

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

The Failure of the Florence-Casa Grande Project PART 1

Part 34

Until the 1860s, Pima and Maricopa farmers used without competition the waters of the Gila River to irrigate a wide array of food and fiber crops. By 1916, when the Florence-Casa Grande Project (FCGP) became law, the Pima and Maricopa share of the river had been reduced to less than 30% of the natural flow. Upstream farmers in the Florence-Casa Grande (29%), Safford-Solomonville (33%) and Duncan (5%) valleys, used more than two-thirds of the natural flow of the river. Pima and Maricopa farms, once the breadbasket of Arizona, were devastated. In rapid succession, upstream mining and agricultural towns were established, diminishing the flow of the river each year.

Congress believed the FCGP would “thoroughly safeguard” the rights of the Pimas “to the use of the water.” Viewed by its supporters as an important component of the larger, long-hoped for San Carlos Project, the FCGP began a joint-use irrigation system that was ultimately designed to integrate the economy of the reservation with that of central Arizona. The FCGP and the rapid development of irrigation projects on the reservation (i.e., the Sacaton, Casa Blanca, Blackwater, Agency and other projects) emphasized use of the rapidly declining natural flow waters of the Gila River before they were gone entirely.

As was true across the western United States, Arizona based water rights on the doctrine of prior appropriation. This meant that those whose rights to the water came first received their water before others did. In other words, “first in time, first in line.” Individuals wishing to make use of the water were required to file a claim for it and put it to beneficial use. If an individual did not use the water for five consecutive years, the right was lost and another could claim the water. This was also referred to as the “beneficial use” doctrine. The Pima and Maricopa, having used the river for centuries, did not—and as prior users saw no reason to—file for a right to use the water. The two tribes, denied the use of water by upstream diversions, clearly understood the effects of prior appropriation—loss of water despite a general recognition that they had prior rights to the water.

Prior appropriation rights developed in the West as the primary means of putting a limited resource such as water to a lawful and beneficial use. Local enforcement of this law conflicted with the Indians’ time-immemorial rights to the water. The US Supreme Court had ruled in a Montana case, in 1908, that Indian tribes had “reserved rights” to the water, meaning their rights were not bound by the enforcement of prior appropriation, having been reserved implicitly as a right with future uses. Neither Congress nor the Indian Service, however, seemed too concerned with the ruling in the years following 1908.

Lacking funds to develop a competitive and modern irrigation system (which was required by the changing nature of the Gila River and its watershed), the Pimas and Maricopas struggled to put their water to beneficial use as defined by local law. Upstream diversions further hampered Indian efforts to put the water to use. Lacking the scientific data and technical expertise necessary to enforce the court’s ruling to the benefit of the Pimas, the Indian Service proved incapable of directing water policy and only belatedly recognized the threat public water developments, such as those authorized by the 1902 Reclamation Act, posed to the Indians.

The FCGP involved deep moral issues that went back half a century or more. Few informed citizens denied the fact of Pima water use and agricultural productivity in the years leading up to 1880. Many, like Arizona Congressman Carl Hayden, saw Pima water losses not as a result of over

appropriation of the river, but more as a byproduct of environmental change in the Gila River watershed. While the national media reported on the “deplorable conditions” among the Pimas when it served the interests of national irrigation and federal reclamation (as it did in 1900-1901), it was nowhere to be found in 1912 when debate began on the extent of Pima rights. Well-connected non-Indian political forces, however, marketed their need for additional reclamation and flood control in the Florence-Casa Grande Valley to Arizona’s congressional delegation, elected by the citizens after Arizona statehood in 1912. In the process, they used the Pima and Maricopa need for water to gain federal assistance for the entire Florence-Casa Grande Valley. One historian called this the playing of the Indian card.

The struggle for water also involved conflicting cultural values. For centuries, the Pimas and Maricopas had provided an oasis in the desert for tens of thousands of passing emigrants. When Kit Carson passed through the Pima villages during the American Civil War and inquired about a purchase of wheat, he was told by the Pimas, “bread is to eat, not to sell; take what you want.” Only with the blessing of—and protection afforded by—the Pima and Maricopa were settlers able to establish the upstream towns of Florence and Adamsville as agricultural villages safe from Apache raids in the 1860s. Then in the 1870s, Upper Gila Valley towns such as Safford and Thatcher were established, adding to the water crisis.

In the 1910s, great economic and political pressure was placed on Pima-Maricopa land and water resources, with a new federal policy favoring the economic integration of the reservation with markets in central Arizona. As settlers demanded additional land and water resources, the state congressional delegation was called on for its support. Politically impotent, the non-citizen Pima and Maricopa did not have the voice necessary to advocate their needs. With “resistance to Indian projects ... so intense” in the west and Congress intent on further integration of the reservation economy, approval for Indian irrigation projects was unlikely without “non-Indian recipients [being] included.”

The political and social realities to develop an irrigation project for the Pimas stemmed not only from a Congressional desire to integrate the reservation economy with that of central Arizona, but also from the long standing national goal of cultural assimilation. A major component of this policy was allotting reservation lands, which the Indian Service did between 1913-1921 when it allotted each Pima and Maricopa two 10-acre parcels of land. From a political perspective, Indian reserved rights had little relevance once allotment was completed, particularly since there appeared to be consensus that once allotment was accomplished, Indian water rights would follow the local doctrine of prior appropriation.

Although requested by the Indian Service in 1886 to investigate the effects of the Florence Canal, the United States Justice Department did not involve itself in Pima affairs until 1904. It was then the Indian Service requested the Department to step in and investigate Pima water complaints. The investigation ended when Pima Agent J. B. Alexander complained the \$30,000 expense of litigating Pima water rights was not worth the cost. Commissioner of Indian Affairs Francis Leupp agreed, believing the Pimas no longer had legal rights to the water since they had not used much of it (due to upstream diversions) for more than five years. As legal trustee for the Pimas and Maricopas, the Indian Service and the Justice Department had a lawful obligation to protect their water. The Pimas and Maricopas were barred by federal law from filing suit on their own behalf, being forced to rely on the government for protection of their rights. In a clear conflict of interest, the Justice Department also had a responsibility to protect the rights of non-Indian water users, placing it in the ambiguous position of “enforcing a contradictory and inconsistent set of water laws.”

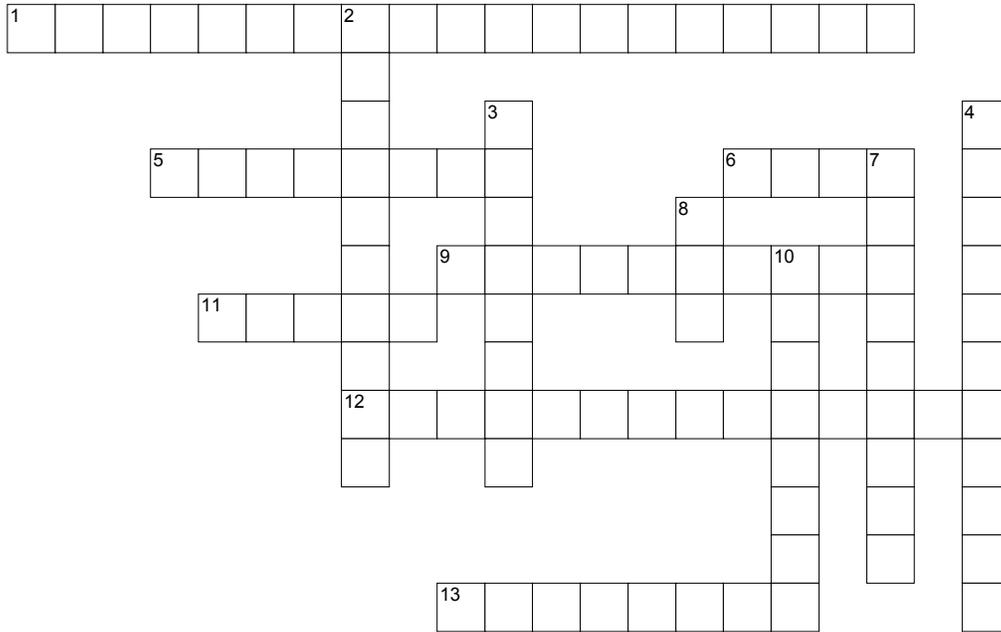
After 1910, the Justice Department was overrun with Indian water cases. Suits from the Ft. Berthold (Mandan-Hidatsa-Arikara) Reservation in North Dakota, the Yakima Nation in Washington, Unitah and Ouray Ute in Utah and the Pimas were well publicized. But challenges remained in prosecuting these cases. Wendell Reed, head of the Indian Irrigation Service in Washington DC,

informed Indian Commissioner Cato Sells that the Justice Department litigated Indian cases but it did not “get out and secure the evidence” needed to successfully prosecute the claims. It “simply fights with the ammunition that is brought to [it].” Opponents of the Indians, Reed added, hire “good lawyers” and “leave no stone unturned” in gathering the evidence needed to support their position. Lack of data was detrimental to Indian cases. While the Justice Department did assign two water rights attorneys to handle Indian cases, in 1913, it did not provide any resources to research Indian water claims.

One result of the Justice Department’s lack of responsiveness was the initiation of the Indian Service into the data collection mode. Having already begun allotting the reservation, the Indian Service now had to reorient its thinking and determine when and where reservation lands had been historically irrigated. As a result, Charles Southworth completed his 1915 irrigation history along the Gila River. This data was vital not only for potential litigation but also to the allotment process itself, as the Pima and Maricopa were to receive irrigable lands with rights to water. Without water, the allotments would be worthless and the Indians would not have an equal chance in the planned integrated economy.

In the years prior to 1916, the Pima’s share of the natural flow of the Gila River decreased rapidly. In the years after passage of the FCGP, the Pimas received little additional natural flow water. The Florence-Casa Grande Project, while successful in gaining support for Coolidge Dam and the San Carlos project in the mid 1920s, failed to alleviate the need for water on the reservation. By disregarding the issue of Pima reserved rights to the water in the first decades of the 20th century, Congress simply postponed the necessity of dealing with the matter. By ignoring its legal obligation to protect Indian water rights, Congress confirmed the prophetic statement of Assistant Commissioner of Indian Affairs Edgar Merritt. Testifying before Congress, in 1914, Merritt declared that by not dealing with the issue of Indian water rights, the United States would one day see Indian tribes take their claims to the courts for action. The Pimas would do so repeatedly in the years to follow.

The Failure of the Florence-Casa Grande Project



Constructed using Crossword Weaver

ACROSS

1. These two Upper Gila River Valley towns used two-thirds of the natural flow of the Gila River:
5. The irrigation project was used by both Indian and non-Indian users and was therefore a ____ project.
6. Abbreviation of the Florence-Casa Grande Project:
9. Prior appropriation is based on _____ use of the water, which means actual use.
11. Western water law was based on ____ appropriation.
12. Pima and Maricopa water rights are based on these rights in the distant past: _____
13. In the 1908 Supreme Court decision, the court said Indian water rights were not specifically stated in a treaty or other document and therefore were implied or _____.

DOWN

2. This man wrote the first irrigation history of the Gila River: Charles _____.
3. Indian water rights are based on the _____ rights doctrine.
4. The Pimas depended on the _____ of the Gila River to sustain their food and fiber crops.
7. When something is discussed and debated:
8. Abbreviation of the modern name of the United States Indian Service:
10. It means having no authority or power or, as non-citizens, the Pimas and Maricopas were _____ to protect their water.

Teacher Plan for “The Failure of the Florence-Casa Grande Project”

Terms to know and understand

- Natural flow (of the river)
- Joint-use
- Prior appropriation
- Reserved rights
- Implicit
- Time-immemorial
- Trustee
- Beneficial

Background

- Prior to 1948, the United States was the guardian of American Indians, with the Indians considered by court ruling (1886 *US v. Kagama*) to be wards of the government. This meant that legally the United States Government was responsible for protecting the Indians and their property—including water rights. The government also had a statutory obligation to protect Pima and Maricopa water by virtue of the Act of March 3, 1893 (27 stat. 631), which held: “In all States and Territories where there are reservations or allotted Indians the United States District Attorney shall represent them in all suits at law and equity.” The US was derelict in protecting the rights of the Pimas, especially by not intervening on their behalf in the 1916 *Lobb vs. Avenente* case, a superior court ruling set in Pinal County. If the United States had intervened, it might have protected the reserved rights of the Pimas, as set forth in the 1908 *Winters vs. United States* decision. Failure to declare the waters of the Gila River in an amount necessary for the needs of the Indians ensured future litigation. After 1948, the guardian-ward relationship was replaced with the federal trust responsibility, which protects the property of the Indians but does not restrict the individual person. Guardianship was replaced by trusteeship.
- In the *Winters v. United States* ruling, the Supreme Court held that the United States—when it recognized a reservation—implicitly reserved all water necessary for the purpose of the reservation. This was considered a right in perpetuity, meaning as future needs increased the Indian tribes could adjust their water needs. This frightened westerners, who held to the doctrine of prior appropriation, which required continuous, beneficial use of the water. Under prior appropriation, water left unused after five years would reenter the water pool and could be appropriated and used by another user. There was no future need in the prior appropriation doctrine. Hence the two doctrines were diametrically opposed to the other.

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.

Students will be able to:

1. Explain how the Florence-Casa Grande Project failed to protect Pima-Maricopa rights to the use of the water.
2. Describe the distinctions between the doctrines of prior appropriation and reserved rights.

Objectives