

MEMORANDUM

June 25, 2015

To: Hon. Paul Gosar

From: , Legislative Attorney,

Subject: Bill Williams River Water Rights Settlement Act of 2014

You have asked CRS to address a series of questions regarding the Bill Williams River Water Rights Settlement Act of 2014 (“the Act”).¹ Each of these questions² and our answers are provided below.³ This memorandum begins by providing background information on the Act and related settlement agreements.

Bill Williams River Water Rights Settlement Act of 2014

Sections 4 and 5 of the Act ratify the Big Sandy River-Planet Ranch Water Rights Settlement Agreement (“Big Sandy River-Planet Ranch Agreement”) and the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement (Hualapai Tribe Agreement) and authorize the Secretary of the Interior to execute these agreements.⁴ The Act does not set forth in detail the provisions of these settlement agreements, but instead authorizes the Secretary to enter into the versions of these agreements dated July 2, 2014 together with any amendments necessary to bring the agreements into conformity with the Act.⁵

The Act provides that the settlement agreements will not be enforceable until the Department of the Interior (“DOI”) publishes in the Federal Register a notice that states that:

1. The agreements have been revised to eliminate any conflicts with the Act;
2. All parties to the relevant agreements have executed their respective agreements;
3. Freeport Minerals Corporation (“Freeport”) has submitted to the Arizona Department of Water Resources (“ADWR”) the conditional amendment to its application to sever and transfer certain water rights, as required by the Big Sandy River-Planet Ranch Agreement;

¹ Pub. L. No. 113-223, 128 Stat. 2096.

² The phrasing of each question was taken from the questions that you provided to us.

³ Please note that information in this memorandum may be of general interest to Congress. As such, all or part of this information may be provided in other CRS written products. Your confidentiality as a requester will be preserved in any case.

⁴ Pub. L. No. 113-223, §§ 4 – 5, 128 Stat. 2096, 2100-02.

⁵ These descriptions are based on the July 2, 2014 versions of the settlement agreements, as executed originally and referenced in the Act. Although the Act allows for amendments to the settlement agreements, it allows only those amendments that are “consistent with this Act.” *Id.* §§ 4(a)(2) & (b)(2), 5(a)(2) & (b)(2).

4. DOI and the Arizona Game and Fish Commission (“AGFC”) have conditionally withdrawn their objections to Freeport’s application, as required by the Big Sandy River-Planet Ranch Agreement;
5. ADWR has issued a conditional order approving Freeport’s application as amended, and all objections to the application have been either conditionally withdrawn or resolved in a final and nonappealable decision by ADWR;
6. DOI has notified the parties to the agreements that it has completed the required environmental reviews;
7. The steering committee of the Lower Colorado River Multi-Species Conservation Program (“Conservation Program”) has approved the lease of portions of the Planet Ranch property to DOI’s Bureau of Reclamation, as required by the Big Sandy River-Planet Ranch Agreement; and
8. DOI and the Hualapai Tribe have executed the required waivers.⁶

DOI has not yet executed the agreements, nor has it published the notice required under the Act, as not all of the events required in the notice have occurred.⁷ The settlement agreements therefore are not yet enforceable.

Big Sandy River-Planet Ranch Agreement

Freeport, through its wholly owned subsidiary, Byner Cattle Company owns property located in La Paz and Mohave Counties, Arizona, known as Planet Ranch.⁸ Freeport also owns a separate property in La Paz County, known as Lincoln Ranch.⁹ Both properties are within the Bill Williams River watershed, and Freeport asserts present water rights for each of these properties in the amount of 16,748.1 acre-feet per year based on asserted beneficial uses under 18 separate certificates of water rights (“CWR”).¹⁰

Freeport also claims surface water rights from the Big Sandy River, a tributary to the Bill Williams River, which it diverts at its Wikieup Wellfield for use at its Bagdad, Arizona, mining complex and for municipal use in the Town of Bagdad.¹¹ Although it appears that actual diversions under these water rights did not exceed 10,055 acre-feet in any year during the period of 1995 - 2010,¹² Freeport asserts total rights to over 40,000 acre-feet per year under these and other claims related to the Wikieup Wellfield.¹³

In 2010, Freeport filed with the ADWR applications to sever and transfer surface water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield for diversion to Freeport’s Bagdad mining complex and to the Bagdad town site.¹⁴ Freeport later applied to transfer certain water rights from one point on

⁶ *Id.* § 9. The contents of this notice mirror the enforceability provisions in the settlement agreement.

⁷ Among other things, ADWR has not yet issued an order granting Freeport’s application that resolves any objections not withdrawn in a final, nonappealable decision. As explained *infra* n.17, Mohave County has appealed ADWR’s decision denying its objections to Freeport’s application.

⁸ Pub. L. No. 113-223, § 3(21).

⁹ *Id.* § 3(17).

¹⁰ See Big Sandy River-Planet Ranch Agreement, Ex. 2.3, Findings of Fact ¶¶ 21, 46 & 53.

¹¹ *Id.*, Ex. 2.3, Findings of Fact ¶¶ 9-11.

¹² *Id.*, Ex. 2.3, Findings of Fact ¶ 11.

¹³ See *id.*, Ex. 4.1(i)(a), tables III & IV.

¹⁴ *Id.*, Ex. 2.3, Findings of Fact ¶ 3.

Planet Ranch to another point within Planet Ranch.¹⁵ DOI and the AGFC objected to these applications,¹⁶ as did Mohave County.¹⁷

Freeport subsequently entered into the Big Sandy River-Planet Ranch Agreement with the DOI, AGFC, and the Hualapai Tribe to resolve these objections.¹⁸ Under the terms of the agreement, DOI and AGFC would withdraw their objections to Freeport's application to sever and transfer a total of 10,055 acre-feet per year in water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield.¹⁹ Although the application, as amended, would not affect the water rights under which Freeport presently diverts water to the Bagdad mine complex and town site from the Wikieup Wellfield and from five additional groundwater wells, the agreement provides that Freeport will limit diversions from Wikieup Wellfield and the specified groundwater wells to a combined total of 10,055 acre-feet per year.²⁰ The agreement further provides that both DOI and AGFC may enforce this limit against Freeport.²¹ Freeport also agreed to file a "Notice of Diversion Limitation on Water Rights" in ADWR's public record for the water rights severed from Planet Ranch and Lincoln Ranch, the water rights under which it currently diverts water from the Wikieup Wellfield to the Bagdad mine complex and town site, and the permits for the five groundwater wells specified in the agreement.²² The Notice would state that Freeport's total diversions from these sources are limited to a combined total of 10,055 acre-feet per year.

ADWR also is a party to the agreement, but in a limited capacity. The agreement provides that ADWR's participation in the agreement is limited to its commitment to enter the agreed order granting Freeport's application to sever and transfer water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield and to include in its public records Freeport's Notice of Diversion Limitation of Water Rights.²³ The agreement provides that, apart from these two commitments, the agreement shall not "be determinative of any decision to be made by ADWR in any administrative, adjudicatory, rulemaking or other proceeding or matter."²⁴

Freeport also agreed in the settlement to lease to DOI a portion of Planet Ranch for a period of 50 years for use in connection with the Conservation Program,²⁵ to donate the land subject to the lease to AGFC (thereby making AGFC the owner and lessor of the property),²⁶ and to sever and transfer water rights in the amount of 5,549.2 acre-feet per year from elsewhere on Planet Ranch to this parcel.²⁷ Freeport further

¹⁵ *Id.*, Ex. 2.3, Findings of Fact ¶ 6.

¹⁶ *Id.* § 2.39.

¹⁷ ADWR dismissed Mohave County's objections. *In re Dep't of Water Res. Denial of Mohave County's Objections to Freeport Minerals Corp.'s Applications to Sever and Transfer Certain Water Rights Appurtenant to Land Located within Planet Ranch and Lincoln Ranch along the Bill Williams River*, No. 14A-SW001-DWR, Final Decision at 3-4 (2014). Mohave County has appealed this decision, and that appeal presently is pending in Maricopa County Superior Court. *See Mohave County v. Dep't of Water Resources*, No. LC2014-000624.

¹⁸ Pub. L. No. 113-223, § 2(2)(A), 128 Stat. 2096, 2096. DOI entered into the agreement on behalf of itself and its constituent agencies, and as trustee for the Hualapai Tribe, its members and members of the Tribe that own certain off-reservation parcels presently held in trust by the United States. *Id.*

¹⁹ *See* Big Sandy River-Planet Ranch Agreement § 4.2.1(ii).

²⁰ *Id.* § 4.2.2(i).

²¹ *Id.*

²² *Id.*

²³ *See id.* §§ 2.7, 11.5.

²⁴ *Id.* § 11.5.

²⁵ *Id.* at § 5.1(i) & Ex. 2.33 ¶ 6.

²⁶ *Id.* § 5.1(ii).

²⁷ *Id.*, Ex. 2.33 at Ex. D; *see also id.*, Ex. 2.3, Conclusions of Law ¶ 8.

agreed to contribute \$1,000,000 to the Hualapai Tribe for its “study of water project alternatives” within 10 days of execution of both the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement by Freeport and the Tribe.²⁸

The agreement further provides that if certain events²⁹ do not occur prior to December 13, 2015, that the agreement will be null and void, except that the Tribe will not be obliged to return Freeport’s \$1,000,000 contribution.³⁰

Hualapai Tribe Agreement

Separately, Freeport entered into the Hualapai Tribe Agreement with the Hualapai Tribe and the United States in its capacity as trustee for the Tribe, its members, and members of the Tribe that own certain off-reservation parcels presently held in trust by the United States.³¹ This agreement confirms the commitments made in the Big Sandy River-Planet Ranch Agreement; places limits on Freeport’s ability to drill new wells in certain areas in order to protect the water rights of the Tribe; and confirms, as between the Tribe and Freeport, other of Freeport’s claimed water rights that were not subject to the Big Sandy River-Planet Ranch Agreement.³² The agreement also requires Freeport to provide additional water to owners of the off-reservation parcels under certain circumstances.³³ Additionally, Freeport agreed to pay an unspecified sum to the Hualapai Tribe Economic Development Fund “for the limited purpose of enabling the Tribe to acquire Colorado River Water Rights with the intent to increase the security of the Tribe’s Water Rights, and to otherwise facilitate the use of Water on the Hualapai Reservation.”³⁴

Question 1. Does this law authorize the construction of any casinos?

No. Neither the Act nor the settlement agreements address the Tribe’s ability to establish casinos. Under the Indian Gaming Regulatory Act,³⁵ in order to engage in casino gaming, a tribe must negotiate a compact with the state in which the casino will be located.³⁶ Whether a tribe may establish casinos, therefore, depends on the terms of its gaming compact. The Act has no effect on the Hualapai Tribe’s compact with the State of Arizona.³⁷

Question 2. Does this law regulate the future I-11?

No. The proposed I-11 and Intermountain West Corridor (“I-11 Corridor”) is meant to “provide a vital . . . connection between the Arizona Sun Corridor and Las Vegas.”³⁸ Although the final alignment of the

²⁸ *Id.* § 9.1. Freeport executed both agreements on July 7, 2014, and the Hualapai Tribe executed both agreements on July 8, 2014.

²⁹ These events mirror the events that the Act requires DOI to include in the Federal Register notice described *supra*. See *id.* § 11.12(i).

³⁰ *Id.* § 11.12(ii).

³¹ Hualapai Tribe Agreement §§ 1.4, 1.5.

³² *Id.* §§ 4.1, 4.2 & 5.2.

³³ *Id.* § 4.3.

³⁴ *Id.* § 8.1(i).

³⁵ Pub. L. No. 100-497, 102 Stat. 2467 (1988) (codified as amended at 25 U.S.C. § 2701 *et seq.*).

³⁶ See 25 U.S.C. § 2710(d).

³⁷ See ARIZONA DEPARTMENT OF GAMING, STATUS OF TRIBAL GAMING IN ARIZONA AS OF 4/1/2015 (2015).

³⁸ I-11 & Intermountain West Corridor Study, Corridor Concept Report at 3 (2014) [hereinafter “Concept Report”].

proposed I-11 Corridor has not been set,³⁹ the November 2014 Corridor Concept Report proposed an alignment that would involve new highway construction in the Phoenix Metropolitan Area in Maricopa County, Arizona, and would proceed northwest along the existing U.S. Highway 93/I-40 alignment in Yavapai County, Arizona, and the eastern and northern portions of Mohave County.⁴⁰

Neither the Act nor the settlement agreements reference the proposed I-11 Corridor, nor do they address generally the rights of the United States or of the State of Arizona to build roads. The draft order granting Freeport's application to sever and transfer its water right indicates that Freeport does not intend to move water physically from Planet Ranch or Lincoln Ranch,⁴¹ thus the proposed order does not appear to contemplate the construction of any water transportation infrastructure that might interfere with any future alignment of the proposed I-11 Corridor. The alignment proposed in the November 2014 Corridor Concept Report was considerably to the east of Planet Ranch, which lies in the southwestern portion of Mohave County and the northwestern portion of La Paz County, Arizona.⁴² Therefore the lease and donation of property at Planet Ranch for the Conservation Program also does not appear to have any potential impact on the proposed I-11 Corridor alignment.

Question 3. Does this law require ADWR to take water rights away from Mohave County?

Under the settlement agreements, DOI, the Hualapai Tribe, and AGFC confirm Freeport's water rights and Freeport confirms the rights of AGFC, the Tribe, and the members of the Tribe that own the off-reservation parcels held in trust by DOI.⁴³ Nowhere in the agreement does ADWR confirm the water rights of any party. In fact, the agreement provides explicitly that nothing in the agreement "shall be determinative of any decision to be made by ADWR in any administrative, adjudicatory, rulemaking or other proceeding or matter," apart from its agreement to enter an order approving Freeport's application to sever and transfer certain water rights and to include Freeport's Notice of Diversion Limitation on Water rights in its public records.⁴⁴ The proposed sever and transfer order attached to the Big Sandy River-Planet Ranch Agreement, which ADWR committed to enter as a party to the agreement,⁴⁵ states that it "will not affect, infringe upon, or interfere with vested or existing water rights."⁴⁶ Nor could it; under Arizona law, the amount of water rights transferred under such an order cannot "exceed the vested rights existing at the time of such severance and transfer,"⁴⁷ and the chapter of the Arizona Revised Statutes that governs severance and transfer provides that nothing therein "shall impair vested rights to the use of water [or] affect relative priorities to the use of water."⁴⁸ Further, in its challenge to ADWR's decision to dismiss its objections, Mohave County stipulated that "it does not hold any water rights in the Bill Williams [River] watershed."⁴⁹

³⁹ See I-11 & Intermountain West Corridor Study, FAQ "Who will ultimately make the decision on where the Corridor would be located?" (available at http://i11study.com/vwp/?page_id=208).

⁴⁰ Concept Report at 18-19.

⁴¹ Big Sandy River-Planet Ranch Agreement, Ex. 2.3, Findings of Fact ¶¶ 20, 45.

⁴² Concept Report at 18-19.

⁴³ See Big Sandy River-Planet Ranch Agreement § 4.1; Hualapai Tribe Agreement § 4.1.

⁴⁴ Big Sandy River-Planet Ranch Agreement § 11.5.

⁴⁵ *Id.* § 4.2.1(iv).

⁴⁶ *Id.*, Ex. 2.3, Conclusions of Law ¶ 5.

⁴⁷ A.R.S. § 45-172(A)(2).

⁴⁸ A.R.S. § 45-171.

⁴⁹ *In re Dep't of Water Res. Denial of Mohave County's Objections to Freeport Minerals Corp.'s Applications to Sever and* (continued...)

Because the settlement agreements themselves do not appear to affect directly any vested water right held by Mohave County, and because the Act does not address any water rights beyond those affected by the settlements, it does not appear that the Act has an effect on Mohave County's water rights.

Question 4. Does this law reduce public access to Planet Ranch and the MSCP lands involved?

No. At present, the entirety of Planet Ranch is Freeport's private property, and the Conservation Program lease and donation of property to AGFC will not take effect until the Big Sandy River-Planet Ranch Agreement becomes enforceable.⁵⁰ The Act does not provide explicitly for any type of public access. However, it does provide that it does not prohibit "reasonable public access to the Conservation Program land at Planet Ranch. . . in a manner consistent with all applicable Federal and State laws and any applicable conservation management plan implemented" on the land.⁵¹ Additionally, under the Conservation Program, "permitted uses" are major elements that the management plans for specific conservation areas should address.⁵²

Question 5. Does this law take any federal land into trust for the Tribe or transfer ownership of Planet Ranch to the federal government?

Although the Act and the settlement agreements involve the rights of individuals who live on certain properties already "held in trust by the United States for individual Indians,"⁵³ neither the Act nor the settlements transfer any property into trust for the Hualapai Tribe or its members. Rather, both the Act and the Hualapai Tribe Agreement require that the parties to the agreement "negotiate in good faith with other parties the terms under which any land within the State of Arizona held or acquired in fee by the Tribe may be taken into trust by the United States for the benefit of the Tribe."⁵⁴

Nor does the Act or the settlement agreements transfer ownership of any portion of Planet Ranch to the federal government. The Act identifies as one of its purposes: "to secure a long-term lease for a portion of Planet Ranch, along with appurtenant water rights . . . for use in the" Lower Colorado River Multi-Species Conservation Program.⁵⁵ The Big Sandy River-Planet Ranch Agreement achieves this by requiring Freeport to enter into a lease agreement with DOI's Bureau of Reclamation.⁵⁶ The agreement further directs Freeport to donate to AGFC the lands subject to the lease, and for the Bureau to consent to the assignment of its lease to AGFC.⁵⁷ The terms of the lease agreement, which is attached as an exhibit to the Big Sandy River-Planet Ranch Agreement, provide that the lease will run for 50 years, and limits

(...continued)

Transfer Certain Water Rights Appurtenant to Land Located within Planet Ranch and Lincoln Ranch along the Bill Williams River, No. 14A-SW001-DWR, Stipulated Findings of Fact at ¶ 20 (2014).

⁵⁰ Big Sandy River-Planet Ranch Agreement § 5.1.

⁵¹ Pub. L. No. 113-223, § 7(d), 128 Stat. 2096, 2108 (2014).

⁵² Lower Colorado River Multi-Species Conservation Program, Final Habitat Conservation Plan at 5-22 – 5-23 (2004).

⁵³ Pub. L. No. 113-223, § 3(2) & (3), 128 Stat. 2096, 2097.

⁵⁴ *Id.* § 5(e); see also Hualapai Tribe Agreement § 10.11.

⁵⁵ Pub. L. No. 113-223, § 2(5), 128 Stat. 2096, 2097.

⁵⁶ Big Sandy River-Planet Ranch Agreement § 5.1(i).

⁵⁷ *Id.* § 5.1(ii) – (iii).

the Bureau's use of the land to "Habitat Restoration Activities" and compatible uses.⁵⁸ Pursuant to the donation agreement, Freeport will convey a fee simple absolute interest in the property to "AGFC in the name of the State of Arizona."⁵⁹

Question 6. Will this law result in Mohave County losing a "\$7,000 a year income stream for 100 years that is worth \$39,500,000 in today's dollars"?

No. The Act does not address directly any revenue stream for Mohave County. However, as a result of the donation of the property to AGFC discussed above, the State of Arizona becomes the owner of the portion of Planet Ranch leased by the Bureau of Reclamation. Under Arizona law, prior to the donation, Freeport is liable for county property taxes on Planet Ranch.⁶⁰ When Freeport conveys the donated property to AGFC, that portion of Planet Ranch no longer will be subject to county property taxes.⁶¹

According to its property tax statement for Planet Ranch, Freeport's total property taxes for the property in 2014 were \$7,627.54, of which Mohave County assessed \$1,783.15.⁶² This assessment was for the entire Planet Ranch property, not just the portion of the property that Freeport will donate to AGFC under the Big Sandy River-Planet Ranch Settlement Agreement.⁶³ Assuming, however, that Mohave County would lose the full \$7,627.54 assessed each year for the next 100 years, the total lost revenues would come to \$762,754 in nominal dollars, which would need to be discounted in order to determine the real present value.⁶⁴

Additionally, because real property tax generally is assessed based on the property's then-current classification and value,⁶⁵ it is not possible to determine from a legal point of view what the future tax liability for that property would be in any given year or over any period of time. Although Arizona law generally limits annual primary property tax increases to 2%, that limit is based on aggregate primary property tax collections.⁶⁶ In other words, Arizona law limits increases in total revenues, not increases in tax liability for particular properties. For instance if, in a given year, total assessed value for properties subject to taxes in the prior year increased by 2% and there was no change in the primary property tax rate, overall revenues would increase by 2% as a result of appreciation. However, this does not mean that all property taxpayers necessarily would see a 2% increase in their tax liability: a taxpayer whose assessed

⁵⁸ *Id.*, Ex. 2.33 ¶¶ 6(b) & (7).

⁵⁹ *Id.*, Ex. 2.18 ¶ 2(a).

⁶⁰ See A.R.S. § 42-11002 ("All property in this state is subject to taxation except as provided in article IX, Constitution of Arizona, and article 3 of this chapter.").

⁶¹ A.R.S. § 42-11102(A) ("Federal, state, county and municipal property is exempt from taxation . . .").

⁶² Mohave County, 2014 Property Tax Statement for Byner Cattle Co. for property located at Township 11N Range 16W Sec 16 S2 SW 4 & SW 4 SE 4. The remaining property taxes owed for the Planet Ranch property included property taxes assessed state school tax equalization and taxes assessed by Owens Elementary School District, Mohave Community College, and by special taxing districts.

⁶³ The land that Freeport will donate to the AGFC is only a portion of the Planet Ranch property. Additionally, the part of the donated property south of the Bill Williams River lies in La Paz County, not Mohave County. See A.R.S. § 11-117 (defining the Bill Williams River as the border between Mohave and La Paz Counties in the area of Planet Ranch). Thus, the donated property is only a portion of the entire Planet Ranch property, and only a portion of the donated property is within Mohave County.

⁶⁴ Nominal value refers to the value of an item in strictly numeric terms. Real value refers to an item's value in relation to a baseline value, and is also known as the inflation adjusted value.

⁶⁵ See A.R.S. § 42-13051; *but see* A.R.S. § 42-13052 (permitting county assessors to "use the same valuation for up to three consecutive tax years" for certain properties, including agricultural property).

⁶⁶ See A.R.S. § 42-17051(A).

valuation did not increase would see no increase in tax liability, while a taxpayer whose assessed valuation increased by 5%⁶⁷ would see a 5% increase in primary property tax liability.

Additionally, an AGFC statute provides that, when AGFC acquires real property that was subject to taxation at the time of the acquisition, AGFC “may make voluntary contributions of money to . . . the county . . . in which the property is located.”⁶⁸ AGFC must notify the appropriate county assessor by April 1 of each year in which it elects to make such a contribution.⁶⁹ Where AGFC volunteers to make these contributions in lieu of taxes, the AGFC must “consult with the assessor of the county in which the property is located and determine the assessed valuation of the property and the amount of the contribution.”⁷⁰ However, the assessed valuation of AGFC’s property cannot increase by more than 2% year-over-year.⁷¹

On September 6, 2014, AGFC affirmed that it would make payments in lieu of taxes on the Planet Ranch property if and when it acquires the property.⁷² At that meeting, AGFC’s counsel noted that AGFC “has routinely made payments in lieu of property taxes with all of its properties and there is no indication that it would not continue” to do so.⁷³ Thus, in the event that AGFC acquires the Planet Ranch property, it appears that Mohave County would not see a reduction in property tax revenues attributable to that portion of Planet Ranch, to the extent that the assessed valuation of the property for purposes of payments in lieu of property taxes is not less than what it would have been had Freeport retained ownership of the property and to the extent that AGFC continues its stated practice of making such payments.

Question 7. Will this law reduce Freeport’s ability to exercise water rights in the basin?

Yes. Freeport currently claims rights to: (1) 14,422.5 acre-feet per year at Planet Ranch based on its asserted beneficial uses under the applicable CWRs;⁷⁴ (2) 2,325.6 acre-feet per year at Lincoln Ranch based on its asserted consumptive use under CWRs associated with that property for alfalfa cultivation;⁷⁵ and (3) over 40,000 acre-feet per year at the Wikieup Wellfield based on numerous historical claims to surface water and groundwater.⁷⁶ Freeport also claims groundwater rights associated with five other wells not located at the Wikieup Wellfield that it uses to supply water to the Bagdad mine complex and town site.⁷⁷ Thus, Freeport asserts rights to 16,748.1 acre-feet per year at Planet Ranch and Lincoln Ranch combined plus an additional right to over 40,000 acre-feet per year at the Wikieup Wellfield and wells

⁶⁷ Arizona law limits year-over-year increases in assessed valuation for some types of property to 5%. See ARIZ. CONST. art. IX, § 18(3)(b).

⁶⁸ A.R.S. § 17-272(A).

⁶⁹ A.R.S. § 17-272(A).

⁷⁰ A.R.S. § 17-272(B).

⁷¹ A.R.S. § 17-272(B).

⁷² ARIZ. GAME & FISH COMM’N, MINUTES OF THE MEETING OF THE ARIZONA GAME AND FISH COMMISSION, FRIDAY, SEPTEMBER 5, 2014 AND SATURDAY, SEPTEMBER 6, 2014, at 21-22 (2014).

⁷³ *Id.*

⁷⁴ Big Sandy River-Planet Ranch Agreement, Ex. 2.3, Findings of Fact ¶¶ 21 & 53.

⁷⁵ *Id.*, Ex. 2.3, Findings of Fact ¶ 46.

⁷⁶ *Id.*, Ex. 4.1(i)(a), tables III & IV. Although Freeport asserts rights to divert over 40,000 acre-feet per year at the Wikieup Wellfield, Freeport asserts that actual diversions from the Wikieup Wellfield to the Bagdad mine complex and town site did not exceed 10,055 acre-feet per year between 1995 and 2010. *Id.*, Ex. 2.3, Findings of Fact ¶ 11.

⁷⁷ *Id.*, Ex. 4.1(i)(a), table VIII.

located elsewhere that Freeport uses to supply water to the Bagdad mine complex and town site, for total asserted water rights in excess of 56,748.1 acre-feet per year.

Under the Big Sandy River-Planet Ranch Settlement Agreement (Agreement), which the Act authorizes, ratifies and confirms,⁷⁸ ADWR would approve the severance and transfer of a combined total of 10,055 acre-feet per year of Freeport's Planet Ranch and Lincoln Ranch CWRs to the Wikieup Wellfield for Freeport to divert and use at the Bagdad mine complex and town site.⁷⁹ Of Freeport's remaining 6,693.1 acre-feet per year of Planet Ranch and Lincoln Ranch CWRs, Freeport would retain 1,143.9 acre-feet per year of Lincoln Ranch CWRs⁸⁰ and would transfer 5,549.2 acre-feet per year of Planet Ranch CWRs to the Lower Colorado River Multi-Species Conservation Program property that Freeport will donate to AGFC pursuant to the Agreement.⁸¹ Thus, while the Agreement would change the points of diversion for some of Freeport's Planet Ranch and Lincoln Ranch CWRs, the amount of water that Freeport and AGFC could claim under those CWRs would not change. Additionally, the Agreement provides that Freeport may not divert more than a combined total of 10,055 acre-feet of water per year under: (1) the CWRs severed from Planet Ranch and Lincoln Ranch water rights and transferred to the Wikieup Wellfield; (2) the water rights under which Freeport currently diverts water from the Wikieup Wellfield to the Bagdad mine complex and town site; and (3) the permits under which Freeport operates the five groundwater wells specified in the Agreement.⁸² Thus, under the Agreement and the Act, Freeport and AGFC's combined exercisable water rights for the Lower Colorado River Multi-Species Conservation area, Lincoln Ranch, and the Wikieup Wellfield would be 16,748.1 acre-feet per year, which would reflect a reduction in excess of 40,000 acre-feet per year of water rights that Freeport could assert in the basin.

Question 8. Does this law authorize increased water use from the Wikieup Wellfield if additional development occurs at the Bagdad town site?

No. As noted above, the Big Sandy River-Planet Ranch Settlement Agreement limits total diversions from the Wikieup Wellfield and from the five groundwater wells identified in the agreement that supply water to the Bagdad mine complex and town site to 10,055 acre-feet per year.⁸³ The agreement also identifies water diverted for municipal uses at those locations as subject to the cap.⁸⁴ Although the Act and the agreement allow for modifications of the agreement upon mutual agreement of the parties, both specify that the amendments may not violate the Act.⁸⁵ In that regard, the Act further states that DOI may not execute an amendment to the settlement that would require congressional approval.⁸⁶ Therefore, DOI could not agree to an amendment that would increase water diversion from the Wikieup Wellfield, to the extent that such an amendment would require congressional approval.

⁷⁸ Pub. L. No. 113-223, § 4(a)(1), 128 Stat. 2096, 2100 (2014).

⁷⁹ Big Sandy River-Planet Ranch Agreement, Ex. 2.3, Conclusions of Law ¶¶ 6 & 7.

⁸⁰ *Id.*, Ex. 2.3, Conclusions of Law ¶ 7.

⁸¹ *Id.*, Ex. 2.3, Conclusions of Law ¶ 8.

⁸² *Id.* §§ 4.2.2(i) & (ii), 4.2.3(i) & (ii). The agreement gives DOI and AGFC the right to enforce this limitation and also requires Freeport to file in ADWR's public record for each of these rights a Notice of Diversion Limitation on Water Rights which states that total diversions under these water rights may not exceed 10,055 acre-feet per year. *Id.* § 4.2.2(i) & Ex. 4.2.2(i).

⁸³ *Id.* §§ 4.2.2(i) & (ii), 4.2.3(i) & (ii).

⁸⁴ *Id.* § 4.2.2(i) & (ii).

⁸⁵ Pub. L. No. 113-223, § 4(c), 128 Stat. 2096, (2014); Big Sandy River-Planet Ranch Agreement at § 11.2(i).

⁸⁶ Pub. L. No. 113-223, § 4(c)(2).

Question 9. Does this law authorize the construction of a new pipeline from Planet Ranch or Lincoln Ranch to the Bagdad Mine?

No. Neither the Act nor the Big Sandy River-Planet Ranch Agreement addresses the question of construction of a pipeline from Planet Ranch or Lincoln Ranch to the Bagdad mine complex or town site. However, the order that ADWR agreed to enter pursuant to the agreement states that, through the sever and transfer, Freeport intends to change the point of diversion of the water rights at issue from one location in the Bill Williams River watershed to another point in that watershed, not to “physically move water from its current place of use.”⁸⁷

⁸⁷ Big Sandy River-Planet Ranch Agreement, Ex. 2.3, Findings of Fact ¶¶ 20, 45.
