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Yaqui Indians Claim Aqueduct in Sonora State Infringes on Tribal Water Rights

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The scarcity of water in northwestern Mexico has created a conflict between the Yaqui Indians in Sonora and the federal and state governments regarding control of the scarce water that flows on the Río Yaqui. The controversy concerns an aqueduct constructed by the administration of Sonora Gov. Guillermo Padrés Elías, which captures 634 gallons of water per second from the Río Yaqui and diverts it through 130 km of pipeline between Presa El Novillo and the state capital of Hermosillo.

The Yaquis, which have opposed the project from its inception, argue that the Sonora government has usurped their water rights and violated the law by ignoring court orders to halt construction and then to stop operations of the aqueduct.

The Acueducto Independencia, completed in November 2012, is just one of several options the Sonora government has pursued to provide water for residential and industrial uses in Sonora after almost a decade of consistent drought conditions in northwestern Mexico (SourceMex, June 7, 2006, April 28, 2010, and April 10, 2013). The efforts to supply the state with water include the proposed construction of a desalination plant near Hermosillo (SourceMex, Nov. 2, 2011).

"Sonora is a state where arid conditions prevail," author and journalist Humberto Musacchio said in a guest column in the Mexico City daily newspaper Excélsior. "The capital city of Hermosillo, the fastest growing city in the state, is thirsty and requires more and more water, regardless of the cost."

Musacchio said water and political campaigns have become inseparable in Sonora. "The political class is aware of the scarcity, and that is why the issue is inseparable from the campaigns," said the author. "During his electoral campaign, Gov. Guillermo Padrés promised to build two large desalination plants to bring water to the state capital."

Padrés Elías, a member of the conservative Partido Acción Nacional (PAN), moved forward aggressively with the construction of the Acueducto Independencia with the support of the federal government, which was then headed by ex-President Felipe Calderón (2006-2012), also a member of the PAN.

The Río Yaqui, the largest river in Sonora, flows for about 320 km from the Sierra Madre Occidental to the Gulf of California, ending near the coastal city of Ciudad Obregón.

Supreme Court orders environmental-impact study

However, the project was met with strong opposition from Yaqui communities, which have seen their water supplies decrease rapidly. The Yaquis, who have filed injunctions with the courts to halt the project, eventually succeeded in bringing the issue to Mexico’s high court (Suprema Corte de Justicia de la Nación, SCJN) with support and assistance from the Centro Mexicano de Derecho Ambiental (CEMDA).
"The history of our people has been linked with the Río Yaqui water for our cultural and economic survival," the Yaqui community said. "The river is part of our rituals and worldview; it is the main productive element, it is connected to creation and is a symbol in the mythical world of the Huya Ania where both benign and malignant beings give meaning and identity to our existence."

"For three years we have seen our very survival seriously threatened by the building of the Acueducto Independencia … depriving us of the most valuable resource we have for subsistence," added the petition presented by the Yaqui administration in Vicam, one of eight seats of traditional government that historically oversee the Yaqui territory in Sonora.

To ensure that the complaint before the SCJN received as much international exposure as possible, members of the Yaqui community launched a parallel campaign on World Water Day, March 22, to bring attention to the issue. "It bears mentioning that the Yaqui Tribe has recognized rights to the mentioned resource, since President Lázaro Cardenas signed a decree restoring territory and creating a title for the Yaqui Tribe, authorizing the right to retain 50% of the water in the channel of the stated river," said the declaration.

"World Water Day is a very opportune date to recall that access to drinking water is a human right recognized by the Constitution, which should be guaranteed by the Mexican state. In this context, we call upon the justices of the court to make a decision that ensures our access to water as well as respect for the right of indigenous peoples and other communities to information and consultation," authorities of Vicam said in a written declaration.

The appeals from the Yaquis found a sympathetic ear in the high court, which on May 8 ordered the federal government to conduct a new environmental-impact study to determine the effect of the aqueduct on the Yaqui peoples. The SCJN directed President Enrique Peña Nieto’s administration to take into account the right of consultation to which the indigenous community is entitled. The right was not granted when the project was first proposed, said the court.

Political observers agreed that the Yaquis had a very strong case when they brought the issue to the SCJN. "In none of the procedures [to construct the Acueducto Independencia] did authorities comply with the law regarding the obligation to inform and receive permission from the indigenous communities," René Avilés Fabila wrote in an opinion piece in Excélsior.

**State ignores court order**

Despite injunctions from lower courts, the Padrés government proceeded with construction of the aqueduct, finally completing the project in November 2012.

And there was no immediate action by either the Sonora government or federal authorities following the SCJN ruling in May of this year. The only step taken by the Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT) was to send a letter to the Sonora governor requesting a meeting to discuss whether he thought an environmental-impact study was needed.

The state government acknowledged receiving the letter. "We are happy to meet [with SEMARNAT] to discuss the issue and offer our point of view and find ways to comply with the law," said Padrés Elías.

With the actions by the Sonora state government and SEMARNAT falling far short of the SCJN’s directive, leaders of the Yaqui community in Vicam took matters into their own hands. They
organized a series of public protests, including a blockade on a section of Federal Highway 15, which connects the border city of Nogales with Mexico City. Agriculture producers from the Yaqui River Valley joined the Yaquis in protesting the water extractions.

"They have not met their obligations, even when the Supreme Court already ruled in favor of the Yaqui people," said Mario Luna, executive secretary for the Yaqui nation. "They have taken evasive actions that are clearly intended not to comply with the law.

Fernando Juárez, another Yaqui leader, said the indifference of the authorities to the SCJN ruling is another example of the systemic violation of the rights of indigenous people by Mexican authorities.

"We do not care whether there are powerful economic interests behind the projects," said Juárez. "What we want is that the law be applied and that they comply with the directive from the high court."

**Highway blockade affects state’s economy**

The protests and the highway blockade, which began on May 29 and continued into July, appear to have made an important statement. Federal Highway 15 is the only major route connecting the northern and central parts of Sonora with Hermosillo, and the blockade stopped the flow of commerce to the capital city and other areas of the state.

The Confederación Patronal de la República Mexicana (COPARMEX) said the protests had prevented many businesses from shipping goods in and out of Hermosillo via Highway 15, causing significant economic losses. In a statement in late June, the business organization called for authorities and Yaqui community leaders to form a dialogue committee to solve the problem. "The protest has caused losses of millions of pesos in neighboring Sinaloa, since agricultural producers are unable to ship their goods north," said COPARMEX in late June. "In Sonora, we also estimate significant losses because the blockade has slowed down the shipment of parts to plants and factories and the export of goods to the US."

COPARMEX also noted that mining and transportation companies were also hurt by the blockade.

One business operation that was affected directly was the Ford assembly plant in Hermosillo, where the affiliate of the US automaker produces the Fusion and other models. Because of the blockade, "the plant stopped producing about 900 units, and this has had repercussion on the company," said Ricardo Martínez Herrera, a union leader at the plant.

But Martínez said Ford has adjusted to the situation. "The company has changed the mode of transporting the parts to Hermosillo, to the point where the plant is now operating at 100% capacity with no problems."

The economic losses have apparently not moved Padrés to stop water extractions from the Río Yaqui. In addition, even when it had agreed to meet with officials of the PRI-led government of Peña Nieto to discuss the question of an environmental-impact study, the administration suggested that state and local elements of the PRI were behind the protests. They especially pointed to strong connections that Yaqui secretary-general Mario Luna had with the governing party. "This is not a community action, but an entirely political activity," said Sonora legal counsel René Luna. "Behind
this movement are legislators and community leaders, all linked to the PRI. They are the ones with the power in the Yaqui communities, and they are the ones behind the protests."

Still, the federal government might eventually force the Padrés administration to conduct the environmental-impact study, although it is uncertain whether any further action will be taken to halt water extractions from the Río Yaqui. In comments to reporters in late July, Mario Luna said he met with officials of SEMARNAT, the Comisión Nacional de Agua (CONAGUA), and the Procuraduría Federal de Protección al Medio Ambiente (PROFEPA), who indicated that Sonora would have to comply with the SCJN directive.

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