



Tohono O'odham Nation Water Settlements and CAP Water

September 5, 2013

Desert Diamond Casino Hotel

Tucson, Arizona

Introduction

- In 1982 and 2004, the Tohono O'odham Nation gave up its Winters doctrine reserved rights to surface and ground water in the Tucson AMA, in exchange for 66,000 acre-feet per year of CAP water delivered to Schuk Toak District and San Xavier District.
- We anticipated 100 years of federally funded delivery of the 66,000 acre-feet for farming, mining, domestic and municipal use. That was the bargain.

Today

- Now in 2013 the long-term delivery of CAP water for tribal farming is threatened by the skyrocketing pumping energy cost for delivering the water. The viability of tribal farming with CAP water beyond the next 20 years is threatened.
- The benefit that we bargained for in our water settlements is at stake. If we cannot farm with our water, we will end up exchanging water for dollars. That is not what we settled for! We settled for water delivered on-reservation for farming and other purposes.

Tohono O'odham Water Settlements

- 1982 – Southern Arizona Water Rights Settlement Act (SAWRSA)
- 2004 – SAWRSA Amendments (Title III of Arizona Water Settlements Act)
- 1986 – Gila Bend Indian Reservation Lands Replacement Act (a land and water settlement)
- Today – A final water settlement is in negotiation for the Nation's remaining lands, including the Sif Oidak Claims.

• SAWRSA 1982 and 2004

- 66,000 AF of CAP water (37,800 AF Municipal and Industrial priority; 28,200 AF Non-Indian Ag priority)
 - 31,000 AF now used on reservation for farming, mining, underground storage, and riparian restoration
 - 2,200 acre Schuk Toak Farm
 - 900 acre allottee owned Cooperative Farm
 - Planning is now underway to expand the Cooperative Farm
 - 35,000 AF stored off reservation in underground storage (USF) and groundwater savings facilities (GSF)

● 1986 Gila Bend Settlement

- Flooding destroyed the 10,000 acre reservation
- The Nation gave up 9,880 acres to the United States – a land settlement
- The Nation gave up a claim to 32,000 acre-feet of reserved water – a water settlement
- In exchange, the Nation gained the right to select replacement lands in unincorporated land anywhere in Maricopa, Pinal and Pima counties. These lands would become a reservation “for all purposes”. The settlement included \$30 million paid to the Nation.

H.R. 1410

- H.R. 1410 in the U.S. Congress now threatens the Nation's right to conduct gaming on lands that it chooses as replacement lands under the Gila Bend Act.
- H.R. 1410 would prohibit new casinos in the Phoenix metro area after January 1, 2013 through 2027.
- If the bill is passed, the United States would unilaterally amend the Gila Bend land and water settlement, in the face of the express objection of the Nation.
- If the United States can break its promises in our case, all parties negotiating land or water settlements with the United States must beware. Passing H.R. 1410 would be a bad precedent.

The high CAP pumping energy cost threatens our water settlements

Pumping Energy Cost (Variable Cost)		
		Total Cost for 66,000 acre-feet/yr
2004	\$28/af	\$1.8 million
2013	\$53/af	\$3.5 million
2014	\$67/af	\$4.4 million (240% in 10 years)
2015	\$74/af	\$4.9 million
2025	\$150/af ?? (We hope not!)	\$9.9 million ?? (200% in 10 years)

One Solution

- **Extend Non-Indian Ag Incentive pricing to Indian tribes!**
- Ag Incentive Pricing was introduced in 1994 and modified in 2004 to keep farmers in business. Why should it be for non-Indian farmers only? CAP should extend Ag Incentive Pricing to Indian tribes, and thereby help keep tribal farms in business!

The future of our relationship with CAP

- The Tohono O’odham Nation and other tribes assisted the CAP in addressing the Navajo Generating Station regulatory crisis in 2009-2013.
- Tribal input on the EPA Advance Notice of Proposed Rulemaking for NGS convinced the EPA to look at the issue from all angles and to take a more flexible approach.
- Communication between the Nation and CAP on common issues like NGS should continue. The new approach at CAP to reach out to tribes is to be commended. Tribes want to be included in discussions which affect rates, delivery, and shortages, for example.



Questions ?