

AK-CHIN INDIAN COMMUNITY

Community Government

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Leslie A. Meyers, P.E.
Area Manager, Phoenix Area Office
Bureau of Reclamation
6150 W. Thunderbird Rd.
Glendale, AZ 85306
lmeyers@usbr.gov

Theodore Cooke
General Manager
Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, AZ 85080-3020
tcooke@cap-az.com

Dear Ms. Meyers and Mr. Cooke:

I write on behalf of the Ak-Chin Indian Community to offer the Community's views on the most recent revisions to the Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project (the Draft Guidance). While the Community recognizes that the most recent draft has improved in some ways, including by partially addressing comments that the Community submitted in the prior draft, the Draft Guidance still suffers from fundamental flaws that render it inadequate to ensure that Ak-Chin receives the water that it is entitled to receive as a matter of law under its federal settlement act and its associated water delivery contract with the United States.

Before proceeding to reiterate the Community's concerns, I would like to acknowledge areas of improvement in the most recent Draft Guidance. In particular, the addition of § 3.4.1.6, which bars the introduction of effluent and other highly impaired water sources in the CAP System for a period of at least five years is a beneficial step in a positive direction, although the Community firmly believes that the introduction of effluent will remain as inappropriate five years hence as it does today. The Draft Guidance's clarification of the definition of the CAP System to clearly exclude facilities such as the Santa Rosa Canal is also helpful and appreciated.

Despite these helpful changes, the current Draft Guidance fails to address the most basic and fundamental concerns repeatedly raised by the Community. It fails to preserve the current, relatively high quality of water in the CAP System. It continues to lack necessary mechanisms providing for consultation of CAP users such as Ak-Chin, not to mention other tribes and stakeholders, who will be adversely affected by the inevitable water quality degradation resulting from increased wheeling of Non-Project Water. And most fundamentally, it fails to ensure—

indeed, it calls into grave doubt—the United States’ ability to meet its statutory, contractual, and trust obligations to annually deliver to Ak-Chin “not less than seventy-five thousand acre-feet of surface water suitable for agricultural use,” with that water consisting of 50,000 acre-feet (AF) of Colorado River water previously authorized for the Yuma-Mesa Division of the Gila River Project and the remainder consisting of CAP Water. 1984 Ak-Chin Water Rights Settlement Act, Pub. L. 98-350, 98 Stat. 2698, §§ 2(a) & (f)(1)-(2) (Oct. 19, 1984) (the 1984 Settlement Act).

Bluntly stated, the Community does not see how the United States will be able to meet its obligation to deliver surface water, the majority of it comprising main stem Colorado River water, suitable for agriculture to Ak-Chin if the Draft Guidance is adopted in its current form. Indeed, it does not appear that there is any intent to meet this obligation. The Draft Guidance acknowledges that the introduction of Non-Project Water “has the potential to alter, *and possibly degrade*, the water quality in the CAP System,” § 3.4 (emphasis added), although even this acknowledgement shies away from the reality that degradation is essentially inevitable under the currently proposed standards. And § 2.1 notably deletes the word “high” from an earlier draft’s statement recognizing the importance of “high quality” water in the CAP system, an apparent attempt to step back from the prior draft’s appropriate acknowledgement of the current, not-to-be-maintained water quality.

In order to preserve the United States’ ability to meet its obligations to Ak-Chin, the Draft Guidance needs to be fundamentally changed in two ways. First, it must include enforceable *delivery* standards, not just introduction standards.¹ While the Community does not question the value of introduction standards, the simple fact of the matter is that the United States’ obligations—and the Community’s needs—are based on the quality of water actually delivered to the Ak-Chin Reservation, and the Draft Guidance should be revised to acknowledge this reality by including enforceable delivery standards.

Second, the proposed salinity concentrations in the Draft Guidance must be lowered, regardless of how they are to be enforced. As the Community has repeatedly pointed out in prior comments, the delivery standards listed in Table A-1 of the Draft Guidance for chloride (170 mg/L) and TDS (747 mg/L) are simply too high to satisfy the United States obligation to deliver to Ak-Chin “surface water suitable for agricultural use.” 1984 Settlement Act § 2(a). As an initial matter, these proposed standards are inconsistent with—and of notably poorer quality than—the existing quality of Colorado River or CAP water, raising serious doubts as to whether water with such characteristics can be properly characterized as the “surface water” that Ak-Chin is entitled to receive. According to the 2019 CAP Water Quality Report, TDS in the CAP System ranged from 500- 660 mg/L and averaged 585 mg/L with a 5-year average of 629 mg/L. Chloride ranged from 82-96 mg/L and averaged 87 mg/L with a 5-year average of 91 mg/L. At the Brady pumping plant, which is the closest measuring point to the Santa Rosa Canal, the maximum 2019 concentration for chloride was 96 mg/L and for TDS was 610 mg/L. Plainly, water with up to 170 mg/L of chloride and 747 mg/L of TDS is chemically inconsistent with the surface water that Ak-Chin is

¹ Moreover, as noted in the Community’s prior comments, language in the Draft Guidance regarding the enforceability of even the introduction standards needs considerable tightening. As written, it focuses far too much on steps that will be taken to accommodate non-conforming proposed introductions of Non-Project Water, *see* § 3.4.5, noting, at worst, that pre-introduction treatment “may”—not shall—be required for non-compliant sources of Non-Project Water that cannot otherwise be accommodated. § 3.4.6.

statutorily and contractually entitled to receive. In fact, as compared to 2019 levels, water at these levels would result in the introduction of *10,000 tons* of additional salt to the Ak-Chin Reservation each year.

Even if that were not the case, water with the salinity levels permitted under the Draft Guidance is significantly impaired for agricultural use. The proposed increases in salinity levels will negatively affect Ak-Chin's farming operations by impairing our ability to continue to grow potatoes and other salt sensitive crops. It will reduce crop yields, contribute to soil compaction, require increased irrigation to provide for salt leaching, and increase preexisting groundwater salinization problems, to say nothing of its adverse effects on non-agricultural uses.

While the United States' obligations to Ak-Chin, standing alone, are sufficient grounds for lowering the chloride and TDS delivery thresholds in the Draft Guidance, the Community also notes that the United States and other stakeholders have invested decades and hundreds of millions of dollars into efforts to combat high salinity levels in the Colorado River for the benefit of water users—efforts that have met with some success and directly contributed to the current, relatively high quality of CAP System water. The salinity levels proposed in the Draft Guidance would effectively undo much or all of that work. This willingness to cavalierly reverse decades of progress is baffling to the Community.

For all of the foregoing reasons, the Ak-Chin Indian Community hereby reiterates its urgent request that the Draft Guidance be revised to include enforceable delivery standards for TDS and chloride set no higher than 680 mg/L and 150 mg/L respectively. Further, the Community strongly encourages CAWCD to postpone any action by its Board of Directors to consider adoption of the Draft Guidance until a study can be conducted to fully evaluate the environmental and economic impacts that would result from this level of increased salinity in the CAP aqueduct, and the United States conducts tribal consultation. I appreciate your consideration of the Community's comments, and trust that the United States will take the necessary and appropriate steps to meet its moral and legal obligation to provide the Ak-Chin Reservation with water suitable to maintain the Community's millennia-long reliance on farming its land.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Miguel', written in a cursive style.

Robert Miguel
Chairman
Ak-Chin Indian Community