

From: [Munson, Catherine](#)
To: [Meyers, Leslie A](#); [Ted Cooke](#)
Cc: [Katosha Nakai](#); [Lance, Lisa C](#); [Tom Harbour](#); [Water Quality Guidance Document](#)
Subject: Ak-Chin Indian Community - Comments on Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project
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Attachments: [image006.png](#)
[062420.Comments on Water Guidelines.pdf](#)

Lesley and Ted,

I'm attaching the Ak-Chin Indian Community's comments on the Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project. We would like to take Reclamation and CAP up on their prior offers to meet with us individually about the Guidance. We'll reach out to Patrick Dent at CAP and I'll follow-up with you Leslie/Lisa to arrange for such a meeting.

Warm regards,
Catherine



Catherine Munson

Kilpatrick Townsend & Stockton LLP

Suite 900 | 607 14th Street, NW | Washington, DC 20005-2018

office 202 824 1435 | cell 202 714 0433 | fax 202 585 0017

cmunson@kilpatricktownsend.com | [My Profile](#) | [vCard](#)



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AK-CHIN INDIAN COMMUNITY

Community Government

42507 W. Peters & Nall Road • Maricopa, Arizona 85138 • Telephone: (520) 568-1000 • Fax: (520) 568-1001



June 24, 2020

Leslie A. Meyers, P.E.
Area Manager, Phoenix Area Office
Bureau of Reclamation
6150 W. Thunderbird Rd.
Glendale AZ 85306
lmeyers@usbr.gov

Theodore Cooke
General Manager
Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, AZ 85080-3020
tcooke@cap-az.com

Dear Ms. Meyers and Mr. Cooke:

I write on behalf of the Ak-Chin Indian Community to express the Community's concerns regarding the Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project (the Draft Guidance). While the Community has concerns about numerous details of the Draft Guidance, some of which are identified herein, its principal issue is that the Draft Guidance fails to include necessary measures to ensure that Ak-Chin receives that quality of water that it is entitled to receive under its federal settlement act and its associated water delivery contract with the United States. In addition, the Community will arrange for a consultation with Reclamation and Central Arizona Water Conservation District regarding the Draft Guidance, after which the Community anticipates submitting supplemental comments.

A. The Draft Guidance fails to ensure that the United States will fulfill its statutory, contractual, and trust responsibilities to Ak-Chin.

As you are no doubt aware, the 1984 Ak-Chin Water Rights Settlement Act, Pub. L. 98-350, 98 Stat. 2698 (Oct. 19, 1984) (the 1984 Settlement Act), with certain limited exceptions not relevant here, requires the Secretary of the Interior to deliver to the Ak-Chin Reservation "not less than seventy-five thousand acre-feet of surface water suitable for agricultural use" each year. 1984 Settlement Act § 2(a). The 1984 Settlement Act goes on to identify the specific sources of surface water that Ak-Chin is entitled to receive—namely, 50,000 acre-feet (AF) of Colorado River water previously authorized for the Yuma-Mesa Division of the Gila River Project, with the balance consisting of Central Arizona Project water. *See id.* §§ (f)(1)-(2). These same obligations are reflected in the permanent water delivery contract that Ak-Chin entered into with the United States in 1985. The United States, through the Department of the Interior, thus has statutory and

contractual obligations, to say nothing of its pre-existing and continuing trust obligations to the Community, to ensure that “surface water suitable for agricultural use” reaches the Ak-Chin Reservation. Unfortunately, the Draft Guidelines do not even acknowledge these obligations, much less put in place measures to reflect how the United States will fulfill its trust responsibilities.

While the Draft Guidance appropriately recognizes the consistently high quality and chemical stability of the surface water in the CAP and the value that those characteristics have for CAP water users, *see* ¶ 2.1, the Guidance does nothing to ensure that the water in the CAP will retain those attributes as groundwater wheeling increases. True, the Draft Guidance calls for the development of introduction and delivery standards for water to be wheeled through the CAP works. But the current proposed standards for many constituents—including many that are specifically relevant to agriculture—fall well short of the historic quality of the surface water, and in some cases, risk causing the CAP water delivered to Ak-Chin to fall short of the minimum requirements for the Community’s agricultural pursuits and its domestic needs. These issues are addressed in more detail below. What is more, the Draft Guidance consistently charges Central Arizona Water Conservation District (CAWCD), rather than the Bureau of Reclamation or any other federal actor, with oversight and operational responsibilities for water wheeling while simultaneously explicitly disclaiming any obligation on CAWCD’s part to ensure the quality of water delivered. *See* ¶ 2.1.

The Community is also concerned by the Draft Guidance’s failure to identify any mechanism for consultation with CAP users, like Ak-Chin, who will be affected by non-Project being introduced into the CAP. For example, increased wheeling of non-Project water is highly likely to exacerbate existing water quality issues at Ak-Chin caused by the Maricopa-Stanfield Irrigation & Drainage District (MSIDD) and Central Arizona Irrigation & Drainage District’s (CAIDD) introduction of groundwater into the Santa Rosa Canal, yet the Draft Guidance does not outline any way for Ak-Chin to voice its concerns or ensure that it is considered in the context of any particular wheeling application. Unless this is addressed, it is all but certain that implementation of the Draft Guidance will result in excluding the voices of Ak-Chin, other tribal stakeholders, and numerous other parties that stand to be adversely affected by the increased presence of non-Project water in the CAP, and that exclusion will increase the odds that the United States runs afoul of its statutory, contractual, and trust responsibilities.

B. It is unclear if the Guidance applies to the Santa Rosa Canal.

Clarification is required about whether the anticipated guidelines will apply to the Santa Rosa Canal, which is owned by the United States, but operated MSIDD. The Draft Guidance defines “CAP System” as “transferred works of the Central Arizona Project (CAP).” Transferred works, in turn, include “those facilities owned by the U.S., but with contractual responsibility of the operation and maintenance (O&M) transferred to local irrigation districts.” *See* <https://www.doi.gov/ocl/bor-facilities>. To the extent the guidelines will apply to the Santa Rosa Canal, they are wholly inadequate to protect Ak-Chin’s rights to receive CAP water that is suitable for agriculture. Consultation with Ak-Chin on appropriate measures to protect Ak-Chin’s federal statutory right to CAP water of a certain quality would be required. We understand that Reclamation likely did not intend for the guidelines to apply to the Santa Rosa Canal and if that is the case, then final Guidance should clarify this point.

C. The Guidelines are inadequate to protect CAP water quality.

The Guidelines should be more rigorous with respect to their protection of the quality of the water in the CAP, particularly given the United States' statutory, contractual, and trust responsibility to maintain a certain water quality for Ak-Chin. Moreover, as acknowledged by the Draft Guidance, CAP water is high quality and suitable for a variety of uses, including potable uses, after minimal treatment, and relied upon by many tribes and cities to meet municipal needs. The Secretary is required to consider the impact of the wheeling of any non-Project water on water quality based on the Repayment Contract and he should do so with the goal of minimizing the impact of degradation on all water users. The Draft Guidance falls short of this goal in several respects.

As the Draft Guidance notes, the introduction of Non-Project water has the potential to alter, and possibly degrade, water quality in the CAP system. In fact, the delivery standards allow for a degradation of the CAP water in a way that will impact Ak-Chin's farming operations. The Draft Guidance allows for the wheeling of non-Project water to increase concentrations of Total Dissolved Solids (TDS), chlorides, and sodium, which at elevated levels have a direct impact on farming operations. The delivery standard for Total Dissolved Solids (TDS), in particular, should be reduced to be no greater than 680 mg/L, which correlates to the maximum range of TDS currently measured in the CAP aqueduct. Allowing the delivery standards to increase TDS levels in the CAP system from the current 5-year average of 629.7 mg/L to 747 mg/L amounts to a reversal of 50 years of progress in salinity reduction accomplished by the Colorado River Basin Salinity Control Program. Many of the crops that Ak-Chin grows are salt-sensitive and increased salinity in irrigation water will reduce crop yields, soil permeability, and cause Ak-Chin to use more of its water allocation to leach accumulated salts below the root zone. In short, increasing salinity of CAP water above the current range of measured values would have a direct negative impact on Ak-Chin Farms and the welfare of the Ak-Chin Community.

As you know, like many cities in Arizona, after minimal treatment at Ak-Chin's surface treatment plant, Ak-Chin uses its CAP water to meet the potable water needs of its Community members and commercial enterprises. While the Community recognizes that in various instances the Draft Guidance includes standards that are more strict than those required by the Arizona Department of Environmental Quality, Ak-Chin believes it is of critical importance that in no case will Non-Project water exceed the standards listed for Domestic Water Source requirements as currently contained in Title 18, Chapter 11 of the Arizona Administrative Code.

Ak-Chin has several other concerns with particular provisions included in the Draft Guidance, but believes all parties would benefit from an in-person individual consultation prior to Ak-Chin submitting additional comments. Our attorneys will contact Reclamation and CAWCD to arrange for such a meeting.

Very truly yours,



Robert Miguel,
Chairman
Ak-Chin Indian Community