

Tribal influence over Arizona water growing

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Baboquivari Mountain seen from South Komelic looking east on the Tohono O'odham Nation. (Courthouse News photo/ Albert Felix)

TUCSON, Ariz. (CN) — When Father Eusebio Kino, a Jesuit priest and explorer for the Spanish crown, came into what is now southern Arizona from Mexico in 1692, he was greeted by irrigated farms sprawling incongruously across the Sonoran Desert.

The Tohono O'odham, among the first tribes Kino encountered near what is now Tucson, and others had been growing crops along Arizona's waterways for thousands of years.

Because of the confluence of relatively recent water rights settlements and a looming shortage of Colorado River water, tribes like the Tohono O'odham Nation and Gila River Indian Community — which hold the two largest tribal allocations of river water — will have growing influence in the water market, a water rights attorney said.

Eventually tribes will control 46% of the Colorado River water delivered through the state in the Central Arizona Project's 336-mile canal from Lake Havasu to Tucson.

"They essentially set the price in a shortage," said Robyn Interpreter, who represents the tiny Pascua Yaqui Tribe in their fight to settle a claim for a share of the river — a lifeline for 40 million people from Wyoming to California.

The Tohono O'odham Nation didn't respond to requests for comment for this story. The Gila River Indian Community offered a one-paragraph statement.

"The community continues to implement its water settlement in a responsible and appropriate manner," the tribe said through a spokesman.

"We are aware of and concerned by the current shortages in Lake Mead and on the Colorado River generally. We participated as innovative and engaged partners in the development of the Drought Contingency Plan in 2018, and our planning is now being called into action. Our support for the DCP is well known, and we will continue to support new efforts to address the ongoing water crisis in the Southwest."

The Bureau of Reclamation is expected to declare a shortage this weekend, meaning Arizona will be squeezed for 512,000 acre-feet of its 2.8 million acre-foot annual allocation. That CAP water loss will come from non-tribal agriculture, users who will likely turn increasingly to tribes for water.

The tribes' potential to influence the water market was a long time coming.

In 2004, President George W. Bush signed the Arizona Water Settlement Act, resolving the state's largest claims from the Gila River Indian Community and Tohono O'odham Nation.

The act reallocated 197,000 acre-feet of Colorado River water to tribes. The Gila tribe got 102,000 acre-feet, and the Tohono O'odham Nation 28,000, while 67,000 acre-feet were set aside for outstanding tribal claims.



Colorado River water flows through a canal that feeds farms operated by Tempe Farming Co., in Casa Grande, Ariz., Thursday, July 22, 2021. The Colorado River has been a go-to source of water for cities, tribes and farmers in the U.S. West for decades. But climate change, drought and increased demand are taking a toll. The U.S. Bureau of Reclamation is expected to declare the first-ever mandatory cuts from the river for 2022. (AP Photo/Darryl Webb)

“CAP water has been an important part of how those claims are settled,” said Ken Seasholes, a resource and planning manager for the Central Arizona Project.

The Gila tribe now gets 312,000 acre-feet per year of CAP water, most of which is stored in aquifers or left in Lake Mead for water “credits” that can be drawn upon later. That 2004

law set in place the current breakdown and hierarchy of CAP allocations, Seasholes said.

"It's almost 50-50. A little less than half of the long-term contract volumes on the federal side is for the tribes, including some water that's set aside for future settlements," he said.

The tribes have used the water for agriculture, long-term leases to cities and others, underground storage via municipalities, and leaving portions of allocations in Lake Mead to earn credits for later use, he said. Both the Tohono O'odham and Gila tribes use some of their CAP allocations for agriculture.

Water rights attorney Interpreter has represented the Pascua Yaqui tribe near Tucson in its water claim for more than 10 years. The Pascua Yaqui was only recognized in 1978, Interpreter said.

"So they've always been a little bit behind the 8-ball in terms of trying to catch up on their development and provide for their people," she said.

That tribe's water use, provided via Tucson city water infrastructure, has been gradually rising as they build out their land at the edge of the city. They now have a casino hotel and golf course, both of which are made possible by tapping the Central Arizona Project canal in 2012.

"The Pascua Yaqui are very fortunate that the CAP canal runs right through their reservation. Other tribes don't have that," Interpreter said.

Now the tribe has an agreement with Tucson to store 500 acre-feet of water annually in a nearby aquifer and deliver it as potable water as needed, Interpreter said.

Similar agreements exist among many tribes and municipalities. When tribal water rights settlements were contemplated, that was the expectation for most of the tribal Colorado River water, Interpreter said.

"The conceptualization for CAP has always been that the tribes would settle their water rights, that they would have the right to lease CAP water, and the lion's share of that CAP would go back to be used by cities and towns," Interpreter said. "No one ever really thought the reservations would actually use their water."

The Pascua Yaqui use about 1,300 acre-feet annually, Interpreter said, including a 500 acre-foot CAP allocation and leases.

The Pascua Yaqui lease water from the San Carlos Apache Tribe and Ak-Chin Indian Community. Those amounts vary year-to-year, but the golf course requires about 720 acre-feet a year. The tribe also stores water via Tucson Water. That

agreement has allowed the tribe to bank about 20,000 acre-feet, which the tribe can tap later as water demand rises, she said.

As the water settlements and other agreements shake out in coming years, the water picture in Arizona is going to change. Tribes will control a lot of water, but the smaller tribes will have less.

"There's going to be some haves and have-nots," Interpreter said.

Even the Tohono O'odham and Gila tribes have a long-term problem, because in 2044 relatively cheap CAP water will get more expensive because of a sundown in the 2004 settlement. Nonetheless, CAP allocations have given the tribes more power to determine their own futures, and if a Colorado River shortage continues, the tribes will have broader influence, should they choose to exert it.

Interpreter thinks the Pascua Yaqui are ready.

Because it's small, the tribe has become nimble where water is concerned. The array of leases and intergovernmental agreements have prepped the Pascua Yaqui for a complicated water future. The tribe is used to scrambling to gather the water it needs, she said.

"Every drop counts for this tribe."

The Bureau of Reclamation is expected to declare a shortage of Colorado River water Aug. 15.

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