

Liquid Gold

Water settlements bring economic promise, newfound power to Indians

By PAULINE ARRILLAGA

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SACATON, Ariz. (AP) – If he closes his eyes, if he shuts out the mile after mile of fallow fields that breed only brush and shriveled mesquite, Harlan Bohnee can still see when this valley thrived.

Neat rows of cotton camouflaged the desert, painting the dusty earth an emerald green. Peach trees and wild spinach sprouted outside his boyhood home, in the shadow of mountains covered with cacti.

Families like his lived off the land, and the land obliged with a bounty that sustained the cultural and economic existence of a community whose very name means "River People." His ancestors first settled the region because of the life-giving waters that flowed freely into hand-dug aqueducts.

"That was the basis for our culture – the river," says the 66-year-old farmer, who learned the trade from his father, who learned from his father before. "If you don't have water, you don't have anything.

"You're not even living."

If you ask Bohnee, the Gila River Indian Community hasn't really been alive for years.

Its watershed, like those traversing so many of the nation's Indian reservations, was drained after white settlers headed West and began pumping the river for their own use. Farmland went barren. Irrigation canals dried up and became littered with weeds and trash. Self-sufficiency eroded with the shrinking river, as the tribe grew more reliant on government commodities.

Today, Bohnee is one of only a handful of farmers left on the 370,000-acre reservation, which sits south of Phoenix alongside swelling suburbs whose golf courses and stucco houses serve as the Indians' modern-day competitors for water.

But now he sees promise in the neglected soil that spans his homeland.

Legislation introduced last month in Congress would guarantee the community of 17,000 Indians about 2.1 billion gallons of water each year _ enough to serve roughly 3 million people _ and give the tribe \$200 million in federal money to rebuild its dilapidated irrigation system.

The deal is one of dozens of Indian water settlements in negotiation over the past 25 years as Western states, the federal government, farmers, industries and tribes seek to sort out who should get how much of the region's most precious resource.

The Gila River proposal, among the largest in terms of how much water would be awarded, comes as the battle for liquid gold reaches new heights in the West. With severe drought draining rivers and reservoirs, some towns ran dry this summer while neighbors waged war over century-old water rights.

For non-Indians, the settlements mean certainty about how much water they're due in wet times or dry. For the tribes, they carry the prospect of economic development and, for some, a return to traditional agricultural practices.

They also bring something else: Newfound bargaining power to a group that has always had little.

"At one level, it's very frightening to other water users," says Daniel McCool, director of the University of Utah's American West Center and the author of several books on Indian water settlements.

"These water settlements are the treaties of this century, the way the land settlements were the treaties of last century. They are critically important, and will have profound consequences for Indian country for all future generations to come."

Like the land they first took from the Indians, white settlers saw the West's streams and rivers as their sole domain and dug their own canals to irrigate arid pastures. They also developed a new legal system to delineate water rights: Whoever first diverted and used the water had the right to that resource over all subsequent claimants.

Yet their doctrine of "prior appropriation," meant to serve the miners, ranchers and farmers who became the prevailing political forces in the West, faced an unlikely challenge from their old adversaries.

In 1905, a Justice Department attorney in Montana filed suit on behalf of the Fort Belknap Indian Reservation, seeking water for a proposed irrigation project. He argued that when the United States established the reservation, it implicitly reserved the right to enough water to sustain the land.

Though the position was contrary to prior appropriation, primarily because white farmers had been using the water while the Indians had not, a judge agreed. Three years later, the U.S. Supreme Court upheld the ruling in the first of a series of decisions creating federal reserved water rights for Indians.

But these victories rarely resulted in actual water for the reservations, because few had any modern delivery systems or the money to construct them. With their land held in trust by the government, Indians couldn't obtain bank loans to build irrigation canals, and Congress was slow to fork over cash.

Their so-called right became little more than a worthless claim. While communities such as Gila River withered, non-Indian farmers and expanding cities diverted more water for their needs.

"Economies grew around the reservations and they began using the water under Western water law, never realizing that under federal law that water had a prior hold on it," says Pamela Williams, director of the Interior Department's office of Indian water rights settlements.

"Mistakes were made. Things were not handled as they could've been, and tribes feel that they definitely got the short end of the stick."

One by one, tribes began asserting their water rights in court _ sometimes suing independently, sometimes intervening in pending cases brought by states or non-Indians. A few early settlements were reached in the 1960s, but once again promises of water delivery went unfilled. By the late 1970s, court rulings had turned less favorable for the tribes, including one giving state courts the authority to resolve Indian water claims.

With Western leaders concerned about the impact of Indian claims on future development, and tribes worried they couldn't win in court, the federal government began calling on all sides to come to the negotiating table.

In 1978, the 750-member Ak-Chin Indian tribe, located just south of the Gila River reservation, became the first Indian community to settle its claims under the federal negotiating process.

Approved by Congress in 1984, the settlement mandated delivery of 75,000 acre-feet of water annually to the reservation beginning in 1988. It also allowed the community to lease another 10,000 acre-feet annually to provide water for a development north of Phoenix.

One acre-foot is about 326,000 gallons, enough to cover an acre of land with a foot of water.

Tribal member Leona Kakar began fighting for the deal in the 1960s, when she and her brothers came up with the idea of starting a tribal farm to sustain the community. Before the water arrived, the Ak-Chin farmed just 3,000 acres. They now grow 15,000 acres of wheat, barley and cotton.

"It was well worth it," Kakar, the community's farm board chairman since 1965, says of the prolonged negotiations. "We were asked to settle for money. We said what good is money? We'll run out of it, and our land will lay out there parched. We have to have water."

Seventeen settlements have been approved since, according to Williams. Twenty more remain in negotiation, and other tribes await their chance to bargain.

Not every tribe wants the water for farming. Some are seeking to protect streams and species they consider sacred. Others no longer have use for the water and intend to lease it back to non-Indian users, something opponents fear will result in a high-stakes bidding war.

In return for settlement, tribes agree to waive all future claims to their federal reserved water rights.

"The thing that everybody gets is finality in terms of who has what water," says Williams. "The non-Indian communities know they can continue developing. Tribes get infrastructure to do farming."

Yet the process is hardly without strife. Settlements involve nearly every significant watershed in the West and thousands of users. Some negotiations last for decades – the Gila River case began in 1974 – and are fraught with some of the same underlying attitudes that plagued early white-Indian relations.

Last December, three men took their guns to the site of an ancient fishing village for Oregon's Klamath Indians and drove around shouting racial slurs, firing their shotguns at signs and accusing the Indians of stealing their water. The incident occurred after water was withheld from farmers the previous summer to assure two endangered fish held sacred by the tribes would survive.

Even those who support the settlements don't agree with the rationale behind them.

"It just seems unfair... like their rules are always different than our rules," says Arizona cotton farmer Dan Thelander, who would surrender some water rights under the proposed Gila River settlement. In exchange, he and his fellow farmers would be waived from paying millions in water-related debts and have the opportunity to buy other water at a cut rate.

"They're going to get water when they weren't using it before and everybody else had to use it. They got the casinos, and nobody else can have casinos," Thelander says. "Philosophically, I don't really think that they deserve it. But the reality is that it's too good a deal to pass up."

That's what the Gila River Indians are counting on. As the settlement awaits action by Congress, the community is fast at work building irrigation canals that leaders hope will one day carry water to now-fallow fields. The ultimate goal is to raise 146,000 acres of cotton, wheat, alfalfa and vegetables.

Tribal leaders have implemented a program to try to lure residents back into farming. They dream of seeing crops grown on the Gila River reservation shipped to grocery stores all across the country.

"Because of the lack of water, you see unused land. Our vision is to get those fields back to cropping," Lt. Gov. Richard Narcia says. "We will be the only real garden spot in this area."

Farmers such as Bohnee have their own dreams. Along with his partner, he'd like to expand his 2,300-acre operation to 15,000 acres. He is one of several members of the fledgling Gila River Indian Irrigation and Drainage District, charged with determining how farmers will share the new water.

"People say, 'Why do you want a water settlement when all this is desert?' Well, it wasn't this way," Bohnee says. "It's basically dead right now. It needs to be brought back to life."

Now, when Bohnee surveys his homeland, he no longer dwells in the past. He can finally envision a future.

EDITOR'S NOTE _ Pauline Arrillaga is the AP's Southwest regional writer, based in Phoenix.

On the Net:

Summary of Arizona water settlement cases:

<http://water.az.gov/AZWaterInfo/indian/>

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