

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 2

Part 35

In 1913, the US Justice Department assigned John Truesdell to investigate Pima water claims and rights. Truesdell, who mistakenly saw the “chief fight on the Gila ... with the owners of the ditches that tap into the stream” near Florence, was nonetheless convinced the Pimas had prior and legitimate claims to the waters of the Gila River. Yet, he opposed a survey of “all the lands affected” by irrigation along the Gila River, including those above the reservation.

Assistant engineer F.M. Schanck informed Indian Irrigation Service engineer Charles Olberg that such a survey was essential to determine the “limit and ... quantity of water now being used,” an idea Olberg already accepted. Only by gathering this data could a case be made to “show that there is a surplus for the use of the Indians, aside from any showing ... as to the former use by the Indians of the water.” Olberg, despite recognizing the inherent conflict between reserved and prior appropriation rights, did not believe it was morally right to take water from upstream users after they had put it to good use with the blessing and approval of the United States Government and restore it the Pimas.

Congress was deliberate in considering the impact of Indian reserved rights. In 1913, it debated the extent of Indian reserved rights but was deeply divided as to what the doctrine meant. Western Congressmen strongly opposed the idea, while Eastern legislators were more likely to support it—especially if it were limited to the time necessary to allot the reservation. Most members of Congress did not understand or were unaware of the *Winters v. United States* ruling, including Arizona Senator Marcos Smith, who admitted he had never heard of the case. During the 1914 Indian Appropriation Act hearing, Vermont Senator Carroll Page, a supporter of Indian rights and the reserved rights doctrine, argued that American Indians were encouraged to farm and make beneficial use of their water but were not given the means to do so. “The Indian says, ‘I have no money; I have no horses; and I have no wagons. I have no plows. Help me to the wherewith and I will do it.’ Our reply to him is substantially this: ‘No sir, we are going to tie your hands. We will not give you anything to work with; and yet if you do not make beneficial use of this water within three years your rights’” will be taken away.

Smith continued to oppose the idea of Indian reserved rights, viewing any water rights issue as a matter of state’s rights (and prior appropriation). Congress was clearly not willing to legitimize Indian water rights. Strong opposition from Western states relegated any Congressional recognition of reserved rights to the political scrap heap. As a result, non-Indian water users retained the rights of possession to most water resources across the arid West, including along the Gila River.

The Indian Service itself poorly understood the ramifications of reserved rights. In 1914, Commissioner of Indian Affairs Cato Sells remarked Indian water rights in general were “more or less in jeopardy.” A year earlier, he noted the “legal right to the use of water” by Indians was “of primary importance.” This right, the Commissioner explained with but a faint understanding of the issue, rested “upon common-law riparian rights in some cases, and in others [upon] beneficial use of water.” While noting the court’s “implied reservation of water,” Sells believed this applied only to tribal lands and did not “involve the rights of any individual Indian.” The Indian Service, in keeping

with its assimilationist directive, adopted the view that reserved rights applied to tribes only until the land was allotted, at which time allotted Indians would fall under state prior appropriation laws.

Sells did not perceive any threat to Pima water rights, believing there was “no danger of immediate loss of water rights.” With the Indian Service failing to recognize the need to legitimize Indian water rights, Congress felt little need to do so. In the 1914 Indian appropriation hearings, Wyoming Representative Franklin Mondell was quick to point out this lack of urgency. If the Indian Service did not see any danger to Indian water rights then Congress had no reason to support Pima water rights and provide a lawful basis for such rights.

Despite the completion of the Ashurst-Hayden and Sacaton diversion dams, water remained insufficient and Pima rights to the use of the water was tenuous at best. Crops planted early in 1925, died from lack of water later in the year. The following year, Pima farmers in Casa Blanca, Sacaton Flats and Progressive Colony were “forced to give up farming operations to a large extent because of lack of water.” Indian farmers in Blackwater had water “for only about 150 acres.” Superintendent B.P. Six inquired of Irrigation engineer N. W. Irsfeld whether or not “something should be done” to assist the Pimas in benefiting from the new irrigation system.

Irsfeld acknowledged “the Indians failed to get their water” and that he had taken a delegation of Pimas to visit the Casa Grande Water User’s Association to “adjust” the problem. Part of the problem, the engineer lamented, was that the irrigation system—operational above the reservation—was not completed on the reservation. Consequently, a five-year program to restore agriculture on the reservation failed, with many Pimas permanently “divorced from field and home” looking for work. While the annual diversion of natural flowing water at Ashurst-Hayden averaged 84,434 acre-feet, at Sacaton Dam it was just 1,639 acre-feet.

By 1930, nearly \$1,500,000 had been expended on the on-reservation FCGP works. While some officials boasted the Pimas had been “generously provided for,” the reality continued to demonstrate insufficient water. Albert Kneale, Agency Superintendent between 1929 and 1936, oversaw the clearing of tens of thousands of acres of land on the reservation. Kneale described the FCGP irrigation system as simply “idle gestures.” The Pimas had “all the essentials” needed to farm “save only water.”

Twelve years after its 1916 inception, the FCGP was merged into the San Carlos Irrigation Project (SCIP). In the years that followed, farmers above the reservation retained de facto rights of possession to the majority of the water, leaving the Pimas without a full measure of the water to which they had a moral and legal entitlement. Insufficient water, lack of financing, bureaucratic restrictions and land fractionation resulting from the failed policy of allotment, and a “piecemeal” irrigation system resulted in much of the irrigable land on the reservation lying idle or being leased to non-Indian farmers.

In the coming decades, the Pimas received an average of just 35% (54,657 acre-feet per year) of all water passing Ashurst-Hayden dam, barely more than they received in 1916. Their neighbors in the Florence-Casa Grande Valley, meanwhile, received an average of 65% of the water (99,437 acre-feet per year). While the Pimas pumped an additional 62,336 acre-feet of groundwater annually (59% of all groundwater pumped within the FCGP area), they failed to receive the quantity of natural flow water guaranteed them under the FCGP act. Even after the San Carlos Irrigation Project—and the federal courts in 1935—further divided the water on project lands, the Pimas still received a lesser quantity (44% of the total water supply available within the SCIP area) than that to which they were entitled. Pima and Maricopa farmers continued to struggle cultivating the land, despite the guarantees of the FCGP.

Today, after more than half a century of litigation, negotiation and compromise, the Gila River Indian Community stands on the precipice of the largest Indian water rights settlement in North American history. On February 25, 2003, the Arizona Congressional delegation introduced S.

437 and HR 885, identical bills calling for the settlement of the Gila River Indian Community's water claims and the restoration of 653,500 acre-feet of water. Nearly a century after Congress first called for the economic integration of the reservation through the Florence-Casa Grande Project, the Pimas and Maricopas are finally poised to equitably and competitively compete with the farmers of central Arizona.

Water Settlement Terms

Find the words related to the Florence-Casa Grande Project and the Gila River water settlement bill in the grid. Words can go horizontally, vertically and diagonally in all eight directions.

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- Appropriation
- Congress
- Farmers
- FCGP
- Priority
- Reserved rights
- Sacaton
- Settlement
- Water

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

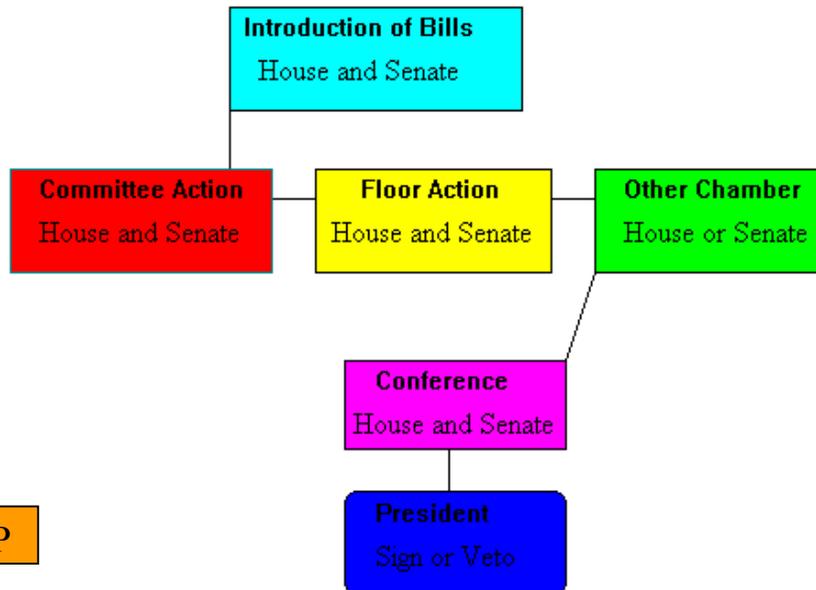
Terms to know and understand

- Survey
- Deliberate
- State’s rights
- Assimilationist
- De facto
- Precipice

Critical Thinking:

- Before the Gila River Indian Community Water Settlement bill becomes law, both the United States House of Representatives and the United States Senate must approve it. The first step in the legislative process is for the bill to be sponsored by a member of Congress. Arizona Senators Jon Kyl and John McCain are co-sponsoring the bill in the US Senate and Arizona Representatives JD Hayworth, Raul Grijalva, Ed Pastor, Jim Kolbe, and Trent Franks are sponsoring the bill in the House. After the settlement bill is introduced in Congress, it will be sent to a committee, which discusses and debates the bill and holds hearings on it before voting for or against it. The bill then goes to the full House and Senate for discussion, hearings and finally a vote. Both the House of Representatives and the Senate must approve the bill (the bills must be identical). The bill then goes to the President of the United States for his signature (or veto). The chart below provides a pictorial view of the legislative process.

How a Bill Becomes a Law



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.

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| Objectives | <p>Students will be able to:</p> <ol style="list-style-type: none"> 1. Discuss the implications of Congress and the Indian Service refusing to deal with the Indian reserved rights doctrine. 2. Explain the general legislative process for how a bill becomes a law. |
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