

9-23-1983

# 1983 Agreement in Principle to Revise Ak-Chin Water Settlement

US Department of the Interior

Ak-Chin Indian Community

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# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

## AGREEMENT IN PRINCIPLE FOR REVISED AK-CHIN WATER SETTLEMENT

The Department of the Interior and Ak-Chin Indian Community have agreed to revisions of the Act of July 28, 1978, (P.L. 95-328), the Ak-Chin Water Rights Settlement Act, that will: (i) maintain the integrity of the Act; (ii) serve to stabilize the Community's farm operations; (iii) insure a permanent and high priority source of water to the Community; and (iv) reinforce the viability of the use of negotiations as a vehicle for resolving conflicting water claims between Indians and non-Indians.

This agreement forms the basis for further discussions with the Arizona Congressional delegation, the State of Arizona, the Central Arizona Water Conservation District and other affected entities. The objective of this agreement is to secure legislation which will ratify a revised settlement and provide authorization for appropriations to implement the settlement. The major provisions of the agreement are as follows:

### Interim Water

The Department will provide \$15 million to satisfy the Community's interim water needs and provide supplemental water beginning in 1988. The Department will seek to provide this funding on a schedule designed to satisfy the Community's needs and requirements. Payment of this sum will be in lieu

ATTACHMENT 7  
Agreement in Principle

of the obligation of the United States to develop a well field on federal lands nearby the Ak-Chin Reservation to meet the emergency water needs of the Community. The Community will determine the most cost-effective means of fulfilling those needs and will have the exclusive determination and responsibility for the use and disposition of that money. The Department will make available the services of the Bureau of Indian Affairs, the Geological Survey and the Bureau of Reclamation to assist the Community.

Interim Damages

The Department's full obligation for the interim water supply from 1984 through 1987 will be met once it has provided funding of \$15 million, a \$3.4 million economic development grant, and \$25.3 million in grants for agricultural development and flood protection.

Permanent Water

Initial deliveries of the permanent water supply through CAP facilities will be made no later than 1988 and such delivery shall constitute performance by the Department under the revised agreement. Damages shall be based in that year on the replacement cost of water not delivered up to a limit of 35,000 acre-feet. To the extent that the United States makes available for delivery all or any portion of that water for beneficial use by the Community, damages shall be based on

the difference between 35,000 acre-feet and the actual amount of water made available for delivery to the Community. The Department will pay all OM&R costs for the permanent water supply. This water supply will be comprised of Ak-Chin's CAP allocation and supplemental Colorado River water which is senior in priority to CAP. The Department will provide the following quantities of water annually or pay damages for failure to deliver the water:

a) Dry years--72,000 acre-feet

The Department will provide a minimum of 72,000 acre-feet of water annually to Ak-Chin in the years in which the shared priorities in the CAP allocations are invoked.

b) Normal and wet years--75,000 acre-feet

The Department will provide 75,000 acre-feet of water to Ak-Chin in all years in which shared priority is not invoked.

Upon request by the Community, the Department will deliver up to 85,000 acre-feet in those years in which sufficient water and canal capacity are available to the Secretary to deliver this water.

Santa Rosa Canal

The Department will ensure that the water is delivered to the Community at flow rates that will meet the peak water requirements on the Reservation not to exceed 300 cfs.

Permanent Water Supply Damages

The Department will be liable for damages when deliveries of permanent water are less than the amount specified in this

agreement. Principles of force majeure will apply to this agreement. For the minimum supply, damages will be equal to replacement cost of water not delivered. In years in which the Community requests additional water, and water and CAP aqueduct capacity are available to the Secretary, damages for failure to deliver the additional water will be equal to the CAP non-Indian agriculture delivery rate plus 20%.

Economic Development Grant

The Department will provide an economic development grant of \$3.4 million to the Ak-Chin Community and \$25.3 million in agricultural development and flood protection grants.

Status of 1978 Act

The Department and the Community agree that the Act of July 28, 1978 (P.L. 95-328) and the contract of May 20, 1980, will remain in full force and effect except as provided in the paragraphs on Interim Water and Permanent Water until the provisions of this agreement in principle have been enacted into law and the permanent water supply has been acquired, delivery facilities have been completed, and initial deliveries have been made of the permanent water supply to the reservation.

The AK-Chin Indian Community and the Department of the Interior hereby agree in principle to this revised proposal and will proceed to pursue its adoption with the appropriate entities.

AK-CHIN INDIAN COMMUNITY

By Leona M. Kakar  
Leona M. Kakar  
Chairman  
Ak-Chin Indian Community

LeRoy J. Narcia  
LeRoy J. Narcia  
Vice Chairman  
Ak-Chin Indian Community

Francis J. Antone, Sr.  
Francis J. Antone, Sr.  
Council Member  
Ak-Chin Indian Community

Vera M. Santos  
Vera M. Santos  
Council Member  
Ak-Chin Indian Community

THE DEPARTMENT OF THE INTERIOR

By James G. Watt  
James G. Watt  
Secretary of the Interior

Sept 23, 1983



1520  
United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

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OCT 7 1983

Honorable Bruce Babbitt  
Governor, State of Arizona  
1700 West Washington Street  
Phoenix, Arizona 85007

Dear Governor Babbitt:

The Act of July 28, 1978, (P.L. 95-328, 92 Stat. 409) provides for the settlement of the Ak-Chin Indian Community's claims to water for its reservation in central Arizona. The Arizona officials who worked with the leaders of the Ak-Chin Indian Community, the non-Indian water users in central Arizona, the committees in the Congress, and representatives of this Department to enact the Ak-Chin settlement accomplished the first legislative settlement of an Indian reservation's water rights.

In formulating a water policy for this administration, we concluded that negotiated settlements are the most appropriate means of resolving Indian water rights disputes. Accordingly, we looked forward to participating in the process that would lead to enjoyment of the benefits of the 1978 act not only by the Ak-Chin Indian Community, but also by non-Indian water users in central Arizona. However, as we proceeded to implement the settlement we discovered that many of the assumptions that Congress made in enacting the settlement have not been borne out by later events. The facts persuade us that the basic objective of the settlement--to provide water to the Ak-Chin Reservation--cannot be met by following the terms of the 1978 act. The following is a discussion of the problems that the settlement presents to Arizona officials who sponsored the settlement and to us who are responsible for its implementation.

At the outset, we find it appropriate for the Ak-Chin Indian Community to have the distinction of being the first Indian tribe to achieve a legislated settlement of its water rights. The Community's earnest and successful efforts to use the farming skills which are deeply rooted in its culture have enabled it to establish a solid reservation economy virtually

ATTACHMENT 8  
October 7, 1983 Letter from the  
Secretary of the Interior to the  
Governor, State of Arizona

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LAND OPERATIONS PHOENIX AREA DIRECTOR

OCT 24 1983

independent of any need for assistance from the Bureau of Indian Affairs. There would have been no need for the settlement if the Ak-Chin Reservation were not wholly dependent on ground water that is being depleted by extensive non-Indian development in the vicinity. By providing for a water supply to replace the depleted ground water resources of the Community, the 1978 act eliminates a serious conflict over water rights between Indians and non-Indians in central Arizona and contributes to the continued economic self-sufficiency of the Ak-Chin Indian Community.

As you know, the 1978 act requires the United States, through this Department, to identify, acquire, and deliver water supplies to the Ak-Chin Indian Reservation. The act contemplates delivery occurring in two phases.

The first phase begins in 1984; it is intended to provide an interim water supply to meet the emergency needs of the reservation. The source of the interim supply is specified in the act as ground water from federal lands near the reservation. Studies of those lands in 1979 indicated that an area known as Vekol Valley was the most promising site to construct a well field and aqueduct to pump and deliver water to the reservation. Additional studies of Vekol Valley have revealed that the ground water available for use as the interim supply may be only ten percent of what was thought to be in the north half of Vekol Valley. Moreover, the costs of developing that water source would be substantial. (The matter of cost had been raised by the previous administration to the committees of Congress when they were considering the settlement. It has continued to concern us.)

Furthermore, it appears that most of the ground water in the southern portion of the Vekol Valley underlies the Papago Indian Reservation. Development of that part of the basin for Ak-Chin raises questions about the nature and extent of the Papago's claims to that supply. If valid Papago water rights are held to attach to the south Vekol Valley ground water, the United States could be held liable for damages under section 2(d) of P.L. 95-328. We are confident that you share our view that, because of this Department's trust responsibility for the natural resources of both the Papago and Ak-Chin Indian Reservations, Congress could not have expected us to deliver water to Ak-Chin at the expense of the Papago Tribe.

The second phase of the settlement is to be implemented as soon as possible but not later than 2003. By that time the United States is to have acquired and delivered an annual water supply of 85,000 acre feet to the reservation.



Failure to deliver water according to the settlement exposes the United States to risk of liability for damages which are defined as the replacement cost of water not delivered by the United States.

We have concluded that it is unlikely that the Vekol Valley or any other interim water source will provide sufficient water to justify the substantial expense involved. In addition, development of those sources would not relieve the United States of further responsibility to develop the permanent supply provided for in the settlement.

Since 1978, when P.L. 95-328 was enacted, non-Indian ground water use has continued unabated in Pinal County. Significantly, the Arizona Ground Water Management Act of June 12, 1980, permits the continued depletion of ground water resources in only one of the Active Management Areas created by that act, the Pinal Active Management Area. The management goal for that area, which encompasses the Ak-Chin Reservation and the federal lands Congress contemplated as a source of interim water, is merely that ground water be managed to allow new non-agricultural uses of water and to preserve irrigated farming "as long as feasible." Arizona Revised Statutes 45-562 B.

During the past several months we have reviewed this problem with the Ak-Chin Indian Community. The Indians' position is clear: the 1978 act provides them with a permanent annual entitlement to water. In exchange for that right the Community has waived all of its past and future claims to the water resources appurtenant to the Ak-Chin Reservation. The settlement frees the non-Indian community in the vicinity of the reservation from the threat of water rights litigation by the Indians and the United States. The Indians want the benefit of their bargain. This attitude is understandable since the non-Indian community has already benefited by the settlement.

On September 23, 1983, this Department and the Community reached an agreement in principle that the most effective way to fulfill the spirit of P.L. 95-328 is to press forward immediately to secure the Indians the permanent water supply to which they are entitled under section 3 of that act. The principal points of agreement are set forth in the following synopsis:

- 1) In lieu of developing a well field on nearby federal lands the United States would agree to provide the Community with \$15.0 million for interim water development during the period

1984 through 1987 and supplemental permanent water beginning in 1988.

The Community will determine the most cost-effective means of developing interim and supplemental water supplies and will have the exclusive determination and responsibility for the use and disposition of the \$15 million. The obligations of the United States for the interim supply from 1984 through 1987 will be completely satisfied by provision of the \$15 million and grants of \$3.4 million for economic development and \$25.3 million for agricultural development and flood protection.

2) Deliveries of the permanent water supply will begin in 1988. All costs of those deliveries will be borne by the United States. The permanent water supply will consist of the Community's Central Arizona Project (CAP) allocation of 58,300 acre feet of water in years of full supply supplemented by Colorado River water. The supplemental supply of Colorado River water will be administered in a manner that will leave it unaffected by shortages to the CAP supply. Accordingly, deliveries to Ak-Chin will be as follows:

- i) 72,000 acre feet in years when CAP supplies are reduced to such a level that the shared priorities in the CAP allocations are invoked;
- ii) 85,000 acre feet in years in which the Community requests additional water and there is sufficient water and capacity in the CAP aqueduct system to deliver 85,000 acre feet of water to the Community in accordance with their needs without affecting the schedule of water deliveries for other CAP users;
- iii) 75,000 acre feet in all other years.

Damages for failure to deliver the base permanent supply of either 72,000 or 75,000 acre-feet, as appropriate, will be the replacement cost of water not delivered. Damages for failure to deliver

additional water as described in (ii) above will be measured by the CAP agricultural delivery rate plus twenty (20%) percent.

- 3) The United States would ensure that capacity of 300 cubic feet per second is available in the Santa Rosa Canal for water deliveries to Ak-Chin.
- 4) The United States would provide an economic development grant of \$3.4 million to the Community, and \$25.3 million in grants for agricultural development and flood protection described above.

This agreement in principle differs from the express provisions of the 1978 act. To implement it would, in our opinion, require legislation. Your support in that effort would be essential.

Acquisition of a water supply to supplement the Community's CAP allocation is potentially the most difficult aspect of our proposal. Section 3 of the 1978 act requires that the permanent supply be delivered to the Ak-Chin Reservation "as soon as possible, but in no event later than" the year 2003. We have concluded that it is in the best interest of the United States and the Community to secure the permanent supply now because we recognize that as the State of Arizona continues to grow, water supplies will become even more difficult and expensive to acquire for anyone's use in the state.

Our study of potential sources for the permanent supply was exhaustive. It included all ground water basins in central Arizona and along the alignment of the CAP aqueduct. We came to the conclusion early that the acquisition and delivery of any substantial ground water source would not be practical for two reasons. First the continued availability of ground water generally is difficult to establish. Moreover, there is little certainty that if a productive aquifer is found it could be adequately protected from other development. Second, the costs of acquisition, development, and delivery met or exceeded in almost every case the costs that we have projected for development of Vekol Valley and other federal lands nearby the Ak-Chin Reservation.

We are persuaded that surface water in Arizona is the only practical source of water for meeting our obligations to the Community. Nonetheless, in our studies we have been sensitive to the reliance interests that have been established in surface water by both Indians and non-Indians. The prospects of acquiring surface water rights from existing users on

Arizona streams do not appear promising to us. Our judgment in that regard is reinforced by the fact that the streams in central Arizona are the subject of pending water rights adjudications. Unless some coordinated effort develops among those water users to facilitate our acquisition of a permanent supply, we do not believe it would be useful to pursue a program of voluntary sales of developed surface water rights for use at Ak-Chin.

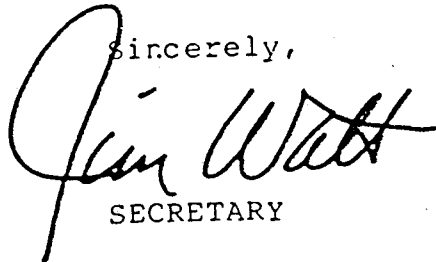
Our efforts then have focused on studying the availability of undeveloped surface water in Arizona. We reviewed water service contracts executed pursuant to this Department's authority under the Boulder Canyon Project Act (45 Stat. 1057; 43 U.S.C. 617 et seq.). In at least three cases we discovered that part or all of the Colorado River water contracted for has never been called for and put to use by the party holding the contract.

The undeveloped water amounts to approximately 100,000 acre feet. Since it has been considered as allocated for use along the Colorado River it has not been included in calculations of the water committed to CAP.

In our view the undeveloped water should be made available for use in the Ak-Chin settlement. We would prefer to negotiate a rescission of the contracts with the affected contractors to the extent of the undeveloped water, but at the same time are of the view that if water is not developed it is within the Secretary's authority to rescind water service contracts to that extent and insure that the undeveloped water is made available for beneficial use elsewhere. Given the statutory obligation to provide a permanent water supply to Ak-Chin and the practical unavailability of any other water supply, we request that you work with us to fulfill the spirit of the Ak-Chin settlement in the manner we propose.

Accordingly, we request a meeting with you in the next month, as your schedule permits, to discuss your reaction to our proposal. Thank you for your consideration of this matter which is of fundamental importance to the Ak-Chin Indian Community and the State of Arizona. An identical letter has been sent to members of the Arizona congressional delegation.

Sincerely,



SECRETARY

bcc: Secretary's Files  
Secretary's RF (2)  
SEC/JCulbertson's RF  
SEC/Assistant Secretary Land & Water  
SEC/Assistant Secretary--Indian Affairs  
SEC/Deputy Assistant Secretary, PBA (Bettenberg)  
SEC/Office of Congressional & Legislative Affairs  
Commissioner, Bureau of Reclamation  
SOL/Solicitor  
SOL/Associate Solicitor, Energy & Resources  
SOL/Associate Solicitor, Indian Affairs  
SOL/Regional Solicitor, Pacific Southwest Region  
SOL/Field Solicitor, Phoenix  
BIA/Director, Office of Trust Responsibilities  
BIA/Area Director, Phoenix  
Bureau of Reclamation, Arizona Projects Office  
Regional Director, Lower Colorado Region  
OWP/Assistant Director--Policy Analysis

SOL/Docket's Files  
SOL/Solicitor's RF  
SOL/JMembrino's RF  
SOL/KCBrittain's RF  
SOL/DIA RF  
SOL/Hold Copies (2)

SOL:JMembrino:JCulbertson:kcb:9/28/83:x343-6967:Tape #20  
(originals sent to Senators DeConcini, Goldwater; Congressmen  
Udall, Rudd, McCain III, McNulty)



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

15 MAY 1980

Memorandum

To: Secretary  
Acting Deputy

Through: Assistant Secretary, Indian Affairs  
Acting Deputy

From: Commissioner, Bureau of Indian Affairs

Subject: Approval of Ak-Chin Water Delivery Contract

MAY 15 1980

1. Type and purpose of Contract:

Enclosed for your consideration and approval is a form of contract providing for the implementation of the Ak-Chin Water Rights Settlement Act (P.L. 95-328) of July 28, 1978. The contract is expressly required by the Act as a condition to the settlement and the terms of the contract conform to the provisions of the Act. Participants in the negotiations on behalf of the United States include representatives of Water and Power Resources Service, Geological Survey, Bureau of Land Management, Bureau of Indian Affairs and the Solicitor's Office. Negotiations were conducted with full regard for the water needs at Ak-Chin, the environmental effects of development, and the cost of the settlement to the Government.

2. Contracting Entity and Legal Considerations:

The Ak-Chin Indian Community is a recognized tribe organized pursuant to the Indian Reorganization Act of June 18, 1934. The Community's Articles of Association were approved by the Secretary on December 20, 1961. The Ak-Chin Reservation was established by Executive Order of May 28, 1912, and consists of 21,840 acres located approximately 30 miles south of Phoenix, Arizona. The reservation is located on essentially flat land with soils well suited to irrigated agriculture. All of the land is owned in common by the Community and current agricultural development is operated as a tribal enterprise.

The proposed contract was accepted by resolution of the Ak-Chin Indian Community Council dated April 28, 1980. The Act provides that the Contract be executed by the Department and the Community. The Field Solicitor, Phoenix, and the Office of the Solicitor, Washington, D.C., find the proposed contract legally sufficient.

ATTACHMENT 4  
Approval of Ak-Chin Water Delivery  
Contract

3. Background:

In enacting P.L. 95-328 the Congress made the following findings: the Ak-Chin Indian Community relies for its economic sustenance on farming, and ground water which is essential for farming is declining at a rate which will make it uneconomical to farm within the next few years; at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, but the Community's water needs have not been met; it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined; there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered.

Based on these findings Congress intended to settle the Community's claim for water by meeting the emergency needs of the Community through construction of a well field and water delivery system from nearby federal lands and by obligating the United States to meet the Community's needs for a permanent supply of 85,000 acre feet of water to be made available no later than twenty-five years from the date of the Act's enactment. Congress directed that the settlement be implemented by means of a contract between the Secretary, on behalf of the United States, and the Community.

4. Proposed Plan:

As required by the Act, studies have been completed which show that there are ground water sources on federal lands near the Ak-Chin Reservation which will supply 85,000 acre feet of water annually for at least twenty-five years. Three sites for ground water development have been identified and one, or a combination of sites, will be selected once all cost and environmental analyses are completed. The following studies are already completed:

- a. "Availability of Ground Water on Federal Land near the Ak-Chin Reservation, Arizona, A Reconnaissance Study", Open-File Report 79-1165, U.S. Department of Interior Geological Survey
- b. "Environmental Assessment, Ak-Chin Water Supply Project for Implementation of Public Law 95-328", January 1980, Prepared for the Bureau of Indian Affairs, submitted by the Ak-Chin Indian Community
- c. "Engineering Report, Ak-Chin Water Supply Project for Implementation of Public Law 95-328", January 1980, Prepared for the Bureau of Indian Affairs, submitted by the Ak-Chin Indian Community

- d. "Addendum to the Engineering Report, Ak-Chin Water Supply Project for Implementation of Public Law 95-328," March 1980, prepared for the Bureau of Indian Affairs, submitted by the Ak-Chin Indian Community

In addition, a final environmental impact statement will be issued on the water supply project. Set out below are the estimated costs of implementing the Act as authorized by Congress. The cost is shown adjusted for inflation and compared with the costs in 1979 dollars estimated for alternative water development plans which may be used to fulfill the Department's obligations to deliver water to the Community. All figures represent reconnaissance cost estimates, and will be adjusted as they are recomputed in greater detail.

An additional factor affecting actual cost will be the final environmental impact statement which will complete the information needed by you to choose the specific site on which the ground water development will occur. The costs associated with the potential environmental impacts will be added to the reconnaissance estimates when they are prepared. Obviously, their effect, if any, will be to raise the estimates, but it already is apparent that in some areas the environmental costs will be much less than in others. These costs are particularly important to the overall cost of the settlement because the Act provides that other water users adversely affected by the settlement may submit claims for compensation to the Department.

Given these qualifications on the accuracy of the cost figures, they are as follows:

AK-CHIN WATER SUPPLY COST SUMMARY  
 Volume: 85,000 acre feet annually  
 Rate of flow: 214 cubic feet per second

P.L. 95-328

March 1977 Authorized Cost	December 1979 Construction Cost Index	December 1979 Consumer Price Index
\$39,501,000	\$53,725,231	\$55,365,612

POTENTIAL WELL FILED SITES December 1979  
 Volume: 85,000 acre feet annually  
 Rate of flow: 300 cubic feet per second

Waterman Wash	Waterman Wash/Bosque Valley	Vekol Valley	Bosque Valley
\$58,963,000	\$73,881,000	\$78,706,000	\$87,814,000



The 214 cubic feet per second rate of flow was adopted originally because of apparent limits to productivity in the three aquifers. Later studies revealed that the full flow requirement of 300 cubic feet per second could be developed. Estimated annual operation and maintenance costs could approach \$5 million. As these figures indicate, the cost of the settlement, largely because of inflation, will exceed the amount authorized in the Act, so that additional authorization will be needed to complete the settlement. However the existing authorization will permit substantial work to be done on the water development.

5. Contractual Obligations:

The Act and the contract address these obligations specifically. Briefly stated, the Community waives its claims for past and future damages to its water and receives a cause of action in contract exclusively against the United States in the event the Government fails to deliver water as provided in the Act.

6. Public Participation:

The contract is with the Community and representatives of the Community; representatives of the Community participated fully in the negotiations. Participation by the general public is relevant only with respect to environmental issues. Public hearings have been held in Arizona, and a decision has been made by the Assistant Secretary, Indian Affairs, upon the recommendation of the Acting Area Director, Phoenix BIA, to prepare an environmental impact statement which will, of course, involve public participation.

7. Findings and Recommendations:

As stated earlier, the Community has approved the proposed contract. We believe the contract represents the best interests of the United States and the Community. Therefore, we recommend that you approve the enclosed form of the contract entitled "Contract Between the United States and the Ak-Chin Indian Community to Provide Water and to Settle Claims to Water." Your approval should be with the understanding that minor contract revisions may be made, consistent with overall contract objectives, to complete the final contract. Thereafter, pursuant to existing delegations of authority and after execution by the Community, the Acting Area Director, Phoenix, Bureau of Indian Affairs, will execute the contract on behalf of the United States and will serve as contracting officer on your behalf.

8. Urgency of Approval:

Ground water supplies beneath the reservation are nearly exhausted. The chronology set forth in the Act required this contract to be signed in late January. Schedules for planning, construction, and eventual water delivery established in the Act can be met only if the contract is approved forthwith. Our obligations under the Act as well as our fiduciary responsibility to the Community require that the contract be approved. Your immediate consideration and approval of the contract is therefore requested.

*Theodore G. Kluge*

Ak-Chin Water Delivery Contract Approved pursuant to P.L. 95-328:

*Cecil D. Andrus*  
Secretary of the Interior

5-15-80  
Date

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Ak-Chin Indian Community Water Rights Settlement Act

CONTRACT BETWEEN THE UNITED STATES AND THE AK-CHIN INDIAN COMMUNITY  
TO PROVIDE WATER AND TO SETTLE CLAIMS TO WATER

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ATTACHMENT 5  
May 20, 1980 Contract for  
Water Delivery

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Ak-Chin Indian Community Water Rights Settlement Act

CONTRACT BETWEEN THE UNITED STATES AND THE AK-CHIN INDIAN COMMUNITY  
TO PROVIDE WATER AND TO SETTLE CLAIMS TO WATER

THIS CONTRACT, made this 20th day of MAY, 1980, is between the Secretary of the Interior (Secretary), on behalf of the UNITED STATES OF AMERICA, and the AK-CHIN INDIAN COMMUNITY (Community), pursuant to the Act of July 28, 1978, (P.L. 95-328; 92 Stat. 409) (Act) to settle the Community's claims to water.

WITNESSETH, That

EXPLANATORY RECITALS

WHEREAS, The Congress has declared in the Act that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached; and

WHEREAS, The Congress has found and declared that--

- (1) the Ak-Chin Indian Community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;
- (2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered;

(5) the Act is intended to settle the Community's claim for water by meeting the emergency needs of the Community through construction of a well field and water delivery system from nearby Federal lands and by obligating the United States to meet the Community's needs for a permanent supply of water in a fixed amount to be available upon a date certain, in exchange for a release of all claims the Community has against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the Community; and

(6) it is the intention of the Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligations of the United States toward the Community; and

WHEREAS, the Congress has directed that the Act be implemented by means of a contract between the Secretary, on behalf of the United States, and the Community;

NOW, THEREFORE, in consideration of the covenants herein contained it is agreed by the parties hereto as follows:

PURPOSE OF THE CONTRACT

1. As intended by the Act, this contract settles the Community's water right claims by obligating the United States to meet the emergency water needs of the Community through construction of a well field and water delivery system from nearby federal lands, and to meet the Community's needs for a permanent supply of water in a fixed amount to be available no later than twenty-five (25) years from the date of the Act's enactment, which will be July 28, 2003. Nothing in the Act or this contract obligates the Secretary to develop the reservation's irrigable lands.

DAMAGES WAIVED

2. As consideration for this settlement, the Community, by this contract, waives any and all of its claims to water rights or for injuries to water rights, including both ground water 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 under the laws of the United States or the State of Arizona. As further consideration for this settlement, the Community, by this contract, waives any and all claims

of water rights or injuries to water rights, including both ground water and surface water, arising under the laws of the United States or the State of Arizona, which it might have in the future against any person, corporation, municipal corporation, or the State of Arizona or agency thereof.

BREACH OF CONTRACT PROVISION

3. The Community does not waive any claims against the United States for breach, if any, of this contract. Except as agreed to by the Secretary and the Community in this contract, a failure to deliver water within the times specified in either section 2(b) or 3 of the Act shall be deemed a breach of the contract. As provided in section 4(c) of the Act, the measure of damages for breach of this contract shall be the replacement cost of water not delivered by the United States.

INTERIM SUPPLY REQUIREMENTS UNDER THE ACT

4. Section 2 of the Act requires the Secretary to deliver to the Community an interim water supply of up to eighty five thousand (85,000) acre feet (a.f.) annually if it is hydrologically feasible to deliver such a supply from a well field to be constructed on federal lands near the Ak-Chin Indian Reservation. The delivery of said ground water shall continue until augmented or replaced by the permanent water supply required to be delivered under section 3 of the Act, except that the obligation to deliver groundwater during any year shall be reduced for that year by an amount

equal to the amount of surface water delivered to the Community. Section 2 of the Act further provides that if the Secretary determines that pumping 85,000 a.f. of ground water annually from nearby federal lands for the Community would not be hydrologically feasible or diminish the ground water supply in the basin and thereby cause severe damage to other water users, he may deliver a lesser amount.

TEMPORARY WATER SUPPLY SOURCES IDENTIFIED

5. As required by the Act, the Secretary has completed engineering and hydrological studies and has determined that there exist, on federal lands near the Ak-Chin Indian Reservation, sources of water which can be taken, on an annual basis, for use in connection with this contract. The studies are reported in United States Geological Survey, "Availability of Ground Water on Federal Land Near the Ak-Chin Indian Reservation, Arizona, A Reconnaissance Study", Open File Report 79-1165.

PHASED WATER DELIVERY

6. Although the water sources described in paragraph 5 are available, and although Section 2(b)(1) of the Act provides for the delivery of up to 85,000 a.f. of water annually to the Community within four years, the Community believes that its interim needs for water can be met satisfactorily through a phased delivery of water for irrigation on the reservation.



Phased delivery of water will contribute to maintaining the Community's financial and social stability as irrigated land on the reservation is increased, pursuant to the contract, from its present level to 16,725 acres. Accordingly, the Secretary shall meet the Community's interim water needs, as required by the Act, through the phased delivery of water pursuant to the conditions and schedule set forth in this contract. The Secretary and the Community agree that such phased water delivery will fulfill the Community's interim needs.

DELIVERY SYSTEM CAPACITY

7. The Secretary and the Community agree that, with the phased water delivery described in paragraph 6, and with the delivery of surface waters, as referred to in section 2(c)(1) of the Act, it may be unnecessary to develop a well field with a capacity to deliver 85,000 a.f. of water annually to the reservation. Instead, the interim needs of the reservation, as provided for in Section 2(b) of the Act, will be met through the phased water delivery which will integrate surface water, well field water, and ground water underlying the reservation. If surface water is not available, it will be necessary to increase: (a) delivery of water from the well field; and/or (b) on-reservation pumping, either of which may require drilling of additional wells. The Secretary and the Community agree that peak demand for 85,000 a.f. of water needed to irrigate the Community's 16,725 irrigable acres will require a delivery system or systems with a capacity to deliver water to the reservation at a rate of at least three hundred (300) cubic feet per second (c.f.s.).

SCHEDULE FOR PHASED WATER DELIVERY

8. The Secretary and the Community agree that the schedule for phased water delivery shall be as follows:

Beginning Date	On-Reservation Irrigated Acreage	Annual Volume (Acre Feet)	Peak Delivery Requirement (Cubic Feet per Second)
Apr 1980	4,000	20,300	72
Jan 1981	4,000	20,300	72
Jan 1982	4,000	20,300	72
Jan 1983	4,000	20,300	72
Jan 1984	8,000	40,600	145
Jan 1985	12,000	60,900	218
Jan 1986	16,725	85,000	300

If future studies of groundwater supplies in nearby federal lands reveal that in any year deliveries in excess of 60,000 a.f. as provided for in this schedule are not possible under the criteria set forth in section 2(e) of the Act, the Community agrees that the Secretary may limit deliveries of groundwater from nearby federal lands to the reservation to 60,000 a.f. annually for a period not to exceed the twenty-five year period following the date of the Act's enactment.

RESERVATION WELLS--REHABILITATION

9. The Secretary shall take such action as may be necessary to operate and maintain existing wells on the reservation as a component of the

phased water delivery. This includes payment by the Secretary of all operating and maintenance costs, and if necessary, the repair, reconstruction and replacement of those wells, commencing on the date of this contract.

WELL FIELD CONSTRUCTION REQUIREMENTS

10. In order to provide for the delivery of sufficient groundwater from nearby federal lands to the southeast corner of the Ak-Chin Reservation and to meet the schedule contained in paragraph 8, the Secretary shall take such action as may be necessary to drill, construct, equip, operate and maintain a well field, and construct a power supply system, conveyance system, and other appurtenant works as a component of the phased water delivery. The Secretary agrees that he will construct, operate and maintain the well field and conveyance system in a manner that will provide the use of those facilities during and after the interim period until such facilities are no longer needed to contribute to the permanent supply referred to in paragraph 11. The capacity of the well field conveyance system will be no less than 300 c.f.s. unless other water suitable for irrigation is made available by the Secretary for delivery to the reservation by May 1, 1986.

PERMANENT SUPPLY

11. As required by section 3 of the Act, the Secretary and the Community agree that commencing as soon as possible, but in no event later than the expiration of the twenty-five (25) year period following the date

of the enactment of the Act, the Secretary shall provide for the permanent delivery, on an annual basis, to the lands comprising the Ak-Chin Indian Reservation, of eighty-five thousand (85,000) a.f. of water suitable for irrigation on the reservation.

INVESTIGATION OF SOURCES OF PERMANENT SUPPLY--REPORTS

12. The Secretary agrees to provide the Community with water availability reports including identification, inventory, quantification, evaluation, and use of existing and potential sources of water needed for the permanent supply referred to in paragraph 11. Unless waived by the Community, this information will be prepared in report form every five years and a copy submitted to the Community, with the first report due in 1990. The Secretary agrees to continue submission of a water availability report at 5 year intervals.

CORRESPONDENCE

13. All notices, demands or correspondence between the parties concerning this contract shall be sent to the addresses set forth in this paragraph or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified or registered mail. Receipt of any notice or demand shall be deemed complete 10 days after mailing or upon the date actually received, whichever is earlier. The addresses are as follow:

Chairman, Ak Chin Indian Community  
Route 2, Box 22  
Maricopa, Arizona 85239

Secretary of the Interior  
United States Department  
of the Interior  
Washington, D.C. 20240

APPROPRIATIONS

14. This contract is subject to the availability of appropriations pursuant to section 5 of the Act.

FORCE MAJEURE

15. In the event of the Secretary being rendered unable, wholly or in part, by force majeure to carry out its obligations under this contract, to make payments of the amount due hereunder, the obligations hereunder of the Secretary so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed in this contract shall mean Acts of God, strikes, lock-outs, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint from rulers and people, interruptions by government not due to defaults of the parties, civil disturbances, explosions, breakage or accident to machinery or transmission facilities. Nothing herein contained shall be construed as requiring the Secretary or the Community to settle a strike against its will.

FEDERAL PROCUREMENT LAWS AND REGULATIONS, INDIAN SELF-DETERMINATION ACT

16. Federal procurement laws and regulations and the Indian Self-Determination Act (P.L. 93-638) shall apply to any contract, subcontract, grant, or subgrant made to implement this contract.

Water Rights Settlement Act P.L. 95-328

Contract No. H50C14201847

Dated May 20, 1980

Contract Between the United States And  
The Ak-Chin Indian Community to Provide  
Water and to Settle Claims to Water  
Amendment to Article No. 10

10. In order to provide for the delivery of sufficient ground water from nearby federal lands to the Ak-Chin Reservation and to meet the schedule contained in paragraph 8, the Secretary shall take such action as may be necessary to drill, construct, equip, operate and maintain a well field, and construct a power supply system, conveyance system, and other appurtenant works as a component of the phased water delivery. The Secretary agrees that he will construct, operate and maintain the well field and conveyance system in a manner that will provide the use of those facilities during and after the interim period until such facilities are no longer needed to contribute to the permanent supply referred to in paragraph 11. The capacity of the well field conveyance system to the reservation will be no less than 300 c.f.s., unless other water suitable for irrigation is made available by the Secretary for delivery to the reservation by May 1, 1986. Conveyance system on the reservation will include primary distribution facilities if the cost does not exceed the cost associated with fulfilling the P.L. 95-328 requirement of delivery to the southeast corner of the Ak-Chin Indian Reservation. Operation, maintenance, and replacement costs related to primary distribution facilities on the Ak-Chin Indian Reservation shall be paid by the Ak-Chin Indian Community.

THE UNITED STATES OF AMERICA

  
BY: Area Director Phoenix  
ACTING Bureau of Indian Affairs

OCT 25 1982

DATE

AK-CHIN INDIAN COMMUNITY

  
BY: Chairperson

DATE

Oct. 27, 1982

ATTACHMENT 6  
Modification to May 20, 1980 Contract  
for Water Delivery

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and date first above written by their respective officers and representatives and warrant that each is duly authorized by the respective entity to execute this agreement which shall bind all the parties hereto, their successors and assigns.

ATTEST:

Wilbert G. Carlyle  
Sec. - Area.

AK-CHIN INDIAN COMMUNITY

By Leonard Kabar  
Chairperson

APPROVED:

Office of the Director  
by William D. Powell  
Field Director, Phoenix

THE UNITED STATES OF AMERICA

By Justin Guzman  
Acting Area Director, Phoenix  
Bureau of Indian Affairs