

Public Law 95-328
95th Congress

An Act

Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States.

July 28, 1978

[S. 1582]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress hereby declares that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Ak-Chin Indian community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached.

Ak-Chin Indians,
water right
claims.

(b) The Congress hereby finds and declares that—

(1) the Ak-Chin Indian community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;

(2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered;

(5) this Act is proposed to settle the Ak-Chin Indian community's claim for water by meeting the emergency needs of the Ak-Chin community through construction of a well field and water delivery system from nearby Federal lands and by obligating the United States to meet the Ak-Chin community's needs for a permanent supply of water in a fixed amount to be available upon a date certain, in exchange for a release of all claims such community has against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the community; and

(6) it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian community.

SEC. 2. (a) For the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall undertake engineering and hydrological studies as may be necessary to determine whether there exists, on Federal lands near the Ak-Chin Indian Reservation, a source of ground water which could be taken, on an annual basis, for use in connection with any contract entered into pursuant to subsection (b) of this section, subject to the provisions in (c) (2).

Studies.

Report to
Congress.

Such studies shall be completed and a report with respect thereto submitted to the Congress within twelve months after the date of the enactment of this Act.

Contracts.

(b) Within one hundred and eighty days following the submission to the Congress of the report referred to in subsection (a), the Secretary, if he determines that there exists a source of ground water which can be so taken on an annual basis, shall enter into a contract or other agreement with the Ak-Chin Indian community pursuant to which the Secretary shall agree, on behalf of the United States, to—

(1) furnish, subject to the provisions of clause (2) of subsection (c) of this section, to the Ak-Chin Indian community, commencing within sixty days following the completion of the necessary facilities under clause (2) of this subsection but in no event later than four years from the date of said contract, the delivery to the southeast corner of the lands comprising the Ak-Chin Indian Reservation, on an annual basis, of eighty-five thousand acre-feet of ground water from nearby Federal lands covered by such studies;

(2) take such action as may be necessary to begin within sixty days following the date of such contract, to drill, construct, equip, maintain, repair, reconstruct, and operate a well field on such Federal lands, and to construct and maintain a delivery system, including canals, pumping stations and other appurtenant works, sufficient to provide for the delivery of such ground water from such Federal lands to the southeast corner of the lands comprising the Ak-Chin Indian Reservation.

(c)(1) The delivery of ground water under clause (1) of subsection (b) shall continue until augmented or replaced by the permanent water supply required under section 3 to be delivered to the Ak-Chin Indian Reservation, except that the obligation to deliver ground water during any year shall be reduced for that year by an amount equal to the amount of surface water delivered to such community pursuant to such contract during such year.

(2) Notwithstanding the provisions of clause (1) of subsection (b) of this section, the Secretary, if he determines that pumping eighty-five thousand acre-feet of ground water annually from nearby Federal lands to the Ak-Chin community would (A) not be hydrologically feasible or (B) diminish the ground water supply in the basin and thereby cause severe damage to other water users; may deliver a lesser amount.

(d) The Secretary is authorized to receive and consider any claims arising under this Act from water users other than the Ak-Chin Indian community for compensation for any losses or other expenses incurred by such users by reason of the enactment of this Act or actions taken thereunder.

Plan, report to
Congress.

(e) Notwithstanding any other provision of this Act, if the Secretary determines on the basis of studies conducted pursuant to subsection (a) of this section, that the pumping on an annual basis of any such ground water pursuant to clause (1) of subsection (b) of this section in excess of sixty thousand acre-feet is not possible by reason of clause (2) of subsection (c), and the Ak-Chin Indian community does not agree to contract for a lesser amount, the Secretary shall report to the Congress an alternative plan for meeting the emergency needs of the Ak-Chin Indian community. Such alternative plan shall be submitted to the Congress within one hundred and eighty days following the submission of the report referred to in subsection (a).

SEC. 3. In addition, and as a part of the contract referred to in section 2(b) of this Act, the Secretary shall provide for, commencing as soon as possible, but in no event later than the expiration of the twenty-five-year period following the date of the enactment of this Act, the permanent delivery, on an annual basis, to the lands comprising the Ak-Chin Indian Reservation, of eighty-five thousand acre-feet of water suitable for irrigation on the reservation.

SEC. 4. (a) As consideration on the part of the Ak-Chin Indian community for entering into any contract or agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive, in a manner satisfactory to the Secretary, any and all claims of water rights or injuries to water rights of the Ak-Chin Indian community, including both ground water and surface water from time immemorial to the present, which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

Waivers.

(b) As further consideration on the part of the Ak-Chin Indian community for entering into any contract or other agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive any and all claims of water rights or injuries to water rights, including both ground water and surface water, arising under the laws of the United States or the State of Arizona, which it might have in the future against any person, corporation, municipal corporation, or the State of Arizona or agency thereof.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the community will not thereby waive any claims against the United States for breach, if any, of the contract referred to in section 2(b) of this Act. A failure to deliver water within the times specified in either section 2(b) or 3 shall be deemed a breach of the contract. The measure of damages for any such breach shall be the replacement cost of water not delivered by the United States.

Breach of contract.

Damages.

SEC. 5. There are authorized to be appropriated for the fiscal year ending September 30, 1979, the sum of \$500,000, and the aggregate sum of \$42,500,000 to be appropriated prior to the fiscal year ending September 30, 1983, for carrying out the purposes of section 2 of this Act. Notwithstanding any other provisions of this Act, no authorization to make payments under this Act, or to enter into contracts, shall be effective except to such extent or in such amounts as are provided in advance in appropriations Acts.

Appropriation authorization.

Approved July 28, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-954 accompanying H.R. 8099 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-460 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Oct. 11, considered and passed Senate.

Vol. 124 (1978): May 2, H.R. 8099 considered and failed of passage in House.
June 29, H.R. 8099 considered and passed House; proceedings vacated and S. 1582, amended, passed in lieu.

July 13, Senate concurred in House amendment.