

River Report

Summer 2001

By S. Joshua Newcom

PEACE ON THE GILA

Pending Gila River Indian Community Settlement Tied to CAP Repayment

The Gila River is no newcomer to controversy. At the onset of negotiations in 1922 over the Colorado River Compact, the state of Arizona raised concerns about state's rights to Colorado River tributaries and in particular, the Gila River. This stumbling block delayed Arizona's signing of the Compact until 1944.

Tension over this tributary continued into 1951 when Arizona sued California because of political turmoil over funding for the Central Arizona Project (CAP) until Arizona's share of the Colorado River was determined for certain. A controversial 1963 Supreme Court decision created the *Arizona v. California Decree* that, in addition to other important facets, gave Arizona control over the Gila River.

Currently, another battle is being waged over this tributary, this time involving a wide variety of parties -- over 28,000 according to the Arizona Department of Water Resources (ADWR) -- including irrigators, cities, businesses and numerous American Indian tribes (and the federal government on behalf of those tribes). The largest of these claims in the Gila River General Stream Adjudication is being made by the Gila River Indian Community (Gila Community) -- a combination of members from the Pima and Maricopa Indians of Arizona.

Abutting the Gila Community is the Gila River -- Arizona's largest tributary to the Colorado River. Since the early 1970s, tribes, irrigators, cities and the state have been locked in court haggling over who will get what rights from the Gila. The largest of these claims is from the Gila Community (about 1.5 million acre-feet) and is equivalent to the average flow of the CAP during an entire year.

"In the adjudication they have claimed the entire flow of the Gila River system from above Gillespie Dam and that includes the Salt, the Verde, the Santa Cruz, the San Pedro, just about everything," said Gregg Houtz, Indian facilitator for the Arizona Department of Water Resources (ADWR).

The claim is not only the largest Indian water rights claim in U.S. history, but also is one that could seriously disrupt current water use in the state if the Gila Community prevails in the general adjudication process for the Gila River.

"The Gila River Indian Community is seeking judicial recognition of adjudicated water rights that would supercede those of other non-Indian users covered under Arizona state law," said Robert Johnson, director for the Lower Colorado Region of the U.S. Bureau of Reclamation (Bureau). "There are huge amounts of water that have the potential to be lost by non-Indians."

Some water claims of the Gila Community have already been met through previous court decrees but outstanding claims remain. However, rather than spend time and money (not to mention the potential of losing) by litigating those remaining claims in court through the general

adjudication process for the Gila River, the Community, the Central Arizona Water Conservation District (CAWCD), the United States (through Congressional delegations along with the Departments of Interior and Justice), and several other "non-Indian" parties are working to establish a settlement for the Gila Community's water rights to the Gila River and its tributaries.

"The non-Indian parties, the U.S. and the state will provide water resources and money to the Gila Community in exchange for a waiver of the tribe's claim to water," said John Weldon, an attorney for the Salt River Project, one of the parties involved in both the proposed Gila Community settlement and the Gila River Adjudication process. By agreeing to a settlement, all parties involved would obtain certainty and finality to their established water rights and the Gila Community would stop all litigating in the Gila River adjudication. Other parties would continue with the adjudication process in court, but the Gila Community would drop its claims to the river altogether if the settlement goes through.

"It would resolve, once and for all, the shadow of uncertainty that exists for water supplies in central Arizona without a settlement in place," said the Bureau's Johnson.

Under the proposed settlement, the Gila Community would have a right to 653,500 acre-feet of water for claims on the Gila River system, 328,500 acre-feet of which would be met through CAP. Though the Gila Community already has rights to 173,100 acre-feet of CAP, 155,400 acre-feet of new CAP water will be devoted to the proposed settlement.

"All of our shareholders will give up a little bit of water," said Weldon, whose water users will have to devote 20,000 acre-feet of water towards the settlement. "In some years it will require us to pump more water and we may have to purchase some Colorado River water occasionally."

Additionally, the Gila Community settlement is linked to a separate CAP repayment settlement between CAWCD, the entity responsible for repaying, operating and maintaining the CAP, and the federal government. For years CAWCD and Interior have squabbled over the amount of money owed to the federal government for building the multimillion-dollar CAP. The repayment settlement would fix the repayment amount owed by CAWCD to Interior for construction of the extensive canal system that delivers water from the Colorado River to the booming cities of Phoenix and Tucson.

"It wasn't CAWCD's intent to tie the two together," said Doug Miller, general counsel for the CAWCD, "but as our discussions with the United States over repayment continued, it became apparent there was a relationship between our repayment settlement and the settlement of certain Indian water rights claims."

Through a component of the repayment settlement, some of the money generated from the CAWCD/Interior settlement – \$200 million – would be redirected to the Gila Community settlement so that it can complete the necessary infrastructure needed to increase its ability to irrigate lands.

"The infrastructure has been underfunded since 1935 and until now, the federal government has ignored rehabilitating the system," said Community attorney Rod Lewis, explaining that the Gila Community needs to build a reliable water distribution system connecting the east end of the reservation to the west end.

In October 2000, Sen. John Kyl (R- AZ) introduced the "Arizona Water Rights Settlements Act of 2000," in a bill to Congress (S. 3231). Though the bill did not pass, Kyl stated S. 3231 was intended to be a springboard for finalizing a bill that could pass. "We have introduced this first version of legislation to demonstrate our commitment to the settlement process, and to allow all interested parties the time to suggest changes to precisely reflect the terms of the agreement," he said.

Former Secretary of the Interior Bruce Babbitt, in his final speech to the Colorado River Water User's Association in Las Vegas last December, echoed the sentiment of reaching resolution. He said that once a settlement agreement was reached, "we shall have met an important and moral commitment to the tribes and to the benefit of Arizona, and we shall have done so in a way that respects Arizona's water management system."

This issue of *River Report* examines the existing proposed settlements as they pertain to the Gila River Indian Community and what steps are being taken to bring closure to this immensely complicated issue.