquisition of land and water resources in  
21 the Verde River basin and for the development  
22 thereof as an alternative source of water for the  
23 Fort McDowell Indian Community.

24 **SEC. 3. DEFINITIONS.**

25 For purposes of this Act:

1           (1) The term “CAP” means the Central Ari-  
2           zona Project, a reclamation project authorized under  
3           title III of the Colorado River Basin Project Act of  
4           1968 (43 U.S.C. 1521 et seq.).

5           (2) The term “CAWCD” means the Central Ar-  
6           izona Water Conservation District, organized under  
7           the laws of the State of Arizona, which is the con-  
8           tractor under a contract with the United States,  
9           dated December 1, 1988, for the delivery of water  
10          and repayment of costs of the Central Arizona  
11          Project.

12          (3) The term “CVID” means the Chino Valley  
13          Irrigation District, an irrigation district organized  
14          under the laws of the State of Arizona.

15          (4) The term “Prescott AMA” means the Ac-  
16          tive Management Area, established pursuant to Ari-  
17          zona law and encompassing the Prescott ground  
18          water basin, wherein the primary goal is to achieve  
19          balance between annual ground water withdrawals  
20          and natural and artificial recharge by the year 2025.

21          (5) The term “Prescott” means the city of  
22          Prescott, an Arizona municipal corporation.

23          (6) The term “Reservation” means the reserva-  
24          tion established by the Act of June 7, 1935 (49

1 Stat. 332) and the Act of May 18, 1956 (70 Stat.  
2 157) for the Yavapai-Prescott Tribe of Indians.

3 (7) The term “Secretary” means the Secretary  
4 of the United States Department of the Interior.

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

11 (9) The term “Tribe” means the Yavapai-Pres-  
12 cott Indian Tribe, a tribe of Yavapai Indians duly  
13 recognized by the Secretary.

14 (10) The term “Water Service Agreement”  
15 means that agreement between the Yavapai-Prescott  
16 Indian Tribe and the city of Prescott, as approved  
17 by the Secretary, providing for water, sewer, and ef-  
18 fluent service from the city of Prescott to the  
19 Yavapai-Prescott Tribe.

20 **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.**

21 (a) APPROVAL OF SETTLEMENT AGREEMENT.—To  
22 the extent the Settlement Agreement does not conflict with  
23 the provisions of this Act, such Agreement is approved,  
24 ratified and confirmed. The Secretary shall execute and  
25 perform such Agreement, and shall execute any amend-

1 ments to the Agreement and perform any action required  
2 by any amendments to the Agreement which may be mutu-  
3 ally agreed upon by the parties.

4 (b) PERPETUITY.—The Settlement Agreement and  
5 Water Service Agreement shall include provisions which  
6 will ensure that the benefits to the Tribe thereunder shall  
7 be secure in perpetuity. Notwithstanding the provisions of  
8 section 2103 of the Revised Statutes of the United States  
9 (25 U.S.C. 81) relating to the term of the Agreement, the  
10 Secretary is authorized and directed to approve the Water  
11 Service Agreement with a perpetual term.

12 **SEC. 5. ASSIGNMENT OF CAP WATER.**

13 The Secretary is authorized and directed to arrange  
14 for the assignment of, or to purchase, the CAP contract  
15 of the Tribe and the CAP subcontract of the city of Pres-  
16 cott to provide funds for deposit into the Verde River  
17 Basin Water Fund established pursuant to section 6.

18 **SEC. 6. REPLACEMENT WATER FUND; CONTRACTS.**

19 (a) FUND.—The Secretary shall establish a fund to  
20 be known as the “Verde River Basin Water Fund” (here-  
21 inafter called the “Fund”) to provide replacement water  
22 for the CAP water relinquished by the Tribe and by Pres-  
23 cott. Moneys in the Fund shall be available without fiscal  
24 year limitations.

1       (b) CONTENT OF FUND.—The Fund shall consist of  
2 moneys obtained through the assignment or purchase of  
3 the contract and subcontract referenced in section 5, ap-  
4 propriations as authorized in section 9, and any moneys  
5 returned to the Fund pursuant to subsection (d) of this  
6 section.

7       (c) PAYMENTS FROM FUND.—The Secretary shall,  
8 subsequent to the publication of a statement of findings  
9 as provided in section 12(a), promptly cause to be paid  
10 from the Fund to the Tribe the amounts deposited to the  
11 Fund from the assignment or purchase of the Tribe’s CAP  
12 contract, and, to the city of Prescott, the amounts depos-  
13 ited to the Fund from the assignment or purchase of the  
14 city’s CAP subcontract.

15       (d) CONTRACTS.—The Secretary shall require, as a  
16 condition precedent to the payment of any moneys pursu-  
17 ant to subsection (c), that the Tribe and Prescott agree,  
18 by contract with the Secretary, to establish trust accounts  
19 into which the payments would be deposited and adminis-  
20 tered, to use such moneys consistent with the purpose and  
21 intent of section 7, to provide for audits of such accounts,  
22 and for the repayment to the Fund, with interest, any  
23 amount determined by the Secretary not to have been used  
24 within the purpose and intent of section 7.

1 **SEC. 7. EXPENDITURES OF FUNDS.**

2 (a) BY THE CITY.—All moneys paid to Prescott for  
3 relinquishing its CAP subcontract and deposited into a  
4 trust account pursuant to section 6(d), shall be used for  
5 the purposes of defraying expenses associated with the in-  
6 vestigation, acquisition or development of alternative  
7 sources of water to replace the CAP water relinquished  
8 under this Act. Alternative sources shall be understood to  
9 include, but not be limited to, retirement of agricultural  
10 land and acquisition of associated water rights, develop-  
11 ment of ground water resources outside the Prescott Ac-  
12 tive Management Area established pursuant to the laws  
13 of the State of Arizona, and artificial recharge; except that  
14 none of the moneys paid to Prescott may be used for con-  
15 struction or renovation of the city's existing waterworks  
16 or water delivery system.

17 (b) BY THE TRIBE.—All funds paid to the Tribe for  
18 relinquishing its CAP contract and deposited into a trust  
19 account pursuant to section 6(d), shall be used to defray  
20 its water service costs under the Water Service Agreement  
21 or to develop and maintain facilities for on-reservation  
22 water or effluent use.

23 (c) NO PER CAPITA PAYMENTS.—No amount of the  
24 Tribe's portion of the Fund may be used to make per cap-  
25 ita payments to any member of the Tribe, nor may any  
26 amount of any payment made pursuant to section 6(c) be

1 distributed as a dividend or per capita payment to any  
2 constituent, member, shareholder, director or employee of  
3 Prescott.

4 (d) **DISCLAIMER.**—Effective with the payment of  
5 funds pursuant to section 6(c), the United States shall not  
6 be liable for any claim or cause of action arising from the  
7 use of such funds by the Tribe or by Prescott.

8 **SEC. 8. ENVIRONMENTAL COMPLIANCE.**

9 The Secretary, the Tribe and Prescott shall comply  
10 with all applicable Federal environmental and State envi-  
11 ronmental and water laws in developing alternative water  
12 sources pursuant to section 7(a). Development of such al-  
13 ternative water sources shall not be inconsistent with the  
14 goals of the Prescott Active Management Area, preserva-  
15 tion of the riparian habitat, flows and biota of the Verde  
16 River and its tributaries.

17 **SEC. 9. APPROPRIATIONS AUTHORIZATION AND REPEAL.**

18 (a) **AUTHORIZATION.**—There are authorized to be ap-  
19 propriated to the Fund established pursuant to section  
20 6(a):

21 (1) Such sums as may be necessary, but not to  
22 exceed \$200,000, to the Secretary for the Tribe's  
23 costs associated with judicial confirmation of the set-  
24 tlement.

1           (2) Such sums as may be necessary to estab-  
2       lish, maintain and operate the gauging station re-  
3       quired under section 11(e).

4       (b) STATE CONTRIBUTION.—The State of Arizona  
5       shall contribute \$200,000 to the trust account established  
6       by the Tribe pursuant to the Settlement Agreement and  
7       section 6(d) for uses consistent with section 7(b).

8       (c) REPEAL.—Subsection 406(k) of the Act of No-  
9       vember 28, 1990 (Public Law 101-628; 104 Stat. 4487)  
10      is repealed.

11      **SEC. 10. SATISFACTION OF CLAIMS.**

12      (a) WAIVER.—The benefits realized by the Tribe or  
13      any of its members under the Settlement Agreement and  
14      this Act shall constitute full and complete satisfaction of  
15      all claims by the Tribe and all members' claims for water  
16      rights or injuries to water rights under Federal and State  
17      laws (including claims for water rights in ground water,  
18      surface water and effluent) from time immemorial to the  
19      effective date of this Act, and for any and all future claims  
20      of water rights (including claims for water rights in  
21      ground water, surface water, and effluent) from and after  
22      the effective date of this Act. Nothing in this Act shall  
23      be deemed to recognize or establish any right of a member  
24      of the Tribe to water on the Tribe's reservation.

1 (b) WAIVER AND RELEASE.—The Tribe, on behalf of  
2 itself and its members, and the Secretary on behalf of the  
3 United States, are authorized and required, as a condition  
4 to the implementation of this Act, to execute a waiver and  
5 release, except as provided in subsection (d) and the Set-  
6 tlement Agreement, of all claims of water rights or injuries  
7 to water rights (including water rights in ground water,  
8 surface water and effluent), from and after the effective  
9 date of this Act, which the Tribe and its members may  
10 have, against the United States, the State of Arizona or  
11 any agency or political subdivision thereof, or any other  
12 person, corporation, or municipal corporation, arising  
13 under the laws of the United States or the State of Ari-  
14 zona.

15 (c) WAIVER BY UNITED STATES.—Except as pro-  
16 vided in subsection (d) and the Settlement Agreement, the  
17 United States, in its own right or on behalf of the Tribe,  
18 shall not assert any claim against the State of Arizona  
19 or any political subdivision thereof, or against any other  
20 person, corporation, or municipal corporation, arising  
21 under the laws of the United States or the State of Ari-  
22 zona based upon water rights or injuries to water rights  
23 of the Tribe and its members or based upon water rights  
24 or injuries to water rights held by the United States on  
25 behalf of the Tribe and its members.

1 (d) RIGHTS RETAINED.—In the event the waivers of  
2 claims authorized in subsection (b) of this section do not  
3 become effective pursuant to section 12(a), the Tribe, and  
4 the United States on behalf of the Tribe, shall retain the  
5 right to assert past and future water rights claims as to  
6 all reservation lands.

7 (e) JURISDICTION.—The United States District  
8 Court for the District of Arizona shall have original juris-  
9 diction of all actions arising under this Act, the Settlement  
10 Agreement and the Water Service Agreement, including  
11 review pursuant to title 9, United States Code, of any ar-  
12 bitration and award under the Water Service Agreement.

13 (f) CLAIMS.—Nothing in this Act shall be deemed to  
14 prohibit the Tribe, or the United States on behalf of the  
15 Tribe, from asserting or maintaining any claims for the  
16 breach or enforcement of the Settlement Agreement or the  
17 Water Service Agreement.

18 (g) DISCLAIMER.—Nothing in this Act shall affect  
19 the water rights or claims related to any trust allotment  
20 located outside the exterior boundaries of the reservation  
21 of any member of the Tribe.

22 (h) FULL SATISFACTION OF CLAIMS.—Payments  
23 made to Prescott under this Act shall be in full satisfac-  
24 tion for any claim that Prescott might have against the

1 Secretary or the United States related to the allocation,  
2 reallocation, relinquishment or delivery of CAP water.

3 **SEC. 11. MISCELLANEOUS PROVISIONS.**

4 (a) JOINING OF PARTIES.—In the event any party  
5 to the Settlement Agreement should file a lawsuit in any  
6 United States district court relating only and directly to  
7 the interpretation or enforcement of the Settlement Agree-  
8 ment or this Act, naming the United States of America  
9 or the Tribe as parties, authorization is hereby granted  
10 to join the United States of America or the Tribe, or both,  
11 in any such litigation, and any claim by the United States  
12 of America or the Tribe to sovereign immunity from such  
13 suit is hereby waived. In the event Prescott submits a dis-  
14 pute under the Water Service Agreement to arbitration  
15 or seeks review by the United States District Court for  
16 the District of Arizona of an arbitration award under the  
17 Water Service Agreement, any claim by the Tribe to sov-  
18 ereign immunity from such arbitration or review is hereby  
19 waived.

20 (b) NO REIMBURSEMENT.—The United States of  
21 America shall make no claims for reimbursement of costs  
22 arising out of the implementation of the Settlement Agree-  
23 ment or this Act against any lands within the Yavapai-  
24 Prescott Indian Reservation, and no assessment shall be  
25 made with regard to such costs against such lands.

1 (c) WATER MANAGEMENT.—The Tribe shall estab-  
2 lish a ground water management plan for the Reservation  
3 which, except to be consistent with the Water Service  
4 Agreement, the Settlement Agreement and this Act, will  
5 be compatible with the ground water management plan in  
6 effect for the Prescott Active Management Area and will  
7 include an annual information exchange with the Arizona  
8 Department of Water Resources. In establishing a ground  
9 water management plan pursuant to this section, the  
10 Tribe may enter into a Memorandum of Understanding  
11 with the Arizona Department of Water Resources for con-  
12 sultation. Notwithstanding any other law, the Tribe may  
13 establish a tribal water code, consistent with the above-  
14 described water management plan, under which the Tribe  
15 will manage, regulate, and control the water resources  
16 granted it in the Settlement Act, the Settlement Agree-  
17 ment, and the Water Service Agreement, except that such  
18 management, regulation and control shall not authorize  
19 any action inconsistent with the trust ownership of the  
20 Tribe's water resources.

21 (d) GAUGING STATION.—The Secretary, acting  
22 through the Geological Survey, shall establish, maintain  
23 and operate a gauging station at the State Highway 89  
24 bridge across Granite Creek adjacent to the reservation  
25 to assist the Tribe and the CVID in allocating the surface

1 flows from Granite Creek as provided in the Settlement  
2 Agreement.

3 **SEC. 12. EFFECTIVE DATE.**

4 (a) WAIVERS AND RELEASES.—The waivers and re-  
5 leases required by section 10(b) of this Act shall become  
6 effective as of the date the Secretary causes to be pub-  
7 lished in the Federal Register a statement of findings  
8 that—

9 (1)(A) the Secretary has determined that an ac-  
10 ceptable party, or parties, have executed contracts  
11 for the assignments of the Tribe's CAP contract and  
12 the city of Prescott's CAP subcontract, and the pro-  
13 ceeds from the assignments have been deposited into  
14 the Fund as provided in section 6(d); or,

15 (B) the Secretary has executed contracts for  
16 the acquisition of the Tribe's CAP contract and the  
17 city of Prescott's CAP subcontract as provided in  
18 section 6(d);

19 (2) the stipulation which is attached to the Set-  
20 tlement Agreement as exhibit 9.5, has been approved  
21 in substantially the form of such exhibit no later  
22 than December 31, 1994;

23 (3) the Settlement Agreement has been modi-  
24 fied to the extent it is in conflict with this Act and  
25 has been executed by the Secretary; and

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

4           (b) DEADLINE.—If the actions described in para-  
5           graphs (1), (2), (3), and (4) of subsection (a) have not  
6           occurred by December 31, 1995, any contract between  
7           Prescott and the United States entered into pursuant to  
8           section 6(d) shall not thereafter be effective, and any  
9           funds appropriated by the State of Arizona pursuant to  
10          the Settlement Agreement shall be returned by the Tribe  
11          to the State of Arizona.

12          **SEC. 13. OTHER CLAIMS.**

13          (a) OTHER TRIBES.—Nothing in the Settlement  
14          Agreement or this Act shall be construed in any way to  
15          quantify or otherwise adversely affect the land and water  
16          rights, claims or entitlements to water of any Arizona In-  
17          dian tribe, band or community, other than the Tribe.

18          (b) FEDERAL AGENCIES.—Nothing in this Act shall  
19          be construed to affect the water rights or the water rights  
20          claims of any Federal agency, other than the Bureau of  
21          Indian Affairs on behalf of the Tribe.

            Passed the Senate July 26 (legislative day, July 20),  
            1994.

Attest:

MARTHA S. POPE,

*Secretary.*

S 1146 RFH—2

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