

The Facts on the Bill Williams River Water Rights Settlement Act



Issues: [Energy, Public Lands and Natural Resources](#)

***** UPDATE*** 6/25/15**

Non-partisan Legal Review Validates Gosar Bill Williams River Water Rights Settlement Law

The report released on June 25, 2015, by the non-partisan Congressional Research Service (CRS) confirms what I have been saying all along about the Bill Williams Water Rights Settlement: this law is a win-win for Arizona and for Mohave County. Despite wild and baseless claims from some opponents, CRS affirmed that this legislation is good for private property owners, will result in a significant net water benefit to the basin and will not result in a loss of any tax revenue to Mohave County.

The Bill Williams River Water Rights Settlement will provide certainty for the Bagdad Mine, which has an annual economic impact of \$339.1 million

to the state of Arizona, and sustains nearly 4,000 direct and indirect jobs. I am proud to see the hard work of countless Arizonans who supported this legislation, including the entire Arizona House and Senate delegation, validated by a non-partisan legal review.

The full report can be found [HERE](#).

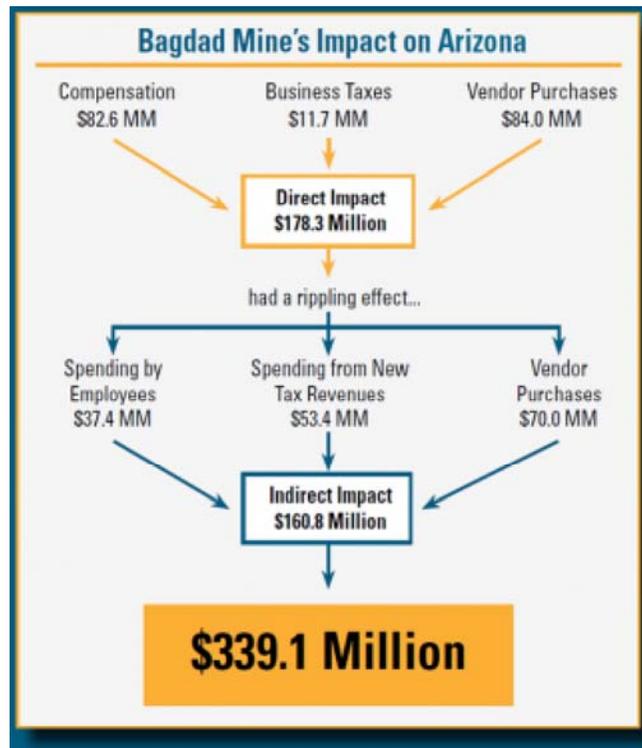
There has been a misinformation campaign against the Flake-Gosar bill known as the Bill Williams River Water Rights Settlement Act. Since this water rights settlement impacts my constituents and Arizona residents, I would like to take a moment to present the facts on this issue.



H.R. 4924 would facilitate the achievement of a fair and equitable settlement of certain claims within the Bill Williams River Watershed among the Hualapai Tribe, the U.S. Department of the Interior acting on behalf of itself and as trustee for the Tribe and, its members, the Arizona Game and Fish Commission, and Freeport-McMoRan. The bill is good for private property owners and good for local economies. This legislation supports thousands of jobs, 175 in Mohave County alone, facilitates an Indian water rights settlement and will result in a significant net water benefit to the basin.

The agreement will provide certainty for the Bagdad Mine, which has an annual economic impact of \$339.1 million to the state of Arizona, and sustains nearly 4,000 direct and indirect jobs. The Hualapai Tribe benefits from this legislation by securing certain water rights from two non-Federal contributions provided by Freeport-McMoRan for an Infrastructure Study Fund and an Economic Development Fund.

Arizona and Mohave County further benefit from the bill as this legislation will result in an overall net water use reduction in the basin and County of nearly 30,000 acre-feet per year. This reduction benefits residents in Lake Havasu and Bullhead City as this water can be put to use in future water and economic development projects. There is also a provision in the bill that allows for new public access for hunting and fishing. Mohave County also benefits by keeping 175 mining jobs and \$16 million in economic benefit. Furthermore, the State of Arizona will pay Mohave County in full for all property tax revenue lost as a result of this legislation (just over \$2,000 per year). Finally, while a fraction of the land at Planet Ranch will now be temporarily leased by the Bureau of Reclamation to assist with the Multi-Species Conservation Program (MSCP), all of this leased land will eventually be donated to the state by Freeport-McMoRan. Utilizing this land for MSCP purposes makes a lot of sense as the land is adjacent to the Bill Williams National Wildlife Refuge and such activities will prevent more animals from being listed as endangered species as well as provide further certainty and benefits for existing water and power users in the region.



Source: Freeport-McMoRan Presentation to Mohave County on July 2, 2014

Facts vs. Fiction:

1) Fiction: The claim that Mohave County will lose tax revenues from lands going into trust for the Tribe or to ownership by the Arizona Game and Fish Commission, creating a negative burden to the county.

Fact: On September 9, 2014, the Arizona Game and Fish Commission (AZGFC) voted unanimously to make in-lieu payments to the counties for the portions of Planet Ranch that are conveyed for Multi-Species Conservation Program purposes. Mohave County will be compensated in whole by the recent AZGFC action, resulting in no net loss in property tax revenues from this legislation.

Recently, county officials proposed calculations that greatly inflate the estimated tax revenue potential from the parcel of land which would be conveyed to the AGFC. They claim that this action will result in the county

losing a " \$7,000 a year income stream for 100 years that is worth \$39,500,000 in today's dollars." This claim is false and inaccurate. In 2013, Freeport-McMoRan paid approximately \$2,389.60 (an average of \$27.78 per parcel) in property taxes associated with these lands. It is difficult to understand claims that, if the County foregoes \$2,389.60 of taxes, that this action will create a negative tax burden on the county's taxpayers. Mohave County levied \$51,766,089 in property taxes in 2013; the property tax revenue from this land represents approximately .00004614% of the county's revenues. Again, the State of Arizona will pay Mohave County in full for all property tax revenue lost as a result of this legislation (\$2,389.60 per year). All remaining private lands will continue to have a tax liability payable by Freeport.

County officials also recently claimed they wished the bill had been "amended to include a provision similar to Section 210 of the 2014 Arizona Water Settlements Act." No land is taken into trust for the Hualapai Tribe in this legislation. As no land is taken into trust in this bill, there was absolutely no reason to include the Section 210 language from Senator Kyle's water rights settlement.

County officials also recently made the claim that the bill will deprive the County of a "\$30,375 a year income stream for 100 years is worth \$171,265,000 in today's dollars." These estimates are blatantly false and are based on land being taken into trust for the Hualapai Tribe and then not being taxable. Again, this bill takes no land into trust for the Hualapai Tribe. Furthermore, if some other bill in the future did take lands into trust for the Hualapai Tribe, these lands would still be taxable. These assumptions are based on inaccurate understandings of Arizona tax law, hypothetical future changes to Arizona tax law, a potential bill in the future of which discussions on haven't even begun, fundamental land-use changes, and mathematical equations that are so far removed from the industry accepted practice of accounting as to render the estimates not only grossly inaccurate, but largely incomprehensible. It is also worth

noting that these projections include property taxes associated with lands that Freeport has no intention of selling. In short, there is absolutely no basis for this claim.

Finally, the just over \$2,000 reimbursable annual property tax figure, mentioned previously, pales in comparison to the amount of taxpayer money spent by the Supervisors on legal fees pursuing a frivolous lawsuit in order to prevent Freeport from putting their private property to beneficial use and risk forfeiture under Arizona law. Furthermore, a ruling by the Arizona Department of Water Resources and a subsequent ruling by a state administrative law judge found the county “does not have any vested or existing water rights in the... watershed that would be affected, infringed upon or interfered with” if the transfers in the bill were allowed. Even the County conceded this point in Court. The County Supervisors have pledged to waste even more money, up to \$400,000, on this rabbit hole. Freeport invested more than \$20 million to acquire the private property in 2011 and at that time of sale, Mohave County failed to even place a bid on the property. The Board introduced a motion to discuss eminent domain and condemnation of the land in 2006, but that idea was also scraped.

2) Fiction: The claim that the legislation will negatively affect the potential for future development, and thus will impact the potential collection of future property taxes.

Fact: Planet Ranch is owned by Freeport, and I am told that Freeport does not intend to develop this land in any way, other than putting the lands back into agricultural use. Second, as illustrated in Exhibit VI.12 - Countywide Land Use Diagram - Sub Area 8, of the Mohave County General Plan 2010 (page 75), the privately-owned Planet Ranch lands are not designated for urban, suburban, or rural development, nor are they identified for any industrial or commercial development. The Board has failed to provide us any master plan, long-range plan, or any planning

document whatsoever that includes this land as potential growth for the County.

When Planet Ranch was put up by the City of Scottsdale for sale, the Board did not make a bid or show any interest in acquiring the property at that time. Furthermore, while the final route for I-11 has not been determined to date, the preferred route is not close to this isolated location, which takes in excess of an hour to travel to on a dirt road. I am co-chair of the I-11 Caucus and one of the primary advocates of this infrastructure project. I have not seen this land on any map that shows close proximity to a potential I-11 path. One can only conclude that there are no immediate plans for development of this remote area.

Furthermore, as mentioned above, no land is taken into trust for the Hualapai Tribe in this legislation. This includes routes along the proposed I-11 corridor.

3) Fiction: The claim that this water settlement will lead to a loss of access to Planet Ranch lands for hunting, fishing, and other recreation purposes.

Fact: Planet Ranch is currently under private ownership, and there has been no public access to this land for many years. To access the land, a person would have to technically trespass on Freeport's private property. A provision in H.R. 4924 directs public land management agencies to allow public access on the land acquired. In fact, most Multi-Species Conservation Program land in Arizona already contains some form of hunting and fishing. The provision in the bill will lead to new access for hunters and fisherman.

4) Fiction: The claim that this agreement will result in more water being transferred out of Mohave County or the basin.

Fact: Freeport has generously agreed to a "diversion limitation" or a cap on its withdrawals from the wellfield and other specified groundwater wells at its historic maximum pumping level of 10,055 acre-feet per year (AFY). This will result in an overall net water use reduction from current entitlements and current use in the basin and County of nearly 30,000 acre-feet per year. The bill does not transfer, affect, or infringe upon any vested or existing water rights held by Mohave County. Water rights claims in Arizona are still unresolved for 11 different tribes and the drought conditions have put even more pressure on scarce water resources. During these tough times, an agreement where a private water rights holder willingly volunteers to reduce water use to which it is legally entitled by 30,000 AFY is a great thing. Furthermore, this reduction benefits residents in Lake Havasu and Bullhead City as this water can be put to use in future water and economic development projects.

Not one net drop of additional physical water is leaving Mohave County. This legislation is mostly focused on replacing less secure water rights with more senior water rights for the mining operation. Yet the Board has made it seem like a new massive pipeline is being built and that additional water from Mohave County will be transported to Yavapai County as a result of this legislation. Again, this bill will actually result in less water being used as Freeport agreed to cap its withdrawals from the Wikieup Wellfield at current use and forgo tens of thousands of acre-feet of water each year to which the company is legally entitled.

5) Fiction: The claim that lights "flicker" in nearby towns when the water pumps are turned on for the Bagdad Mine.

Fact: This claim is not credible, nor is it coming from a power utility. The power grid for Arizona does not rest on a precipice dependent upon whether a few water pumps are turned on.

6) Fiction: This agreement allows for increased water use from the Wikieup Wellfield if additional development occurs at the Bagdad town site.

Fact: This agreement clearly and unmistakably limits the amount of water to be carried from the Wikieup Wellfield at 10,055 AFY. The legislation permanently prohibits Freeport McMoRan from ever increasing its pumping at the Wikieup Wellfield above this number, regardless of any hypothetical future development at the Bagdad town site.

7) Fiction: Mohave County and its interests were excluded in the formulation of this settlement.

Fact: The legal entities involved in this agreement include U.S. Department of Interior, The Hualapai Tribe, The Arizona Game and Fish Commission, Arizona Department of Water Resources, The United States Bureau of Reclamation, and Freeport-McMoRan and its subsidiaries. Mohave County is not a legal entity in this agreement. Although the County has no legal stake in the private water rights and private lands involved with this bill (as determined by a State Administrative Law Judge), their concerns have been thoroughly canvassed and legitimate claims have been incorporated into the agreement. As a result, the County and the general public come out as net beneficiaries in every major category of measure. The Board should be proud of the tangible benefits accomplished in this transparent and inclusive agreement. One concession made to the Board at their request was new public access for hunting and fishing. Both Senator Flake and Rep. Gosar agreed with this request and this provision was inserted into the bill prior to introduction.

The entire Arizona Congressional delegation supported the Bill Williams Water bill. Further, every member of Congress did as well. Every member. From all states. Republicans and Democrats. This is not a controversial bill if one takes the time to actually understand this bill.

Unfortunately, several Mohave County Supervisors have taken to publicly bashing this bill while simultaneously remaining ignorant of its impact. The Supervisors claim that they “are livid that the deal was put together with no input from county officials.” This is simply not true. Freeport, Congressman Gosar and Congressman Gosar’s staff have had multiple, in-person meetings and phone calls with the Supervisors to discuss the details of the water rights settlement prior to introduction of this legislation and throughout the legislative process. Following one of the two-hour meetings, the Havasu News even reported, "But, at least for now, the supervisors are pleased their concerns are being heard by members of the congressional delegation.'...'They are taking our concerns pretty seriously,' Johnson said. 'Who knows if it will help, but at least they were willing to come out and listen to what we had to say.'"

Congressman Gosar even helped set up a tour of Planet Ranch so the Board could get a better understanding of the bill and see the issue first-hand. Unfortunately, the Board declined this tour and said they simply wanted a “briefing.” The Board then turned this briefing into a public meeting where they passed a resolution of disapproval against the bill without having full knowledge of what the bill and two agreements codified by the bill actually entail—and after refusing to come to Planet Ranch to get a better understanding. Furthermore, Rep. Gosar has made it a priority to address their concerns and responded in an extremely detailed letter to the Supervisors on October 3, 2014, going point by point addressing their objections. Click [HERE](#) to read that letter.

8) Fact:

This Agreement DOES NOT :

- Settle all Claims of the Hualapai Tribe to the Colorado River
- Transfer ownership of Planet Ranch to the Federal Government
- Give any land to the Hualapai Tribe or the U.S.
- Limit Public Access to the MSCP Lands
- Authorize the Construction of a Pipeline from Planet Ranch or Lincoln

Ranch to the Bagdad Mine

- Authorize new Withdrawals from the Wikieup Wellfield
- Increase Withdrawals in the Bill Williams Watershed

9) Fact: The agreements that will be codified by this legislation are important in terms of water supply certainty. Arizona water law requires that the beneficial use of the water rights not lapse for more than five years. Failure to put such water rights to use during that time frame can result in the forfeiture of those water rights. Since Freeport completed the purchase of Planet Ranch in December 2011, this legislation must be signed into law, and the water rights on Planet Ranch must be put to beneficial use by December 2016. Failure to put such water rights to use could result in Freeport losing \$20+ million dollars that the company invested to acquire these private water rights. This would be a significant loss not only to the company but to the employees and municipalities who benefit from Freeport's Arizona operations.

“As with all mining operations, the Bagdad operation requires a dedicated water supply...Although the company believes the Bagdad operation has sufficient water resources to support current operations, Bagdad faces the potential for increases in competing water demands and variability in water supplies due to an on-going drought,” stated Mr. Francis McAllister, a Freeport executive who testified at the hearing on this bill.

10) Fact: One thing I think we all should agree upon is that we respect private property rights. A private land owner can sell land or water rights to whomever they want. A private land owner has the right to fence off private property and exclude a trespasser. Freeport invested \$20+ million dollars to acquire these private water rights. The Board did not bid when these water rights or land were up for sale, and the Board has not used eminent domain to seize these lands, although the idea was proposed by Supervisor Johnson in 2006. The rule of law supports Freeport's right to utilize or sell its private property.

FINAL THOUGHT: I genuinely have no idea what is behind the Supervisors' misinformation campaign. I have a lot of respect for all of the Supervisors and have successfully worked with them before on important issues such as protecting the vital rainbow trout stocking program at the Willow Beach National Fish Hatchery. In addition, I have invited them out numerous times to testify before Congress. I look forward to future efforts with the Board and hope we can put this disagreement behind us as we agree on numerous other issues. Having said that, Mohave County needs to know the truth, and I felt compelled to set the record straight. The Flake-Gosar bill is about private property rights and is a win for all involved, especially Mohave County.

Status of the Legislation

1. June 20, 2014: I introduced H.R. 4924, the Bill Williams River Water Settlement Act of 2014. The entire bipartisan Arizona delegation in both Houses of Congress strongly supports this bill and signed on as original cosponsors of this legislation prior to introduction.

- H.R.4924 is referred to the House Committee on Natural Resources.

2. September 19, 2014: House Natural Resources Subcommittee on Water and Power held a hearing in Washington, DC on H.R.4924.

3. November 19, 2014: House Natural Resources Committee advanced H.R.4924, by a bipartisan and unanimous vote, to the full U.S. House of Representatives. [READ MORE](#)

4. December 1, 2014 – House Natural Resources Committee filed the committee report on H.R.4924, making the bill eligible for consideration by the full U.S. House of Representatives.

5. December 1, 2014 - The bill passed the full House of Representatives by unanimous consent. [READ MORE](#)

6. December 2, 2014 - The bill passed the full United States Senate by unanimous consent. [READ MORE](#)

7. December 16, 2014 - The bill was signed into law by the president. [READ MORE](#)

Letters of Support

This water rights settlement has strong bipartisan support across the State of Arizona. Below are a few of the letters in support of the bill (Click to view each).

[Arizona Chamber of Commerce](#)

[Arizona Governor Jan Brewer](#)

[Hualapai Tribal Council](#)

[Hon. Mark Lewis, Director, Central Arizona Project](#)

[Arizona State Senator Carlyle Begay](#)

[John Sullivan - The Salt River Project](#)

[AZ Game and Fish, AZ State Land Department, Freeport, AZ Department of Water Resources](#)

[Sundance Helicopters](#)

[The Nature Conservancy in Arizona](#)

[Yavapai County Chairman Rowle Simmons](#)

There are Two Settlement Agreements Codified by the Bill

The Big Sandy River-Planet Ranch Water Rights Settlement Agreement:

The first agreement codified by this bill, the Big Sandy River-Planet

Ranch Water Rights Settlement Agreement, allows for more senior water rights owned by Freeport on Planet Ranch to be further secured in order to provide certainty and support the company's mine operation in Bagdad, Arizona. This agreement also allows Freeport to donate 3,400 acres of private land at Planet Ranch to the Arizona Game and Fish Department. The land will then be managed as part of the State's responsibility under the Multi-Species Conservation Program (MSCP) for the lower Colorado River. "The MSCP is a 50-year federal/state/local Habitat Conservation Plan for Arizona, California, and Nevada. It was created to accommodate 'current water diversions and power production and will optimize opportunities for future water and power development by providing ESA compliance.'" (9.17.14 W&P Briefing Paper on H.R. 4924.)

The Hualapai Tribe Bill Williams Water Rights Settlement

Agreement:

The Hualapai Tribe Bill Williams River Water Rights Settlement Agreement is the second agreement confirmed by this legislation and "would secure a number of benefits and protections for the Tribe, including two non-Federal funded donations. The Tribe benefits from an immediate financial contribution by Freeport of \$1 million for water and infrastructure studies. Freeport has also agreed to make a substantial contribution to the Tribe's Economic Development Trust."..."Finally, the bill includes a limited waiver of sovereign immunity by the federal government and the Tribe as it relates to enforcement of the terms of the settlement agreements and the Act." (9.17.14 W&P Briefing Paper on H.R. 4924.)



Source: Freeport-McMoRan Presentation to Mohave County on July 2, 2014

Rep. Gosar sent a letter to the Mohave County Board of Supervisors responding to their concerns and included many of the facts listed above.

Click [HERE](#) to read that letter.

Rep. Gosar also wrote an op-ed to set the record straight on this bill.

Click [HERE](#) to read that op-ed.

