

The New Water Czars

by Daniel Kraker

A historic water deal could give an impoverished Indian community a path back to its roots — and turn it into one of the West's next big power brokers

Thirty miles south of downtown Phoenix, past the rugged South Mountains rising out of the city's southern edge, past the acres of asphalt and the 10-lane highways, the city stops abruptly at the bone-dry bed of the Gila River. On the other side of the riverbed, where you might expect to find desert saguaro and cholla, emerald green farm fields blur into the horizon: perfectly flat rectangles laid out one after the other, separated by canals and irrigation ditches into a gigantic crossword puzzle-like grid.

Here, on the 375,000-acre Gila River Indian Community, Pima and Maricopa Indians tend fields of alfalfa, cotton, wheat and vegetables, groves of citrus and olive trees, and even giant ponds full of tilapia and shrimp. The community's 16,000-acre farm, and a handful of smaller farms operated by tribal members, are sustained by more than 200,000 acre-feet of water, funneled every year from the Gila, Salt and Colorado rivers, or pumped from underground aquifers. (An acre-foot is one year's worth of water for a family of four.)

Already, the Gila River Indian Community is one of the largest agricultural operations in southern Arizona. But a deal pending before Congress would more than triple its water share, and turn the tribes' land into what some tribal leaders hope will be the "breadbasket of Arizona." The landmark settlement would provide this community of fewer than 20,000 with more than 650,000 acre-feet of water annually. That's enough to serve the residential needs of almost 3 million people, nearly the entire Phoenix metropolitan area.

The deal has been nearly 80 years in the making. If approved, it will be the largest Indian water rights settlement in history, involving literally thousands of parties and hundreds of millions of federal dollars. And it will give the Gila River Indians a huge tap into the massive Central Arizona Project, which funnels water from the Colorado River into the heart of Arizona.

If the Gila River Indian Community scores this huge victory, it will put the Pima and Maricopa people in a position of tremendous power — and at the center of more than a little controversy. Critics complain that the deal will put vast amounts of precious Colorado River water — literally the lifeblood of the Southwest — in the hands of a tiny minority of "Indian water czars." But where some people see a frightening reshuffling of power, others see a bit of long-overdue justice, and even question whether the tribes are getting enough out of the deal.

However you look at it, the Gila River water settlement paradoxically stands to either shape — or strangle — many other tribes' ambitious quests for the West's most valuable resource.

Not all Indians were hunter-gatherers

Ramona Button and her husband, Terry, have operated Ramona Farms on the Gila River Indian Community for the past 30 years. Currently, they farm about 2,500 acres, growing cash crops like alfalfa and cotton, as well as heirloom crops like Hopi corn and tepary beans.



Pima Indian Francis Jones irrigates cotton at Gila River Farms. Mark Henle/The Arizona Republic

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Pima Indian Francis Jones irrigates a cotton field at Gila River Farms in Sacaton, Arizona. Mark Henle/The Arizona Republic

Ramona is in her 60s, her skin weathered from hours spent in the desert sun. She grew up in a traditional Pima home, and has vivid memories of her father's 10-acre farm. He dug ditches to bring water from the irrigation laterals, and grew alfalfa to feed the family's horses, as well as a cornucopia of fruits and vegetables, even sugarcane. Ramona would ride with him in their wagon to trade with surrounding tribes and non-Indians in the 1950s.

Ramona's father's farm offered a glimpse of her tribe's unusual agricultural history. Long before Europeans arrived on the scene, the Pimas farmed along the banks of the Salt and Gila rivers, the two main arteries that drain Arizona's eastern mountain country. They're descendants of the Hohokam, who, from about 300 B.C. to 1450 A.D., farmed the rivers' rich floodplains, hand-digging a complex canal system to divert water during spring runoff.

"They were one of the most remarkable agricultural civilizations in the New World," says Gary Nabhan, who directs the Center for Sustainable Environments at Northern Arizona University. The Hohokam eventually dug more than 600 miles of canals, some as wide as 64 feet across, that carried water as far as 16 miles from the rivers — all using only stone instruments and highly organized labor.

In the 18th century, the Pimas banded together with the Maricopas, who migrated into the area from along the Colorado River. As late as the 1870s, the tribes were the largest producers west of the Mississippi of wheat and other crops.

During the Civil War, the community, which was formally established in 1859, supplied both the Yankees and the Rebels with all their wheat flour, sent east by rail. Shortly thereafter, the Army stepped in, laying out its own giant farm amongst the canals. The Army grew thousands of acres of hay to feed the horses it used in the fight to subdue renegade bands of Apaches — and eventually, to capture Geronimo, the leader of the last band of American Indians to formally surrender to the United States.

But the long, lush fields of the Pimas and Maricopas began to wither in the late 1800s, when Mormon farmers upstream began diverting huge amounts of water from the Gila. Partly as repayment for the tribes' cooperation in the Arizona Indian Wars, Congress approved the construction of Coolidge Dam upstream on the Gila in 1924, as well as the San Carlos Irrigation Project, a network of canals to transport enough water to irrigate 50,000 acres on the reservation.

But the Bureau of Indian Affairs (BIA) only got halfway through construction of the irrigation system before it ran out of money. With the canals that were completed, the tribe and some individuals have managed to farm some 20,000 acres.

Now that money from the BIA has begun to trickle in again, the community has embarked on a massive rehabilitation and expansion of the irrigation works. But to really make the project work, says Lee Thompson, director of the tribes' Department of Land and Water, the community needs the \$200 million in federal money included in the water settlement now before Congress, because its vision is now much grander than the original San Carlos Irrigation Project. When the expansion is completed, Thompson says, there will be a 2,400-mile spiderweb of canals, pipelines and laterals that will carry enough water to irrigate 146,000 acres of farmland.

The water settlement will allow the Pimas and Maricopas "to go back to our agricultural heritage," says Thompson, expertly navigating the rutted dirt roads between the canals and fields in a giant Ford Expedition. New canals carry crystal-blue water to vivid green fields of alfalfa and huge citrus groves — oranges, nectarines, grapefruit, lemons, and the tangerine and grapefruit hybrids called tangelos. "The idea is, if there's a lot of water coming into the community, the quickest way to use that water is by putting it into agriculture. We want to use the water to preserve the (agricultural potential of the) land, because that's one of the last things we have left."



Ramona and Terry Button have operated Ramona Farms on the Gila River Indian Community for 30 years. Courtesy Terry Button

The project offers hope for the tribes' approximately 20,000 members, about two-thirds of whom live on the reservation. Over the years, small-scale farming has largely died out; most tribal people don't have the capital to get into it, and financing on the reservation is next to impossible, because the land, held in trust by the federal government, can't be used as collateral ([HCN, 8/3/98: Tribes reclaim stolen lands](#)).

The tribes operate two profitable casinos, and the revenues have helped fund new homes, public waterworks and health care clinics. But per capita income on the reservation is still a scant \$6,000. Half of the adult population suffers from diabetes, brought on by a switch from traditional foods to the sugar-rich foods of Anglo culture — the highest per capita rate of diabetes in the world.

The tribes are already setting up a grant program to help small farmers dig irrigation laterals, and buy seeds and equipment. A seed bank has been established to preserve ancient varieties of drought-resistant corn, squash and tepary beans, which offer a return to a more traditional, healthier diet. There is also a ready market in high-end restaurants that incorporate Indian staples into their menus. Thompson's staff at the Department of Land and Water helps teach gardening basics to grade-school kids on the reservation.

But Terry and Ramona Button say it will be difficult to re-establish their tribes' small-scale farming tradition. "There are three or four generations of people who haven't been directly involved in agriculture," says Terry Button. He can see a place for small subsistence gardens, but he doubts that the Pimas and Maricopas can ever return completely to the old ways.



A Maricopa woman fills an earthen vessel at a canal, c. 1907. Northwestern University Library, Edward S. Curtis's *The North American Indian: The Photographic Images*, 2001

else ([HCN, 4/28/03: Indian Power](#)).

And tribes can potentially claim historic rights to the lion's share of water in the West. In the landmark 1963 case *Arizona vs. California*, the U.S. Supreme Court ruled that tribes were entitled to as much water as necessary to farm all the "practically irrigable acreage" on their reservations. In some instances, that has meant huge tribal claims: The same court case awarded the Colorado River Indian Tribes, whose Arizona reservation sits in the Colorado River's rich floodplain south of Hoover Dam, the rights to more than 700,000 acre-feet of water a year.

The new way is to grow crops for cash, and much of that will happen on Gila River Farms, the mammoth tribally owned operation. Like the casinos, Gila River Farms is under the tribal umbrella, but it has its own general manager who oversees day-to-day operations. Revenues from all tribal enterprises go into the general fund, and are spent on various public-works projects at the discretion of the popularly elected tribal council.

While some tribal members may return to farming, Terry Button says non-Indian corporate farmers are already looking into leasing land on the reservation, drawn by the guaranteed, long-term supply of water.

A tense standoff ends peacefully

If the Gila River water settlement is creating a buzz on the reservation, then talk in the broader Western water world, where Indian water rights have long been the elephant in the corner, has risen to a roar.

Indian tribes enjoy what are known as "Winters" reserved rights to water, named after a century-old Supreme Court case in which each tribe's water rights were tied to the date its reservation was created. Most Western states divvy up water based on "prior appropriation," meaning that whoever first puts the water to use has the rights to it. Typically, that has been non-Indian farmers. But once tribes affirm their rights in court, they take precedence over all other users, even if it means leaving no water for anyone

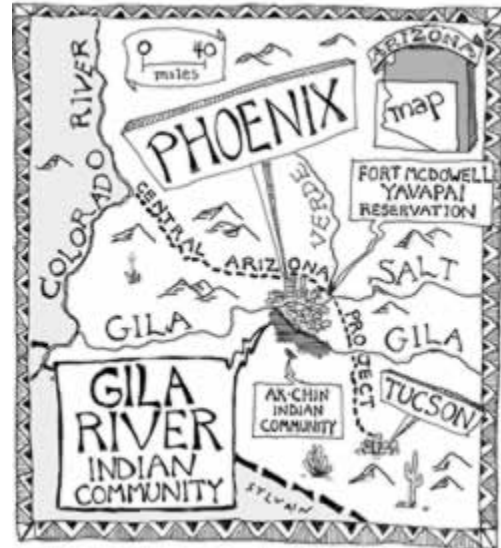
In most cases, however, Indian water claims have simply meant endless litigation: Of the hundreds of Indian water rights lawsuits filed since the Winters Doctrine was established near the turn of the last century, only three have been resolved in court. But anyone involved in Western water knows that eventually, Indian water claims will come home to roost. And in the case of the Gila River tribes, the claim — and its consequences — have been massive.

The Gila River Indian Community first went to court in 1925, and has spent millions of dollars in an effort to quantify its water rights. Originally, the tribes made a claim on the Gila and Salt rivers, which form the boundaries of the reservation. In 1974, they sued for nearly the entire annual flow of the Gila, almost 2 million acre-feet.

If the tribes had pursued that claim, it would have posed a major threat to the water supply of fast-growing Phoenix, according to City Water Manager Tom Buschatzke. Phoenix took the threat so seriously that, in 1988, it created an adjudication section within its law department, staffed by an attorney, a paralegal, a historian and a hydrologist, to try to work out a settlement with the Gila River Community and other tribes.

"We believed, and still do believe," says Buschatzke, "that without settlements, (Indian tribes) are threats to our water supply."

It took eight years, but the city, working with the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Bureau of Indian Affairs, the Bureau of Reclamation, irrigation districts and other metropolitan cities, finally came to an agreement with the Gila River Community. The proposed settlement makes a trade: The city of Phoenix will hang onto most of the water from the Gila and Salt rivers; the tribes, in return, will get a huge slug of water from the Central Arizona Project (CAP), the \$4.7 billion system of canals that pumps 1.5 million acre-feet of water annually from the Colorado River.



Gila River Indian Community. Diane Sylvain

The losers in the Gila River settlement — at least on paper — are those non-Indian farmers with junior rights to the Central Arizona Project, who grow mostly cotton, along with some feed grains and vegetables. They will have to give up some 200,000 acre-feet of water to the Gila River Community, as well as another 67,000 acre-feet to an "account" reserved for future Indian settlements. In exchange, they'll receive a waiver of more than \$73 million in debt that they owe for the Central Arizona Project.

The trade-offs

Tribal attorney Rod Lewis, who has spent 31 years working to get water for the Gila River Indians, speaks proudly of the settlement, but he also says it is a "bundle of compromises."

Lewis says the CAP trade-off wasn't easy for some tribal members to swallow. Many elders remember when the Gila River used to flow through the reservation, he says; although the tribe will use some of the settlement water and agricultural runoff to restore wetlands along the river, the Gila will flow no more.

And, he says, some members thought the tribe deserved more than 650,000 acre-feet: "Some people thought we should fight it out in court and extract every acre-foot of water that we could." But ultimately, the tribes agreed to the lesser amount to avoid the possibility of losing their case in court — and because the federal government agreed to foot the bill to upgrade the reservation's water-distribution system. That gave Gila River Indians actual "wet water," as opposed to "paper water" — water that a tribe owns rights to, but lacks the means to actually put to use.

That's what Arizona Department of Water Resources attorney Gregg Houtz calls the "Wind River situation." In the 1980s, the Eastern Shoshone and Northern Arapaho tribes on the Wind River Reservation in Wyoming went before the Supreme Court three times. They ultimately won rights to almost the entire annual flow of the Bighorn River. "But they have absolutely no money to develop those resources," says Houtz. "What you get in settlements is the

resources to develop water for use on the reservation. That is probably what brings the tribes to the (negotiating) table more than anything else."



Aber Samaniego caulks the joints of a 108-inch-diameter pipe that will carry irrigation water to the western end of the Gila River Indian Community. Mark Henle/The Arizona Republic water.

The Gila River tribes hit another sticking point on an issue that is one of the most controversial — but lucrative — parts of most modern Indian water settlements: provisions that permit tribes to lease at least some of their water to other users. Under the proposed settlement, the Gila River Indian Community can lease about 41,000 acre-feet of its water to cities, and it has the option to lease upwards of 100,000 acre-feet in the future.

Water marketing is already a big moneymaker for Arizona tribes that have settled their water rights claims. The tiny Ak-Chin Indian Community, which forged the first water rights settlement with the federal government in 1978, leases water to Anthem, a plush planned community north of Phoenix, with its own four-acre fishing lake and Big Splash Water Park, for \$1,200 an acre-foot — compared to the \$106 an acre-foot valley cities currently pay for CAP

And the Gila River Indian Community will get even more for its water. Tom Buschatzke says the city of Phoenix anticipates leasing 15,000 acre-feet for about \$1,500 per acre-foot. That's \$22.5 million per year for the tribe. If the tribe is able to lease 41,000 acre-feet at that price, that equates to annual revenues of \$61.5 million.

All this worries critics of Indian water deals. In an editorial in *The Arizona Republic* after the Gila River deal was announced, Arizona water historian Earl Zarkin wrote that if it becomes law, "Indian water czars" — the 13 tribes with rights to Colorado River water that make up slightly more than 1 percent of the state's population — will control more than half of the state's Colorado River entitlement. Zarkin and others argue that water should just be given to the cities, rather than allotted to Indians and leased to cities at cutthroat prices. "In my mind," Zarkin says, "it's unjust enrichment. Why should anybody in an arid state be given more water than they need so they can turn around and lease it?"

But in reality, even the right to lease the water is one more compromise. The Gila River Indian Community will only be able to lease roughly one-sixth of the water it gets in the settlement. The settlement forbids leases to out-of-state buyers, and the tribe is severely limited in what it can charge for its water.

When it comes to Indian settlements, the price for water isn't set by competing buyers in an open market — it's determined by a complicated formula written into the terms of the settlement. A 1988 water rights settlement with the Salt River Pima-Maricopa Indian Community just east of Phoenix established a lease price of \$1,100 an acre-foot. "Subsequent (Indian water) settlements," says Phoenix's Tom Buschatzke, "have used that price as a baseline" and adjusted it based solely on inflation.

The price of Indian water may seem exorbitant now, but a few years down the line, it may look dirt-cheap when increased demand drives open-market prices sky-high. Los Angeles, for example, is already considering buying water at prices of up to \$10,000 an acre-foot.

University of Utah professor Daniel McCool, who has written two books on Indian water rights, says the Gila River tribes would be better off with a smaller amount of water that they could lease to other users, anywhere, at any price they wanted.

The real test of Indian water settlements might not come for another 100 years, when prices on the open market are phenomenally high. Tribes will look back, says McCool, "and I think they'll say, 'The albatross around our neck is the inability to freely market water to whomever we want, whenever we want.' "



Rodney Lewis, standing in front of alfalfa and cotton fields in Sacaton, is the lead attorney and negotiator for the water settlement talks for the Gila River Indian Community. Christine Keith/The Arizona Republic

Deal drips with irony

Whatever angle you take on the Gila River water settlement, it is dripping with irony.

The settlement will slowly wean many non-Indian farmers in central Arizona from Colorado River water, but it will simultaneously subsidize a massive expansion of Indian farming. Some of that farming will be traditional subsistence agriculture, but much of it will be large-scale and water-intensive, even as critics question the economic and ecological wisdom of flood-irrigated desert farming.

Another irony is that, as non-Indian farmers lose access to CAP water, they are likely to turn back to pumping Arizona's limited groundwater — a practice that CAP was explicitly designed to end.

Also, when the Central Arizona Project was initially funded, the federal government saw it as a way to settle the water rights claims of the state's Indian tribes, many of which were wending their way through the federal courts. While this settlement would give the Gila River Indian Community its due, it could cut out the claims of many other tribes, including those of the much-larger Navajo Nation.

That's because the Gila River deal divides up the Central Arizona Project's annual allotment of 1.5 million acre-feet: The federal government gets 735,000 acre-feet to help settle the state's Indian claims; the state gets the rest. Nearly all of the federal allocation would already be spoken for: Almost half of it has been awarded to a number of tribes in the southern half of the state, and the Gila River tribes would get almost all the rest. The deal would leave the feds with only 67,000 acre-feet to divide among the Navajo, the Hopi, the White Mountain Apache, and six other tribes that still have unsettled water rights claims.

The Navajo Nation alone, with a 17 million-acre reservation that borders the Colorado River, may have a claim to many times that amount of water ([HCN, 4/28/03: The Colorado River's sleeping giant stirs](#)). And the Navajos arguably are in more dire need of surface water than any other tribe in the state: Nearly a third of the 200,000 people living on the reservation still haul water to their remote homesteads for drinking, cooking and washing. Towns on the western side of the reservation, including Tuba City and Kayenta, are projected to run out of groundwater within the next three decades. Thousands of ranchers have been forced to sell livestock because wells have dried up ([HCN, 8/19/02: Corruption and tragic history paralyze range reform on the Navajo reservation](#)).



On the Navajo Nation, groundwater is running scarce. Lou Swenson

"The decision to use such a huge quantity of CAP water in the Gila River settlement is being made in a vacuum," says Navajo water rights attorney Stan Pollack. The government, he says, is "tying its hands."

For this reason, the Gila River settlement will likely only pass Congress if another bill — a complex trade-off that will send water to the Navajo Nation capital in Window Rock — passes as well. New Mexico Sen. Pete Domenici, R, hopes to have that bill introduced this spring, about the same time Arizona Sen. Jon Kyl, R, hopes to have the Gila River settlement marked up in the Senate Energy Committee.

Water for the eight other tribes in the state with outstanding water rights claims will likely have to come from existing users, predominantly non-Indian farmers, as well as from groundwater, and from the Little Colorado River and some smaller mountain streams.

Of course, many see Indian water settlements, including the huge amount of water the Gila River Indian Community is on the cusp of receiving, as reparation for a century-and-a-half of failed federal Indian policies. And therein lies perhaps the deepest irony of all.

Those policies confined Indians to reservations in the mid-1800s, then divvied up the land and tried to turn tribal members into individual landowners and farmers. The federal government for a century did its best to transform Native Americans into an Anglicized ideal — essentially, happy hay farmers. And now that the Indians are finally taking the government up on that offer, it's difficult to argue about it. That's especially true in the case of the Gila River Indians, who have already been farmers for centuries.

And what if, years from now, the tribes push to renegotiate the settlement, and sell more of their irrigation water to cities? "If it's going to be called Indian water," says McCool of the University of Utah, "they should be able to do what they want with it."

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