

# AK-CHIN INDIAN COMMUNITY

## Community Government

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### COMMENTS BY AK-CHIN INDIAN COMMUNITY REGARDING BUREAU OF RECLAMATION PROPOSED COLORADO RIVER SHORTAGE EIS

Ak-Chin Indian Community, a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934, appreciates the opportunity to review and comment on the Draft EIS issued by Bureau of Reclamation on February 28, 2007, and dealing with Colorado River Shortage regulations to be promulgated by the Secretary of Interior. Ak-Chin and its legal counsel have carefully reviewed all of the alternatives set forth in the Proposed EIS. Though considerable work has gone into each of the alternatives, and several meetings have been held to consult with Arizona and other Indian tribes, none of the alternatives represents a "Tribal Alternative" aimed specifically at protection of tribal rights to Colorado River water. This is of special concern to Ak-Chin, and we believe, to other tribes receiving Colorado River water. Receipt of such water in most cases has been decreed, or has been set forth in legislation, in settlement of the tribal federal reserved water rights, or *Winters* water rights. In Ak-Chin's case, the Community gave up its right to assert water rights held from "time immemorial" in return for specific provision by the US government of water from the Central Arizona Project (CAP) system, and from the Yuma Mesa Division of Gila Project. Ak-Chin's comments therefore stress the continuing viability of its water settlement legislation, including the specific provisions for treatment of scarcity set forth in its 1984 settlement act, and the requirement of the Secretary to protect tribal trust assets, including tribal water.

Ak-Chin's 1978 Water Settlement Act provided as follows:

"As a part of the contract referred to Section 2(b) of this Act, the Secretary shall provide for, commencing as soon as possible, but in no event later than the expiration of the twenty-five-year period following the date of the enactment of this Act, the permanent delivery, on an annual basis, to the lands comprising the Ak-Chin Indian Reservation, of eighty-five thousand acre-feet of water suitable for irrigation on the reservation."

In return for this provision of water, and "as consideration on the part of the Ak-Chin Indian Community for entering into any contract

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or agreement pursuant to Section 2(b), the Ak-Chin Indian Community shall agree to waive, in a manner satisfactory to the Secretary, any and all claims of water rights or injuries to water rights of the Ak-Chin Indian Community, including both groundwater and surface water from time immemorial to the present, which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation, arising out of the laws of the United States or the State of Arizona." Sections 3 and 4(a), Public Law 95-328 (July 28, 1978).

The initial Water Settlement Act of 1978 contemplated delivery of water to Ak-Chin from off-reservation groundwater supplies. As it became apparent that that plan was not feasible, Ak-Chin and the federal government negotiated the 1984 Water Settlement Act. That Act required that "As soon as possible but not later than January 1, 1988, the Secretary shall 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 except as otherwise provided under Subsections (b) and (c)."

Under Section 2(b) of the 1984 statute, the Secretary is required to "deliver such additional quantity of water as is requested by the Community not to exceed ten thousand acre-feet," if the Secretary makes a determination that there is "sufficient capacity available in the main project works of the Central Arizona Project to deliver such additional quantity."

Section 2(c) contains a provision for reduction of Ak-Chin's entitlement "in time of shortage." That Section provides that "If the aggregate supply of water referred to in Subsection (f) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet."

Section 2(c) defines "time of shortage" as "a calendar year for the which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred ninety thousand eight hundred twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses."

According to Section 2(d) of the Act, the Secretary is required to deliver such water at a flow rate meeting "the seasonal requirements for agricultural use on the Reservation," not to exceed three hundred cubic feet per second.

Section 2(f) contains the sources of water to be used to satisfy the government's obligation under the Act.

Fifty thousand acre-feet of the surface water comes from water authorized by the Act of July 30, 1947 (61 Stat. 628) for beneficial consumptive use on the lands of the Yuma Mesa Division of the Gila Project. The balance of the water to satisfy the requirements of the statute comes from the Central Arizona Project, at CAP priority.

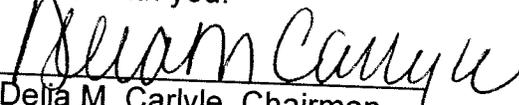
Under Section 2(j) of the Act, "The Ak-Chin Indian Community shall have the right to devote permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal, industrial, mining or recreational use."

Whereas the water legislation was initially crafted to diminish the possibility of groundwater depletion, the Act and resulting 1985 contract with the United States provide that, if shortages exist preventing delivery of water to Ak-Chin from either of the two surface water sources listed in the Act, Ak-Chin may pump groundwater sufficient to make up any such deficiency.

Nothing in the proposed EIS or any regulations adopted by the Secretary may vary the provisions of Ak-Chin's water settlement legislation, passed by Congress, including those specific provisions relating to receipt by Ak-Chin of water in time of shortage, or alternative groundwater supplies available to Ak-Chin in times of shortage. Ak-Chin will continue to monitor the treatment of Colorado River water to ensure compliance with all aspects of its settlement legislation.

Since most Arizona tribes receive Colorado River water, in one form or another, in settlement of their "federal reserved water rights" or *Winters* rights, Ak-Chin Indian Community urges the Bureau of Reclamation and the Secretary of Interior to attempt to arrive at regulations which will best protect the rights of the tribes to Colorado River and related water supplies. Water is the lifeblood of the tribes in Arizona and elsewhere in the Southwest, and as part of the Secretary's continuing obligation to protect trust resources of the tribes, special attention should be paid to ensure that no diminution of such trust assets will be caused by any new regulations governing shortage.

We will be happy to discuss Ak-Chin's position on the proposed EIS further with you.

  
Della M. Carlyle, Chairman  
Ak-Chin Indian Community

Date: 4-20-07