

Use of the Lower Colorado River Basin Development Fund Under the Arizona Water Settlements Act

Overview

Title 1 of the Arizona Water Settlements Act (Act) made the Lower Colorado River Basin Development Fund (Development Fund) available to fund the Gila River Indian Community Water Rights Settlement, the Southern Arizona Water Rights Settlement and future Indian water rights settlements in Arizona. Specifically, Title 1 amended section 403(f) of the Colorado River Basin Project Act of 1968 (Basin Project Act) to allow additional uses for certain funds deposited into the Fund.

The funds in question are derived from the sale of power and energy in Arizona and from payments made each year by the Central Arizona Water Conservation District (CAWCD). By law and contract, those funds are credited each year against CAWCD's repayment obligation for the Central Arizona Project (CAP). Before the Act, the money was then returned to the general fund of the U.S. Treasury to repay the costs of constructing the CAP. Title 1 changed that process in one key respect: After the money in the Development Fund has been credited against CAWCD's repayment obligation each year, it is no longer returned to the general fund. Instead, Title 1 provides that those funds may be used each year, without further appropriation, to pay the costs of delivering CAP water to Indian tribes, constructing distribution systems to deliver CAP water to Indian tribes, and other costs authorized under Titles 2 and 3 of the Act.

The Development Fund Before the Act

The Development Fund is a separate fund within the U.S. Treasury established by Congress in the Basin Project Act, which authorized construction of the Central Arizona Project. Revenues deposited into the Development Fund come from a number of sources, including: the sale of power from the Navajo Generating Station¹ that is surplus to CAP pumping needs; a surcharge on power sold in Arizona² from Hoover Dam and (beginning in 2005) Parker and Davis Dams; and other miscellaneous revenues from operation of the CAP. Before the Act, these Development Fund revenues were paid each year to the general fund of the Treasury to return the CAP construction costs that are reimbursable by CAWCD. If Development Fund revenues were insufficient to meet CAWCD's annual

¹ The CAP owns 24.3% of the Navajo Generating Station (NGS). Power from NGS is used to lift Colorado River water nearly 2900 vertical feet for delivery to central Arizona.

² There is also a 2.5-mill surcharge on power from Hoover and (in 2005) Parker/Davis that is sold in California and Nevada. See 43 U.S.C. §1543(c)(2). Title 1 did not affect the disposition of these revenues, which continue to be governed by the Basin Project Act. See 43 U.S.C. §1543(g).

repayment obligation, CAWCD would make up the difference with a cash payment to the United States, which was also deposited into the Development Fund.³

The Development Fund under the Arizona Water Settlements Act

Section 107(a) of the Act did not affect the collection and deposit of revenues to the Development Fund. Nor did it alter CAWCD's obligation to make cash payments sufficient to meet its annual repayment obligation for the CAP. But under section 107(a), those revenues and cash payments are no longer returned to the general fund of the Treasury. Instead, after being credited against the annual payment owed by CAWCD, those funds—all of which are paid by water and power users in the State of Arizona—are available to pay the costs of delivering CAP water to Indian tribes and to fund Arizona Indian water rights settlements.⁴

As amended by the Act, section 403(f) of the Basin Project Act still provides that Development Fund revenues, as well as CAWCD's annual payments, will be credited against the annual payment owed by CAWCD for the CAP. But after being credited, those funds may be used by the Bureau of Reclamation, which administers the Development Fund, for the following purposes, in order of priority:

- (1) Payment of fixed operation, maintenance and replacement (OM&R) charges associated with the delivery of CAP water to Indian tribes. This does not include pumping energy charges, which must also be paid for any CAP water to be delivered. For the most part, Indian tribes remain responsible for paying the pumping energy charges for CAP water delivered to them.
- (2) Payment of \$53 million to the Gila River Indian Community Water OM&R Trust Fund established under Title 2 of the Act. This fund will be used by the Gila River Indian Community to pay a portion of the pumping energy charges due for delivery of its CAP water.
- (3) Payment of \$147 million to the Gila River Indian Community to rehabilitate the San Carlos Irrigation Project, a Bureau of Indian Affairs project constructed more than 70 years ago to serve the Community and the San Carlos Irrigation and Drainage District. No more than \$25 million may be spent for this purpose in any single year.
- (4) In addition to any annual appropriations, and without regard to priority (except that payments to the New Mexico Unit Fund shall be made first):

³ Revenues and cash payments from CAWCD to the Development Fund each year, up to the amount of the payment due from CAWCD in that year, are certain through the CAP repayment period, which ends in 2046. After CAP repayment is complete, it is unknown whether there will be significant annual revenues to the Development Fund.

⁴ Funds may not be expended from the Development Fund before January 1, 2010. Act, §107(b).

- a. Payment of at least \$66 million to the New Mexico Unit Fund.
 - b. Payment of the costs of constructing water distribution systems for the Gila River Indian Community, the San Carlos Apache Tribe and the Tohono O'odham Nation, as well as other costs authorized by Congress in Title 2 or Title 3 of the Act.
 - c. Payment of \$52.4 million for rehabilitation of the San Carlos Irrigation Project.
 - d. Payment of \$250 million to the Future Indian Water Settlement Subaccount to fund additional Indian water rights settlements in Arizona approved by Congress after the Arizona Water Settlements Act.
- (5) Payment of the costs of constructing CAP distribution systems for the Yavapai Apache, Pasqua Yaqui and Tonto Apache tribes and the Sif Oidak District of the Tohono O'odham Nation. If a CAP distribution system for any of these tribes has not been constructed by 2030 and the tribe does not have a final Indian water rights settlement by that date, then the tribe may receive annual cash payments from the Development Fund.

Any funds not used in the year they become available are carried over to the following fiscal year and are again available for the purposes outlined above.

If revenues to the Development Fund exceed the amount required to make CAWCD's annual payment for the CAP, then the Bureau of Reclamation may use the excess funds for the following purposes, in order of priority:

- (1) Payment of fixed operation, maintenance and replacement (OM&R) charges associated with the delivery of CAP water to Indian tribes.
- (2) Payment of the final outstanding annual payment due from CAWCD under its CAP repayment contract with the United States.
- (3) Payment to the general fund of the Treasury in reimbursement of Indian fixed OM&R charges previously paid from the Development Fund under 403(f)(2).
- (4) Payment to the general fund of the Treasury in reimbursement of Indian water rights settlement costs previously paid from the Development Fund under 403(f)(2).
- (5) Payment to the general fund of the Treasury in reimbursement of any federal 9(d) debt made non-reimbursable under section 106 of the Act.

- (6) Payment to the general fund of the Treasury to return CAP construction costs, if any, deemed by Reclamation to repayable but not covered under the CAP repayment contract between CAWCD and the United States.

Any funds left over under subsection 403(f)(3) will be deposited in the general fund of the Treasury.

For example, if the annual payment due from CAWCD in a year were \$55 million and Development Fund revenues totaled \$70 million in that year, then \$15 million would be excess and available for use as described. (The first \$55 million would have been credited against CAWCD's annual payment and would be available for use as described previously.) It is not anticipated that there will be any excess Development Fund revenues before 2012.

Under the Act, Development Fund revenues not needed to meet current requirements may be invested and the interest income used for the same purposes.