

### **Pima-Maricopa Irrigation Project**

Education Initiative

2002-2003



*Restoring water to ensure the continuity of the Akimel O’otham and Pee Posh tradition of agriculture*

### ***An Equal Chance or Another Proposition?***

**Part 29**

In June of 1914, Representative Carl Hayden and Senator Henry Ashurst introduced a bill into Congress for the construction of San Carlos dam. Facing opposition from Western Congressmen who believed Arizona already had its slice of the federally financed reclamation program in the Salt River project, Hayden and Ashurst initiated a public relations campaign designed to shape public opinion for the overall San Carlos project. “Our best, and in fact our only avenue of approach is by reason of the fact that the Pima Indians will be benefited,” Hayden noted. Western states, including Arizona and California, were also beginning to quarrel over control of the Colorado River waters.

The Pima continued their own public relations blitz. The Pima First Presbyterian Church in Sacaton frequently wrote members of Congress seeking their support for a reclamation project that would benefit the Pima and Maricopa. Pima men such as Hugh Patten and Lewis Nelson continued to lobby for the restoration of their water long ago taken without their consent. At the same time, tribal leaders expressed “gratitude” to Hayden for his work in seeking approval for the San Carlos project.

Federal support for the San Carlos project faced an uphill battle. Increasing concern over World War One diverted attention from Hayden’s bill. In January, Ashurst, chairman of the Senate Indian Affairs Committee, requested Interior Secretary Franklin Lane to report on the position of the Indian Service regarding the feasibility of a diversion dam above Florence. Since the Pimas were considered “wards of the government,” Lane legally spoke on their behalf.

Lane believed the Florence location was ideal because it was “at the mouth of a series of canyons” through which the river flowed out of the Pinal Mountains. West of this point the river spread into a wide alluvial plain, with much of the water disappearing in the riverbed. Lane placed greater importance on the diversion dam after yet another disastrous flood destroyed all of the headings and brush diversion works both on and above the reservation during the winter of 1915. While non-Indian landowners might be able to build a permanent diversion dam above Florence, Lane warned Ashurst, the Government would have to oppose such construction “in order to protect the water right now claimed by the Indians.” Lane gave his blessing to the proposed diversion dam and encouraged the Senate to approve of the bill so as to “give the Indians an advantage of location that they have not heretofore enjoyed.”

With the flood of January 1915 causing so much destruction, Hayden believed now was the time for Congress to act to secure control of the river and its life-sustaining waters. Knowing Congress would not yet approve of a plan to build the costly San Carlos project, Hayden and Ashurst focused on gaining approval to build a diversion dam for the “benefit of the Indians.” It was advantageous, Hayden argued, to have a portion of the cost of the Florence diversion dam charged to private landowners since they would also benefit from the dam. The Pimas and their non-Indian neighbors in Florence and Casa Grande received water from the same source, Hayden reasoned, and had a common interest that would bind them “for all time to come.” The government—not private citizens—had to control the dam, Hayden said. Only then could the Pima and Maricopa receive their “prior right to use the flow of the Gila River.”

Ashurst worked to secure an amendment to the bill adding a second diversion dam (and bridge) to be located on the reservation. Wendell M. Reed, of the Indian Irrigation Service, recommended to Commissioner of Indian Affairs Robert Valentine that the dam and bridge be built. In a report of

November 25, 1914, Charles Olberg explained a bridge was “badly needed by the Indians and the white people.” The cost of the bridge, Olberg suggested, would “be only a small amount more” than the dam itself. While depicted as a means to provide the Pima with transportation over the river, the bridge was largely the desire of A.J. Chandler, who wanted a bridge so his San Marcos Hotel patrons could more easily visit Casa Grande Ruins over what would soon become a paved highway.

The Senate remained skeptical of the real intent of the project, fearing it was another “white man’s proposition” designed to cheat the Pimas out of their water resources. Senator Harry Lane explained that Indians rarely “benefit from water ... if the white man has the first opportunity.” They “usually suffer,” Lane continued, pointing to the example of the Gros Ventre and Assinboine tribes from the Fort Belknap Reservation in Montana. Even though the United States Supreme Court upheld their water rights, in 1908, non-Indians continued to use the waters of the Milk River. How would it be any different on the Pima Reservation, Lane inquired, if Congress approved of the dams?

Lane invited Samuel Brosius to testify before the Senate. Brosius had been involved in the Pima water struggle since 1911, when the Pimas invited the Indian Rights Association to aid them in their endeavor to reclaim their water. Brosius supported the bill if it guaranteed the enforcement of the prior rights of the Pimas through the insertion of a clause clearly spelling out Pima water rights to 40,000 acres of land. Any water remaining after the Pimas had received their water, Brosius stated, could then be made available to neighboring non-Indian farmers.

While Hayden supported legislation moving toward construction of the San Carlos project, he and Assistant Commissioner Edgar Merritt opposed such details, fearing they would bind the Indian Service so that it “could not do what was best.” Senator Joseph Robinson feared the omission of such a guarantee, arguing that if the government agreed the Pimas had priority water rights then “Why should it not be incorporated in the bill?” Robinson further feared that by not including clear language protecting Pima water rights, the Indian Service would “be forced to exercise a discretion that it might not want to exercise” in the future.

To prove the Pima and Maricopa would be the primary beneficiaries of the diversion dam, Hayden and the Indian Service had to demonstrate that the Indians would actually use the water that might be made available. The Indian Service had begun to do this with the development of various reservation irrigation projects in 1913. Lane particularly questioned Hayden on how many acres of Indian land would be irrigated and farmed if the project were approved. Acres under ditch and potential irrigated acres were crucial data needed to demonstrate allocation of the water.

In answering Lane’s questions, Hayden outlined the real intent of the project. The Pima’s current diversion of water was “below the white diversion.” Passage of this bill would “carry the Indian diversion up the river so that he will get an equal chance to obtain his share of the water.” Water could then be transported through the Florence Canal, to which would be added the Pima Lateral, to the reservation. It was senseless to build another canal, Hayden argued, when one already existed.

The catch was that the United States would have to purchase the non-Indian owned right-of-way through the Florence Canal to divert water for the benefit of the Pima. In exchange for this right, the government would have to allow non-Indians to divert water from the same structure. Hayden saw this as a win-win solution for all parties. Only if the United States built and controlled the diversion dam and the distribution canal would the Pimas be assured of receiving their water. Ashurst was so sure the project would protect Pima water rights that he boasted in Arizona one had to be “an Indian to secure ... your rights” from the government.

The House and the Senate agreed that the best and simplest means to resolve the water challenge was to build a joint-use irrigation system. Such a system, Reed argued, would “be of material advantage to the Pima.” In March 1915, the Senate Indian Affairs Committee recommended an appropriation not to exceed \$175,000 to construct the Florence diversion dam. A House filibuster at the close of the 63<sup>rd</sup> Congress, however, prevented the bill from gaining passage and it died.

In February of 1916, another devastating flood struck the Gila River Valley. Agency Superintendent Frank Thackery informed Hayden that the damage on the reservation exceeded \$100,000, with more than \$40,000 damage off the reservation. Canals were destroyed, head gates and brush dams were washed out and severe erosion occurred. “Unless something is done,” J.F. Brown, President of the Casa Grande Water User’s Association, informed Ashurst, 3,000 Pimas and many white settlers would lose their crops and “be left in destitute circumstances.”

When the House Committee on Indian Affairs again took up debate on the bill, in the spring of 1916, it expressed a new concern. Would the construction of the diversion dams commit the government to building the entire San Carlos project? Missouri Congressman William Borland feared it would do just that. Hayden, however, persuaded his colleagues that the dams were needed even if the San Carlos project were not built.

In the debate, Senator Charles Curtis, a member of the Kaw Tribe, remained unconvinced that the Pimas would receive “all the water they need.” Ashurst assured Curtis that the Pimas would be first in line for water and added, “any remaining [water], if any, may be sold to the whites, [with] the ... proceeds of the sale to be used for paying for this appropriation.” To ensure his vote, Curtis demanded the water be protected “for the use of the Indians” even if they needed it all. The Indian Service continued to oppose such specific language and it was not included in the final bill. In its place was an ambiguous provision that the water would be distributed to Indian and non-Indian landowners “in accordance with the respective rights and priorities” of each as “determined by agreement of the owners thereof.”

One final provision to be clarified dealt with the adjudication of Gila River water rights. In 1914, Judge A.C. Lockwood of Cochise County initiated water rights proceedings to determine the legal appropriators of Gila River water. On April 6, 1916, Lockwood issued his decree, settling Gila River appropriations between 1868 and 1916. The “Lockwood Decree” determined and fixed a priority date for the waters of the river. Believing their concerns had been alleviated, Congress agreed to the bill and on May 18, 1916, authorized \$75,000 to begin construction of a “dam with a bridge superstructure [Olberg Bridge and Sacaton Diversion Dam].” It also authorized \$75,000 to begin construction of a diversion dam “at a site above Florence [Ashurst-Hayden Diversion Dam].” The Florence-Casa Grande Project had been approved as a joint-use system. The reservation economy was to be closely associated with that of Pinal County. The project, Merritt believed, would not only stimulate agriculture on the reservation but also reduce the “uncertain water supply.”

### Supporting the Florence-Casa Grande Project

Match the name on the left with the main argument used by that individual on the right. The answers are listed below.<sup>1</sup>

- |                          |  |
|--------------------------|--|
| 1. _____ Carl Hayden     | A. He wanted a bridge across the Gila River for his hotel guests                 |
| 2. _____ Samuel Brosius  | B. Pimas should have the right to all the water they need.                       |
| 3. _____ Charles Curtis  | C. It will give the Pimas an advantage of location for diversions.               |
| 4. _____ Hugh Patten     | D. It will carry the Pima diversion of water above non-Indian diversions.        |
| 5. _____ Henry Ashurst   | E. It must clearly protect water for 40,000 acres of Pima land.                  |
| 6. _____ A.J. Chandler   | F. Wanted the water that had been stolen from his people returned.               |
| 7. _____ Franklin Lane   | G. The Pimas would be first in line and could sell surplus water to non-Indians. |
| 8. _____ Joseph Robinson | H. Without dams, both the Pimas and their neighbors would lose their crops       |
| 9. _____ J.F. Brown      | I. Feared the BIA would have too much discretion over dividing the water         |
| 10. _____ Harry Lane     | J. Wanted to know how many acres would be irrigated on the reservation           |

<sup>1</sup> ANSWERS: 1-D, 2-E, 3-B, 4-F, 5-G, 6-A, 7-C, 8-I, 9-H, 10-J.

## *Teacher Plan for “An Equal Chance or Another Proposition?”*

### Terms to know and understand

- Public Opinion
- Ward of the government
- Alluvial
- Amendment
- Skeptical
- Filibuster

Students will be able to:

1. Analyze environmental changes in the Gila River watershed and their impact on the reservation.
2. Identify and analyze the arguments used in gaining approval of the Florence-Casa Grande Project.

**Objectives**

### Critical Thinking:

- Carl Hayden believed the Pima’s loss of water was not so much due to upstream diversions as it was to environmental changes in the Gila River watershed. While partially correct, upstream diversions played a significant role in the hardships of the Pimas. During the 19<sup>th</sup> century there were many environmental changes in the Gila watershed. The over trapping of beaver by the Mountain men, the overgrazing of the southern Arizona range by cattle, the expansion of agriculture by farmers and the deforestation of the mountains that occurred as a result of mining activities (hydraulic machines ran on steam power, requiring large quantities of wood). Read Henry Dobyn’s “Who Killed the Gila,” *Journal of Arizona History* Spring 1978 (19:1) pp. 17-30. Then analyze the changes that occurred and the impacts on the reservation. Discuss your findings.

### Activities

- Before students read and discuss the selection, explain to them that in 1886 the US Supreme Court, in *United States vs. Kagama*, declared American Indians who were still in tribal relations to be “wards of the government.” Explain to students that wards (prisoners, the insane, children, etc.) cannot vote or exercise any legal authority. The federal government became paternalistic, often treating American Indians as children. In 1903, the Supreme Court ruled in *Lonewolf vs. Hitchcock* that Congress had plenary authority over Indian nations. The court held that the relationship between Congress and the Indian nations was a political one and, as such, the courts did not have the authority to interfere with “political questions.” As a result, Congress believed it could now act on behalf of Indian nations without their consent. Congress often coerced Indian leaders into accepting its desires, even when it was not in the best interests of the tribe. It was the Indian Service (BIA) that was the agent that implemented the wishes of Congress. Having plenary—or near-absolute—authority, the BIA began to assume control over most tribal affairs. It was in this context that Interior Secretary Franklin Lane spoke on behalf of the Pima and Maricopa (do not confuse this with Indian acceptance of this authority). This authority by the Indian Service was at its peak between 1890 and 1930. It was not until 1977 that the federal courts ruled the Indian Service could not arbitrarily act without tribal consent.

### About P-MIP

The Pima-Maricopa Irrigation Project is authorized by the Gila River Indian Community to construct all irrigation systems for the Community. When fully completed, P-MIP will provide irrigation for up to 146,330 acres of farmland. P-MIP is dedicated to three long-range goals:

- Restoring water to the Akimel O’otham and Pee Posh.
- Putting Akimel O’otham and Pee Posh rights to the use of water to beneficial use.
- Demonstrating and exercising sound management to ensure continuity of the Community’s traditional economy of agriculture.