

# AK-CHIN INDIAN COMMUNITY

## Community Government

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December 20, 2022

Jacklynn Gould  
Regional Director  
Lower Colorado River Basin  
Bureau of Reclamation  
PO Box 61470  
Boulder City NV 89006-1470

### Re: Ak-Chin Indian Community Water Settlement and System Losses

Dear Ms. Gould:

I write on behalf of the Ak-Chin Indian Community regarding recent public discussion of potential changes to how the Bureau of Reclamation accounts for transit losses in the Lower Basin states of the Colorado River. It is the Community's understanding that the Bureau is considering reducing water deliveries to users in the Lower Basin states, including in Arizona, to account for transit losses in order to help meet conservation goals necessitated by the severe ongoing drought in the Southwest.

Ak-Chin lauds the Bureau's efforts to address the serious problem of ongoing and worsening water shortages in the Colorado River Basin and recognizes that the severity of the problem calls for the consideration of broad range of solutions, some of them potentially unpleasant for stakeholders. At the same time, Ak-Chin wants to clearly state its position that any reduction in water deliveries to the Ak-Chin Reservation to account for supposed transit losses is *per se* impermissible as a matter of federal statutory law and contract.

As you may be aware, Ak-Chin receives Colorado River water through the Central Arizona Project pursuant to a congressionally approved settlement of Ak-Chin's water rights claims against the United States—the first of its kind in U.S. history. The purpose of the Ak-Chin Water Rights Settlement was to provide the Community a replacement water supply for groundwater that the United States had allowed third parties to mine from under the Ak-Chin Reservation in violation of its trust duties to the Community. *See* 1978 Ak-Chin Water Rights Settlement Act (1978 Act), Pub. L. 95-328 (July 28, 1978), § 1(b).

The initial legislation implementing the Ak-Chin water rights settlement, like subsequent legislative enactments and federal water delivery contracts with the Community, was quite specific regarding the United States' obligation "to meet the Ak-Chin Community's needs for a permanent supply of water *in a fixed amount.*" *Id.* § 1(b)(5) (emphasis added). Accordingly, rather than allocating a certain amount of Colorado River water to Ak-Chin, Congress allocated "[s]uch Central Arizona Project water ... as is necessary to fulfill the Secretary's water delivery

obligations” to the Community. 1984 Ak-Chin Water Rights Settlement Act (1984 Act), Pub. L. 98-530 (Oct. 19, 1984), § 2(f)(2). That obligation, as stated by Congress, is to “*deliver* annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of *not less than seventy-five thousand acre-feet* of surface water suitable for agricultural use” subject to certain conditions. *Id.* § 2(a) (emphasis added). Plainly, the United States’ obligation is not to allocate or divert 75,000 acre-feet (AF) of surface water to the Community and then to deliver that amount less transit losses, but rather to deliver the full fixed amount to the Ak-Chin Reservation and to allocate such water as is necessary to ensure that obligation is met. The United States has operated for many years with the understanding that Ak-Chin’s settlement water cannot be reduced by system delivery losses, and Ak-Chin expects the United States to continue doing so.

Although not directly relevant to the foregoing analysis of Ak-Chin’s legal rights, I should note that the Community already faces impending reductions in water deliveries to its Reservation under the terms of its settlement. The 1984 Act provides that in times of shortage, the United States “*may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet.*” 1984 Act § 2(c). Under this provision, Ak-Chin could lose 3,000 AF of its annual Colorado River water in the event of a Tier 3 shortage. What is more, Ak-Chin has traditionally been able to exercise its right under the 1984 Act to receive an additional 10,000 AF of surface water annually when such water is available (*see* 1984 Act § 2(b))—a scenario that is increasingly unlikely given the ongoing drought and resulting water shortages. As a combined result of these developments, Ak-Chin could see its annual water deliveries reduced from 85,000 AF to as low as 72,000 AF in the future without adding in unlawful transit loss assessments. Because the Community currently uses all of its water to meet its on Reservation needs and its obligations under a long-term lease, these reductions alone will result in hardship for the Community.

In short, Ak-Chin recognizes that the exigent circumstances of drought and water shortage in the Colorado River basin call for sacrifices by stakeholders, and it will be making such sacrifices along with everyone else. But it will not accept any attempt to reduce its rights beyond those agreed to by the Community and the United States and approved by Congress in the 1978 and 1984 Acts. Specifically, it will not accept any effort to reduce the United States’ water delivery obligations to account for transit losses. Ak-Chin is entitled to have “a fixed amount” of water delivered to its Reservation to replace groundwater that was unlawfully taken from it, and it expects those deliveries to continue as required by law.

Thank you for your consideration of the Community’s position on this matter, and please do not hesitate to contact me if you have any questions.

Very truly yours,



Robert Miguel  
Chairman, Ak-Chin Indian Community

cc: Catherine Munson, Kilpatrick Townsend

Katosha Nakai, Strickland & Strickland  
Pam Williams, Director, Secretary's Indian Water Rights Office  
Lisa Lance, Attorney-Advisor, Department of the Interior  
Morgan Figuers, Attorney-Advisor, Department of the Interior  
Alex Smith, Acting Manager, Phoenix Area Office, Bureau of Reclamation  
Pam Adams, Native American Affairs Office, Bureau of Reclamation  
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