GILA RIVER INDIAN COMMUNITY
Indigenous Perspectives on Sustainable Water Rights

THE NATURE OF TRIBAL WATER RIGHTS

June 9-10, 2015

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Historical Perspective

1. The Gila River Indian Reservation was established by Congress in 1859.
2. Pimas (Akimel-O'Odham) and Maricopas (Pee-Posh) comprise the tribes of the Community.
3. Our ancestors, the ancient HuHuKam, farmed the Gila and Salt River Valleys since time immemorial.

…continued Historical Perspective

4. Over 500 miles of canals were dug to irrigate our fields.
5. Diversion of water upstream on the Gila River caused famine and drought beginning in the 1880s.
6. Pimas and Maricopas have the highest documented rate of diabetes of any ethnic group in the world.

ARIZONA WATER SETTLEMENTS ACT

Background-Years of Litigation

- The Gila River Indian Community's claims for water and damages had been litigated for approximately 100 years.
- Litigation has been costly to all parties.
- Rights to water in central Arizona were uncertain for all water users pending the outcome of litigation.

ARIZONA WATER SETTLEMENTS ACT

Striving for Settlement

- Gila River Indian Community, in good faith, negotiated a water settlement. This process took over 20 years
- The Community participated with over 35 Federal and non-Indian parties in an especially concerted effort to structure and draft a settlement agreement documents.

Reserved Rights Cases

- The *Winters* case, 207 U.S. 564 (1908) held that the United States in setting aside land for a reservation, the government implicitly reserved sufficient water to accomplish the reservation's purpose. The arid lands of the Ft. Belknap Reservation could not be made "habitable and capable of growing corps" without an implicit reservation of Milk River water.
- In *Arizona v. California*, 373 U.S. 546, 1963 the United States when it created the Colorado River Indian Reservation obviously knew that "most of the lands were of the desert kind-hot, scorching sands," and that water from the Colorado River was essential to growing crops. (Developed the Practicable Irrigable Acreage test)
- In *Cappaert*, 426 U.S. 128, 1976, the Supreme Court recognized the hydrological connection of surface water and groundwater.
- In the *Big Horn* case the Wyoming Supreme Court declined to find a reserved right to groundwater. 753 P. 2d 76, 1988

GILA III 989 P. 2d 739, 1999

- Federal reserved water rights doctrine applies not only to surface water but also to groundwater.
- Holders of federal reserved water rights may invoke federal law to protect their groundwater from subsequent diversion even if the holders would enjoy greater protection than holders of state law water rights.

… continued Gila III

1. Two thirds of the land is federal and Indian held
2. State courts must apply federal substantive law to measure federal rights in state adjudications.
3. The federal reserved rights doctrine applies not only to federal enclaves but also Indian reservations.

…continued Gila III

4. The United States intended, when it established reservations, to reserve sufficient unappropriated water to meet the reservations' needs, it must have intended that reservation of water to come from whatever particular sources each reservation had at hand. For instance groundwater.

GILA IV

In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 198 Ariz. 330, 9 P.3rd 1069 (2000)

1. Subflow is defined as the saturated floodplain Holocene alluvium.
2. All wells located within the lateral limits of the subflow zone are subject to this adjudication.

… continued GILA IV

3. Wells outside the subflow zone, but pumping water from a stream or subflow as determined by the cone of depression test, are included in the adjudication.

GILA V
(Practicably irrigable acreage)

- *The General Adjudication of All rights to Use Water in the Gila river System and Source*, 201 Ariz. 307, 35 P. 3d 68 (2001)

- The general purpose of a reservation is to provide a home for the Indians and that purpose is broad and must be liberally construed.

PIA

- The PIA standard is not the exclusive standard to measure *Winter's* right water.
- Must consider a tribe's history, religion, rituals, and culture.
- Also consider a tribal land's geography, topography, and natural resources, including groundwater availability.

… continued PIA

- A tribe's economic base, the most efficient use of water, physical infrastructure, human resources, technology, raw materials, financial resources, and capital.
- Past water use
- A tribe's present and projected population

ARIZONA WATER SETTLEMENTS ACT

The Arizona Water Settlements Act, P.L. 108-451,118 Stat. 3478 (December 10, 2004) was the largest Indian water settlement in the history of the United States.

ARIZONA WATER SETTLEMENTS ACT

Because it:

- Settles longstanding dispute between the US and the CAWCD (State of Arizona)
  - Repayment obligation of CAWCD
  - Division of CAP water between the US and CAWCD
- Provides the framework for future Arizona Indian water settlements through the Lower Colorado Basin Development Fund

ARIZONA WATER SETTLEMENTS ACT

The Community's Globe Equity Rights are associated with lands in the San Carlos Irrigation Project (SCIIP), which serves both Indian and Non-Indian lands.

- 100,546 acres on the Gila River Indian Reservation
- 100,000 acres in the San Carlos Irrigation and Drainage District (SCIDD)

ARIZONA WATER SETTLEMENTS ACT

Water OM&R Trust Fund and SCIP Rehabilitation Fund

- $200 million will be allocated to the Community with
- $53 million to establish the OM&R Trust Fund to defray OM&R costs associated with the delivery of CAP water to the Community
- $147 million to rehabilitate the SCIP Joint Works and SCIP Indian Works

ARIZONA WATER SETTLEMENTS ACT

Settlement provides more certain funding for CAP-IDD facilities for GRIC

- Funding to be provided to GRIC for continued construction of the Pima-Maricopa Irrigation Project (P-MIP) pursuant to repayment contract executed with BOR on July 20, 1998.
- Currently funded by annual appropriations
- $313 Million (indexed) remains to be funded as of 2004.

ARIZONA WATER SETTLEMENTS ACT

Settlement provides funding for rehabilitation of San Carlos Indian Irrigation Project facilities

- $147 Million to be used by the Community to rehabilitate delivery and distribution works of SCIIP that were either never constructed as contemplated or have fallen into disrepair contrary to US trust obligation.